

# RESOURCE MATERIAL SERIES

## FEATURED ARTICLES

INTERNATIONAL STANDARDS FOR THE TREATMENT OF DRUG USE DISORDERS

TREATMENT AND CARE FOR PEOPLE WITH DRUG USE DISORDERS IN CONTACT WITH THE CRIMINAL  
JUSTICE SYSTEM: ALTERNATIVES TO CONVICTION OR PUNISHMENT

*Anja Busse (UNODC)*

IN-PRISON SUBSTANCE MISUSE TREATMENT PRINCIPLES AND MODALITIES

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*by Dato' Sri Ahmad Khusairi Bin Yahaya (Malaysia)*

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## INTRODUCTORY NOTE

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It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 107.

Part One of this volume contains the work product of the 170th International Training Course, conducted from 22 August to 20 September 2018. The main theme of the 170th Course was *Treatment of Illicit Drug Users*. Part Two contains the work product of the 21st UNAFEI UNCAC Training Programme, conducted from 10 October to 15 November 2018. The main theme of the 21st UNCAC Programme was *Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society*.

The 170th Course offered participants an opportunity to deepen their understanding of relevant theories and practices to facilitate the treatment of illicit drug users and breaking the cycle of drug dependence. Dependence on drugs entails a complex multifactorial health disorder characterized by a chronic and relapsing disease with social causes and consequences. It is a result of a long series of biological and environmental factors that can be prevented and treated in a health-oriented framework. Therefore, it is necessary not only to instruct users to desist from using drugs but also to have awareness that it is a disease that can be recovered from by continuous treatment and support. With the aim of promoting desistance from drug use, this training programme offered participants an opportunity to deepen their knowledge and understanding of effective systems and practices for withdrawal from drug use.

The 21st UNCAC Programme took a comprehensive look at measures to combat corruption. Specifically, this programme focused on: (1) effective anti-corruption investigation, prosecution and adjudication in cooperation with relevant agencies (including special investigative techniques, whistle-blower and witness protection, utilization of financial intelligence units, etc.); (2) international cooperation (mutual legal assistance, extradition, joint investigations, and asset recovery); and (3) preventive measures against corruption in cooperation with civil society and the private sector.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held these training programmes to offer participants opportunities to share experiences, gain knowledge, and examine crime prevention measures in their related fields, as well as to build a human network of counterparts to further international cooperation, which is vital to addressing these issues.

In this issue, in regard to both the 170th International Training Course and the 21st UNAFEI UNCAC Training Programme, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the reports of each programme are published. I regret that not all the papers submitted by the participants of each programme could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

March 2019



Takeshi Seto  
Director of UNAFEI

**PART ONE**  
**RESOURCE MATERIAL SERIES**  
**No. 107**

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**Work Product of the 170th International Training Course**

**Treatment of Illicit Drug Users**

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**UNAFEI**

# INTERNATIONAL STANDARDS FOR THE TREATMENT OF DRUG USE DISORDERS

Anja Busse\*

## I. INTRODUCTION

This article describes the policy background, purpose, content as well as the dissemination process of the International Standards for the Treatment of Drug use Disorders (UNODC/WHO, 2016).

Drug Use Disorders (DUDs) are a public health, developmental and security problem both in industrialized and developing countries. They are associated with health problems, poverty, violence, criminal behaviour and social exclusion. Prevention of illicit drug use and treatment of drug use disorders are essential demand reduction strategies of significant public health importance. Therefore, the implementation of adequate programmes is key in ensuring an appropriate response to the need for evidence-based prevention and treatment interventions of people at risk or affected by drug use disorders and their negative health and social consequences.

The *International Standards for the Treatment of Drug Use Disorders*<sup>1</sup> (the *Standards*) were prepared in the framework of the UNODC-WHO Programme on Drug Dependence Treatment and Care<sup>2</sup> to support UN Member States in their efforts to develop and implement effective and ethical services and systems for the treatment and care of drug use disorders. The *Standards* were launched as a draft for field testing during the 2016 Commission on Narcotic Drugs (CND).

Prior to the *Standards*, UNODC and WHO had already jointly published the Principles of Drug Dependence Treatment (the *Principles*)<sup>3</sup> (UNODC/WHO, 2008) which specify general requirements for comprehensive drug dependence treatment that is accessible, affordable, evidence-based, diverse and compliant with human rights and ethical standards. Building on the *Principles*, the *Standards* describe a range of effective treatment interventions that can be implemented in a variety of settings (outreach, outpatient treatment, short-term inpatient treatment, longer-term residential treatment to sustained recovery management) with a view to the implementation of a full continuum of care for the treatment of drug use disorders at the service and the systems levels.

About 275 million people worldwide or 5.6% of the global population aged 15-64 years have used drugs at least once in the year 2016 and 31 million people globally suffer from drug use disorder. Cannabis remains the most widely used illicit drug worldwide while opioids are responsible for most of the negative health impact of drug use. There are an estimated 11 million people who inject drugs (PWID) and are thus exposed to further health and social risks. 1 in 8 persons who inject drugs is living with HIV, and every second person who injects drugs has Hepatitis C. There remains a discrepancy between the number of people who actually receive treatment for drug use disorders and the number of people who need it as globally only 1 in 6 persons in need of drug use disorder treatment has access to it<sup>4</sup>. Women with drug use disorders are even more underrepresented in treatment. 1 in 3 persons who use drugs is a woman, but women account only for 1 in 5

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\* Ms. Anja Busse is Programme Officer at the Prevention, Treatment and Rehabilitation Section at the United Nations Office on Drugs and Crime. She can be contacted at [anja.busse@un.org](mailto:anja.busse@un.org). The information and views set out in this article are those of the author(s) and do not necessarily reflect the official opinion of the UNODC.

<sup>1</sup> UNODC/WHO (2016). International Standards for the Treatment of drug use Disorders. Draft for Field Testing. Available online at: [http://www.unodc.org/documents/International\\_Standards\\_2016\\_for\\_CND.pdf](http://www.unodc.org/documents/International_Standards_2016_for_CND.pdf)

<sup>2</sup> <http://www.unodc.org/unodc/en/treatment-and-care/our-projects.html>

<sup>3</sup> United Nations Office on Drugs and Crime and the World Health Organization, *Principles of Drug Dependence Treatment* (Vienna, Austria, 2008).

<sup>4</sup> United Nations Office on Drugs and Crime, *World Drug Report 2018* (Vienna, Austria, 2018).

people in treatment<sup>5</sup>.

Limitations inherent in the data regarding drug use in general, and treatment specifically, must be considered. Reporting practices on drug use tend to be weak, and the data for drug use disorder treatment is greatly affected not only by the demand for it but also by the extent to which treatment services are available and accessible, and supported through public funding.

## II. DEVELOPMENT OF THE STANDARDS AS PART OF THE INTERNATIONAL DRUG POLICY CONTEXT

### A. Commission on Narcotic Drugs (CND) Political Declaration and Plan of Action 2009<sup>6</sup>

In the *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (2009)*, Member States expressed great concern regarding the consequences of drug use and drug use disorders for people who use drugs, their families and their communities. Member States restated their commitment to work towards the goal of universal access to comprehensive prevention programmes and treatment, care and related support services and recognized that a lack of quality standards hinder the effective implementation of demand reduction measures based on scientific evidence, therefore requesting the development and adoption of appropriate health-care standards.

In response, the UNODC and WHO jointly created a Global Programme on Drug Dependence Treatment and Care in 2009<sup>7</sup>. This programme supports UN Member States in their efforts to develop effective treatment policies, systems services through capacity building and technical assistance. As part of their collaboration, UNODC and WHO developed initially the *Principles* and then the *Standards* as guidance to Member States on the provision of ethical and evidence-based drug-use-disorder treatment and care interventions to be implemented as a continuum of care in a variety of settings within a comprehensive drug-use-disorder treatment system.

### B. CND Resolution 59/4 – Development and Dissemination of International Standards for the Treatment of Drug Use Disorders

The *Standards* were released as a draft for field testing at the 59<sup>th</sup> session of the Commission on Narcotic Drugs in April 2016. In resolution 59/4 Member States noted with appreciation the work of the United Nations Office on Drugs and Crime and the World Health Organization in developing the international standards for the treatment of drug use disorders, and encouraged all Member States to consider expanding the coverage and improving the quality of drug treatment systems, interventions and policies based on scientific evidence, using the scientific evidence-based international standards for the treatment of drug use disorders developed by the UNODC and the WHO.

### C. Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem<sup>8</sup>

The United Nations General Assembly conducted a Special Session on Drugs in April 2016, during which it clearly recognized drug dependence as a complex, multifactorial health disorder characterized by a chronic and relapsing nature with social causes and consequences that can be prevented and treated through scientific evidence-based treatment, care and rehabilitation. It furthermore recommended to promote and implement the standards on the treatment of drug use disorders developed by UNODC and WHO along with a range of other concrete suggestions to improve treatment and care for people affected by drug use disorders, for example, to encourage the voluntary participation of persons with drug use disorders in treatment programmes, with informed consent.

<sup>5</sup> Ibid.

<sup>6</sup> United Nations Office on Drugs and Crime, *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem* (Vienna, Austria, 2009).

<sup>7</sup> More information available from: <http://www.unodc.org/unodc/en/frontpage/unodc-and-who-launch-joint-drug-dependence-treatment-programme.html>; <http://www.unodc.org/unodc/en/treatment-and-care/our-projects.html>

<sup>8</sup> United Nations General Assembly, *Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem – Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem* (New York, 2016).



#### D. Sustainable Development Goals

The *Standards* support the implementation of the Sustainable Development Goals (SDG), especially SDG 3<sup>9</sup> – Ensure healthy lives and promote well-being for all at all ages; particularly target 3.5 – to strengthen the treatment of substance abuse, and 3.8 – to achieve universal health coverage, access to quality essential health-care services and affordable essential medicines for all.

### III. INTERNATIONAL STANDARDS FOR THE TREATMENT OF DRUG USE DISORDERS<sup>10</sup>

#### A. Key Principles and Standards for the Treatment of Drug Use Disorders

Seven key principles have been outlined in the *Standards* as a cross-cutting requirement for the delivery of treatment of drug use disorders, to

- *Principle 1.* Be available, accessible, attractive and appropriate;
- *Principle 2.* Ensure ethical standards of care in treatment services;
- *Principle 3.* Promote treatment of drug use disorders by effective coordination between the criminal justice system and health and social services;
- *Principle 4.* Be based on scientific evidence and respond to specific needs of individuals with drug use disorders;
- *Principle 5.* Respond to the needs of specific populations;
- *Principle 6.* Ensure good clinical governance of treatment services and programmes for drug use disorders;
- *Principle 7.* Ensure an integrated treatment approach where linkages to complementary services must be constantly monitored and evaluated.

#### B. Comprehensive Treatment Modalities and Interventions

The *Standards* then describe how a range of evidence-based interventions needs to be implemented throughout a continuum of care including modalities such as outreach, screening and brief interventions, outpatient treatment, short-term inpatient treatment, longer-term residential treatment and sustained recovery management.

Assessment and treatment planning are considered relevant for all settings, as drug use disorders can be described on a spectrum from lower to higher severity and complexity. Treatment plans, to be developed with the patients, would therefore need to count on a diversity of treatment and care approaches taking into account the overall life situation of the patient including health, social, legal, educational, financial and other aspects. It is recommended that treatment plans be developed with the help of a multi-professional team with patient involvement. Treatment plans should be individualized and consistent with the management of other chronic illnesses.

DUDs are often associated with other mental and somatic disorders. A comprehensive assessment should be administered upon entry into any treatment programme that includes a full medical history, presence of chronic and acute diseases and related pharmaceutical therapies, as well as a routine documentation of infectious diseases including HIV, tuberculosis, and hepatitis. It is also critical to distinguish independent mental health disorders from substance-induced disorders that will improve with abstinence.

##### 1. Community-Based Outreach

Community-based outreach services approach and engage with people who use drugs (PWUD) in their community in an unconditional way. Outreach specifically targets PWUDs who, because of the unavailability, inaccessibility or unacceptability of existing services are not currently receiving treatment. This treatment modality aims to identify affected populations, engage them, provide community-based care including for the reduction of the negative health and social consequences of drug use and dependence, and link people to outpatient and inpatient health and social services according to their needs.

<sup>9</sup> <https://sustainabledevelopment.un.org/SDG3>

<sup>10</sup> The *Standards* are available for download at [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_59/ECN72016\\_CRP4\\_V1601463.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/ECN72016_CRP4_V1601463.pdf)

Outreach depends heavily on community workers; often peer workers, as they are knowledgeable of the local communities they serve. They should have adequate basic training in relevant health conditions and health and social services available in the community.

## 2. Screening, Brief Interventions, and Referral to Treatment

Screening, Brief Intervention, and Referral to Treatment (SBIRT) is an evidence-based practice used to identify, reduce, and prevent drug use disorders and can be applied in different non-specialized contexts. Health service providers, which are not specialized in the treatment of drug use disorders, can be trained to deliver SBIRT in a rapid and cost-efficient manner that causes minimal interference with the provision of other services (WHO, 2012). For people who screen positive for drug use, a brief intervention carried out in a non-judgmental and motivational style can be effective in altering the trajectory of people at risk of developing drug use disorders or experiencing other severe negative complications related to their drug use. Screening may also identify a smaller subset of persons with already more significant, chronic or complex substance use problems who will require a more extensive assessment and referral for specialized drug use disorder treatment.

## 3. Short-Term In-Patient Treatment

The short-term inpatient treatment setting is ideal for persons likely to experience a severe withdrawal syndrome following cessation of drug use, and for people whose current drug use is causing a significant risk of harm and who might only have limited social support. Short-term inpatient treatment typically takes place in an environment in which 24-hour care is available to manage the symptoms and complications likely to occur following the cessation of drug use (management of withdrawal) or acute symptoms related to other comorbid disorders.

There are established withdrawal protocols usually employing pharmacotherapy combined with rest, nutrition and motivational counselling. Staff should be knowledgeable about withdrawal and able to prescribe effective medication. They should also be prepared to offer psychological support to motivate the patient to move past the withdrawal phase. Detoxification alone cannot be considered an effective treatment response as the risk of relapse is high following detoxification and the risk of overdose due to decreased tolerance increases significantly after discharge. An effective follow-up treatment plan should therefore include strategies for patients to successfully transition to the next level of care and maximize the chances to maintain medical and psychological health.

## 4. Outpatient Treatment

Outpatient treatment requires persons with drug use disorders to visit the treatment facility only for treatment interventions. It is intended to help patients stop or reduce drug use; to minimize medical, psychiatric and social problems associated with drug use; to reduce the risk of relapse; and improve general well-being as part of a long-term recovery process. Its components vary considerably in terms of the level of intensity and the interventions offered, but is nonetheless usually performed in health and social services specializing in the treatment of substance use disorders, or within the broader context of community mental health services. The range of treatment offered in the outpatient setting include psychological and pharmacological interventions, and social support. Treatment objectives can be best accomplished by using a combination of evidence-based pharmacological and psychosocial interventions. Ideally, outpatient treatment programmes for drug use disorders offer a comprehensive range of services to manage various problems affecting patients across several life domains. Routine cooperation with allied care services is essential and should include integration of outpatient treatment with medical services for HIV, viral hepatitis, TB and sexually transmitted infections. Routine cooperation with social support and other agencies, including education, employment, welfare, housing, or legal assistance should also be present. Outpatient treatment and care services can help patients in establishing a level of stability and resources in their lives that makes it easier to follow a course of ambulatory health interventions.

## 5. Long-Term Residential Treatment

Long-term residential treatment can take place in a hospital environment, typically a psychiatric hospital, or for example in a therapeutic community. Although traditional models of long-term residential treatment include only psychosocial treatment methods, modern approaches may involve the use of medications to decrease drug cravings and manage comorbid psychiatric symptoms. The primary focus of treatment is on learning skills to control cravings and on developing new interpersonal skills, personal accountability,

responsibility, and improving self-esteem. Additionally, the structured activities and the rules of the residential programme help patients develop better impulse control and delay gratification while learning skills to deal with frustration and to cope with stress. Comprehensive services including vocational skills and employment training may also be provided in the residential setting.

Patients who are unlikely to maintain abstinence outside of a structured environment or to participate in health and social integration are most likely to benefit the most from long-term residential treatment. Staying long-term in a residential setting allows patients to take a break from the chaotic and stressful environment that might have contributed to their drug use. At the end of a long-term residential treatment programme the transition to the community must be carefully planned and supported. The duration of treatment necessary to consolidate and internalize behavioural change and prepare to live a drug-free life varies for each resident; however residents who stay at least 3 months in treatment usually have better outcomes. Residential treatment which intends to promote therapeutic change must be distinguished from supported accommodation that primarily functions as a housing intervention that is not providing active treatment.

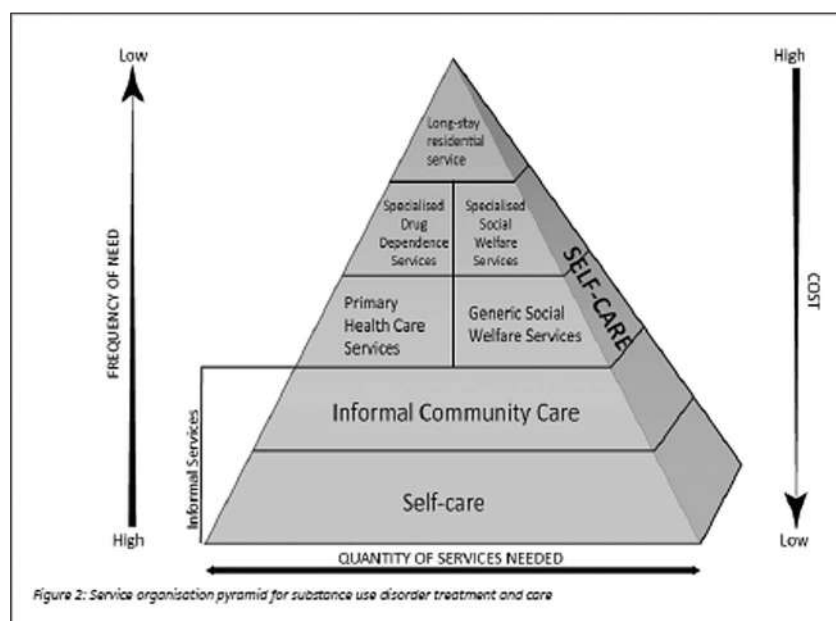
#### 6. Sustained Recovery Management

Post-discharge relapse and eventual re-admission in treatment are very common; sustainable recovery, however, is possible, and up to 40% of persons with DUDs achieve it. Recovery management describes a long-term recovery-oriented model that follows the stabilization of abstinence achieved during outpatient or residential treatment. The primary goal of recovery management is to maintain benefits obtained in earlier treatment: it focuses on reducing the risk of relapse to drug use by comprehensively supporting social functioning, well-being, and social reintegration.

Ideally, both long-term residential and intensive outpatient care should be followed by a step down to a less intensive level of care that continues long-term. Recovery-oriented continuing care is an approach to long-term management of patients within the network of community-based supports and services. Instead of a discharge process, in recognition of the chronic and relapsing nature of this complex disorder, there is post-stabilization monitoring, recovery education, recovery and coaching, active linkage to communities of recovery, recovery community resource development, and early re-intervention when needed. Given the chronic and relapsing nature of drug use disorders, recovery management approaches include long-term pharmacological, psychosocial, and environmental interventions targeted at maintaining reductions in substance use and contact with the criminal justice system as well as maintained improvements in physical and mental health, and social functioning.

### C. Treatment Systems

An effective national system for the treatment of drug use disorders requires a coordinated and



integrated response of many actors to implement policies and interventions based on scientific evidence in multiple settings and targeting different groups at different stages with regard to the severity of their drug use disorders. The public health system is best placed to take the lead in the provision of effective treatment services for people affected by drug use disorders, often in close coordination with social care services and other community services. Case management is a strategy to support patients in accessing various services offered in a network of community-based health and social services. Treatment services should be available, accessible, affordable, evidence-based, and diversified. When developing a comprehensive treatment system that wisely allocates available resources and responds best to patient's needs, the key public health principle to apply is offering the least invasive intervention possible with the highest level of effectiveness and the lowest cost possible. Investments of public funds should therefore be made according to the frequency of treatment services needed as shown in the service organization pyramid.

#### **IV. FIELD TESTING AND IMPLEMENTATION OF THE STANDARDS**

Following the launch of the *Standards* and their wide policy level acknowledgement, a process of field testing was initiated in the framework of the UNODC/WHO Programme on Drug Dependence Treatment and Care to assess further the comprehensiveness, appropriateness, feasibility, utility and evaluation capability of the *Standards* in different contexts. Data so far were formally collected from 9 countries, involving about 1,000 survey respondents, results from more than 30 focus groups, 40 expert reviews and 30 site visits. Data analysis has begun, and a comprehensive field testing report will accompany the future dissemination of the *Standards*. In parallel, the *Standards* have already been applied by countries in the development of national level quality assurance mechanisms for drug-use-disorder treatment services. *Quality Assurance Tools for Drug Treatment Services and Systems* were developed and piloted by UNODC to further support UN Member States in the operationalization and putting the *Standards* into practice.

# **TREATMENT AND CARE FOR PEOPLE WITH DRUG USE DISORDERS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: ALTERNATIVES TO CONVICTION OR PUNISHMENT**

*Anja Busse\**

## **I. INTRODUCTION**

This article is based on the publication “Treatment and care of people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment<sup>1</sup>” (UNODC/WHO, 2018).

In response to resolution 58/5 of the Commission on Narcotic Drugs (CND) entitled “Supporting the collaboration of the public health and justice authorities in pursuing alternative measure to conviction or punishment for appropriate drug related offences of a minor nature”, The United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO) have jointly launched an initiative on treatment and care for people with drug use disorders in contact with the criminal justice system as alternatives to conviction or punishment. The Commission on Narcotic Drugs had invited UNODC — in consultation with Member States and, as appropriate, other relevant international and regional organizations — to “provide guidelines or tools on the collaboration of justice and health authorities on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature”<sup>2</sup>.

Strengthening prevention and treatment for people with drug use disorders is an essential demand reduction strategy of significant public health importance and a cornerstone of the 2016 United Nations General Assembly Special Session on the World Drug Problem (UNGASS) outcome document<sup>3</sup>. The UNODC/WHO initiative on treatment and care for people in contact with the criminal justice system contributes to the achievement of Sustainable Development Goal (SDGs) 3<sup>4</sup> targeting goal 3.5 which states, “Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol” and SDG 16<sup>5</sup> targeting especially goal 16.3 “Promote the rule of law at the national and international levels and ensure equal access to justice for all” and 16.6 “Develop effective, accountable and transparent institutions at all levels”.

The United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO), launched the initiative “Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment” at the 59th session of the Commission on Narcotic Drugs in 2016. The initiative aims to enhance the knowledge, understanding, scope and potential for alternative measures to conviction or punishment. In line with the international drug control conventions<sup>6</sup> and other relevant international instruments, including human rights treaties and UN standards and norms in

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<sup>1</sup> United Nations Office on Drugs and Crime, UNODC, and World Health Organization, WHO, “Treatment and Care of People with Drug Use Disorders in contact with the Criminal Justice System: Alternatives to Conviction or Punishment”, 2018 [http://www.unodc.org/documents/UNODC\\_WHO\\_Alternatives\\_to\\_Conviction\\_or\\_Punishment\\_2018.pdf](http://www.unodc.org/documents/UNODC_WHO_Alternatives_to_Conviction_or_Punishment_2018.pdf)

<sup>2</sup> Resolution 58/5 Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug related offences of a minor nature.

<sup>3</sup> UNODC 2016: Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Our Joint Commitment to effectively addressing and countering the World Drug Problem. <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

<sup>4</sup> United Nations Sustainable Development Knowledge Platform, SDG Goal 3 “Ensure healthy lives and promote well-being for all at all ages” <https://sustainabledevelopment.un.org/sdg3>

<sup>5</sup> United Nations Sustainable Development Knowledge Platform, SDG Goal 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” <https://sustainabledevelopment.un.org/sdg16>



crime prevention and criminal justice<sup>7</sup>, options to divert people with drug use disorders who are in contact with the criminal justice system to treatment are being explored.

In the framework of the initiative on treatment as an alternative to conviction or punishment UNODC and WHO further aim to provide relevant information to policymakers about the rationale and the existence of a variety of practices in line with the international drug control conventions to provide treatment and care for people with drug use disorders who come into contact with the criminal justice system. It has been proven useful to support criminal justice actors' understanding of how treatment of drug use disorders works and for treatment providers to better understand how the criminal justice system works to enhance synergies through mutual exchange and support. Opportunities can be considered at various levels to bring drug use disorder treatment and criminal justice systems into better alignment and to help policymakers and professionals from both sectors understand the multiple possible perspectives of their cooperation.

With these goals in mind, UNODC and WHO jointly developed the publication "Treatment and care of people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment"<sup>8</sup> (UNODC/WHO, 2018) which was launched at the 61<sup>st</sup> Commission on Narcotic Drugs as an advance copy.

## II. GLOBAL SITUATION WITH REGARD TO DRUG USE DISORDERS AND IMPRISONMENT

The UNODC World Drug Report<sup>9</sup> reports that around 275 million people worldwide (or 5.6% of the global population aged between 15-64 years) used drugs at least once during the year 2016. Around 31 million people who use drugs suffer from severe drug use disorders. However, in the year 2016, only 1 in every 6 people of the world's population suffering from drug use disorders received treatment and this ratio has been remaining constant in recent years<sup>10</sup>. Cannabis is the most commonly used drug, followed by opioids and amphetamines and prescription stimulants, then followed by ecstasy, opiates and cocaine<sup>11</sup>. People Who Inject Drugs (PWID) account for 10.6 million globally and they often experience severe additional adverse health consequences such as hepatitis C and HIV as a result of sharing contaminated needles<sup>12</sup>. The World Health Organization (WHO) reported that in 2015 around 450,000 people died due to substance use, of which 167,750 deaths resulted from substance use disorders especially due to opioid use<sup>13</sup>.

Prison populations worldwide are increasing and placing a financial burden on countries. In October 2015 it was estimated that more than 10.3 million prisoners, which included sentenced and pre-trial prisoners, were held in penal institutions around the world<sup>14</sup>. Since the start of the 21<sup>st</sup> century the total world prison population has increased by almost 20%. Since the year 2000, the female prison population total has increased by 53%, while the equivalent figure for the male prison population is 19.6%<sup>15</sup>.

<sup>6</sup> The three International Drug Control Conventions are the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

<sup>7</sup> These instruments will be mentioned throughout this publication and include for example the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for Non-custodial Measures and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. For compilations of relevant instruments, see OHCHR, The Core International Human Rights Treaties (2014) and UNODC, Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (2016).

<sup>8</sup> United Nations Office on Drugs and Crime, UNODC, and World Health Organization, WHO, "Treatment and Care of People with Drug Use Disorders in contact with the Criminal Justice System: Alternatives to Conviction or Punishment", 2018 [http://www.unodc.org/documents/UNODC\\_WHO\\_Alternatives\\_to\\_Conviction\\_or\\_Punishment\\_2018.pdf](http://www.unodc.org/documents/UNODC_WHO_Alternatives_to_Conviction_or_Punishment_2018.pdf)

<sup>9</sup> United Nations Office on Drugs and Crime, "Executive summary: Conclusion and Policy implications", The World Drug Report 2018, Booklet 1, pg. 7 <https://www.unodc.org/wdr2018/>

<sup>10</sup> Ibid., pg. 16

<sup>11</sup> Ibid., pg. 7. Number of past-year users in 2016: 192 million people used cannabis; 34 million people used opioids; 34 million people used amphetamines and prescription stimulants; 21 million used ecstasy; 19 million used opiates; 18 million used cocaine.

<sup>12</sup> Ibid., pg. 7

<sup>13</sup> Ibid., pg. 1

<sup>14</sup> World Prison Population List, Eleventh Edition, International Centre for Prison Studies [http://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_prison\\_population\\_list\\_11th\\_edition\\_0.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf)

Those who suffer from severe substance use disorders are relatively insensitive to the threat of criminal sanctions due to the compulsive nature of their disease. Drug use including injecting drug use is widely prevalent in prisons. Within a prison population, people with drug use disorders usually make up a higher proportion than in the general population. Associated with the closed living settings and other related conditions such as overcrowding and limited access to health services, prisoners are at a much higher risk of being affected by diseases (2 to 10 times higher) such as tuberculosis, HIV and hepatitis C than the general population. Unsafe practices of sharing needles and syringes amongst prisoners increases the risk of these infectious diseases<sup>16</sup>.

People with drug use disorders in prison settings often have limited or lack access to treatment services, and the available treatment programmes are of a much lower standard than what is being provided to the general population.

People in prison lose their source of income and cannot support their family outside affecting the economic status and, after release, ex-offenders have little to no opportunities for attaining employment due to their criminal record, which entraps them in poverty and increases risk of re-imprisonment. Also, prisoners with childcare responsibilities cannot support their children anymore. This way, imprisonment has an effect not only on the offender but also on the broader network of their families and communities.

Prisoners often relapse to drug use upon return to the community and especially after times of no or reduced drug use in prison are exposed to a severe risk of drug (and especially opioid) overdose associated with reduced tolerance, which explains a good percentage of mortality in the first two weeks after prison release<sup>17</sup>. Offenders are often discharged from prison without health and social support, including limited knowledge about and inaccessibility of treatment for drug dependence, overdose management and access to medications such as naloxone and methadone in the community<sup>18</sup>.

A higher proportion of women than men are in prison for drug related offences. According to the UNODC World Drug Report 2018, of the 714,000 female prisoner population, 35% are incarcerated due to drug offences whereas of the 9.6 million male prisoner population, only 19% are incarcerated for drug offences<sup>19</sup>. Of the prison population, females who are incarcerated have lower access than males to health care and treatment services for substance use disorders, reproductive health needs and other health requirements. Even upon prison release females receive less support to reintegrate back into their community lifestyle and settings. They are often faced with worse stigma and discrimination by their community compared to their male counterparts and therefore face more challenges in regard to accessing health care and social services in the community<sup>20</sup>.

### **III. DRUG USE DISORDER TREATMENT AS AN ALTERNATIVE TO CONVICTION OR PUNISHMENT**

As the negative consequences of incarceration may affect and worsen the health and social situation of people with substance use disorders and their families<sup>21</sup> even more, prison needs to be considered as a measure of last resort including for this vulnerable population and other alternatives in line with the international<sup>22</sup> drug control conventions and other relevant international and legal instruments should be explored first in combination with adequate access to effective services for the comprehensive treatment of

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<sup>15</sup> [http://www.prisonstudies.org/sites/default/files/resources/downloads/wfil\\_2nd\\_edition.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/wfil_2nd_edition.pdf)

<sup>16</sup> United Nations Office on Drugs and Crime, "Global Overview of Drug Demand and Supply", The World Drug Report 2018, Booklet 2, pg. 20 <https://www.unodc.org/wdr2018/>

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Roy Walmsley, "World prison population list", 11th ed. (Institute for Criminal Policy Research, 2016) and Roy Walmsley, "World female imprisonment list", 4th ed. (Institute for Criminal Policy Research, 2017). Share of prisoners for drug offences based on 50 Member States (UNODC, Special data collections on persons held in prisons (2010-2014), United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS).

<sup>20</sup> United Nations Office on Drugs and Crime, "Executive summary: Conclusion and Policy implications", The World Drug Report 2018, Booklet 1, pg. 21 <https://www.unodc.org/wdr2018/>

<sup>21</sup> United Nations Office on Drugs and Crime, "Global overview of Drug Demand and Supply", The World Drug Report 2018, Booklet 2, pg. 20 <https://www.unodc.org/wdr2018/>

drug use disorders such as outlined in the “International Standards for the Treatment of Drug Use Disorders<sup>23</sup>” (UNODC/WHO, 2016).

Many people who use drugs and who suffer from drug use disorders come in contact with the criminal justice system. They could be involved in various types of drug crimes which include possession, purchase, cultivation, supply of illicit substances and other kinds of offences such as robbery, theft, assault, and so on. Sometimes the following types of offence categories are being considered<sup>24</sup>: Psychopharmacological offences are driven by the influence of drugs often resulting in violent behaviour and violent property offences; Economic-compulsive offences are property offences committed for financial drug use which is related to illicit use of controlled drugs and the fear of experiencing withdrawal symptoms by a discontinuation of drug use and often related to homelessness and social exclusion; Systemic offences are related to negative interactions of the illicit drug market with the actions of supply and demand. The nature of the offence is, however, not the only factor to be considered when deciding on the use of alternatives to conviction or punishment.

The United Nations and Member States have adopted international normative instruments that include treaties, conventions, resolutions, and declarations that set forth international standards and norms that address several issues ranging from drug control and human rights to treatment of criminals. Although punishments (or alternatives to conviction or punishment) within a country are decided within the bounds of the UN Member States, international instruments create exceptions such as by prohibiting inhuman or degrading forms of punishment and encouraging the use of alternatives to conviction or punishment for criminal offences. Mitigating imprisonment by incorporating alternative measures within a country’s legal system and rationalizing criminal justice policies by observing the human rights, social justice and rehabilitation needs of the offender are all to be expected to be followed by the UN Member States. Implementing the international legal framework enables treatment and care as alternatives for offenders with drug use disorders who come into contact with the criminal justice.

In line with the international drug control conventions, treatment, education or social reintegration can be applied as alternative measures to conviction or punishment in cases of offences related to personal consumption of drugs<sup>25</sup> or offences of drug trafficking and related conduct in cases of a minor nature<sup>26</sup>. In addition, there are other offences, for which there is no specification under the international drug control conventions, such as non-violent property crimes, for which treatment and care can be applied as alternatives to imprisonment for people with drug use disorders, as appropriate cases, as stipulated in national legislation. The Tokyo Rules<sup>27</sup> and other international standards and norms require decision makers to also focus on the social and health background of the offender and his or her rehabilitative needs, so as to avoid unnecessary use of imprisonment and maximize opportunities for treatment and social rehabilitation.

Effective alternatives to conviction or punishment can mitigate reoffending and thereby can contribute to reduce the size of the prison population while positively influencing public safety and public health. Community service instead of imprisonment and non-custodial community programme studies conducted in the Netherlands<sup>28</sup> and Florida, USA<sup>29</sup> for example, respectively have shown that offenders are significantly less likely to reoffend than those who were sentenced to prison.

<sup>22</sup> United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

<sup>23</sup> United Nations Office on Drugs and Crime, UNODC, International Standards for the Treatment of Drug Use Disorders, March 2016, [http://www.unodc.org/documents/International\\_Standards\\_2016\\_for\\_CND.pdf](http://www.unodc.org/documents/International_Standards_2016_for_CND.pdf) [http://www.unodc.org/documents/International\\_Standards\\_2016\\_for\\_CND.pdf](http://www.unodc.org/documents/International_Standards_2016_for_CND.pdf)

<sup>24</sup> Goldstein, P.J. The drugs/violence nexus: A Tripartite conceptual framework. *Journal of Drug Issues*, 1985, 15, 493-506.

<sup>25</sup> See article 3, paragraph 2 and subparagraph 4(d) of the 1988 Convention

<sup>26</sup> See article 3, subparagraph 1 and subparagraph 4(c) of the 1988 convention

<sup>27</sup> United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), <http://www.un.org/documents/ga/res/45/a45r110.htm>

<sup>28</sup> Wermink H.T., Blokland A.A.J., Nieuwbeerta P., Nagin D. & Tollenaar N. (2010), Comparing the effects of community service and short-term imprisonment on recidivism: A matched samples approach, *Journal of Experimental Criminology* 6(3): 325-349.

<sup>29</sup> William D Bales and Alex R Piquero “Assessing the impact of imprisonment on recidivism” *Journal of Experimental Criminology* March 2012, Volume 8, Issue 1, pages 71-101.



There are seven principles outlined by UNODC and WHO (2018)<sup>30</sup> that were adapted from various components of the international legal framework concerning the treatment of persons with drug use disorders in contact with the criminal justice system:

1. Drug use disorders are a public concern requiring responses that are health-centred. Individuals with drug use disorders should not be punished for their drug use disorder but provided with appropriate treatment.
2. The use of alternatives to conviction or punishment at all stages of the criminal justice system for offenders with drug use disorders based on an assessment of established criteria should be encouraged.
3. Proportionality is required during all stages of the diversion and supervision process.
4. A diversion to treatment should be made with the informed consent of the offender.
5. The implementation of alternatives to conviction or punishment should respect legal and procedural safeguards.
6. Specific attention to special groups and their access to treatment as an alternative to conviction or punishment is required to avoid discrimination.
7. Prisoners with drug use disorders may not be deprived of their right to health and are entitled to the same level of treatment as the general population.

The development and implementation of drug treatment and care as alternatives needs to take into account every country's individual legal system and tradition, particularly the process, timeframe and the role of judicial actors. Common challenges also exist such as different perspectives of the health and justice sectors. For example, issues such as when non-compliant conduct of an offender with substance use disorder who has relapsed would be treated with punitive sanctions from a criminal justice perspective whereas a treatment professional would view it as a disorder requiring a treatment response. Another issue is who decides the appropriate responses to offences. Typically, the justice system should not make treatment decisions and treatment professionals should not make justice system decisions. However, when a person with a substance use disorder comes into contact with the justice system, the perspectives from the view of the health and justice sectors should be coordinated appropriately to provide treatment and care services as an alternative for offenders.

Treatment and care interventions can effectively mitigate drug related harm and manage harmful use of drugs as well as drug dependence. Such measures can be applied as well for people in contact with the criminal justice system. The UNODC-WHO International Standards for the Treatment of Drug Use Disorders<sup>31</sup> explain in depth a range of treatment options which involves various pharmacological and psychosocial interventions in in- and outpatient settings for treating harmful drug use and dependence. There is, though, a high likelihood that people with contact with the justice system due to drug related offences upon entry are not provided with the adequate treatment.

The criminal justice system should interact with the offender and provide opportunities for him/her to have access to drug treatment if needed. In this regard, offenders need to be initially screened and assessed to determine their health and social conditions and needs to offer adequate services. Non-specialist, trained staff could conduct the initial screening, which comprises a brief process to determine indicators for whether there is a specific condition present where the individual would need treatment and if a thorough assessment is required. A trained health professional should conduct the assessment process since it requires a comprehensive medical and psychosocial evaluation that considers the patient's medical history, presence of chronic or infectious diseases such as HIV, tuberculosis, hepatitis, etc. When the presence of harmful

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<sup>30</sup> UNODC/WHO (2016). Treatment and care of people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment.

<sup>31</sup> United Nations Office on Drugs and Crime, UNODC, "International Standards for the Treatment of Drug Use Disorders", March 2016 [http://www.unodc.org/documents/International\\_Standards\\_2016\\_for\\_CND.pdf](http://www.unodc.org/documents/International_Standards_2016_for_CND.pdf)

substance use or dependence is confirmed and once the individual shows willingness to participate in treatment interventions, arrangements could be made to initiate the treatment process involving health experts and criminal justice authorities as required. The treatment plan should be detailed, and the treatments administered should be based solely on their health conditions and not on their alleged offences during the assessment stage. If the assessment identifies the patient as being drug dependent, further drug dependence treatment is required and should be provided where the services will be tailored to the specific issues of the patient's condition. In case the treatment methods do not result in the desired outcome, a process should be undertaken to consider other alternative treatment options that would better suit the health of the offender with substance use disorder.

Implementing a system of treatment for substance use disorder as an alternative to conviction or punishment would have to consider the diversity of each country's individual legal system, policy priorities in terms of drug offences, the resources at disposal and cultural aspects. Therefore, the treatments are administered and adapted to the country in which they operate<sup>32</sup>. The availability, accessibility and effectiveness of drug use disorder treatment services in a country is a key factor in implementing treatment as an alternative to conviction or punishment successfully. Treatment options have been implemented in various stages of the criminal justice proceedings ranging from pre-trial, trial/court to post sentencing<sup>33</sup>.

Diversion options incorporated in the administrative responses should be contemplated before the diversion options within the criminal justice system are addressed since they are a formal response to drug offences. Treatment referrals for drug offenders at the pre-trial stage could avoid unnecessary involvement in the criminal justice system. For more serious cases, at the sentencing stage, the sentence could be suspended while the defendant undergoes treatment with judicial supervision. A prisoner could choose to participate in a treatment programme as a condition of early release at the post sentencing stage through a comprehensive assessment to create a treatment plan after release.

Many countries incarcerate people with harsh punitive measures for minor violations of the law such as for example possessing small quantities of drugs for personal use. Such breaches of the law could instead be handled with administrative sanctions involving diversion to treatment such as brief motivational treatment, short-term treatment and relapse prevention classes. Non-criminal justice responses could also be another diversion from incarceration, for example, in 2001, Portugal removed criminal penalties for low-level possession of all types of controlled drugs and categorized them as administrative violations under Law 30/2000.

The pre-trial stage within the criminal justice system is the point where criminal justice actors such as the police and prosecuting authorities, who act as the first responders to offenders with substance use disorders, could use the opportunity to divert offenders to treatment. Therefore, criminal justice actors should be well informed with clear instructions and guidelines<sup>34</sup> about drug use disorders afflicting the offenders and how to lead them to treatment. In some jurisdictions the prosecutor can direct people to treatment at the pre-trial stage, while in other countries the police already have some authority for pre-trial diversions. Alternatives to arrest or prosecution at this stage include conditional cautions in conjunction with a referral to treatment, prosecution suspension on condition that the offender completes treatment, and conditional bail through participation in treatment. If an offender decides to quit during treatment, the prosecutor may reimpose criminal charges and prosecute the case.

Most often alternatives to conviction or punishment are present at the sentencing stage. The offender should fully comprehend the consequences of non-compliance with the alternative conditions set by the court and the judicial actors must ensure that the set conditions are met appropriately and that the rehabilitative needs of the offender are taken into account. Courts around the world generally could offer diversion options

<sup>32</sup> Inter-American Drug Abuse Control Commission (OAS/CICAD), Technical Report on alternatives to incarceration for drug-related offences, 2015

<sup>33</sup> For a more comprehensive overview of alternatives to conviction or punishment it is made reference to other documents such as EMCDDA best practice portal, European Commission's study on alternatives to coercive sanctions (2016) or OAS/CICAD's technical report (2015)

<sup>34</sup> United Nations Office on Drugs and Crime, UNODC, Handbook of basic principles and promising practices on alternatives to imprisonment.

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ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
PRE-ARREST Police	PRE-TRIAL Police, Prosecutor, Defence, Examining magistrate	TRIAL/SENTENCING Judge, Probation officers	POST-SENTENCING Prison Director, Parole Board, Minister of Justice
Administrative response with information/referral to treatment	Caution with a diversion to education/treatment	Postponement of the sentence with a treatment element	Early release/parole/pardon with a treatment element
	Conditional dismissal/ Conditional suspension of the prosecution	Deferring the execution of the sentence with a treatment element	
	Conditional bail (alternative to pre-trial detention)	Probation/judicial supervision	
		Special courts/docks (e.g. the Drug Treatment Court)	

Table 1: The table above outlines the key interventions and diversion programmes which are possible at each stage of the criminal justice system starting from the arrest of the drug offender to incarceration until release from prison that have been set forth by the UN Member States

that will need to rely on specialized drug use disorder treatment services in the community. A clinical assessment should be conducted to determine the type and intensity of the treatment<sup>35</sup> A key challenge at the sentencing stage is for the court to obtain information and expertise regarding the health issues and the rehabilitative needs of the offender, which need to be considered in sentencing decisions along with other considerations (seriousness of the offence, protection of society, victims' rights). Depending on the jurisdiction, this can be achieved through various means, including social inquiry reports, expert witnesses, or as part of specialized courts and proceedings.

In some countries the establishment of special courts/dockets has proven to be an effective diversion strategy. As an example, the Drug Treatment Court (DTC) is one such special court in Florida, USA which has been adapted to the situation of several UN Member States. The system organization and everything entailed between the criminal justice actors and health professional are all considered. This type of court system includes rehabilitative goals, the judge's active role, collaboration between defence and prosecution in non-adversarial systems<sup>36</sup>. There are various treatment interventions conducted in DTCs with regular follow up hearings which monitor compliance and advocate pro-social behaviour. Drug treatment courts are the most cost-effective when they deal with higher-risk and higher-need offenders<sup>37</sup>.

An offender at the post-sentencing stage could be diverted to treatment if serving a conditional supervised release. Extreme caution and care and the continuity of services should be available to offenders such as conducting comprehensive assessments, developing treatment plans, recovery management (involving relapse prevention, employment and housing aid) and other means support to ensure social

<sup>35</sup> United Nations Office on Drugs and Crime, UNODC, Handbook on Strategies to Reduce Overcrowding in Prisons, 2013, p. 108.

<sup>36</sup> Vilcić, E.R., Belenko, S., Hiller, M., & Taxman, F. (2010). Exporting court innovation from the United States to continental Europe: Compatibility between the drug court model and the inquisitorial justice system. *International Journal of Comparative and Applied Criminal Justice*, 34, 139-172.

<sup>37</sup> NADCP, Douglas B. Marlowe, Research Update on Adult Drug Courts, December 2010; [http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP\\_1.pdf](http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf)

reintegration<sup>38</sup>. Supervision and case management should be followed to ensure an individual's compliance around the time of prison release which could be deterred by factors such as lack of housing, transportation, and negative peer relationships. The time period around prison release is a critical stage for the offender since the stress, possibly associated with return to the community, may result in increased risks for relapse and recidivism to drug use<sup>39</sup>. The first two weeks after prison are highly associated with the risk of death by drug overdose mainly related to opioid use disorders.

#### IV. CONCLUSION

Treatment of drug use disorders as an alternative to conviction or punishment is an opportunity foreseen by the International Drug Control Conventions for eligible offences of a minor nature. Implementation at national level needs to take into account a country's legal system requirements and treatment system conditions. The key principles formulated by UNODC and WHO (2018), based on existing international standards and scientific evidence, should be considered when implementing diversion to treatment for people with drug use disorders in contact with criminal justice system. Ultimately the decision of whether or not to start treatment depends on the offender keeping in mind that the justice practitioners assess eligibility for diversion programmes under the supervision of the justice system, and the health providers assess the medical condition of the offender providing suitable treatment approaches. Additional studies still need to be conducted to generate future evidence and provide good practices in terms of what works best regarding the provision of legal and health systems for treatment as an alternative to conviction or punishment in specific contexts. In general options for diversion to evidence-based treatment of drug use disorders should be considered as early as possible in the justice process for people with drug use disorders.

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<sup>38</sup> Rules 107 and 110 of the Nelson Mandela Rules and Rule 47 of the Bangkok Rules.

<sup>39</sup> Leukefeld, C, Oser, CB, Havens, J, et al. Drug Abuse Treatment Beyond Prison Walls. *Addiction Science & Clinical Practice*. 2009, 5(1): 24-30

# IN-PRISON SUBSTANCE MISUSE TREATMENT PRINCIPLES AND MODALITIES

*Sheldon Zhang\**

## I. INTRODUCTION

This paper is written with correctional officials in developing countries in mind, specifically officials and program administrators who work in prisons or jails with inmates with substance misuse problems. It is intended for non-academic and non-technical audiences for easy understanding. If anyone cares to read more or explore specific topics within the literature of substance misuse research and treatment, a bibliography is provided at the end that provides all the background materials upon which this paper is based.

### A. Substance Misuse Is a Global Problem

Substance misuse has been plaguing the Western world for decades, particularly in the United States. The misuse of illicit substances is now spreading in developing countries. It is a global problem, confronting particular countries with growing economies. Increased wealth and the increasingly globalized economy have also brought about unprecedented opportunities for the flow and consumption of illicit substances. So there is no need to be shy about a country's substance misuse problem. We share this common challenge, from the global North to the global South.

Response to substance misuse, however, varies by country and more specifically by culture. What is being presented here represents mostly Western, or more specifically, US experiences. Caution should be exercised about how the ideas or intervention strategies presented here may or may not suit one's own country. Suffice it to say, there are no silver bullets or magic pills anywhere in the Western world. One can easily tell just by the fact that substance misuse is still widespread in the West. With all the claims about various effective pharmacological or psychosocial treatment approaches over the decades and so much treatment evaluation research, the US is now going through a serious opioid misuse crisis. It appears that the illicit drug problem in the US matches to its own drum beat, entirely independent of the accumulated knowledge of and investment in the intervention efforts. But this doesn't mean we should surrender to this social problem.

### B. The Prison System Is a Critical Front in Dealing with Substance Misuse

Historically, most countries have relied on the justice system as a primary means to respond to substance misuse in the society. This is because the possession and use of illicit substances is criminalized in most countries and many substance misusers also engage in criminal activities that get caught by the police. Although the criminal justice system is often the default solution to substance misuse, there are both benefits and drawbacks with this response strategy. On the drawbacks, substance misuse is a complex problem encompassing a multitude of problems—physiological, psychological, and social—none of which have easy solutions. To ask the criminal justice system to take on such a complex social problem may be unrealistic as well as resource-distracting. The primary role of the justice system is to enforce the law and penalize the law breakers. Treating substance misuse disorder requires a different mindset and response setup, one that sometimes does not sync well with the justice system.

On the other hand, many substance misusers wind up in the justice system, being arrested for crimes related to or caused by their drug problems. Because of the coercive nature of the justice agency, more specifically the prison system, treatment services can be delivered to the substance misusers more effectively and efficiently, often with little or no resistance. It will be quite different out in the community

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where treatment compliance is often the number one challenge for community-based service providers. High dropout rates frequently plague community-based treatment programs. Research has shown that for justice system-involved substance misusers (i.e., drug abusing prisoners), addiction assessment and treatment should begin during incarceration, and prison-based treatment is most effective when aftercare services are planned and delivered upon release. Research and evaluation studies on in-prison interventions and community rehabilitative programs in the U.S. have made much progress in recent years and produced many promising findings that can be shared in countries with emerging substance misuse problems.

The prison environment also offers an excellent opportunity to screen and treat substance abusers for infectious diseases such as HIV/AIDS, hepatitis B and C, and tuberculosis because this is the population that often lives beyond the reach of public health services. Substance abusers are also known for their lack of care for personal hygiene, thus making them highly susceptible to communicative diseases. Furthermore, once inside the prison and living in close quarters with other inmates, these substance abusers can quickly spread their diseases and create a public health headache.

## **II. GUIDING PRINCIPLES FOR IN-PRISON TREATMENT**

There are a few basic principles that all program administrators or prison officials should acquaint themselves with.

### **A. The Prison Environment Offers a Great Opportunity to Deliver Treatment Services Because of Its Restrictive Structure**

Most substance misusers are quite open to treatment services while incarcerated. The structured and restrictive environment inside prison offers an opportunity for treatment staff to assist their clients to think and reflect upon their personal or physical problems. Many addicted to substances will want to quit using and often seek treatment services. Once inside the prison, substance misusers will have few choices but to confront their drug problems. Many must endure and deal with symptoms of withdrawal and adjustment.

Furthermore, research has shown that substance misuse treatment need not be voluntary. Compulsory or coerced treatment can increase treatment entry and prolong retention. Oftentimes substance misusers do not voluntarily enter treatment until they enter the prison. Therefore sanctions imposed by justice agencies or the prison environment can be effective tools to enroll substance misusers and expose them to treatment options, making recovery possible.

### **B. Psychedelic Substance Misuse Causes Brain Damage That Has Long-Term Behavioral Consequences**

Research has shown that prolonged use of psychedelic substances causes damage to the brain's structure and function, resulting in abnormal/criminal behavioral outcomes. Such brain damage cannot be easily repaired, which is why substance abusers often go through multiple relapses and drop out of treatment programs many times. The idea of "curing" addiction through one or two spells of treatment is simply unrealistic, and treatment outcomes therefore must consider multiple steps and measures that aim for long-term reduction in use and eventual recovery.

### **C. There Are No Silver Bullets or Simple Solutions, So Expect Relapses, Many Times**

Unlike diseases where specific pathogens can be identified as the culprit for certain medical conditions and specific medications can be applied to all who suffer from the same conditions, substance misuse is a far more complex problem that can be attributed to multiple factors. The characteristics of the drug users and the type of substance misused vary from person to person. Treatment needs to take into consideration individual variations. Although we know a lot about what drugs can do to the brain, which in turn affect one's thought process and behavior, we know little on how to correct the causal conditions so that the patients can stop using and return to productive functioning.

To make things more complicated, substance misuse is often the manifestation of multiple problems, or comorbidities, such as medical, psychological, social, and vocational troubles. It is generally agreed that early intervention can reduce lasting damage to the brain and improve chances of recovery. Therefore, it is critical that substance misusers in prison be identified early, their needs and risk assessed, and treatment provided promptly. This requires the prison staff to develop and be ready to deliver treatment services. This is a



simple concept but oftentimes difficult to implement.

#### **D. Treatment Must Include Risk/Needs Assessment and Adjust Treatment Accordingly**

As discussed above, substance misuse is typically prompted by and a reflection of multiple personal, mental as well as social issues. Moreover, many of these individuals have criminal records, which may or may not be related to their substance misuse. The type of substance abused, legal prescriptions or illicit psychedelic drugs or both, and the severity of the misuse can affect how individuals may respond to treatment regimens and their post-release reintegration into the community. Therefore at the earliest possible time upon their arrival in prison, risk/needs assessment needs to take place to understand the type of drugs misused, severity, prior criminal behavior and encounters with justice agencies, and prior treatment histories among other things.

Following the risk/needs assessment, treatment plans can then be drafted for each subject; and their problems may require a combination of treatment options, for instance, medication plus counseling or psychotherapy. Other services inside the prison may also be added to the treatment plan, such as drug education, peer support groups, or self-help groups.

#### **E. Aftercare Is Critical for In-Prison Treatment Activities**

Substance misuse often requires long-term engagement with the treatment community. While the in-prison treatment programs can often help inmates succeed to stop using drugs, but to maintain treatment effects requires follow-up reinforcement services. Research has consistently shown that the length of stay in treatment programs is directly related to the overall success. In other words, the longer one stays in a treatment program the more he/she can benefit from the services.

Furthermore, taking the long-term perspective also means that relapses will occur to many of these inmates, and multiple episodes of treatment thus become a normal part of their recovery process. Because of the damage to the brain and the challenges in eradicating the personal/social/mental situations that gave rise to their substance abuse in the first place, many justice-involved substance misusers will return to prison and start in-prison treatment programs again, and again. It is therefore important to recognize substance misuse as a form of chronic illness that requires not only in-prison treatment but also aftercare programs after release.

Retention in aftercare is key to treatment success because once outside the prison, these substance misusers often find ways to leave the treatment program prematurely. Without the prison structure, alternative strategies or incentives need to be developed to keep these substance misusers in the treatment program. Any incentives to encourage engagement in treatment must be coupled with continuous monitoring of the substance misusers, such as through behavioral observations by peer support groups, self-reports, and urine analysis. Knowing one is being monitored can serve as a powerful reminder that one is not alone in this struggle. On the other hand, a return to substance misuse also suggests that one's previous treatment protocol may need adjustment.

### **III. PHARMACOLOGICAL TREATMENT APPROACHES**

Substance abuse treatment can be divided into two main categories: pharmacological and psychosocial. Oftentimes medications are used to assist the first stage of addiction treatment because there are many painful physiological responses to withdrawal. However, medications alone rarely can achieve long-term abstinence. Thus psychosocial strategies are almost always used in combination depending on the resources and the agencies providing the treatment services. In other words, pharmacological treatment is often augmented with psychosocial interventions, based on the assumption that the latter is necessary to foster long-term recovery.

It should be noted early that in comparison to other aspects of modern medicine, pharmacological research has been surprisingly limited when it comes to substance misuse. There are multiple reasons for the lack of investment in the research and development of medications to deal with addiction problems, a topic beyond this presentation. Unlike the multitude of medications available for physical diseases (think about antibiotics and pain meds), it is quite easy to go through all the medications available for substance use disorders. Currently there are only a few medications available for opioid, alcohol, and tobacco. For the

purpose of this presentation, we will only present the few medications for opioid dependency problems because thus far there is no effective pharmacotherapy for the treatment of stimulant misuse, i.e., cocaine, methamphetamine, and other amphetamine-type stimulants (ATS).

Pharmacotherapies or medication-based treatment for substance misuse can be divided into two broad functional categories. One category of medications is intended to serve as a substitution that can mimic or create similar feelings that the illegal drugs do. These medications (actually only two medications) are called agonists or partial agonists. Essentially this group of drugs can produce some euphoria similar to that of heroin, enough to reduce opioid cravings thus avoiding physical symptoms associated with withdrawal. These two drugs are: methadone and buprenorphine. The other group of medications are called antagonists, which just like what the name suggests are designed to counter the effects of opioids. Naltrexone, the only drug used for recovery purposes, blocks opioids from binding to their receptors, thus removing the mechanism for producing any euphoria and other effects.

Now a few more words on how these medications are administered and their treatment impact. In the US, methadone and buprenorphine are the only two drugs approved by the FDA for clinical use. Methadone, a synthetic opioid agonist for the purpose of substitution, has been around for decades. It can provide some euphoria similar to that produced by heroin so to reduce withdrawal symptoms and reduce craving for illicit opioid drugs. Methadone can also act to block the effects of illicit opioids. It is taken orally on a daily basis. Because of its potential for abuse and overdose, it is a tightly controlled substance and patients can only access this treatment on a daily basis at licensed and supervised settings. So one must have access to and make arrangement in order to stick to this treatment protocol.

Buprenorphine, the second medication, is also a synthetic opioid but only a partial agonist at opioid receptors. It helps reduce cravings and withdrawal symptoms, but does not produce the euphoria and sedation similar to that induced by heroin or other opioids. Clinically it carries less risk of respiratory depression or overdose than methadone. Buprenorphine is also taken orally. Because buprenorphine is a safe medication, it is approved for primary care physicians to prescribe to their patients. Oftentimes buprenorphine is combined with the antagonist naltrexone, a formulation called Suboxone. A long-acting formulation of buprenorphine is also available. This is the implant version in the form of small rods that are implanted under the skin of the upper arm. Once implanted, the medication can release slowly into the body for four to six months.

There are two common opioid antagonists: naltrexone and naloxone. Although both are opioid antagonists, they behave very differently and are used for very different purposes. Naloxone (or Narcan) is a fast acting but short-term opioid blocker, and used primarily as an antidote to reverse the effects of opioid overdose. It is an emergency medicine that is meant to save lives. Once injected or snorted, naltrexone works immediately. The person can become coherent quickly and start breathing normally. By acting fast, naloxone also wears off fast, typically in about 30 minutes and gone in 90 minutes.

Naltrexone on the other hand is a long-lasting opioid blocker. It binds and blocks opioid receptors so that the drug user will not feel the effects such as sedation and euphoria of opioids. It has been around for three decades as an opioid antagonist and is primarily used for recovery purposes. Once a substance misuser goes through the detoxification phase, naltrexone can be an effective tool in keeping patients off opioids. Naltrexone can be taken orally as pills and injected. The pill delivery form has a poor record of compliance. The injection formulation, called Vivitrol, can deliver the effect for up to one month. However, compared to agonists such as buprenorphine, naltrexone has a hard time to be accepted by active drug users.

Naltrexone is most effective when the substance misusers have completed detoxification, which is ideal for use in prison and in preparation for release. For instance, research has shown that the initiation of extended release (slow release) injectable naltrexone prior to prison release can significantly reduce relapse among opioid-dependent inmates. Those who received the extended release (slow release) injectable naltrexone prior to prison release had a greater number of days in abstinence, and fewer positive urine drug tests in the 6 months, particularly during the first two weeks following release when they are at high risk for overdose.



#### IV. PSYCHOSOCIAL TREATMENT APPROACHES

Unlike pharmacotherapies, this section presents different versions of “talk” therapies, i.e., through techniques of persuasion or convincing to change people’s attitudes and behaviors so that they will remain abstinent. Collectively called psychosocial strategies, they teach people to acquire new ways of thinking and skills to handle stressful situations that may trigger substance abuse.

Research has shown that overall, psychosocial treatment strategies are effective, particularly when used in combination with pharmacological interventions. Over the decades, mental health practitioners and the research community continue to examine, test, and refine psychosocial intervention programs for criminal offenders who abuse drugs. Most of these psychosocial interventions are available online in public and academic websites should anyone be interested in obtaining free materials. We know that criminal offenders with substance misuse problems present more challenges than their non-criminal peers, which must be taken into consideration when devising treatment interventions both inside and outside the prison. Drug treatment programs for prison inmates typically need to incorporate two key ingredients: (1) risk of reoffending, and (2) criminogenic needs.

There are two aspects to the *risk* factor in every criminal offender with substance misuse problems: (1) the risk of re-offending; and (2) the risk of relapse. For a criminal offender, “risk” is often construed as the likelihood to re-offend; but this type of risk is often compounded by the offender’s likelihood of relapse into substance misuse. The greater the substance misuse problem the more likely the person is to re-offend regardless of other criminogenic factors. In the U.S. most criminal offenders are assessed to identify not only their criminal propensity but also the severity of their substance misuse. Treatment plans in prison ideally should take both factors into consideration and match the service needs of the offender. Depending on inmates’ drug use histories and types of drugs abused, some may receive a combination of pharmacological interventions and psychosocial services, while others are only assigned to psychosocial programs such as education and training programs to acquire coping skills, behavioral modification, counseling, and self-help.

*Needs* assessment is an extension of risk assessment. It allows for drug treatment programs to achieve optimal allocation of resources so that the most intensive and costly services are provided to those in greatest need. There are well known treatment needs that have long been identified by practitioners to address with criminal offenders, such as criminal thinking, criminal associates, impulsivity, risk taking, limited self-control, poor problem-solving skills, poor educational and employment skills, and drug and alcohol dependence. Risk and needs assessment in American correctional institutions is mostly done through the administration of some instruments, either developed in house or purchased commercially. Because of the high demand for in-prison treatment and other correctional activities (e.g., housing assignment or pre-release planning), risk and needs assessment has become an industry in the U.S. where private businesses are developing and selling assessment tools to correctional agencies. Similar to other established psychometric tests, correctional agencies are typically charged license fees and/or per-use fee<sup>†</sup>. In California, for instance, there are about 130,000 offenders in the state prison system, all of whom typically undergo two separate risk/needs assessments, one at entry and one prior to release. As one can imagine, fees associated with the administration of the assessment as well as payment to the commercial company can quickly amount to a significant number. It is therefore important to understand the nature of these commercial risk/need assessment tools, and perhaps explore cheaper or free alternatives. There are free options. Most of the measures in these risk/needs assessment tools are similar to one another. There are no secrets to what these items are.

There are many terminologies and variations in treatment modalities including cognitive behavioral therapy, contingency management, relapse prevention, and treatments combining cognitive behavioral therapy and contingency management. Three distinct treatment modalities that have the strongest empirical support are presented below.

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<sup>†</sup> Like many established psychometric tests, commercial risk & needs assessment instruments for U.S. prison populations, such as LSI-R and COMPAS, typically involve two types of fees—an annual license fee (usually a few thousand dollars) and a per-use fee (usually around \$3 per use). For example, details can be found at <https://www.gifrinc.com/course/lsi-r/> for fee structures on LSI-R, probably the most widely recognized risk & needs assessment instrument for justice-involved populations in North America.

### **A. Cognitive Behavioral Therapy**

Most common psychosocial interventions are those emphasizing cognitive changes in how people perceive events or situations and what alternative activities one may use to resolve their predicaments. Cognitive behavioral therapy (CBT) oriented treatment modalities have probably received the most attention in evaluation and have in general produced more consistent positive findings than any other psychosocial approaches. Meta-analysis in other areas of mental health also suggest that CBT performs better than other psychosocial treatment practices, such as psychodynamic therapy, psychoeducation, physical exercise and supportive interventions. There are numerous variants of CBT, such as relapse prevention and dialectical behavior therapy. CBT consists of two main components: identify and understand events and situations that provoke negative emotive states; and learn alternative coping skills and apply these newly acquired skills to wider situations.

CBT starts with “attitude adjustment,” by changing the way criminal offenders think or perceive things. The philosophy behind CBT assumes that people who abuse drugs usually are aware of their predicaments but are unable to navigate through life’s challenges (i.e., triggers or drug use cues) without resorting to drug-induced solutions. These trigger events or life circumstances can be internal (i.e., negative physical or mental states such as not feeling well or depressed), interpersonal (i.e., peer pressure or negative social encounters) or situational (i.e., social settings that induce stress or pressure). CBT-oriented treatment activities help substance misusers to recognize these stress-inducing or high-risk situations, acquire thinking strategies and coping skills through modeling and practicing. A CBT practitioner often presents multiple scenarios (in addition to eliciting specific situations from participants) that trigger substance-using behavior, identifies problematic thoughts and response strategies in the past that led to drug use, then introduces different ways of thinking and problem solving strategies, frequently through role-playing and modeling. CBT participants will then rehearse and practice these newly acquired thinking skills and behavioral techniques.

### **B. Contingency Management**

Contingency management (CM) focuses on exploiting the principle of operant conditioning, that is, behavior is shaped by its consequences. If positive behaviors are quickly reinforced through incentives, CM believes that such behaviors will likely repeat themselves. Psychologists have long studied how animal or human behavior changes in anticipation of anticipated outcomes. By offering alternatives to drug use, people with substance misuse problems are believed to be able to accept non-drug incentives and avoid relapse. CM therefore seeks alternatives or behavioral substitutions, mostly through incentives, to encourage or maintain desired behavioral changes and prevent relapse. Numerous studies have been conducted to examine the efficacy of contingency management and findings are supportive in general.

Under CM procedures, a treatment participant is rewarded with an incentive following a clean drug test, typically through urinalysis. The incentive is used to reinforce the positive behavior of staying clean and a substance misuser is believed to maintain his/her abstinence in anticipation of further rewards. There are two major types of CM procedures. One is the voucher-based reinforcement therapy (VBRT), in which a substance misuser receives a voucher worthy of a monetary value each time he/she is tested clean. Consecutive clean tests can increase the value of the voucher. First instance, the first time a clean urinalysis is worth \$1.00. The second test, if found clean, the voucher will be worth \$1.50, and the third consecutive clean test will be worth \$2.00. After three clean tests, the program participant will earn a total \$4.50. However if the fourth test turns dirty, the voucher will be worth \$1.00, reset to its starting value. The idea is that as the voucher becomes more valuable with each successive clean test, the program participant will be incentivized to stay clean, hoping to cash in for a sizable cash award at the end.

Another common CM protocol is the prize-based procedure, where each clean urinalysis is rewarded with a chance to win something from a bowl filled with paper tickets or slips for various prizes. After a program participant provides a negative drug test, he/she will get to draw a prize from the prize bowl. Oftentimes the ticket or slip contains nothing more than a few encouraging statements, such as “good job”. The majority of the slips in the bowl contain low value prizes. However, as the participant turns in consecutive clean urine samples, he/she is afforded additional chances to draw prizes, thus increasing his/her chances of winning “big” prizes, e.g., a \$100 gift card. But a dirty test will reset to only one draw from the bowl.

Meta-analysis research has also confirmed the effectiveness of contingency management in promoting abstinence. Greater effectiveness tended to occur in studies where there was greater researcher involvement

and in shorter treatment duration. CM was found to be more effective in treating opiate use and cocaine use, relative to tobacco and polysubstance abuse. Although the effect seems to disappear over time, CM can be used as an adjunct to other treatments because of its effectiveness in keeping participants in the program.

### **C. Motivational Interviewing (MI)**

Motivational interviewing is a counseling style whereby the therapist seeks to help program participants to explore and resolve their own ambivalence towards drug treatment and rehabilitation. MI-type counseling is non-judgmental and non-confrontational. The counseling style places the participant at the center to take charge of his/her own life. The client is encouraged to set goals and explore ways to avoid their destructive lifestyle. As suggested by the name, this type of counseling helps clients find self-motivation to change behaviors that are not consistent with their goals and objectives. Typically, the therapist uses open-ended questions to encourage participants to realize their agency.

Often grouped in therapeutic interventions called Motivational Enhancement Therapy (MET), MI procedures are typically brief and used in conjunction with other behaviorally oriented treatment activities. MI starts with an assessment of the program participant, then the therapist uses the information to stimulate discussion and self-motivation. The treatment consists of brief sessions, during which participants make a plan for change and devise strategies to maintain abstinence.

Although some found that MI was only effective in treatment retention not outcomes, other meta-analyses find that MI in general produces significant, albeit low to moderate range of, impacts on outcomes. Still others found that MI was able to produce significant outcomes that were robust across many moderators, including feedback (motivational enhancement therapy), delivery time, manualization, delivery mode (group vs. individual), and ethnicity.

Because MI is brief and manualized, it can be applied in settings where there are few other treatment resources. There are many free materials online and anyone interested in learning or practicing motivational interviewing techniques can obtain instructions and manuals at the U.S. government agency (such as NIDA) websites<sup>‡</sup>. In fact among the different variants of CBT, contingency management strategies appeared to have the clearest evidence for its effectiveness, followed by relapse prevention, and motivational interviewing. However, the effectiveness of contingency management tends to disappear once the incentive structure is gone. Furthermore, because financial incentives and frequent drug tests are important components of the protocol, contingency management is often beyond the means of community agencies; and cost-efficient strategies must be developed for contingency management to be implemented on a wider scale.

### **D. Other Common Psychosocial Interventions**

There are of course many more psychosocial interventions than the three briefly described above. A large number of these treatment modalities are variants of CBT, such as dialectical behavior therapy (DBT) and moral reconnection therapy (MRT). DBT focuses on learning about one's triggers that lead to negative states of mind and learning to apply different coping skills to break the sequence of events, thoughts, feelings, and behaviors that cause relapse. DBT assumes that the identification of triggers and effective coping skills can produce and reinforce desired behavior and prevent relapse. MRT on the other hand was developed specifically to help criminal offenders to adjust their anti-social thinking. Following conventional CBT principles, MRT helps ex-offenders through several phases to identify and process events and environments that cause criminogenic stress, acquire and practice alternative behavioral solutions, and apply their new skills to a wide range of stressors.

One other strategy that has been widely practiced in the U.S. among the substance misuse community is called the *twelve-step program*, which was originally proposed by Alcoholics Anonymous (AA)—a self-help style of support groups for alcoholics. There are AA groups practically in all corners of the U.S., where mentors are helping mentees abstain from drinking. There are also 12 traditions to go along with the 12 steps of changes that govern behavior of AA members. The 12-step program first emerged in the 1930s and, although there have been changes over the decades, the essential elements remain. As summarized by the

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<sup>‡</sup> For instance, numerous instructional and assessment materials about motivational interviewing and motivational enhancement therapy can be downloaded for free on NIDA's website: <https://www.drugabuse.gov>.

American Psychological Association, the process involves the following<sup>§</sup>:

- admitting that one cannot control one's alcoholism, substance misuse or compulsion;
- recognizing a higher power that can give strength;
- examining past errors with the help of a sponsor (experienced member);
- making amends for these errors;
- learning to live a new life with a new code of behavior;
- helping others who suffer from the same alcoholism, substance misuses or compulsions.

Following the examples of AA, other self-help groups among substance misusers of various addictive behaviors have emerged over the decades, such as Cocaine Anonymous, Gamblers Anonymous. These self-help groups are widely available in most American communities. However, evaluation of their effectiveness using rigorous designs, i.e., randomized controlled trials, is rather limited. While the 12-step philosophy is widely applied, the actual implementation and treatment procedures are difficult to standardize across.

## V. CONCLUSION

Research has shown that treatment for substance misuse disorder is effective, but there is no singular approach that works the wonder. Most treatment professionals in the West would advocate for a comprehensive approach that starts with risk and needs assessment, and then match treatment services with identified needs. Because of the nature of the population, post-release monitoring and surveillance are also important components of the treatment planning. Research has shown that effective treatment programs for criminal populations tend to have the following characteristics: (1) intensive and behavioral that aim at taking up most if not all offenders' daily schedule and providing positive reinforcement for pro-social behavior; (2) focused on high risk offenders; (3) matching treatment modalities and services with identified needs; and (4) providing pro-social contexts to bridge offenders released from prison to outside law-abiding lifestyles.

Treating prison inmates with substance misuse problems is no easy task. For prison officials and program administrators, there are two take-home points from this paper.

### A. Avoid Reinventing the Wheel

Much literature and clinical procedures have been developed, tested and standardized in the U.S. as well as in many Western countries. Psychosocial interventions do not contain proprietary ingredients that, if packaged together, can somehow deliver guaranteed results. There is no need to purchase any commercial training manuals or packages. Be very suspicious if someone advocates a commercial product or encourages one's agency to purchase a so-called name brand in the substance misuse treatment field. As demonstrated in the above review of promising psychosocial interventions for substance misuse, U.S. government agencies on health services, using tax-payers' money, have funded numerous clinical programs with manualized procedures and treatment principles. These materials are almost always posted online for all to download free of charge. For instance, NIDA's official website contains a wealth of information about CBT that can be downloaded for free. Similar CBT training manuals can also be found at another U.S. government agency, the National Institute of Alcohol Abuse and Alcoholism (NIAAA)\*\*.

However, there is no shortage of companies, many of them in the U.S., that are eager to sell or promote packaged programs for a fee. Many companies also try to get listed on government agency websites as a way to increase their "legitimacy". Free manualized treatment protocols (and assessments) can be obtained so that well-established psychosocial interventions can be implemented with little or no cost. While it is important to develop culturally-sensitive programs, the theories underlying the above-mentioned treatment modalities are common across all societies, and have been tested and standardized through numerous clinical studies with different social and ethnic groups. More importantly, these psychosocial principles are simple enough for ordinary people to master, thus providing cost-effective treatment to peer support groups in places where

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<sup>§</sup> For a quick overview and lesson of the the 12-step program, a good source is provided by *VandenBos, G. R. (2007). APA dictionary of psychology, 1st ed. Washington, DC: American Psychological Association.*

\*\* Specific instructions on how to conduct CBT training can be found at NIDA's website: <https://archives.drugabuse.gov/TXManuals/GBT/CBT1.html>. Similar CBT training manuals can also be found at NIAAA's official website: <https://pubs.niaaa.nih.gov/publications/MATCHSeries3/>.

there are few mental health professionals.

### **B. Use Rigorous but Inexpensive Evaluation Strategies to Improve Treatment Programs Over Time**

Evaluation research should be a standard component in all agencies that provide substance misuse treatment services. Furthermore, psychosocial interventions that are often culturally responsive tend to vary somewhat from place to place. Once a psychosocial intervention takes on a local flavor, it should be evaluated so that incremental improvements can be made. By rigorous, we do not mean expensive. In fact, conventional randomized controlled trials (RCTs) are probably the least expensive evaluation design with the simplest statistical procedures to prove a point. There is no need for fancy statistics, simulations, or struggles with matching subjects or controlling for covariates. To the medical world, RCTs are the most basic design to prove the efficacy of a treatment protocol. Social sciences are catching up. Many treatment topics can be brought into evaluation: single vs. group counseling, single sessions vs. multiple session interventions, strategies to improve retention, or days in maintaining abstinence. Any adjustments in program design or treatment activities, as trivial as scheduling preferences or appointment reminders through cell phone texts, can be evaluated using RCT designs. The key objective of a randomized controlled trial is to create a condition for “objective” or “non-judgmental” comparison, and prevent cherry picking.

Criminal offenders remain arguably the most afflicted segment of the population and receive the least treatment. For instance, in the U.S., about half of prisoners meet the clinical criteria for a diagnosis of substance use disorders, but only 10% of them receive treatment. Much of the treatment has been the cheapest options, such as mutual support, peer counseling, and drug education. This is because prison inmates rarely raise much sympathy or public concerns for adequate funding. However, the vast majority of these inmates, except for those lifers, will return to the community where their substance misuse problems will again place the public and themselves in danger of further criminal offenses. It behooves all agencies inside the criminal justice and social service sectors of the government to pay attention to these substance misuse offenders because, if untreated, they can cost a lot more money and headaches to the justice system as well as the community.

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# ASSESSMENT OF IN-PRISON DRUG TREATMENT

*Sheldon Zhang\**

## I. INTRODUCTION

This paper is written with correctional officials in developing countries in mind, specifically management staff and treatment program administrators who work in prisons or jails with inmates who have substance misuse problems. It is intended for non-academic and non-technical audiences. However, some prior exposure to research methods training will be helpful in understanding the materials. If anyone who wants to read more or explore specific topics within the literature of substance misuse research and treatment, additional resources can be provided.

### A. Evaluation Research<sup>†</sup>

Evaluation research, in a nutshell, is any systematic assessment to determine if something is of value or worthwhile. Just like what the word—"evaluation"—means, it seeks to attach a value to something, be it an object, program, person, service, activity, need, policy, or piece of technology. Its goal is to produce knowledge that can be used immediately, or useful feedback. Evaluation research is not meant to discover generalizable knowledge, but to improve or make better use of something in existence. Also, the word "research" means systematic endeavors to examine or study, not judgment based on anecdotal stories or some haphazard personal observations or subjective assessment.

There is nothing mysterious about evaluation research because it uses all the standard research methods in social science. In the Western world, evaluation research is a booming business and employs many people who specialize in this field and make a living doing it for various government agencies and community organizations. This is because we live in a world where governments have to answer to tax payers about how their money is spent, or foundations or private donors want to account for their investment in social programs, and philanthropists want to know if their money achieved their intended goals. Such evaluative questions require researchers to frame their research questions that can put a relative value (not necessarily in monetary terms) and construct their data collection methods specifically to answer them.

The most fundamental question any evaluation researchers ask about an intervention program (or treatment services) is: does it work? Yes, this is a very simplistic way to describe evaluation research. And evaluation research differs from other types of research. It is intended to generate practical and specific knowledge that seeks to enhance decision making regarding a particular program or a particular type of services. The end goal is improvement of the program being evaluated over time. One unique feature of evaluation research is its tendency towards continuous monitoring and assessment, in which program administrators can provide feedback to guide another round of evaluation, thus making continuous program improvement possible.

### B. Why Bother to Evaluate Your Treatment Program?

Why not? There are two ways to think about treatment evaluation. First, you firmly believe what you are doing (your services and treatment protocols) is effective and there is no need to waste any resources on evaluation. In this case, what you are doing is not much different from activities carried out by faith-based organizations, whose work does not require empirical verification. There are actually many social service providers and treatment programs that share such beliefs. They seek neither validation nor verification for

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† A free online introduction to evaluation research can be found at: <http://www.socialresearchmethods.net/kb/evaluation.php>; another general overview paper is at: <https://www.ideals.illinois.edu/handle/2142/3666>.

what they do. This is perfectly fine in today's pluralistic society. These organizations are organizing their social services around their belief system.

Second, if policy makers or government administrators appreciate the complexity of human behavior and maintain a healthy dose of skepticism towards claims made by others, evaluation can be a valuable tool for program implementation and improvement. These program managers typically want to strengthen the quality of their programs and improve outcomes, or simply have a curious mind that wants to see evidence of effectiveness in any particular treatment protocol before making a long-term commitment to resource allocation.

Evaluation by definition seeks to prove if something is working or how effective a particular treatment approach works; and if effective, for whom. Substance misuse is a complex social as well as personal problem. Most treatment approaches work for some but not others, in one context but not in others. Program evaluation answers basic questions about a program's effectiveness, and evaluation data can be used to improve program services.

Frankly speaking, evaluation research can be threatening, as it is often mistaken for auditing. Because evaluation research involves a detailed examination of administrative and financial records to document what has been done and how much money was spent at what stages. Most people do not like to have their work inspected. That's just human nature.

We can have a long conversation about the best ways to plan an evaluation study. It often depends on the organizational culture and the leadership of an agency. In general, it is important to bring in the stakeholders early, preferably at the planning stage of any new initiatives or treatment programs. Without the buy-in from the organizational leadership and stakeholders, any externally imposed evaluation efforts can be easily stalled and even sabotaged.

### **C. How Much Does Evaluation Usually Cost?**

As a rule of thumb, the evaluation component should be about 10% of the total program budget. It is difficult to overemphasize the importance of evaluation, which enables continuous improvement of a program both in its efficacy and cost-effectiveness. It often costs more when a new program is implemented as opposed to an on-going evaluation of an existing treatment program. Oftentimes when a new treatment protocol has a potential for widespread implementation, dedicated funding for evaluation is usually required. In the US, typically government agencies or large private foundations fund these large-scale evaluation studies with wide implications. The 10% mentioned here is just for routine on-going program assessment and feedback for small and incremental improvement.

However, most, if not all, evaluation research literature and researchers themselves will tell you the money devoted to program evaluation is grossly inadequate, particularly in the criminal justice system. Let's just say most government agencies or program administrators do not think it is necessary to spend the money. As discussed earlier, treatment program administrators usually believe what they are doing is helpful and the limited resources should be best devoted to the delivery of services. However, studies time and again have shown that's not the case. Substance misuse is more than just an addiction disorder. It is supported and enabled by a host of complex social and personal factors, making treatment particularly difficult. For instance, naltrexone is an effective blocker to opioid receptors and has been around for three decades. How come such an effective opioid antagonist has not made much dent to the heroin addiction problem in the US or anywhere else in the world? This is because heroin users will do anything to avoid taking the pill or getting the injection. They want to feel the euphoria provided by heroin. Adherence to treatment protocol has remained a challenge. The same goes to methadone and buprenorphine. Without psychosocial interventions and other support (familial and peer), pharmacotherapies are not that effective.

### **D. Must an Agency Have Professionally Trained Researchers?**

No. Evaluation research can be done by trained government staff or prison management. However, this short answer must be contextualized. As long as one has capable research-oriented and well-trained staff, one does not need to spend much money to hire outside consultants or research team to conduct treatment evaluation. Further, one can spend some money to set up an evaluation system with key performance indicators built into routine administration data collection. Routine statistical procedures can also be

established so cost for additional data processing can be kept to minimum.

The key is to establish an assessment-oriented data system to enable on-going feedback for the performance of a treatment program. For large organization with a dedicated research division, this task can be easily accomplished. For small justice agencies or administrative jurisdictions that operate small prisons and jails, the best approach is to team up with others of similar sizes and pool together resources to enable evaluation of treatment programs.

#### **E. Prison Settings Have Unique Advantages for Evaluation Research**

One of the main challenges for evaluation research on substance misusers is the attrition problem—study participants drop out at high rates from the program making the remaining sample biased towards motivated subjects. Because of the coercive nature of the prison environment, treatment services can be delivered to the substance misusers more effectively and efficiently, and the follow-up evaluation can be carried out easily also. Inside the prison, inmates' movements are monitored and any disciplinary problems are recorded. If any contraband drugs are suspected of being smuggled into the prison, urine samples can be collected with little resistance. In general, attrition is typically not a problem for evaluation research inside the prison. What is often cited is the tension between service provider/evaluator and prison management. Because of different occupational mandates, prison officials are most concerned about safety and order of the inmates. Lockdowns due to riots, inmate disruptive behaviors, searches for contraband or removal of inmates to different cells can all cause disruptions to treatment service delivery and evaluation activities.

Assessment of in-prison treatment programs inevitably needs to extend beyond the prison walls. Ultimately it is the behavior outside the prison that demonstrates the treatment effects inside the prison. It is quite different out in the community where treatment compliance is often the number one challenge for community-based services. High dropout rates often plague community-based treatment programs. Research has shown that for justice system-involved substance misusers (i.e., drug abusing prisoners), addiction assessment and treatment should begin during incarceration, and prison-based treatment is most effective when aftercare services are followed upon release.

There has been much discussion on how to improve retention both in treatment phase and follow-up phase for this population, such as the use of familial network and social media as venues to keep in touch with study participants. However, study participants may not want to be found if the research team represents the justice agency, or worse, prison officials. Suffice it to say, much planning is needed once inmates are released into the community, and the follow-up phase of the evaluation needs to develop multiple strategies in reaching the study participants.

## **II. EVALUATION DESIGNS**

### **A. Basics in Evaluation Research**

Evaluation research can be divided into two broad categories: *process evaluation* and *outcome evaluation*. Process evaluation focuses on the implementation and operation of a treatment program. Outcome evaluation focuses on the impact of a treatment program. There are ways to further divide evaluation research into different specialty areas. For instance, *cost-benefit* analysis is also commonly associated with outcome evaluation so that we not only look at the impact of a treatment protocol but also whether it is cost effective. A treatment can be effective in bringing about the anticipated reduction on substance misuse, but if it is too expensive, it will be difficult for wide implementation. Furthermore, before an evaluation begins, the researcher typically also examines whether a program is ready for evaluation. This is called *evaluability* assessment. Evaluability refers to the state of a program that has completed (or nearly completed) its intended design and is ready to produce the intended outcomes.

### **B. Key Performance Indicators**

One of the key tasks in evaluation research is the establishment of key performance indicators. There are multiple ways to construct these indicators and most of the time the process is unique to each organization. Here are a few common indicators for one to consider.

*Recidivism.* This is probably the most important outcome indicator that most, if not all, justice agencies are concerned about. Although services may vary in their treatment goals, orientations or durations, justice

agencies are all concerned if, following the treatment services, these prison inmates will get rearrested and returned to prison. The central question is whether the treatment will result in fewer criminal activities, particularly those related to substance misuse. There are more nuanced ways to look at the recidivism indicators. One can look at the overall re-arrest rates, or how different programs or durations may result in differences in re-arrests.

Recidivism, a central theme in most correctional evaluation studies, can be defined in different, methodologically valid, ways. One can look at re-arrests, irrespective of convictions. One can look at the severity of new arrests. One problem with official arrest records is that most crimes are neither detected nor acted upon by authorities. Official arrest records often show little difference between treatment and comparison groups. This is because within the short follow-up period arrests do not occur enough times for the comparison to be valid. This is not to discredit the use of official data, but to point out the importance of including self-report measures to complement official statistics.

Self-report data can provide much richer information on the spread and frequency of criminal behavior among the offender population. Besides, self-report methods have been shown to be reliable with a remarkable degree of uniformity between self-reported answers and official data. A more recent study of drug dealers that traced self-reports of arrests from interviews through criminal records found about an 80% match between the two data sources. Still, an 80% match still leaves out 20% inaccuracy. Besides, this is only US experience. There is little research in non-English countries on the reliability of self-report criminal data. However, self-report data collection relies on the offender's memory, which fades over time and also fluctuates depending on the intention of the respondent.

For prison management purposes, one can also look at any unfavorable movement of an offender, once released, in and out of parole supervision or back to prison. Depending on the post-release conditions in each country's correctional system, inmates can be released outright without any further monitoring by the justice agencies, or one may be supervised for some length of time after release, such as parole supervision in the US. If inmates are released with supervision condition, then recidivism can be extended to include any condition violations, suspension from parole due to absconding, or newly convicted offenses.

*Relapse* in substance misuse. For substance abuse treatment programs, this is probably the most important outcome indicator. Relapse is an easy concept to understand but not always easy to measure. The best way and probably the most valid way is to obtain biological samples such as urine at predetermined intervals or random schedules. To use biological samples to ascertain one's drug use, a program administrator needs to have access to qualified laboratory facilities and the money to pay for the analysis of bio-samples (urine, hair, saliva, etc.). Although urine analysis has become much cheaper these days, it can still add up if one operates a large prison and aftercare program. Over time, there need to be dedicated resources, staff and money, to capture accurate information on relapses among patients who have gone through the treatment program. These bio-samples also need to be collected frequently over the observation period as some illicit substance passes through the body quickly.

Aside from biological samples, researchers also use self-reports to ask study participants to report their drug use in different time periods, while incarcerated or post release. Self-reports are inexpensive to collect but not very accurate. There are many factors that can influence one's recall accuracy.

*Other outcome indicators.* Aside from recidivism and relapse, there are other outcome indicators that a researcher should consider. These include prosocial activities, such as job training, gainful employment, school attendance, stable residence, reunification with family and children, and participation in other prosocial activities. Although peripheral to the core mission of the prison management, these are also powerful indicators that can foretell the prognosis of an offender in his reintegration effort. Relapse and recidivism are indicators of particular events while these prosocial activities can reflect a more stable personal growth and improvement in recovery.

Program "effectiveness" means a lot of things to different people; at the minimum it means more than mere measurement in most evaluation research as arrests or parole/probation violations. Therefore, evaluation researchers need to work with stakeholders, treatment participants, and service providers to agree up and develop a set of outcome measures.

### C. Data Collection

Data for an evaluation study needs to be planned out up front. For prison management or any other justice agencies, there are typically two major data sources. The first is the official management information system. Typically, a prison data system maintains criminal records and his/her stays in the prison. Upon the entry of the inmate into the prison, the data system also keeps tracks of his/her movements through different quarters, such as substance abuse treatment units or regular inmate units, medical histories, and any disciplinary records. The prison record keeping also contains some criminal history and background demographics about the inmate. Depending on the sophistication and longevity of the prison management information system, the data may be of great value for various evaluation considerations, which allow for both historical (trends over time) and biographical (patterns within individuals) analyses.

The second data source is typically provided by treatment service providers. In the US and many Western countries, substance misuse treatment services are contracted out to particular agencies specialized in treating substance abuse disorder among the criminal population. These treatment providers always maintain records of service utilization. These data can provide information about the numbers of inmates who have used the treatment services, the specific services used, and the outcomes of these service contacts. Once the data sources are identified, an inspection of what data are kept is necessary. Routinely collected data are the easiest place to start planning the evaluation. However, when routine administrative data or service data are not adequate, additional collection must be planned with all stakeholders involved. Prison officials and substance abuse treatment staff are generally reluctant to alter their routine activities and probably will find ways to resist inputting or gathering the data outside their job classification.

Closely associated with planning the data collection is the determination of *observation period*. Usually the longer the observation period the more we can find out about the effects of a treatment protocol on its participants. But there is also a pragmatic side to all evaluation efforts—the amount of money that can support observation over time. As a rule of thumb, 6 months following the exit of a treatment episode is the minimum required for outcome evaluation purposes; typically, one year is needed to examine recidivism rate for prison populations.

### D. Common Designs

When someone says a treatment program is effective, one should always ask: compared to what? In other words, there needs to be a comparison of sorts. Without any comparison or contrast, there is no way to tell if something is working. There is quite a bit of science in constructing ways to do such comparisons. The following lists the three most common ones.

#### 1. Pre-and-Post Test

This is probably the easiest evaluation design. Essentially one conducts a baseline assessment of a cohort of prison inmates at the entry of their treatment program. Then at the end of the treatment or a few months following the completion of the treatment, another assessment is conducted to detect any differences on the main outcome indicators.

A pre-and-post evaluation design using official and/or self-report methods is an easy way to enter the evaluation research business. Within the prison environment official records are easy to utilize for evaluation purposes, although self-report data may face challenges in validity and reliability. However, depending on the quality and independence of the research evaluator, there are no insurmountable barriers to collecting self-report data. Self-report data collection is routinely done in the US and other Western countries. However, this may not be the case in other countries.

While easy to understand and implement, pre-and-post test as an evaluation design has many limitations. First, research has shown that patients who participate in treatment tend to be more motivated than non-participants. This selection bias is very difficult to overcome because one cannot tell if the improvement in the end can be attributed to the motivation factor or the treatment effect itself or some other factors. Second, without a comparison, there is no way to tell if the treatment protocol has produced anything better than the status quo (or existing) treatment services or no treatment at all. In other words, the results one obtains from a pre-and-post design stand alone with no external reference.



## 2. Randomized Controlled Trial (RCT)

The most rigorous evaluation design is the use of randomized controlled trial (RCT). In this design, all eligible patients are randomly assigned to either the treatment group or the control group, hence randomized controlled trial. This is the strongest research evaluation. Its strength lies in the ability of researchers to infer cause – the program caused differences in outcomes rather than preexisting differences. One can infer that groups that are truly equivalent in all aspects going into the interventions have different outcomes only if the interventions have different impacts on the participants.

Randomized experiments are highly valued because they allow for such causal inferences, but they are not infallible. Random assignment must be thoughtfully implemented so that truly randomly equivalent groups are set up, and the equivalence of the groups must be protected over the course of the experiment so that the random equivalence has not eroded before the causal inference can be made.

There are several ways to establish and protect randomly equivalent comparison groups. First, one must *avoid differential consent*. Differential consent can lead to a subtle self-selection bias that corrupts random equivalence from the start. If consent to participate in the new intervention or remain in status quo program takes place *after* random assignment, there can be differences in the characteristics of inmates that consent to the different options. Inmates that refuse to consent to one condition or another may differ in attitudes, prior experiences with substance abuse treatment, or any number of ways not immediately apparent. If inmates who consent to the new treatment protocol tend to be slightly more functional, slightly more in control of their prison activities or more amenable to controlling this time, or different in any number of ways, then the random assignment is defeated. Inmates not consenting to be part of the new program may infuse an element of self-selection that could be related to outcome differences. The inferences that any differences between the new treatment and status quo are due to the program and not preexisting dispositions will be threatened.

Therefore, consent must be obtained *before* random assignment. Those refusing consent will be eliminated from both groups. The comparison groups will be formed from exactly the same pool of consenting inmates. There will be no possibility of differential consent. Consent letters (or instructions) will explain that two approaches are being compared. Inmates will be asked to consent to be randomly assigned to one, and to agree to cooperate with program and evaluation requirements. Consent will be requested at the time of the first assessment.

Second, one must *avoid resentful demoralization of controls*. Consent to be assigned to alternative treatment programs can be accomplished without provoking “resentful demoralization of controls” that occurs in some studies. In this situation, the alternatives can be described evenly and honestly as different approaches without values attached. In other words, it is important not to suggest in any way that one treatment approach is superior to another, or one treatment protocol is more current than the other. Such value-loaded descriptions of any treatment protocols will unwittingly influence inmates’ preference to one treatment program over the other. Inmates are asked to consent to cooperate with either approach. In both programs, they will be required to participate fully in all program activities.

Third, one should *avoid instrumentation differences*. Probably the most common threat to validity in a true RCT design is from instrumentation differences that correspond with group assignment. Even when the same measurement tools are employed, if they are “calibrated” differently or applied differently in one group than in another, differences may stem from the measurement process rather than the treatment. For example, a prison guard’s judgement of an inmate’s substance misuse severity may be very different from that rendered by a professional treatment staff. If the intake assessments for inmates participating in a study are conducted by different sets of personnel using different instruments, the outcomes could easily be interpreted as tainted by instrumentation bias. Therefore, assessment instruments should be the same for both treatment and control groups and carried out by the same trained personnel.

Fourth one should *avoid contamination between treatment and control groups*. Another concern in protecting the random equivalence of the comparison groups has to do with preventing the re-assignment of inmates from one condition to another or interaction between the two groups. This is sometimes difficult to implement and will require commitment from the prison management to ensure both assignment conditions are not crossed. If the inmates can be kept separate physically, i.e., locked up in different facilities, then



contamination can be prevented.

Fifth, whenever possible, one should *strengthen random equivalence by assigning within key strata*. We know from logic, simulations, and mathematical laws that random assignment always results in equivalent groups *if the pool is large enough to overcome the heterogeneity within it*. Overall this will surely be true, but less certain for breakdowns within prisons or service areas, and on key characteristics. Within group distributions on a small number of key characteristics that may strongly affect outcomes need not be left entirely to chance. For example, if marital status has a strong influence on outcomes and we know that married inmates are less common than unmarried inmates, it would be desirable to have roughly equal numbers of married inmates receive each treatment without tainting random assignment. Since service areas (i.e., prison settings) have different populations that may react differently to the treatment options, it would be desirable to have roughly equal numbers of married inmates in treatment and control groups within each of the seven areas. Random assignment is preserved and the chances of differentially skewed distributions (on these key characteristics) within treatment groups reduced, when inmates are randomly assigned to treatments within prison and marital status groupings.

Therefore, once the eligible pool of participants is established, key characteristics known to be strongly related to outcomes need to be identified. If marital status or gender or age of offending onset are key predictors of outcomes, one will need to create sufficient strata, within which random assignment takes place. This approach strengthens statistical tests between randomly equivalent groups, provides opportunities for stronger subgroup analyses (i.e. by prison, by gender, by marital status, or by age of first offense), without in any way compromising the random equivalence of groups and the opportunity to make causal inferences.

Although RCT is an easy concept, there is a lot to be discussed in terms of proper execution of the design. The aforementioned represents a very rigorous form of RCT. Not all prison institutions are set up to do them this way. However, simple random assignment with sufficient participants can still produce results with much greater confidence than any other evaluation designs.

### 3. Comparison Group and Case Matching

When an RCT design is not possible, researchers often fall back on a quasi-experimental design of using other inmates for comparison purposes. The use of comparison groups is an old strategy in evaluation research. When RCT is not possible, researchers must find something to compare to in order to establish the efficacy of the treatment protocol. There are different ways to construct one's comparison group. The most common method is sometimes called quasi-experimental design, essentially constructing a comparison group using some recruitment criteria. For a long time, case matching (or blocking) is the method, in which researchers select a group of subjects that are the same as the treatment group on some key descriptive characteristics, such as gender, age, prior incarceration, marital status. Using this method, a group of similar inmates is then used to compare with the treatment group.

Prior to computer-assisted statistical analysis, case-matching was often done manually. As one can see, as the number of descriptive variables increase, it becomes very difficult, if not impossible, to do the matching by hand. In recent years, researchers employ a technique called propensity scoring to create a statistically equivalent comparison group in order to detect discernible patterns and treatment effects. Essentially a propensity scoring index is created through statistical analysis that simultaneously consider all known descriptive variables among the non-treatment subjects, thus using all the information available to compare the treatment subjects against this statistically equivalent group.

Propensity score matching offers the most robust alternative to a true randomized controlled trial because of the sophisticated statistical procedures. In a non-randomized, comparative study, the estimated treatment effect is likely to be biased due to confounding variables. This bias is called *the treatment assignment bias*. The best method for eliminating this bias is by random assignment of the treatment as commonly practiced in clinical trials. But such a rigorous design is often impossible or impractical to implement in criminal justice research, especially incarceration settings. The propensity score method is a statistical technique to approximate the randomized assignment design.

Researchers who developed this technique have shown that by matching on the propensity score calculated from multiple confounding variables, the distribution of these variables will be the same in the

treatment and the control group. Just like random assignment, matching on propensity score will balance the two groups on the confounding variables. The major strength of the propensity score method is its dimension reduction capability in the sense that it can achieve multivariate matching by using a single score (i.e., the propensity index). If done properly, researchers have shown the bias reduction of propensity score matching: sub-classification based on the quintiles of the estimated propensity scores can reduce 90% of the bias in the mean difference. In the 1990s, the propensity score method gained wide popularity among social scientists.

One major shortcoming of the case matching method (or propensity score indexing) is that it can only provide some control over descriptive variables (e.g., race, gender, age, and prior incarcerations), known to be related to recidivism or relapse in substance misuse. Some researchers argue that, given sufficient sample sizes, these case matching variables can be easily controlled through multivariate statistical procedures. More importantly, drawing samples (irrespective of the sampling techniques) means some loss of information about the population. Therefore, if one has access to the entire target population, say, the entire substance misuse population in the prison system, one can conduct parametric analysis by using the entire treatment participant population and the entire non-treatment population. By using the population data, assessment of the program, impact should be more precise and stable.

The case-matching method, or using the entire non-treatment population for comparison purposes, still faces the issue of selection bias—the possibility that those who are enrolled in the treatment services are somehow qualitatively different (e.g., either due to self-motivation or favorable prognosis by the prison management staff) from those who do not participate. There are, however, statistical methods to mitigate the problem of selection bias through different weighting schemes. There are also other factors that may mitigate the selection bias. For instance one can examine whether there are any special administrative incentives, perks, or advantages associated with providing the treatment protocol. Second, how the in-prison treatment services are distributed and whether all substance misuse inmates have access to them. If the services are not evenly distributed across all prisons in the jurisdiction, access to these services varies from prison to prison, so many other substance misusers still rely on other forms of treatment or no treatment at all. The comparison population then is made up of inmates who may be equally motivated but unable to access the new treatment protocol. In this case, the assessment of the new treatment protocol compares against the status quo treatment services.

### III. CONCLUSION

Evaluation research is important for developing and improving substance misuse treatment in prison and community. Although many treatment strategies have been developed in the West, evaluation research continues to show their many limitations. It is important to point out that evaluation research, particularly those involving criminal justice agencies in the US and many Western countries, has long been plagued by weak designs and poor execution. There is still much room for improvement in terms of evaluation research on substance misuse treatment inside prison or out in the community. Unlike the medical world where research and evaluation are very much the backbone that supports and enhances our improvement in treatment technologies, procedures, and medications, substance misuse treatment inside prison or in the community does not catch much attention from policy makers.

There are two major problems in our assessment of substance misuse treatment inside prison or out in the community. First, design weaknesses in most evaluation research have hampered building knowledge on the effective treatment. Most of what we know about treatment comes from meta-analysis, that is, analyzing a body of literature to detect the treatment effects overall. An important movement that has been building momentum in the US and other Western countries is the use of true experimental trials of intervention programs in the criminal justice system to find out what works. These researchers argue that much of our past research has been plagued by weak research designs. Few question the rigors of randomized controlled trials, but such designs remain the exception rather than the norm in criminal justice research. Few of us in the trenches are ever afforded the luxury to implement a true experimental design to evaluate a correctional program.

Justice agency officials often oppose the “randomized administration of justice” or reject the idea on the basis that it is unethical to withhold services or certain types of treatment from eligible offenders. Evaluation researchers thus often adjust their designs to accommodate the demands or resistance of program

administrators. Oftentimes researchers become involved well after the program has already been in operation or well beyond the point of making any suggestions for programmatic changes to accommodate research activities. As a result, evaluation studies in correctional fields come in all shapes and forms; and findings are often so mixed and even confusing that they make little sense to either the public or policy makers.

Second, aside from the lack of rigorous designs, many evaluation studies are also plagued by small samples or highly localized populations to assess program effectiveness, making generalization to the larger population difficult. The sample size problem arises because correctional programs are often funded for small numbers of offenders in a catchment area either due to limited budgets or for “demonstration” purposes. Although sound in the logic that any large-scale operations should begin with rigorously designed demonstrations, few of these correctional efforts ever survive to see widespread replication in any jurisdiction irrespective of their outcomes. The lack of statistically significant findings (either positive or negative) in many evaluation studies is thus exacerbated by these small samples that are often low in recidivism anyway. Although statistical procedures can mitigate some of these design handicaps, the inherent problem of small samples and small participant populations is intransigent for making impact statements on a system-wide basis.

Finally, evaluation research is what we have been able to advance substance misuse treatment. Through decades of research, we have come to recognize that there are no silver bullets for substance misuse, and effective treatment often consists of multiple strategies, ranging from risk/needs assessment to pharmacotherapy to psychosocial therapies. Moreover, what is effective for one inmate population may not be so effective in a different setting. Appreciating the complexity of the substance misuse problem is the first step towards effective treatment.

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### AN INTRODUCTION TO TREATMENT AND REHABILITATION FOR ILLICIT DRUG USE OFFENDERS IN MALAYSIAN PRISONS

*Suhaizak Ab. Wahab\**

#### I. INTRODUCTION

Illicit drug use in Malaysia has been known as one of the most serious problems that exists. The problem has caused adverse effects on families, public safety and the economy of the country. (Mahmood Nazar, 2005), and also contributed to the incremental degradation of health statistics. The health risk of illicit drug use offenders is quite different from other addiction because it physiologically changes the body and brain even after the individual has stopped taking drugs. Illicit drug use also has a big potential to twist behaviour to criminal behaviour because of drug misuse. Their are huge consequences to the health risk of individuals and devastating impact on physical and mental health as well as psychosocial well-being and criminal behaviour. (Norliza, 2014).

In Malaysia, the laws that govern the drug issues are many, namely the Dangerous Drug Acts 1952, Dangerous Drug Act (Forfeitures of Property) 1988, Dangerous Drug Act (Special Preventive Measures) 1985, Drug Dependants (Treatment and Rehabilitation) Acts 1983, Act 234 Dangerous Drugs Act 1952, Act 283 Drug Dependants (Treatment and Rehabilitation) Act 1985, Act 638 National Anti-Drugs Agency Act 2004 (AADK, 2018). These laws and regulations provide complete information on drugs starting from the definition of drugs, their illicit use, enforcement and punishment and last but not least the right to be treated and rehabilitated. As far as the differences of legal system were concerned, Malaysia has banned illicit use of all types and categories of drugs or substances including the use of Kratom leaves.

The illicit use of drugs is often referred to as drug or substance abuse in Malaysia, especially by scholars. In Malaysia the terms refer to the use of drugs against the benefit of medication and by the person who not authorized by the law. As far as illicit drug use offenders in Malaysian Prisons were concerned, most of the offenders in Malaysian Prisons consumed (but not limited to) opiates (*heroine, fit, pokteh*) the drugs that are famous and frequently used, as well as stimulants (methamphetamine, ecstasy, *ice, syabu, yaba*) followed by less than a third of the respondents other drugs such as *marijuana*, depressants and *kratom* as well (Norbayusri Burhanuddin, Nordin Muhammad, 2015).

Except for Kratom that falls under the Poison Acts 1951, those were among the drugs that fall under the definition of *dangerous drugs* in the First Schedule of Dangerous Drugs Act 1952 in Malaysia. According to sections 6, 14 and 15 of the Dangerous Drugs Acts 1951, it is expressly mentioned that any act of possessing, consuming and administering *dangerous drugs* within the definition in the *first schedule* of the act are considered as guilty under the Acts and liable for the specified period of imprisonment and specified amount of fine. Thus, the illicit drug user is considered an offender at the first place and later on will be treated as a patient as per decision by the judges/magistrates during the trial by referring to the severity of the case. However, this scenario will not be applicable for those who were surrendered or volunteered themselves to be treated in the registered rehabilitation centre as in accordance with *Section 8 Drugs Dependants (Treatment and Rehabilitation) Acts 1983*.

The function of Malaysian Prisons is to help rehabilitate the prisoners, as well as to control and isolate them from jeopardizing the public in general (Nicholls T.L., 2005). Since offenders are in involuntary legal custody by order (not by will), the prisons authorities have no abilities to chose their 'customers' to put them in treatment. Therefore, Malaysian Prisons have to treat all kinds of offenders with different types of drug

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\* Prison Department of Malaysia. This individual paper is for the JICA course 2018. The use and publication other than for this purpose is prohibited without the express consent of the authority of the Prison Department of Malaysia.



issues with their own ways. Therefore, they must live according to the rules and regulations laid out for them including the method of treatment; thus their movements were limited (Jabatan Penjara Malaysia, 2010). With so many illicit drug use offenders coming in, it has created challenging factors to treat and rehabilitate them so as to follow the principle that every single case of an illicit drug use offender is unique.

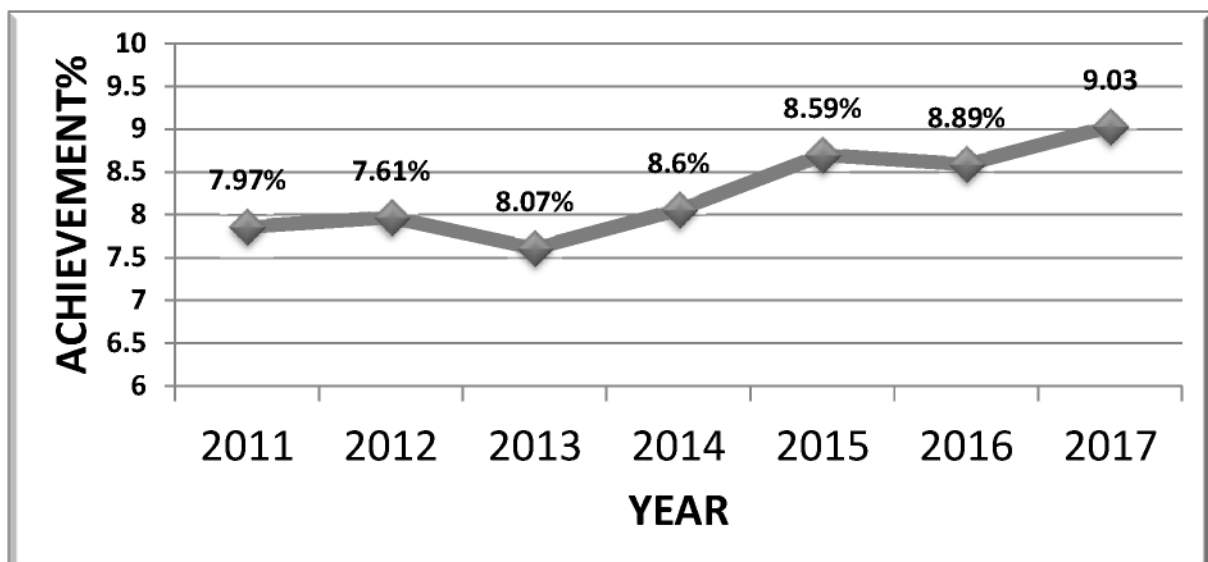
Needless to say, ever since the British introduced incarceration (later adapted as the correctional system) in Malaysia, they never cease the effort to treat and rehabilitate drug abusers. This is to align with the vision of the Prison Department of Malaysia to be pioneers in corrective services and the mission, to produce productive citizens through effective rehabilitation, conducive environment and strategic integration. The objective of its existence is to ensure all inmates undergo safe custody until the date of discharge, to ensure all inmates are treated according to rules and regulations, to ensure all categories of inmates are rehabilitated through effective rehabilitation programmes and to prepare inmates for effective reintegration into society (Zulkifli & N., 2017).

Effectiveness of the rehabilitation process applied to the inmates is always a current topic of society and local authorities. Thus, they have high expectations for these offenders to be rehabilitated during their sentence in prison, especially those illicit drug users. Research over the last two decades has consistently reported the beneficial effects of treatment for the drug abuser in the criminal justice system. Treating drug-involved offenders provides a unique opportunity to decrease substance abuse and reduce associated criminal behaviour. (Redonna, 2010).

## II. ISSUES, CHALLENGES AND POSSIBLE SOLUTIONS IN TREATMENT AND REHABILITATION PROGRAMMES IN MALAYSIAN PRISONS

### A. Maintaining the Recidivism Rate

Malaysian Prisons have regulated standard benchmarking of rehabilitation success in prison based on the recidivism rate. Currently the prison department has determined to adhere their rate of recidivism not exceeding 10% in order to indicate that rehabilitation programmes including for those offenders involved in illicit drug use. In Malaysia the recidivism rate refers to ex-convicted who reoffend and returned back to prison within 3 years after being released (Zulkifli & N., 2017). The chart below shows the recidivism achievement up to year 2017.



*(Source: Prison Department of Malaysia)*

The results showed the rehabilitation programme managed to effectively control the rate of recidivism (inmates relapsing into criminal behaviour), with 8.7% recorded in 2015, below the 9% level set by the Home Ministry (Zulkifli, 2016).

Currently, the recidivism rate in Malaysia is the lowest in Asia. But the problem that needs to be

pondered is whether the trend is increasing or decreasing. This is among the problems faced by Malaysia.

In prison, the majority of prisoners are illicit drug use offenders and drug-related criminals. As far as the drug-related crime is concerned, most of the recidivism rate is contributed by them. According to the research, the trend of illicit drug use offenders is likely to increase in Malaysian Prisons. This indirectly reflected the increment of government administration cost (Jamal Ali, Sallahuddin Hassan, Noor Al-Huda Abdul Karim, 2014). It is something that Malaysian Prisons need to be aware of as it will be exceeding the current benchmarking.

As a possible solution prison authorities were of the opinion to separate normal non-drug-related crime and drug-related crime, which mostly consists of illicit drug use offenders. They would be identified as relapse offenders rather than recidivists. This would maintain the current rate of recidivism. So far Malaysian Prisons were not going to benchmark the rate of relapse offenders among the illicit drug use offenders. Therefore, they would be attended accordingly in terms of treatment and rehabilitation in order to avoid relapse.

### **B. Mental Health, Depression and Offenders' Readiness to Change**

Mental health and depression were interrelated when mental state of illicit drug use offenders is concerned. Depression is classified under mood disorders as the mood in a major depressive episode is often described by the person as depressed, sad, hopeless, discouraged, or 'down in the dumps' (DSM-IV, 1994). A mental disorder and depression are common among Malaysian offenders, and there is a growing population of mental health problems where prisoners may be undetected and treated with this issue (Brugha, 2005). Offenders exhibit higher levels of anxiety and depression than the general population, along with lower levels of self-esteem, specifically among certain groups of offenders with substance abuse problems (Picken, 2012). The depression among adults showed biased recall towards negative information relative to non-depression adults (Saralah, 2016).

There are several cases in Malaysian Prisons showing that offenders have such symptoms. This was the challenge that needed to be faced by the prison authority since this kind of offenders' condition would affect the effectiveness of treatment and the rehabilitation process. Furthermore, readiness to change among them cannot be captured accurately when these issues are not resolved. Among others, the prison authority does not yet initiate any treatment and rehabilitation module for the offenders who are in the state of mental incapability and depression, and rather refers them to the hospital that is beyond the prison authority's jurisdiction. As a solution, the prison authority has requested several psychiatrists from the Ministry of Health to attend to them, and to construct such modules. Recently, the health minister has agreed to place several psychiatrists within the prison walls to cater to such issues, which form a good kick-start. It is hoped that treatment and rehabilitation of illicit drug use offenders is done holistically throughout the country.

Research shows that the majority of prisoners use drugs prior to custody (Boys, 2002). Therefore, the readiness to change is important and needs to be enhanced among prisoners before they are released from prison. Readiness to change is a crucial element influencing illicit drug use offenders to seek out, follow and complete treatment. In order to change their behaviour of drug abuse, prisoners should reach a state of readiness and willingness to change.

Stages of Change are conceptually defined as a sequence of transitions through which people progress as they initiate and maintain behaviour change (Miller, 1996). Stages of Change are central concepts in the trans-theoretical model (Prochaska, 1986). However, motivation to change problem behaviours is not equal with motivation for participating in treatment. Many prisoners go through the treatment under pressure from the environment of the prison because the treatment programme in prison is compulsory. Although prisoners enter the treatment programme every day, they still may not be ready to change and a relapse may occur. Therefore as a solution, if a prisoner presents motivation, a quick assessment of the Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES) had been introduced and applied in Malaysian Prisons to cater to the issues together with the established instrument BDI (Beck Depression Inventories), AQ (Aggressive Questionnaires) and some others. (Mohd Fadzil, Wan Marzuki, 2012)

### III. ILLICIT DRUG USE OFFENDER REHABILITATION AND TREATMENT PROGRAMME

#### A. Structured Programme: Integrated Human Development Programme

The programme was started in year 2003 and has been enhanced ever since. This is the structured programme that was intended for all offenders in Malaysian Prisons but separated by specific modules according to offenders' categories including illicit drug use offenders. The objectives of the programme were to develop Attitudes, Skill and Knowledge of the offenders during their incarceration. The programme consisted of 4 phases which have been simplified as follows:

PHASE	CONTENT	DURATION
<b>PHASE 1 (Disciplined Emphasis Phase)</b>	Psycho Education	2 Months
<b>PHASE 2 (Character Building Phase)</b>	Therapeutic Community and Halaqah (Islamic-oriented Programme) Academic	6 Months
<b>PHASE 3 (Skill Enhancement Phase)</b>	Nurturing Skills (Vocational & Industrial Training)	Until qualified for 4 <sup>th</sup> Phase
<b>PHASE 4 (Reintegration Phase)</b>	Community Programme - (Parole, Community Rehabilitation Centre, Vocational Programme Outside Prison Walls)	Until released

Malaysian Prisons depend on this programme in order to achieve the intended output of rehabilitation. Therefore, this programme reflects on how Malaysian Prisons will achieve their recidivism rate (Zulkifli O., 2014).

#### B. HUNT Modules

As a leading rehabilitation institution in this country, the Prison Department of Malaysia is responsible for implementing drug treatment for the drug offenders where they undergo their sentences through the Human Development Program applying a psycho-education module called HUNT. The module was introduced to the Prison Department in year 2017. The module was constructed by the prison officers with qualified Substance Abuse Psychology Counseling Masters Degrees. Modules consist of 17 chapters focusing on the early recovery rehabilitation for illicit drug use offenders. The domains focused on are as follows: This module, among others, evaluates the readiness to change and severity of addiction among the offenders using the prescribed instrument namely DAST-20 and URICA (Jabatan Penjara, 2017). This module was Integrated in Human Development Program Phase 1, as mentioned earlier. The modules touched on the following items:

Stages of Change (SOC)	Precontemplation to Contemplation	Contemplation - Preparation
<b>The most relevant changing process</b>	Awareness enhancement	Self-efficacy evaluation
	Dramatic relief	Environmental evaluation
	Self-efficacy evaluation	Balancing decision
	Environmental evaluation	Self-Efficacy capability
	Balancing decision	Social Liberation

The rehabilitation process then was followed by another phase of the programme that is psychosocial-based (*Therapeutic Community-Phase 2*), psycho-spiritual (*Halaqah* module-Phase 2) and Methadone Maintenance Therapy (MMT) for opiate medication.

### C. Therapeutic Community Programmes

Therapeutic community programmes are one of most successful programmes as far as illicit drug use offenders are concerned. In Malaysian Prisons, it has been started since 1992 using U.S.A. frameworks by the officers who received that particular training. This programme was based on the help of peer groups, residential family oriented, where offenders are put together in their family (other offenders who having the same interest) to undergo the drug rehabilitation process (Penjara, 2014). Among the modality objectives, the framework is as follows:

1. Developing offender's autonomous decision making
2. Developing the offender's life objectives
3. Enhancing sensitivity towards himself and others
4. Developing self-efficacy and reducing self-defeating outlook
5. Developing communication and confrontation skills

The decision to implement TC is on the ground that based on the result showed by the research that re-incarceration rates were lower among those who received TC treatment compared without TC treatment (Prendergast, 2004).

### D. Methadone Maintenance Therapy

This is the one and only pharmacological treatment that has been implemented for illicit drug use offenders in Malaysian Prisons. This programme started in 2009 where synthetic drugs called methadone were used to replace opioids to reduce dependency. This programme is purposely focused on the reduction of harm caused by the offender who has stopped using drugs but is physically and psychologically dependent on the substance, especially opioids. Since the programme was monitored by the Ministry of Health, the rate of effectiveness of the programme throughout Malaysia rest with them. However, the therapy was very effective for the offenders in Malaysian Prisons (Penjara, 2014).

### E. Rehabilitation Outside Prison Walls

Besides the programme implemented inside the prison perimeter, there are several methods used by Malaysian Prisons to exhilarate the rehabilitation process of the offender that is outside the prison walls, called the reintegration process. This process is the next stage of the rehabilitation process that has been mentioned earlier. It shows that the rate of recidivism among the illicit drug use offenders who have undergone this process was below 1%. The rehabilitation programmes were:

#### 1. Parole System

Unlike some countries that use court-ordered parole, this system was issued by Malaysian Prisons with close supervision by Parole Board Authorities. It was established in 2008 where offenders were put outside the prison walls to have a normal functioning life with their families, but under prison authority supervision. Their parole date lapsed once their imprisonment period is over and they were released. In Malaysia, unlike other countries, the parole order was granted with the suggestion of the Malaysian Prisons, not direct issuance of the judiciary. Therefore prisoners must undergo the imprisonment process before the parole order was granted, subject to their good behaviour and compliance with other compulsory conditions. Therefore, parole duration in Malaysia is determined on the remaining days left to the release date. Once the imprisonment period ends, the parole duration is over. Their parole period is part of the imprisonment period. This method of rehabilitation was the best practiced pre-aftercare programme provided by Malaysian Prisons since by-laws have no authority whatsoever to regulate the life of offenders once they are released; therefore it is hard to implement real-time aftercare services.

#### 2. Community Rehabilitation Program (CRP)

A centre has been established outside the prison perimeters to gather offenders and undergo skills and vocational training together with the society. Here, their skills (including farming, manufacturing and agriculture) were either nurtured or enhanced to enable to offenders to sustain themselves after release from prison. Unlike the Parole System that requires offenders to sustain their own lives during the programme,

offenders at this centre would be closely monitored by prison officers within required proximity. Although the severity of the crime and the period of imprisonment are the factors that separated offenders in the parole system and CRP, nevertheless the objectives were the same: to promote strong self-efficacy of the offenders to face the community in order to avoid relapse and reoffending.

#### IV. CONCLUSION

The main objective of drug treatment of the Prison Department is to rehabilitate and to treat as well as to prevent relapse among drug offenders. Prisoners are the products of the prison and the nation who are willing to change their negative behaviour towards becoming an excellent individual. Prison authorities have played their part well in overcoming such issues and will keep going until it keeps the Malaysian nation in good condition. In doing so, countless efforts have been done, numbers of suggestions have been taken into account, and several research projects have been set up. Currently Malaysian Prisons authority has suggested alternative punishment for illicit drug use offenders namely Day Parole, Home Detention, suspended sentence and compulsory attendance order as alternative rehabilitation. The researcher believes this is a way to decrease the chances of re-arrests, reducing the costs associated with incarceration, providing them with the choice of changing substance abusing behaviour, to overcome overcrowding and to strengthen drug treatment among drug offenders. However further studies have to be done and serious discussions among agencies in the criminal justice system have to be made before it can be implemented.

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# TREATMENT OF ILLICIT DRUG USERS IN MALAYSIA: FOCUS ON PAROLE

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## I. INTRODUCTION

In the past, prisons were purely custodial and punitive but today the emphasis is on rehabilitation and treatment of offenders. Thus it is imperative that the prisons remain safe and secure to ensure that the prison can fulfil the multiple goals of punishment, deterrence and that of rehabilitation, reformation and reintegration. Over the past decade, prisons have progressively re-affirmed their role to take on the charge of being agents for rehabilitation, moving away from being mere custodians of the offenders under their charge. To discharge this mission effectively, prisons have embarked on a deliberate and rigorous review of their capabilities in operations, rehabilitation and community engagement.

The Prison Department of Malaysia has also moved forward and continuously innovates in order to assist the prison administration in dealing with modern culture through criminology, penology and overall social control. This includes developing programmes and treatments to help inmates change their criminal behaviour through evidence-based interventions, and preparing them for their eventual return to the community.

### A. Scope of Prison Department

The Prisons Department is under the Ministry of Home Affairs (KDN) where it works in ensuring safe custody of prisoners and detainees, as well as continuous rehabilitation programmes for prisoners. The Prisons Department of Malaysia currently has 37 Prison Institutions, 4 Henry Gurney schools, 13 State Prisoners Offices and 52 Parole District Offices.

### B. Scope of Parole and Community Service

When the parole system was first established by the Malaysian Prisons Department more than a decade ago, there were concerns over how the authorities would manage the risks involved, particularly those regarding public safety and security. The parole system in Malaysia was introduced in 2007 and the Prison Act 1995 was amended to establish the system in Malaysia. It received royal assent on 24th January 2008 and was published in the gazette on 7th February 2008. However, it only became enforceable on 30th June 2008. In July 2008, the pioneer batch of 64 convicted prisoners was released on parole.

The legislative intention of introducing the Malaysian parole system was to alleviate prison overcrowding and operating cost, reduce recidivism and to rehabilitate the prisoners to ensure successful reentry and reintegration into society through the role of the family, employers or community members. Thus, to realize the parliamentary intention, the values and principles of the Parole Division of the Malaysian Prison Department are embodied in its mission statement and are evidenced by its objectives to ensure a continuity of effective rehabilitation programmes and to give prisoners a second chance to go through the process of integration of their lives into the community. In addition, it is also the Department's vision to ensure the welfare of the society and to reduce recidivism by assisting and guiding the prisoners to live as individuals who respect the laws and regulations of the country.

The Prison Act 1995 defines “*parole*” as the release of prisoners to serve any part of the imprisonment sentence outside the prison pursuant to a parole order. By section 46A “*prisoners*” means a prisoner who is released on a parole order made by a Parole Board. Section 46I (*Prison Act*) provides that a prisoner is

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deemed to continue serving his sentence of imprisonment during the period of parole that begins on the date of release on parole as specified in the parole order and ends upon the expiration of his sentence of imprisonment, taking into account so much of his sentence as shall remain after deducting from it such part of remission of sentence granted, or when the parole order is suspended or revoked. As such, parole in Malaysia is viewed as an extension of the custodial period, as the prisoners will be placed in the community under the correctional authority and supervision of the parole officers.

The parole system in Malaysia is administered by the Ministry of Home Affairs. Two governmental offices are concerned with administration of the parole system: (1) the Parole Board, (2) the Malaysian Prison Department.

#### 1. The Parole Boards

Recently there are three Parole Boards in Malaysia's parole system. A Parole Board shall consist of the following members who shall be appointed by the Yang di-Pertuan Agong:

- a) A Chairman, from amongst members of the Judicial and Legal Service;
- b) A senior prison officer;
- c) A senior police officer;
- d) Three members of the public.

With a view to encouraging good conduct and industry and to facilitate reformatory treatment of prisoners, a Parole Board shall have the following powers:

- a) To make a decision whether to release a prisoner on parole;
- b) To suspend or revoke a Parole Order;
- c) To add or vary conditions of a Parole Order;
- d) To hold an inquiry on any matter related to parole;
- e) To examine any prisoner for the purpose of soliciting additional information related to a parole application or any other reason that the Parole Board deems fit; and
- f) To exercise and perform such other functions and duties as the Minister may determine.

The Parole Board shall examine and evaluate the parole dossiers<sup>1</sup> received from a prison officer in respect of such prisoner and any other report prepared by any prison officer in relation to an application for release on parole.

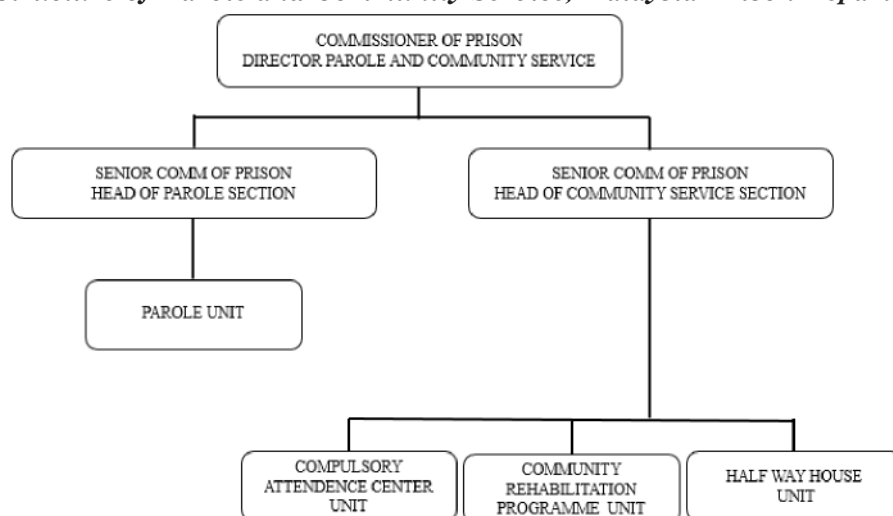
#### 2. Malaysia Prison Department

In Malaysia, the parole system is a newly established programme in order to enhance the rehabilitation programme for convicts. The parole system is designed for inmates who show exemplary behaviour during incarceration. It is seen as an incentive which inmates must earn in order to enjoy it through demonstrating positive adjustment and fulfilling the requirement stated in the programme.

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<sup>1</sup> Dossier means document representing prisoner report of all the activity and attitude in the prison.

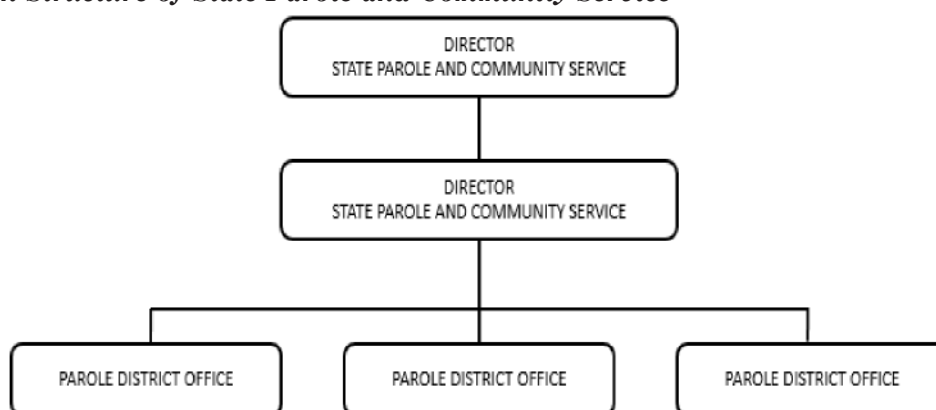
### ***Organization Structure of Parole and Community Service, Malaysia Prison Department***



*Source: Malaysia Prison Department*

The Malaysia Prison Department through the Parole and Community Services Division has implemented the system by setting up 14 State Offices and 52 Parole District Offices in the country.

### ***Organization Structure of State Parole and Community Service***



*Source: Malaysia Prison Department*

The parole system in Malaysia requires that to be considered for parole release, prisoners must be sentenced to a year and above of prison and have completed half of the amount of punishment decided by any court. Subsequently, the parole officer placed in the prison institution is entrusted with preparing evaluation forms for submission to the Parole Department Headquarters for scrutiny and then passes them on to the Parole Board. Once they have identified the prisoners, they will be given a briefing. The briefing is given initially upon admission, later as part of the module in Phase 1, Human Development Program. A month before release, briefing is given through the Pre-release Parole Module. The parole officer will be entrusted with interviewing inmates selected to be released on parole to obtain a release plan, conducting fact finding and contacting the residence of family or relatives and employers who agree to accept prisoners in their daily lives. After obtaining information on the prisoners, the parole officer at the prison institution will prepare a complete report on whether the convict is qualified to be granted parole. If the convict is found to be eligible for parole, the parole officer will determine the risk level, which is minimum, medium or maximum through risk assessment. This is intended to decide on the frequency of contact, meeting and trips to the residence and workplace of the parolee by the parole officer. Besides this, the risk assessment also helps the parole officer outline a suitable programme for the parolee.

## II. MONITORING & SUPERVISION

A parolee who is released by the parole order must comply with the conditions laid down in the parole order. The parole order will be issued by the board after being satisfied with the report lodged by the parole of the institute as well as the support of the Parole and Community Services Division, the Head Office. Terms of the parole order shall be read on the day of release and every condition shall be understood by the parolee. More than 20 conditions have been set by the Parole Board and among the conditions that the parolee must adhere to are as follows:

- i. Parolee is prohibited from engaging in criminal activity;
- ii. Parolee must not leave the designated area without the permission of a parole officer;
- iii. Parolee is prohibited from using any prohibited or intoxicating substance;
- iv. Parolee shall comply with any directions from parole officers;
- v. Parolee is prohibited from using any illicit drug.

Parole is granted to those inmates who have successfully completed and surpassed the comprehensive assessment by the prison authority and an internal committee evaluation followed by an external evaluation. While they are on parole, the parolees will be supervised and monitored by parole officers in their specific designated area<sup>2</sup>. In the event of breach of terms and conditions imposed on them while under parole, it will lead to the revocation of their parole order.

Supervising and monitoring drug offenders is a big challenge to our officers compared to those with other criminal backgrounds. The current trend of drug abuse has changed; synthetic drugs are more commonly used compared to opiate-based ones. Although there has been rejection from their families and the society in the process of reintegration, there are many who are willing to support and cooperate. The parolees themselves need the driven power to adapt, be ready to change and enhance their resilience in order to determine and restore their success.

The parolee him/herself also shall have a job that guarantees earning a living; jobs are arranged or agreed by the District Parole Officer. They will also be involved with any personal training and development programs that fit into their respective capabilities.

All parolees are prohibited from possessing or using drugs and also associating with criminal associates who are in the public domain. The conditions contained in the parole order depend on the prisoner's offence and the criminal effect committed by the prisoner against the surrounding community. The more likely the prisoner will return to drug abuse, the more stringent the conditions will be allocated to them.

Each parolee must also undergo a prescribed recovery programme as stated in the parole order. Parole Officers shall arrange rehabilitation programmes either in individual, group or rehabilitation programmes within the community. Parolees must report once a week as arranged by the parole officer. The presence of intervention is compulsory and action will be imposed if the parolee fails to attend the Parole Office. For parolees involved in drugs must undergo urine testing as part of their intervention programme.

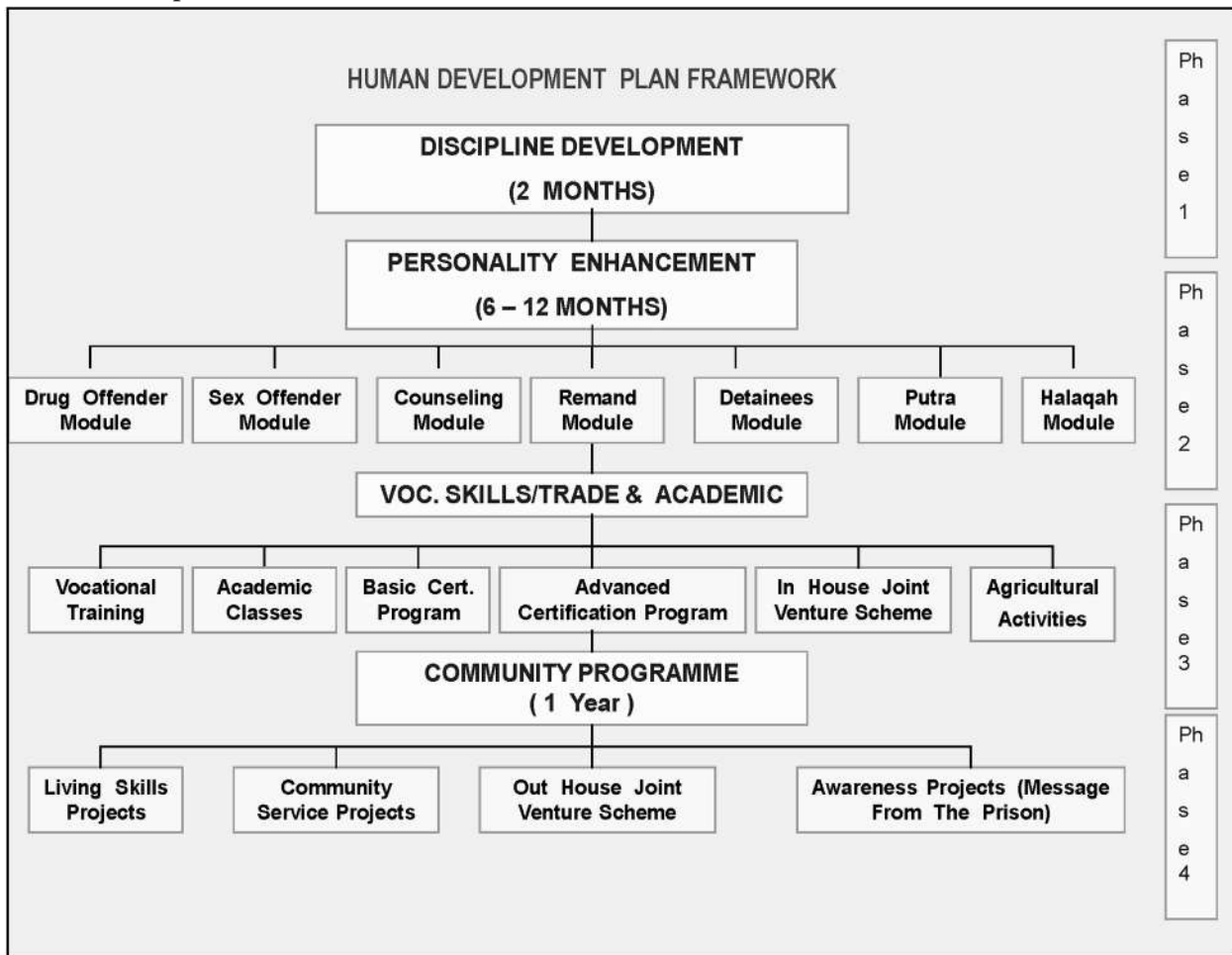
## III. COMMUNITY-BASED TREATMENT FOR DRUG OFFENDERS

The implementation of prison rehabilitation programmes is an important basis in overall recovery where every prisoner needs to go through several phases and have his progress evaluated in each phase to be elevated into the next phase.

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<sup>2</sup> Designated area means the gazette area that gives the authority to the parole officer to supervise.

## Human Development Plan Framework



Source: Malaysia Prison Department

In an effort to achieve the said mission and objective, the Malaysian Prison Department has introduced *Pelan Pembangunan Insan* (Human Development Plan), a comprehensive and integrated rehabilitation system. The new system targeted mainly on the rehabilitation of spiritual and physical needs of inmates through change in attitude and increase in skills and knowledge. The Human Development Plan is a rehabilitative process for inmates that is conducted through four key programmes, namely, Induction Program (Phase 1: 2 months), Personality Enhancement Program (Phase 2: 6 to 12 months), Skills Program (Phase 3: duration is subjected to Period of Imprisonment) and Pre-Release / Community Program (one year before release). In addition, several rehabilitative modules are used for the different categories of offenders such as Drug Offenders Module for drug-related offenders and Sexual Module for sexual offenders.

However, in contrast to the parolee recovery that has been released through the parole system where the approach adopted is based on Community-Based Treatment where the approach used is based on social support group that helps in the recovery of parolee outside the prison wall. Factors that encourage the implementation of Community-Based Treatment are the following:

- To ensure the stability of society through rehabilitation and to reduce repeated criminal behaviour;
- To provide support and guidance to inmates in respecting law and order of the country;
- To ensure continuity of the rehabilitation programme and more effective supervision in the hope of giving prisoners a second chance to carry on life through the process of reintegration into society.

The involvement of Non-Government Organizations (NGO) and the involvement of private companies in the Corporate Smart Partnership is a programme that assists in the Community-Based Treatment in which the support provided to help a parolees be more confident.



There are several approaches used in assisting parolee recovery for those involved with drug activities. The method of recovery is also different from the type of drug used and also the level of drug use over a period of time. Each parolee needs to undergo a psychological test for the purpose of knowing the level of addiction for a parolee. Each parolee needs to undergo 2 phases, which are during imprisonment and when it is beaten. Parole officers should review both test reports before determining the level of intervention that each parolee needs to go through.

#### **A. Cure and Care Programme: Social Support Groups Module / Recovery Programme in the Community**

This Programme is designated for drug users or drug-related offenders especially for parolees. All parolees must be involved in weekly sessions run by Parole Officers in collaboration with the National Anti-Drug Agency.

The main objectives are:

- i. Providing a safe haven for discussion group clients to practice social skills;
- ii. Having recovered clients serve as role models;
- iii. Promote and expand the support system;
- iv. Provide education so that clients have the skills to cope with social problems faced.

Among the modules and technique are Cycle Stop (Stop The Cycle), identifying techniques used to reduce addiction and its effects, Thought-Stopping skill to cut (block) triggers facing the parolees and External Trigger. Components and elements contained in the Recovery Module will help the Parole Officer to better plan implementing the C & C to parolees. This programme can be a reference to the Parole Officer in the execution to parolees to undergo the programme smoothly and adapt to society after serving of the Parole Order after release.

#### **B. Methadone**

Parolees with a history of heroin-type drugs will be helped to overcome addiction using the method of methadone. The parolee involved in the programme has been identified during the rehabilitation programme in the prison again and when undergoing parole order, this methadone programme will proceed based on the record obtained from prison. Parole officers will ensure the parolee recovery involved with the methadone will continue until the sentence is completed or until the dose is reduced. Parole officers will also work with pharmacists from government hospitals to ensure a parolee who join the programme daily and will be in accordance with established procedures.

#### **C. Interventions**

Parolees need to undergo an intervention programme scheduled once a week as set forth in the rules. Parole officers shall prepare and organize a programme schedule for each parolee in the recovery phase; the planned monitoring of the parolee is under the parole officer. Intervention is a method of reviving parolees and recognizing the level of parolee recovery under the supervision of parole officers. Among the activities are individual counselling<sup>3</sup>, group counselling, support programmes and other appropriate parole programmes.

#### **D. Spiritual Programmes**

One of the forms of recovery that can affect the parolee recovery is to have a spiritual recovery programme. Parole officers should plan this spiritual programme as a continuation of parole recovery in prison. The spiritual approach is very important in parolee recovery because it helps in enhancing identity as well as the parolee's confidence in drawing closer to the Creator. In order to run this programme, parole officers need to cooperate with volunteer religious teachers or religious departments to run the spiritual programme for parolees based on a weekly schedule.

#### **E. Others Programmes**

In addition to the programmes mentioned above, there is another programme for collaboration with local companies. The *Corporate Smart Internship* (CSI) programme was created for the purpose of enhancing

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<sup>3</sup> Counselling sessions run by counsellors from the prison department or by rehabilitation officers.

parolee skills in the field of work. Indirectly, this programme provides parole space to build confidence to recover where continuous recovery is the department's primary objective in ensuring the parolee can be rehabilitated. Among the fields of employment are agriculture, manufacturing and other fields that have an impact on the job sector. The programme started in 2017, and up to 661 parolees have participated in the programme.

Indirectly, this programme has benefited the company especially in the cost savings of operations and labour which involves foreign workers who need a lot of costs in the documentation process. For parolees, as well as enhancing skills in the employment sector, moral support and guidance have had a positive impact on the ongoing recovery.

## IV. THE CHALLENGES

### A. Dual Roles of Parole Officers

In Malaysia, the dual roles in surveillance and rehabilitation process do potentially pose challenges in trying to achieve their goals of helping the prisoners successfully reintegrate into the community and protecting the society from at-risk individuals i.e. Section 46K (e) of Prison Act 1995 provides that it is a duty of a parole officer to organize or direct a prisoner to undergo a programme for rehabilitation. As a parole officer, early planning for each programme should take into consideration all the requirements for the recovery of the parolee.

### B. Providing Social Services

In line with the social service model which focuses on the client's needs such as employment and housing, parole officers often have difficulty to reconcile their role with the conflicting objective of the surveillance and control approach. It is a challenge for parole officials to ensure that all the requirements and rules set may be implemented at a time.

### C. Willingness of Parolees to Participate in Treatment

The willingness and openness of parole in receiving treatment is an important aspect of recovery. This factor needs to be in every parolee and not just fill in the programme slot without the need to change. The role of parole officers is also important where continuing support in ensuring the parolee can follow the appropriate recovery programme. This support actually helps to increase confidence in parolees to recover and avoid negative thoughts.

### D. Support from the Community

A study reveals that the main reasons for detainees floating with the wrong influence are due to lack of support from community networking and friendship. Recent studies by the parole department show that prisoners return to their old habits due to the unwillingness of the community to accept them, as well as refusal by family members. One of the challenges faced by parole officials is to deal with the public stigma of former prisoners despite knowing that they have been restored. Eventually the former prisoner had to accept the fact that they were not needed by the community and returned to friends who better understood them.

### E. Translating Theories or Principles into Practice

It is a challenge for parole officers to design a programme and supervision plan to hold prisoners accountable and focus on their change as they need to address the prisoner's specific criminogenic need factors, i.e. early identification with a predilection for criminal behaviour risk. Another factor that needs to be thought about is the psychological development among the criminal or drug user whereas for parole officers, skills in psychology are needed to understand the character of the parolee.

### F. Right Philosophies, Attitude and Background

The background of parole officers in the rehabilitation and surveillance of prisoners must possess the right philosophies and attitude to balance their dual roles in facilitating successful reintegration of prisoners into the society. Parole officers with background in social work and behavioural sciences were more likely to report that prisoner treatment needs were integrated into supervision requirements and activities. However, certain characteristics of staff working in correctional environments such as appropriate educational qualification, experience in working with prisoners, professional values such as empathy, tolerance, integrity and flexibility, a firm but fair approach, good listening and communication skill, may result in successful

reintegration of the parolees into the community.

## **V. CONCLUSION**

One of the challenges faced by the authorities is the use of alternatives to imprisonment. Challenges are inevitable but for the sake of public safety and peace, various alternatives to imprisonment should be implemented. A comprehensive initiative has to be undertaken to ensure success. Programmes involving strong community participation have to be implemented. Although alternatives to imprisonment are comparatively inexpensive and efficient, they must be imposed carefully. Besides the well-being of the offender, the safety of the public should be of paramount concern.

## **REFERENCE**

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3. Human Development Plan Module, Malaysia Prison Department
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# DRUG REHABILITATION IN MALDIVES

*Abdul Sattar Abdul Hameed\**

## I. OVERVIEW OF LEGAL FRAMEWORK ON DRUG OFFENCES IN MALDIVES

In recent years drug trafficking and drug abuse have escalated in the Maldives mainly due to increased exposure to the outside world. Official recognition of the problem arose when the first ever incidence on drug use was reported back in 1977 when a person was arrested with 350 grams of hashish.<sup>1</sup> As a result, the first principal legislative Act of the Maldives dealing with narcotic drugs and psychotropic substances, (Law No 17/77 - The Drugs Act) was passed the same year in order to help the legal system deal with it, and to act as a deterrent.

The law (Drugs Act) was amended in 1995 (Section 2 of the law) to award life imprisonment, and 25 years is given for offences of trafficking of prohibited drugs by either, cultivation, manufacture, exportation, importation, selling, buying, giving or possession for sale of one gram or more. For the offence of consumption of prohibited drugs under section 4 of the law, using or possession for personal use of less than one gram, the penalty is imprisonment, banishment or house arrest for a period between 5 and 12 years, or referral to rehabilitation with the possibility of a suspended legal sentence. Further amendments to the law on drugs were made in 2001, facilitating confidential interviewing with drug users for the purpose of research for government. Alcohol is not included in the law on drugs. It is controlled under the law of Islamic Shari'ah.

Drug use and drug abuse became an increasing concern, even after enacting a rigid law for its prohibition. Commonly abused substances since then have been hashish oil / cannabis and heroin / diamorphine. In 1996, a total of 241 cases of substance abuse were reported to the police. In 1998, over 450 arrests were made for drug abuse and related offences. The first major seizure of cocaine was made in September 1993 at Malé International Airport when 8 kilograms of cocaine was found concealed in the false bottom of a suitcase in the possession of a foreign national. The Statistical Yearbook of Maldives 2011 reported that a total of 783 persons in 2006 and 1187 persons in 2007 have been detained by the Maldives Police Service in relation to drug use offences.

According to a 2012 UN report<sup>2</sup>, there are 7,500 drug addicts in the Maldives. However, critics say the real figure is much higher. One thing that is certain is that drug abuse and related offences are more compared to any other crime in Maldives and drug addiction touches nearly every family of the country.

### A. The New Legal Response to the Drug Use Issue

After 27 years from the enactment of the Act 17/77 a survey done in 2004<sup>3</sup> showed that drug offenders and people charged with drug offences constitute at least 80% of the prison population and often face very long periods of imprisonment, even for the possession of small amounts of narcotics.

In summary, it was agreed that the law present at that time (17/77) was harsh, costly and counterproductive. They are harsh in the sense that mere users face very long periods of imprisonment without access to treatment for their addiction, and with no prison-based incentives or a properly structured parole system. They are costly because of the long periods of imprisonment. They are counterproductive in that they appear to consolidate or even to create criminal careers; and, given the levels of drug use, they do not seem to be acting as a deterrent. Young people thus become a burden on the country's development

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\* Chief Judge, Drug Court, Republic of Maldives.

<sup>1</sup> Mariyam Shazly and Hassan Zilaal, 'Drug offender Treatment in Maldives',

<sup>2</sup> UNODC, 'National Drug use survey Maldives-2011/2012', 2003.

<sup>3</sup> Profesor Richard Harding and Dr.Neil Morgan, 'Strengthening custodial services in Maldives', 2004.

process rather than making a positive contribution to it.

As a result, a bill was submitted to Parliament in 2009 that reduces jail terms for drug use, and devotes more funds to rehabilitation efforts. This bill was passed and came into force on 31<sup>st</sup> December 2011 as the new Drug Act (Law number 17/2011). Under this Act, the National Drug Agency (NDA) a government agency responsible for the implementation of policies relating to the legislation was established, while its work is overseen by the National Drug Control Council established under the new Drug Law, NDA is managed by a Chief Executive Officer (CEO) who reports to a ten-member Advisory Board appointed by the President. One of the special features of the new legislation is that it establishes a specialist court—a court having the jurisdiction in matters related to drugs accorded to it.

## **B. New Features of the Drug Act 2011**

The main focus of the new Drug Act is to move away from taking a punitive approach against “small scale” drug offences. The law recognizes three main categories of drug offences, that is, the use, peddling and trafficking of drugs, and provides measures to motivate drug dependent persons to enroll in treatment and rehabilitation programmes with a view to facilitate their reintegration into the community as responsible citizens and at the same time stipulating offences and punishments relating to the misuse of drugs and matters relating thereto. Among many objectives, the Act attempts to reduce the level of drug dependency, to identify those who are in the early stages of drug dependency and to assist them in obtaining measures which will enable them to overcome their dependency on drugs, to establish a mechanism for the rehabilitation of drug dependent persons, believing that drug dependent persons are not just criminals but those in need of rehabilitation as they have, through the use of drugs, developed a psychological or physical dependence upon the effect of those drugs, and to invest law enforcement agencies with special powers to reduce the number of drug dependent persons and to prevent trafficking of drugs in the Maldives.

### **1. Drug Court**

The Drug Court, established in 31<sup>st</sup> March 2012 under Drug Act 2011, was aimed to grant legal and judicial recognition to the treatment mechanism, while interlinking the treatment mechanism with the general justice system.

Mainly four categories of offenders are eligible for drug court treatment programmes. Those categories are, (i) drug users, (ii) peddlers, (iii) drug dependent people whose drug dependency contributed to the commission of a criminal offence, (such as theft and robbery) and (iv) people who were serving a jail term for drug abuse.

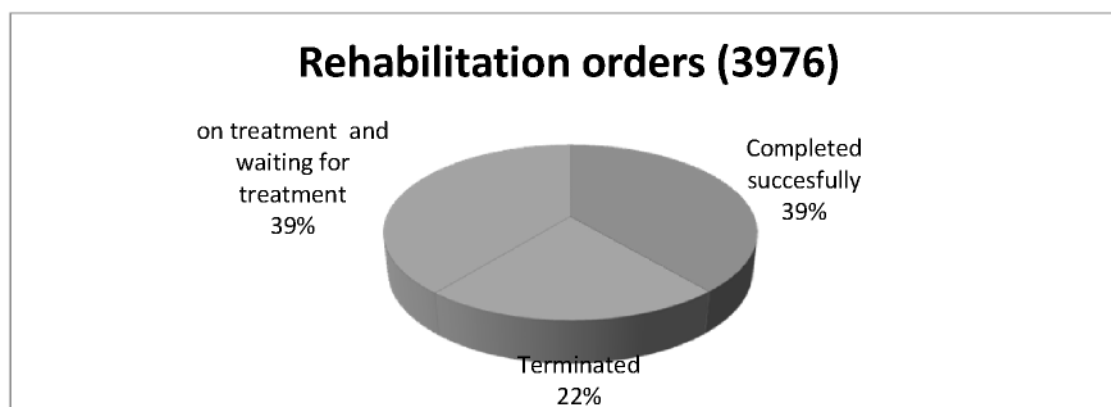
The specialty of drug court is that, all eligible cases will proceed only if certain conditions are met, mainly (i) the person pleaded guilty to the offence, (ii) the person is willing to be subjected to an indicative assessment, (iii) if the person has agreed to participate and complete a prescribed treatment programme and to obey other conditions set by the court. Moreover, in all prescribed treatment programmes the offender will be called to appear before the court for status hearings to check on how he has cooperated.

The court suspends jail sentences subject to the completion of a rehabilitation programme. However, the sentence should be served if the person does not act according to the rehabilitation rules and orders of the Drug Court and the treatment centre.

Six years into force, a total number of 6,368 cases has been submitted to the Drug Court by the end of the year 2017. Out of these, in 3,976 cases rehabilitation orders were made. So far 1,542 people have completed their rehabilitation programmes who spend an average of 7-10 months in the rehabilitation treatment programmes and have been released to the community by suspending their jail sentences. At the same time 878 drug offenders have been terminated from the rehabilitation programme and sent to jail to complete the jail term sentence<sup>4</sup>. The other 1,556 are either on rehabilitation treatment or waiting for the programme to start. The figure below shows the percentages of people who have completed and been terminated from the rehabilitation programme.

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<sup>4</sup> Statistics collected from annual Reports of Drug court 2013, 2014, 2015, 2016 and 2017



## 2. Drug Treatment Centres

The National Drug Agency has the responsibility under the Drug Act 2011 to implement effective and efficient drug prevention, treatment and rehabilitation programmes for the drug users and to effectively re-integrate them back to the society. Currently there are 5 drug treatment centres established in Maldives that all function under the National Drug Agency, namely:

Name of the facility	Capacity	On treatment
1. Drug Treatment and Rehabilitation Center	172	172
2. Drug Treatment and Detoxification Center -1	19	16
3. Drug Treatment and Detoxification Center -2	40	13
4. Community Service Center	270	301
5. Halfway House	15	15
total	516	517

DTRC was the first drug treatment centre established in Maldives, which was in 1997. It was also the only drug treatment centre in Maldives before the enactment of the Drug Act 2011, with a capacity of 70 people at that time.

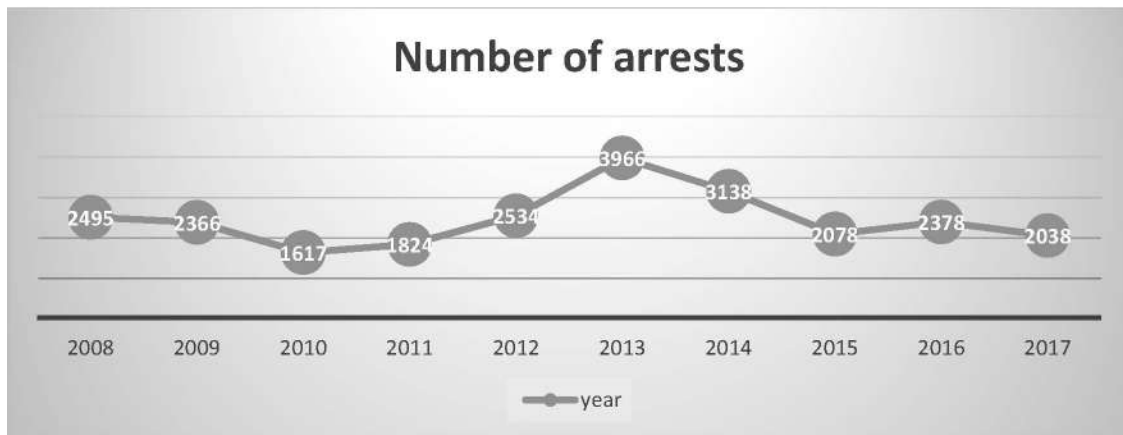
The rehabilitation centres conduct rehabilitation programmes which include information classes, counselling sessions for the offenders (as well as to their parents), religious information sessions, regular drug testing and mandatory attendance checking on selected dates (the offenders has to just appear in the rehabilitation centres and sign an attendance register). During the time of the rehabilitation process it is also mandatory to appear at the drug court before the Judge for hearings called status hearings. The main purpose of these hearings is to check the status of the ongoing treatment for the respective person and to warn him or her for any disobedience and also to applaud them for continuing the programme in a successful manner.

## C. Has There Been Any Change in Drug Abuse and Related Offences?

Here I include a number arrest records<sup>5</sup> from the Maldives Police Service in cases of drug use and related offences; the purpose is to see whether there is any difference or any trend observed after the enactment of the 2011 Act.

<sup>5</sup> Statistics for past years, (website), <https://www.police.gov.mv>.





The statistics show that there is a gradual decrease in the number after 2013. This does not conclude that it's the effect of the 2011 Act. There are other measures to calculate the effectiveness of the rehabilitation system.

For the purpose of this paper, a sample of 100 clients was taken who have successfully completed rehabilitation programmes and were released to the community by the end of September 2014. Criminal activity/arrests of these 100 people have been checked by using a portal (software / website) created between the Maldives Police Service and drug court which shows the records of any arrest at any time.

**Findings:** Out of the 100 people, 13 have been arrested for different criminal offences after the completion of rehabilitation and graduation from the drug court. 9 of them were arrested for an offence related with drugs. 87 percent had no record of arrest after the graduation. It is a success that 87 out of 100 can be cleansed from drug addiction and brought back to the community who are deemed to contribute to the success of the whole country.

## II. THE CHALLENGES IN THE SYSTEM

### A. Inadequate Treatment Facilities

Availability of adequate treatment facilities has been a concern since the start. Inadequacy in respect of lack of capacity in the rehabilitation centres is one challenge to be notified under this heading. As noted earlier in this paper there are 1,556 people even now ordered to conduct a rehabilitation programme by the drug court; however, it has to be noted that the total number of people that can be accommodated by all the above treatment centres is only 516 at a given time. And according to the National Drug Agency, including the 2 treatment centres, the total number of people currently undergoing the treatment programmes is 517. This shows about 1,000 offenders ordered to undergo rehabilitation treatment programmes are waiting for their turn to start the programme.

Inadequacy in respect to capacity is not the only challenge: availability of qualified professional staff specialized in the area of drug rehabilitation is another important problem. It has to be noted that except two, all other treatment centres are located in the capital city area. Even if the offenders wanted, it is a challenge for the them to get the rehabilitation treatment, because they have to move to Male (Capital City) for 7-10 months leaving behind their families and their respective islands. Some people opt to go to jail for 3 years.

### B. Slow Prosecution Procedures

The annual report of the drug court for 2015 shows that it takes an average time of 14 months from the time of the execution of the offence to prosecute the case. Isn't this too long a period for an intervention like rehabilitation? During this time the offender, without any rehabilitation or treatment, might have repeatedly committed crimes just because he is a drug addict. It has to be noted that this delay in prosecution has started to take a good turn after the new Criminal Procedure Rules which came in to effect in July 2017.

### C. Labelling

Labelling the offenders as criminals even after completion and getting over the drug addiction is another

challenge. Even after a successful rehabilitation process the society still does not accept the person as sober. Even the families of the respective people feel reluctant to accept him. This is discouraging to the ones to the ones who undergo rehabilitation. They know this is the view of the society; therefore, the only motive for them to undergo the rehabilitation is just to get rid of the jail sentence.

#### **D. Clearing Other Criminal Records**

Their concern is, if they successfully complete the rehabilitation process, will that clear their past criminal records. The current Act stipulates that it does not. One might have another criminal conviction for which he has to undergo a jail sentence. In such a case, even if that person completes the rehabilitation process successfully, he has to go immediately to jail to serve the jail sentence for the other conviction. This again blurs the original purpose for the whole rehabilitation process.

### **III. CONCLUSION**

Drug addiction touches nearly every family and is a big worry to the whole country. In response to the problem of drug use, Maldives introduced severe penalties for drug use and related crime in 1977. However, the problem of drug use and drug-related offences did not minimize to any extent. Thus, as encouraged by the international drug control conventions, treatment as an alternative to criminal justice sanctions was believed to be more effective than imprisonment in encouraging recovery from drug dependence and reducing drug-related crime. As a result, in the year 2011 a new drug act was enacted engraving this view.

Though researchers have found that rehabilitation is the best and most effective intervention compared to the traditional adjudication of drug-related offences, what is observed is 37 percent of the drug users sent to rehabilitation programmes are sent back to jail for their inability to complete the programmes, and 13 percent of the people who complete the programmes continue the criminal behaviour they had previously adopted. Still we find 87 percent of the people do not go back to criminal activities. In my view it is quite a good result. And the ones who fail do not fail because rehabilitation is a bad intervention; it may be because of the inadequate facilities and due to other challenges of the rehabilitation process in Maldives.

# TREATMENT OF DRUG OFFENDERS IN THE MAURITIUS PRISON SERVICE

*Joanna Figaro-Jolicoeur\**

## I. DRUG SITUATION IN MAURITIUS

Substance abuse and illicit trafficking is a matter of serious concern throughout the world. Even the Republic of Mauritius has not been spared to that scourge. Situated in the Indian Ocean, it is a small island with a population of approximately 1.35 million<sup>1</sup>. The country is facing an unprecedented situation from drug trafficking and drug use, posing a threat to its national security and public health. Mauritius recorded, in 2016, an estimated market value of about 10m USD on seized drugs. Cannabis is one of the most popular drugs available in the Mauritian market, with an increase of 4% compared to year 2015, due to its easy cultivation on our island<sup>2</sup>. Since 2013 there is an emerging demand for new psychoactive substances. The supply is abundant due to the ease with which these drugs are imported and cheap price which leads to its easy availability among the young public.

The country has passed a number of laws in order, on one hand, to curb drug trafficking, money laundering and financial crime and, on the other, to provide evidence-informed policies and interventions to protect and promote the health and well-being of its citizens. The Dangerous Drug Act 2000, the HIV and Aids Act 2006, the Financial Intelligence and Anti Money Laundering Act 2002, henceforth known as FIAMLA, POCA (2002), the Bank of Mauritius Act 2004 are examples of this legislation.

## II. CURRENT SITUATION

Problematic drug users are among the most vulnerable among prisoners and are over-represented within the prison population, often due to a growing trend towards the criminalization of drug use and possession and the use of custodial sentences for drug-related crime.

Effective delivery of drug interventions is key — until drug addiction can be broken, offenders remain dysfunctional and incapable of engagement with programmes that, collectively, help them lead law-abiding lives on release. Prison represents the first opportunity for offenders to have their drugs-misuse problems addressed in a coherent, structured way.

Against this backdrop, the Prison Service is tasked with addressing the needs of individuals who are both dysfunctional and often unable to engage effectively with others. The demand for drug interventions, therefore, places the prison system under considerable pressure.

Since implementation of Methadone Maintenance Therapy (MMT) in 2006 in the community, the Prison Service ensured continuity of methadone therapy to detainees already induced at community level. However since December 2011, a methadone induction unit has been set up for induction and dispensing of methadone for People Who Inject Drugs (PWID). Drug rehabilitation programmes are delivered in different prison institutions to those people.

A team of healthcare workers comprising of Prison Doctors and Nurses provides round-the-clock medical service, assisted by a full time psychologist, Prison Welfare cadre, and trained Prison Officers, at reducing the

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<sup>1</sup> Indexmundi.com. (2018). *Mauritius Demographics Profile 2018*. [online] Available at: [https://www.indexmundi.com/mauritius/demographics\\_profile.html](https://www.indexmundi.com/mauritius/demographics_profile.html) [Accessed 23 Apr. 2018].

<sup>2</sup> Statsmauritius.govmu.org. (2018). *Statistics Mauritius - Crime, Justice and Security Statistics - Year 2016*. [online] Available at: [http://statsmauritius.govmu.org/English/Publications/Pages/CJS\\_Stats\\_Yr2016.aspx](http://statsmauritius.govmu.org/English/Publications/Pages/CJS_Stats_Yr2016.aspx) [Accessed 22 Apr. 2018].

supply of illegal drugs into prison — through a range of practical supply reduction initiatives — and at reducing the demand for drugs among prisoners through effective treatment interventions, clinically managing their withdrawal from drug dependency, providing rehabilitation, and support to remain drug-free.

About 60% of those admitted into prison are problematic drug-misusers (PDMs) with about 75% reporting some drugs-misuse; With an annual through-flow of about 7,500 offenders, an average of 4,500 drug-misusing prisoners may be in custody during the course of a year, with about 1,200 being present at any one time, out of which 11.4% are HIV positive cases. The total prison population as at March 2018 was 2,354 and 13.9% were on MMT.

The Mauritius Prison Service manages 7 prisons for men and 2 for women, a rehabilitation youth centre and a correctional youth centre. In 2017, the prison recorded an admission rate of 7,517 out of which 3,027 averred to be intravenous drug users. During that same year 317 were convicted due to offences directly related to drug:

Offence	Number
1. Drug Possession/Use	211
2. Drug Dealing	61
3. Drug Trafficking	33
4. Drug Importation	12

### III. CHALLENGES

- i. Prisons are not therapeutic institutions;
- ii. The prison staff and administration often do not have the capacity to respond adequately to the health problems of drug users;
- iii. Many drug users in prison are serving short-term sentences or are on remand, which means the time available for therapeutic interventions is often limited;
- iv. Diversion of methadone is becoming a recurrent feature in prison;
- v. Few cases of overdose have been reported;
- vi. Impersonation during methadone dispensing;
- vii. Sharing of unsterile injecting equipment.

### IV. WAY FORWARD

Due to the chronic relapsing nature of drug dependence and the need to address social and psychological dimensions, achieving abstinence for many people is often a lengthy and difficult process. The period of time when a prisoner is incarcerated represents an opportunity to intervene in the cycle of drug use and crime and to reduce the harms of drug use.

Therefore, to address the underlying causes of addiction, a proposal is made for the establishment of residential rehabilitation based on the principle that a structured, drug-free environment provides an appropriate context for treatment. The programme will be developed to assist drug users in developing appropriate skills and attitudes to make positive changes towards a drug-free way of life. Thus, Therapeutic Communities (TCs), a subset of residential rehabilitation characterized by an emphasis on accepting personal responsibility for decisions and actions, will be established.

The objective of drug dependence treatment is the achievement and maintenance of physical, psychological and social well-being through reducing the risk-taking behaviours or practices associated with drug use or through abstinence from drug use.

Action to reduce prison populations and prison overcrowding should accompany — and be seen as an integral component of — a comprehensive strategy to prevent HIV transmission in prisons, to improve prison health care, and to improve prison conditions. This should include:

- The development of non-custodial strategies to reduce the over-incarceration of drug users and to establish government targets for reducing prison overcrowding generally;
- Multi-sectoral collaboration among law enforcement, health, judiciary, human rights, social welfare and drug control institutions to assist in developing frameworks of action to support people who use drugs;
- Setting up of a drug court to expedite referral of drug users to the Drug Detention and Therapeutic Centre;
- To establish a drug and detention treatment centre under the jurisdiction of the Mauritius Prison Service exclusively for the purpose of rehabilitation and treatment of substance use disorders;
- Capacity-building of officers selected to work in this centre.

In view of the increasing number of detainees on methadone, and to curb the problem of diversion, a separate institution should be identified to accommodate methadone recipients in prison. This measure would enable the provision of comprehensive services in terms of support and rehabilitation. The creation of a separate harm reduction unit with trained and adequate personnel is highly important to provide care, treatment and support to these groups of detainees.

Nongovernmental organizations are also lending a helping hand in the harm reduction programme. Close links between prison and public health services will be strengthened for prisoners to have access to an appropriate quality of healthcare.

## V. CASE STUDY

The Prison Department receives admission on a daily basis and for several offences. Recurrent cases that are received are those related to drugs. On admission, detainees go through an induction programme where the detainees are informed about their rights and privileges and prison rules during the period of incarceration and at the same time the Prison Staff obtain baseline information on the detainees regarding their health status and behaviour patterns. This programme is conducted with a panel of Prison cadre namely Prison Officers, Welfare Officers and the health care team.

The drug problem remained a priority issue in the Mauritius Prison Service. So far, several stakeholders are collaborating with the prison service to address the drug issue among detainees, including Non Governmental Organizations (NGOs), during the incarceration period and on discharge.

Since each detainee has a specific perception and attitude towards his offence it is important to modify their risky behaviour. Therefore, the Transtheoretical Model describes the process of behaviour change and accounts for an individual's readiness to make and sustain behaviour changes. This model is useful as it helps planners design programmes based on an individual's readiness, motivation, and ability. It was developed by Prochaska and DiClemente in the late 1970s, to monitor the steps in changes and focuses on decision making<sup>3</sup>.

During the Induction Program, the inmates are encouraged to join the Drug Rehabilitation Program in different Prison institutions. But the study was mainly focused on the Beau Bassin Prison. On three

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<sup>3</sup> Wayne, W. 2016. Behavioural Change Model. Boston University School of Public Health. (accessed on 26 Apr 2018)

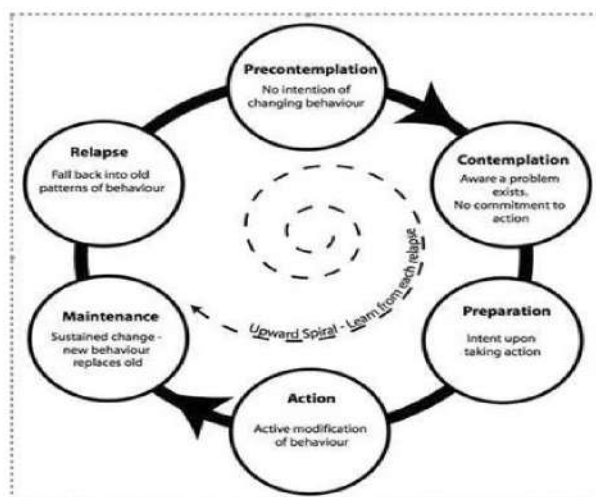
consecutive days, intravenous drug users were identified on admission. 35 detainees started an awareness programme for about three weeks. The programmes were carried out by Prison health professionals, Welfare Officers and NGOs.

## VI. SELECTION CRITERIA

The main criteria were to identify people who inject drugs on admission. The 35 participants were male convicted detainees with more than 6 months' imprisonment. All 35 detainees attended the awareness programme.

The Transtheoretical Model of Change comprises 5 stages<sup>4</sup>:

- i. Pre-contemplation
- ii. Contemplation
- iii. Preparation
- iv. Action
- v. Maintenance



### A. The Pre-contemplation Phase

At this stage the individual has no intention to change. Two detainees among them previously embarked on unsuccessful attempts. This previous experience made an impact on the actual situation as they were discouraged.

Education is of utmost importance to pull the detainees out of ignorance. With the support of NGOs, awareness and sensitization classes were conducted. The time spent from pre-contemplation to move to the next stage depends on each individual. 5 detainees were identified as being very participative and showing willingness to change. As the Methadone Induction Program enrolled batches of 5 participants at a time, the five detainees were selected to step ahead. The project milestones were explained to them and all their uncertainty was being clarified. The 30 remaining participants were involved in other sensitization programmes; Alternative activities were established to encourage these clients to give up their previous habitual behaviour patterns until the next intake of methadone induction therapy in prison.

<sup>4</sup> Extension.purdue.edu. (2018). [online] Available at: <https://extension.purdue.edu/extmedia/HHS/HHS-792-W.pdf> [Accessed 26 Apr. 2018].



## **B. Contemplation**

In the contemplation stage people are more aware of the personal consequences of their bad habits, and they spend time thinking about their problem. Although they are able to consider the possibility of changing, they tend to be ambivalent about it. In this stage, the individual weighed the pros and cons of quitting drugs or modifying their behaviour. The five detainees were moving toward healthy behaviour.

## **C. Preparation Phase**

The 5 detainees are prepared to adopt another lifestyle. Psychological support is provided in order to help them to set goals and priorities to change. They were given one hour individual counselling sessions per day. A detainee worksheet was introduced to assist them during this phase. The five detainees were asked to identify barriers that prevent them from stopping drug abuse. A team of 3 trained Prison Officers was entrusted to work according to the detainees' particular problems. For example, some wanted to change cell so as to avoid gangs whereas others preferred to avoid remaining idle in the yard so as to avoid visual triggers induced by other drug using inmates. The hospital staff assisted the detainees to work on introspection. At the sight of drugs, they postpone their decision to change. So they were placed in another cell during the night and placed in the day care rehabilitation unit to avoid exposure with detainees involved in drug use. More information was given to them about the Methadone Induction programme in prison.

## **D. Action Phase**

In this stage, the 5 detainees start implementing direct action in order to accomplish their goals. The main action that was focused on was to stop injecting drug. They were placed in the self-care unit designed for those on methadone. Health-related posters were placed in their dormitories and pamphlets were distributed.

After a couple of days, it was noted that two detainees presented with withdrawal symptoms: muscle cramps, body pain, and runny nose etc, which was a good sign prior to start methadone therapy. They were referred to the medical section to evaluate their health status and eligibility for induction to the methadone programme. After assessment, they were found suitable for enrolment for the programme. Both of them started the harm reduction programme. According to their behavioural pattern and to urine tests performed after six months of the project, the other 3 inmates were maintaining drug-free lifestyles.

Emotional support and family bonding is important during that phase. Welfare officers arranged for regular visits and even close contact visits were allowed at time.

## **E. Maintenance Phase**

The prime concern of this phase was to involve the social environment of the detainees in order to acquire efficient rehabilitation. Welfare Officers were requested to contact their family members. NGOs were working with the participants and their families. At the end of the project the detainees were compliant with the treatment. Regular follow-up to assess the 3 participants that were not induced on methadone reveal that they were maintaining drug-free lifestyles. They were encouraged to motivate other detainees to join the harm reduction programme.

# TREATMENT OF DRUG OFFENDERS IN THE MAURITIUS PRISON SERVICE

*Deepak Roomesh Gunnoo\**

## I. SITUATIONAL ANALYSIS ON SUBSTANCE ABUSE IN MAURITIUS

Mauritius is a small developing island<sup>1</sup> in the Indian Ocean with a population of around 1.35 million and with a population growth rate of 0.59%. Of this population 43.75% is composed of the age group 25-54, both male and female included. With a 5% of GDP expenditure on education, the total population literacy rate is 92.7%<sup>2</sup>.

According to Natarajan (2016)<sup>3</sup>, developing countries are more prone to various types of crimes ranging from very simple to the most complex offences including sex trafficking, murders and drug trafficking. The author further stated that most serious offences around the world have been recorded in developing countries. As in all developing countries, the incidence of crime is fairly high in Mauritius. During the year 2016, statistics<sup>4</sup> showed a decreased of 3% in the number of drug offences perpetrated in 2016 in contrast to 2015, resulting in the stabilization of the drug offence rate to 2.7 per 1000. In 2016, out of the 3,370 drug offences reported, 57% were *gandia* (Cannabis) related offences, 25% heroin related offences, 5% for sedatives/tranquilizers and 1% for buprenorphine. The remaining 12% represented other types of drugs which included mainly synthetic cannabinoid, methadone and hashish. During a study carried out in 2015 by a Non-Governmental Organization (Pils. mu, 2018)<sup>5</sup>, it was reported that more than half of Mauritians interviewed (N = 600) stated their lives were somehow directly or indirectly influenced by the drug problem across the island. Furthermore, the organization stated that drugs topped the list of social problems in the country due to the fact that more and more complex types of drugs including synthetic substances were being easily introduced into the drug market. As mentioned earlier, Cannabis is more rampant over the island and is consumed by people from all walks of life in the Mauritian society. This is because most Cannabis consumed by Mauritians is being cultivated and produced locally. However, the perception of the Mauritian population towards Cannabis is diverse as it generates mixed emotions and feelings.

- 36% think that cannabis is harmless if a reasonable amount is consumed;
- 33% think that cannabis is harmful;
- 34% think that cannabis must not be considered as a crime and must be treated just like cigarettes and alcohol;
- 46% claim that the law must make a difference between cannabis and other illegal substances;

However, the use of heroin and other intravenously administered substance are still rampant over the island.

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<sup>1</sup> <http://www.ssr.org/DevelopingCountries>

<sup>2</sup> Indexmundi.com. (2018). *Mauritius Demographics Profile 2018*. [online] Available at: [https://www.indexmundi.com/mauritius/demographics\\_profile.html](https://www.indexmundi.com/mauritius/demographics_profile.html) [Accessed 22 Apr. 2018].

<sup>3</sup> Natarajan, M. (2016). Crime in developing countries: the contribution of crime science. *Crime Science*, 5(1).

<sup>4</sup> Statsmauritius.govmu.org. (2018). *Statistics Mauritius - Crime, Justice and Security Statistics - Year 2016*. [online] Available at: [http://statsmauritius.govmu.org/English/Publications/Pages/CJS\\_Stats\\_Yr2016.aspx](http://statsmauritius.govmu.org/English/Publications/Pages/CJS_Stats_Yr2016.aspx) [Accessed 22 Apr. 2018].

<sup>5</sup> Pils. mu. (2018). [online] Available at: <http://pils.mu/wp-content/uploads/2017/03/TNS-Image-and-perception-of-drugs-in-Mauritius.pdf> [Accessed 22 Apr. 2018].

## II. LEGAL FRAMEWORK TO ADDRESS SUBSTANCE ABUSE IN MAURITIUS

### A. Political Will

Political activities have an influence on national policies targeting the fight against drug abuse and trafficking<sup>6</sup>. Therefore it is obvious that political will is an indispensable factor towards tackling drug problems in a society. In June 2017, according to a Government Press release<sup>7</sup>, the Prime Minister Hon Pravind Kumar Jugnauth reiterated his determination and commitment to deploy all means to combat the surge of drugs which is causing enormous harm to the Mauritian society.

In the same breath, Dr. Abdool Reychad, consultant, United Nation Office on Drug and Crime (UNODC), expressed satisfaction regarding the fruitful discussions with the Prime Minister on issues of drug trafficking and crime, approaches to prevent drug proliferation targeting both local and foreign drug dealers and their networks as well as drug consumers.

In that context, the elaboration of the National Drug Control Master Plan was the focus of a three-day workshop held from 31 May 2017 to 02 June 2017<sup>8</sup> under the aegis of the Prime Minister's Office in collaboration with the UNODC. Various stakeholders including government officials and Non Governmental Organizations participated in discussions. In January 2018, the Prime Minister announced the setting up of a National Drug and HIV council to strengthen the fight against drug abuse, drug trafficking and drug lords, and HIV/AIDS<sup>9</sup>.

### B. Dangerous Drug Act

Thanks to committed political will, the legislature has enacted law enforcement policies against drug trafficking and abuse. The Dangerous Drug Act<sup>10</sup> was enacted in year 2000 and later amended in 2003. The fundamental aim of the Act is as follows:

*To consolidate the law relating to dangerous drugs and to make further and better provision for the control of dangerous drugs, the treatment of addiction, the prevention, detection and repression of drug trafficking, the prevention of laundering of drug money in Mauritius, the sentencing of drug-traffickers, seized assets of drug offenders to be vested in designated institutions, restriction of bail and minimum penalties in respect of certain serious drug offences and the punishment of persons making false statements in relation to drug offences.*

### C. Drug Control Master Plan for Mauritius

The National Drug Control Master Plan shall empower institutions, communities and individuals in their response to drug trafficking and use through law enforcement, prevention, harm reduction and treatment for a safe and healthier Mauritius while maintaining human rights.

The master plan shall target specific areas, namely drug supply reduction, drug demand reduction, harm reduction and coordinating mechanisms among the various drug fighting stakeholders.

## III. INCARCERATION

As a main component of the criminal justice system, the Mauritius Prison Service is entrusted with the

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<sup>6</sup> Ryder, D. (2008). Political and legal institutions and their influence on drug policy: an Australian perspective. *Drug and Alcohol Review*, 27(4), pp.374-379.

<sup>7</sup> Govmu.org. (2018). *Republic of Mauritius- UNODC pledges assistance to elaborate Drug Control Master Plan for Mauritius*. [online] Available at: <http://www.govmu.org/English/News/Pages/UNODC-pledges-assistance-to-elaborate-Drug-Control-Master-Plan-for-Mauritius.aspx> [Accessed 24 Apr. 2018].

<sup>8</sup> Govmu.org. (2018). *Republic of Mauritius- Elaboration of a Master Plan to fight drug scourge in Mauritius*. [online] Available at: <http://www.govmu.org/English/News/Pages/Elaboration-of-a-Master-Plan-to-fight-drug-scourge-in-Mauritius.aspx> [Accessed 26 Apr. 2018].

<sup>9</sup> *l'express.mu*. (2018). *PravindJugnauth: «Un National Drug and HIV Council sur pied cette année»*. [online] Available at: <https://www.lexpress.mu/article/323880/pravind-jugnauth-un-national-drug-and-hiv-council-sur-pied-cette-annee> [Accessed 24 Apr. 2018].

<sup>10</sup> Apps.who.int. (2018). [online] Available at: <http://apps.who.int/medicinedocs/documents/s18370en/s18370en.pdf> [Accessed 24 Apr. 2018].

main duty of keeping prisoners in custody after they have been convicted by the Judiciary. An average amount of Rs 775 was spent daily to maintain a detainee in 2016 on the Island of Mauritius<sup>11</sup>.

#### A. The Mauritius Prison Service

The Mauritius Prison Service (MPS) is a public service and is under the aegis of the Ministry of Defense and Rodrigues. The MPS comprises ten penal institutions, including one in Rodrigues and one modern prison named Eastern High Security Prison. Prison institutions are classified as high, medium and low security prisons in terms of security rating. The more the security is high, the higher the wall, barbed wire fencing, security checks, dog surveillance, use of metal detectors and the more searches of prisoners and premises. On the other hand, a low security prison will be one which provides low security measures, open conditions for inmates and opportunity for outside labour and contact visits with relatives. It also includes one prison for females and one for juveniles. The Mauritius Prison Service<sup>12</sup> is accountable for protecting the public by keeping detainees in safe custody while exercising a duty of care. In order to meet national and international norms, changes are brought at regular intervals. It aims at achieving this through investment in staff development and support. It also aims to manage their resources effectively and efficiently, to work to clear objectives, to value diversity and to provide a healthy environment where rehabilitation takes place. These are the main missions of the Mauritius Prison Service.

#### B. Statistics on Drug Offenders Detained in Penal Institutions

**Table showing the number of persons (male) convicted for drug offences from 1990 to 2016**

Year	Heroin	Gandia	Opium	Others*	Total	Total number of Detainees	Percentage
1990	62	92	6	2	162	969	16.7
1991	74	88	0	10	172	998	17.2
1992	95	61	1	3	160	887	18.0
1993	177	74	0	0	251	1025	24.0
1994	255	97	0	5	357	1162	30.7
1995	326	110	1	6	443	1276	34.7
1996	338	127	2	6	473	1428	33
1997	242	139	3	11	395	1378	29
1998	124	161	0	14	299	1228	24.35
1999	153	123	1	7	284	1044	27.2
2000	234	128	-	7	369	1305	28.2
2001	310	154	-	12	456	1672	27.2
2002	369	136	-	16	521	2110	24.7
2003	404	121	-	9	540	2295	24.1
2004	372	97	-	222	691	2400	28
2005	344	50	-	249	643	2323	27
2006	315	59	-	202	576	2423	23
2007	227	40	-	311	578	2626	22
2008	305	97	-	352	754	3032	25
2009	162	67	-	431	660	3517	18

<sup>11</sup> Statsmauritius.govmu.org. (2018). *Statistics Mauritius - Crime, Justice and Security Statistics - Year 2016*. [online] Available at: [http://statsmauritius.govmu.org/English/Publications/Pages/CJS\\_Stats\\_Yr2016.aspx](http://statsmauritius.govmu.org/English/Publications/Pages/CJS_Stats_Yr2016.aspx) [Accessed 26 Apr. 2018].

<sup>12</sup> Prisons.govmu.org. (2018). *Mauritius Prison Service - Goals and Objectives*. [online] Available at: <http://prisons.govmu.org/English/AboutUs/Pages/The-Minister.aspx> [Accessed 24 Apr. 2018].

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2010	103	111	-	398	612	3551	17
2011	97	104	-	340	541	3250	17
2012	53	43	-	381	477	2905	16
2013	102	96	-	126	324	2710	12
2014	57	113	-	91	261	2437	11
2015	116	115	-	-	231	2725	8.47
2016	110	129	-	65	304	3434	8.55

Source: Mauritius Prison Service<sup>13</sup>

**Table showing the number of persons (Female) convicted for drug offences from 2001 to 2016**

Year	Heroin	Gandia	Opium	Others*	Total	Total number of Detainees	Percentage
2001	15	06	-	-	21	59	35.6
2002	17	04	-	03	24	99	24.2
2003	18	07	-	09	34	103	33
2004	17	04	-	08	29	78	37.2
2005	17	04	-	08	29	80	36.3
2006	10	02	-	16	31	93	33.33
2007	10	-	-	08	18	87	20.7
2008	16	01	-	16	33	103	32
2009	11	02	-	12	25	123	20
2010	14	01	-	12	27	112	24
2011	11	15	-	14	40	122	33
2012	7	7	-	23	37	125	30
2013	7	-	-	19	26	124	21
2014	7	2	-	6	15	92	16
2015	5	6	-	14	20	86	23
2016	9	2	-	4	15	112	13.4

Source: Mauritius Prison Service<sup>14</sup>

### C. Induction Procedure

#### 1. History Taking through Motivational Interviewing

The main purpose of induction procedures is to take over the convicted person who is about to discover the penal world. The induction process mainly revolves around interviewing the detainee to elicit relevant information in connection to his or her substance abuse history. On the very first night, the detainee is confined according to his/her physiological needs.

<sup>13</sup> Prisons.govmu.org. (2018). *Mauritius Prison Service - Total number of persons (male) convicted for drug offences from 1990 to 2016*. [online] Available at: <http://prisons.govmu.org/English/statistics/Pages/drug-offences-Male.aspx> [Accessed 25 Apr. 2018].

<sup>14</sup> Prisons.govmu.org. (2018). *Mauritius Prison Service - Number of persons (Female) convicted for drug offences from 2001 to 2016*. [online] Available at: <http://prisons.govmu.org/English/statistics/Pages/drug-offences-Female.aspx> [Accessed 25 Apr. 2018].

## 2. Health Screening

On admission to the prison, every detainee is seen by a doctor who assesses the detainee's general health. All detainees are offered Provider Initiated Counselling and Testing as screening procedures for HIV. Subject to clinical observation by the Prison Medical Officer, further pathological and radiological tests are requested as and when needed. The same process is observed when he is released. During the period of detention, whenever the need arises, the detainee can be seen by the doctor at the prison hospital or dispensaries for any health problem. In addition, detainees requiring specialist treatment are referred to public hospitals.

## **D. Sentence Planning**

A sentence plan is made for prisoners serving long-term sentences. Sentence planning is in fact a plan about how a detainee will spend the time in prison. It is concerned with addressing the different needs of detainees while making optimum use of their time in prison. It aims at providing programmes to suit their needs, to keep them busy, to prevent them from being idle and to help them to lead a useful life after their release from prison. The sentence plan is the key tool for identifying what an offender will do during their sentence, based on an assessment of the factors associated with their offending, thus enabling prison authorities to achieve the aims of the sentence.

It is also concerned about placing prisoners in institutions with varying degrees of security. The first day a person is imprisoned, he is detained in a high or maximum security prison depending on the gravity of the case. When reaching fifty percent of his term of imprisonment, he is transferred to a medium security prison and at the last stage of imprisonment; he is once more transferred this time to a low security prison, thereby planning for his release and facilitating reintegration in the society. Unfortunately, no such facility is available for women. However, rehabilitation programmes exist; they are also employed outside prison walls. A new open facility for women is now open to ease detention of female detainees in view of enhancing the rehabilitation process.

## **IV. REHABILITATION OF DRUG OFFENDERS**

The MPS offers a range of rehabilitation programmes to inmates with a view to provide them with new skills to facilitate their integration in society after release. The programmes range from educational, vocational, spiritual and also life skills.

Since January 2012, the Mauritian authorities have launched a raft in the prisons of the island, to allow inmates to acquire skills, to regain their freedom. 1,060 prisoners in six prisons in Mauritius are now benefiting from this programme of rehabilitation through labour, which has an annual government envelope of 7 million rupees. Inmates eligible and subject to strict discipline where the work is honoured are paid at the rate of Rs 20-30 per day for their efforts in learning of a work which is an effective passport for personal reintegration into civilian life.

Training workshops with the key qualifications, such as cooking, baking, masonry, tailoring, carpentry, are thus provided to prisoners of Mauritius to eventually reduce the recurrence rate, once outside.

### **A. Lotus Center**

The Lotus Center is an in-house rehabilitation centre which saw the light of day in 1985. However, due to its reduced activities, the project was re-engineered in 2018 by the prison authorities in collaboration with the National Agency for the Treatment and Rehabilitation of Substance Abusers (NATReSA), the National AIDS Secretariat and various Non-Governmental Organizations<sup>15</sup>.

The Lotus Programme is a Residential Rehabilitation and Day Care programme in prisons across the island which aims at helping detainees to be free from addiction, encouraging them to participate in rehabilitation programmes to gain greater self-awareness to live a drug free life, and preparing their re-entry in the community with the involvement of stakeholders. It is a new era in the Prison Department where an integrated approach is adopted to treat substance abusing detainees based on medical and therapeutic

<sup>15</sup> Le Mauricien. (2018). RÉHABILITATION DES DÉTENUX: Réouverture du Lotus Centre à la prison centrale - Le Mauricien. [online] Available at: <https://www.lemauricien.com/article/r%C3%A9habilitation-des-d%C3%A9tenus-r%C3%A9ouverture-du-lotus-centre-%C3%A0-la-prison-centrale/> [Accessed 26 Apr. 2018].



community models combined with a multi-disciplinary concept.

In the same line, a new Lotus Center was put in operation in October 2017 in collaboration with the Ministry of Health & Quality of Life at the Eastern High Security Prison which is the most recent penal institution of the island having a capacity of around 1,000 detainees. According to the Health & QL Minister, who proceeded for the inauguration in presence of the Commissioner of Prisons, his Ministry is working in close collaboration with the Prisons Department to better handle detainees who use drugs. The Lotus Programme, he added, will help the Prison Department achieve one of its goals, that is, making detainees drug-free and substance misuse-free so that they can have better opportunities when they leave the prisons and there is less chance of them reoffending on their release<sup>16</sup>.

#### **B. Non-Governmental Organizations**

In order to sustain the activities of the Lotus Center in view of addressing the needs of illicit drug users among Mauritian detainees, the support and collaboration of various NGOs are sought due to their expertise in relevant fields.

#### **C. Sensitization and Awareness Campaigns**

Sensitization and awareness campaigns are mostly run by Prison Hospital Staff. As from the induction phase, awareness is raised among newly admitted detainees, and they are sensitized about the salient health issues orbiting around their incarceration. As an ongoing educational programme for detainees, prison nurses are called upon to deliver health education to inmates undergoing the rehabilitation programme in the Lotus Center. Issues such as the function of the human body, pathology in connection with substance abuse, HIV / AIDS, non-communicable diseases among others are discussed with inmates.

#### **D. Vocational Training**

Various skills are provided to prisoners. The aim is to reshape them and provide others with new skills. They can use these skills to earn a living on release. Numeracy and literacy are also provided to those who are in need. And where an in-prison business partner is involved in providing work, they will help design the vocational skills delivery that supports that, exactly as they would outside. Moreover, these partners employ some of the prisoners on their release.

A prison that is a place of work and industry will instil in offenders the disciplines of working life: order, timekeeping, working within deadlines, being managed and overseen. These are skills that employers want, for they comprise the elements of responsibility which make lives normal. When allied to vocational skills, ex-offenders who have gained these 'life-skills' — the fabric of responsibility — become more attractive potential employees and better husbands, parents, neighbours and friends.

Facilities are provided to prisoners who wish to study further. The MPS provides prisoners who are studying advanced courses with electronic tablets and internet facilities.

### **V. THERAPEUTIC TREATMENT OF DRUG OFFENDERS IN PENAL INSTITUTIONS**

Prison contains the largest concentration among the most at risk population which are over-represented within the prison community. The marginalized and vulnerable groups such as injecting drug users, commercial sex workers, mentally ill and HIV/AIDS inmates are all compounded within prison. The majority of prisoners have multiple health problems.

There are high turnover and mobility rates among the detainees. The average stay is short and the return rate is high, thus making the prison population a significant vector of inward and outward transmission of HIV and other infectious diseases. Imprisonment is a unique opportunity for all aspects of health promotion, health education and disease prevention. Thus, prison health staff has to take an active role in the prevention, as well as the care, of mental and physical health problems and provide the foundation of a healthy environment. As a major service provider of a high-risk group population, prison could seize this opportunity

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<sup>16</sup> Govmu.org. (2018). Republic of Mauritius- Mauritius Prison Service must contribute to eradicate drug problem, states Minister Husnoo. [online] Available at: <http://www.govmu.org/English/News/Pages/Mauritius-Prison-Service-must-contribute-to-eradicate-drug-problem-states-Minister-Husnoo.aspx> [Accessed 26 Apr. 2018].

to attend to their health care needs and provide care support and treatment programmes aimed at reducing and changing high-risk behaviour patterns during incarceration and after release.

#### **A. Substance Abuse**

Problematic drug users are among the most vulnerable among prisoners, and are over-represented within the prison population, often due to a growing trend towards the criminalization of drug use and possession and the use of custodial sentences for drug-related crime.

#### **B. Harm Reduction Strategies**

##### **1. Methadone Substitution Therapy**

Since November 2006, about 5,000 drug users have been induced on methadone at the national level, and prisons had registered about 3,310 that have been detained and that 346 among them are currently on Methadone Substitution Treatment in prison. Since December 2011, detainees were induced on methadone at the prison level and 324 among this group have already been induced. There is a weekly intake of 5 induced on methadone. Diversion of methadone is becoming a recurrent feature in prison. About 115 cases of diversion of methadone have been reported since implementation.

#### **C. Treatment of People Living with HIV/ AIDS**

The Mauritius Prison Service has hosted 51.9% of national cumulative HIV positive cases, among which about 33% are injecting drug users. The daily average of HIV/ AIDS inmates in prison is about 394, representing 16.4% of the actual prison population. Prison had registered 1,508 detainees on anti-retroviral treatment (ARV) and that 300 among them are still serving prison sentences. HIV diagnosed detainees are given adequate treatment and follow up. Patients are seen regularly by HIV physicians; pathological tests are requested on each subsequent medical consultation and treatment is tailored for each patient.

## **VI. CHALLENGES**

#### **A. Inadequate Resources**

The treatment of illicit drug users in prison is a multi-disciplinary approach and involves complex activities such as prevention, screening, sensitization, and treatment, care and support. The Mauritius Prison Service has established an effective therapeutic psychosocial approach that relies on funding from external organizations like the Global Fund to sustain the treatment of drug offenders in its various penal institutions.

#### **B. Lack of Trained Personnel**

The involvement of prison personnel, especially the prison hospital staff, is indispensable for the optimum delivery of care to drug offenders. The prison staff is trained in correctional services and general health service but is not adequately trained to provide specific and up-to-date care and support to illicit drug users detained in prisons.

#### **C. Gang Affiliation and Peer Pressure**

The affiliation to prison gangs among detainees is a current practice. In so doing, detainees are most of the time subject to peer pressure which influences the treatment of patients. Irrespective of their intrinsic motivation, detainees who have opted to benefit from substance abuse treatment often halt their treatment due to peer pressure.

#### **D. Availability of Illicit Drugs and Relapse**

There are a significant number of traffickers detained in prisons. Hence the availability of illicit substances allows drug users to obtain their daily dose with ease. The fact that these people are sustaining their addiction, they are not interested in health services and treatment offered to them by the MPS. On the other hand, illicit drug users who have been recruited in substance abuse treatment programmes are often subject to relapse due to the availability of their preferred illicit substances.

#### **E. Access to Prevention Commodities**

Illicit drug users are prone to developing adverse health conditions such as blood-borne communicable diseases namely HIV and Hepatitis. Furthermore, some detainees often engage in high risk sexual activities which may have health related consequences. Illicit drug users do not currently have access to prevention commodities, such as sterile needles and syringes and condoms for safer sex.

## **F. Aftercare and Recidivism**

The high recidivism rate<sup>17</sup> in the Mauritius Prison Service impacts greatly on the treatment of drug offenders in the various penal institutions of Mauritius. Detainees who have successfully completed their substance abuse treatment in the prison are not taken care of when they are reinstated in the society. With an accrued negative perception of the society towards ex-detainees, these persons often revert to their illicit activities and come back to prison where they are influenced by their peers and restart illicit drug use.

## **VII. WAY FORWARD**

In order to curb the negative pressure exerted by the above-mentioned challenges, with a view of promoting the treatment of illicit drug users in the Mauritius Prison Service, the prison staff has come up with a few potential solutions to address these challenges.

### **A. Advocacy**

The MPS has a dedicated Strategic Planning and Research Unit which needs to co-opt active participation of a staff member from the prison health care team to participate in research, the analysis of current situation and drafting of reports and documents for submission to higher authorities, policymakers, and unilateral, bilateral, international organizations. There is a need to advocate with judicial legal authorities in view of promoting alternatives to imprisonment such as non-custodial care of illicit drug consumers.

### **B. Capacity-Building of Staff**

The MPS should train its personnel, especially the health care personnel in substance abuse, motivational interviewing techniques, counselling, and social work among others to empower them to deliver optimum health care service to the detainees. Therefore, capacity-building and empowerment should be the fundamental pursuits of the MPS to be better equipped to treat illicit drug users. With an optimal advocacy level, the MPS may consider application for scholarships or training with international organizations in the field under study.

### **C. Training of Peer Support**

One of the best ways to fight gang affiliation and peer pressure is the implementation of an intramural peer support network<sup>18</sup> for each institution. These peer support groups will be responsible to create a healthy relationship between inmates thereby instilling the element of trust among them. In this way, the application of health processes to treat illicit drug users may be more accepted.

### **D. Supply Reduction**

The application of more rigid security measures to halt the entry of illicit substances inside prisons shall be a focal activity of the Mauritius Prison Service. Decreasing drug supplies will certainly entail an increase in the need for medical care to palliate withdrawal, resulting in more detainees soliciting health care service.

### **E. Setting Up Harmonized Programmes Including Stakeholders**

Consultative workshops must be held involving the various stakeholders fighting the drug scourge and aiming at giving out treatment and care to illicit drug users. There shall be a harmonized programme to share confidential information of patients with external agencies such as rehabilitation centres, the national HIV/AIDS units in view of reducing loss to follow up and to sustain treatment initiated in prison once a detainee is released, which could represent an effective and efficient aftercare bridge.

### **F. Setting Up of a Dedicated Rehabilitation Centre**

The setting up of a comprehensive centralized rehabilitation centre for the provision of care support and treatment of illicit drug users detained in prison should be considered. The centre shall be a drug free unit whereby clients shall be cared for in their cognitive, affective and physiological dimensions.

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<sup>17</sup> Globaljournals.org. (2018). [online] Available at: [https://globaljournals.org/GJHSS\\_Volume11/9-Trends-in-Incarceration-and-Recidivism-in-Mauritius.pdf](https://globaljournals.org/GJHSS_Volume11/9-Trends-in-Incarceration-and-Recidivism-in-Mauritius.pdf) [Accessed 26 Apr. 2018].

<sup>18</sup> Pacenterofexcellence.pitt.edu. (2018). [online] Available at: <http://www.pacenterofexcellence.pitt.edu/documents/prison%20based%20peer-15.pdf> [Accessed 26 Apr. 2018].

## VIII. CASE STUDY

As the treatment of illicit drug users revolves around therapeutic intervention coupled with strong psychosocial support, the application of the Health Belief Model is an ideal approach to cater for the health needs of illicit drug users incarcerated in the Mauritius penal institutions.

The Health Belief Model (HBM) is a psychological model that attempts to explain and predict health behaviours (UniversiteitTwente, 2017)<sup>19</sup>. This is done by focusing on the attitudes and beliefs of individuals. The HBM was first developed in the 1950s by social psychologists Hochbaum, Rosenstock and Kegels working in the U.S. Public Health Services. The model was developed in response to the failure of a free tuberculosis (TB) health screening programme. Since then, the HBM has been adapted to explore a variety of long- and short-term health behaviours, including sexual risk behaviours and the transmission of HIV/AIDS and drug addiction.

This present case study reports the intervention of prison hospital officers to address the issue of drug addiction among a group of five prison inmates with history of substance abuse. The intervention was extended on a six months period and was conducted in collaboration with the Prison Medical Officer, prison psychologist and welfare officers. The programme encompassed medical care to cater for physiological symptoms such as withdrawal and psychosocial support to enhance their morale.

The five inmates were recruited in the programme through peer contact tracing method and the inclusion criteria were firstly, a history of substance abuse through intravenous use, and secondly, their remaining sentence to be served should be more than six months representing the span of the programme and to prevent loss to follow up.

The programme was based on the application of the Health Belief Model, and all the constructs of the model were applied in a very efficient and effective way. The HBM was spelled out in terms of four constructs representing the *perceived threat* and net benefits: *perceived susceptibility*, *perceived severity*, *perceived benefits*, and *perceived barriers*. These concepts were proposed as accounting for people's "readiness to act." An added concept, *cues to action*, would activate that readiness and stimulate overt behaviour. A recent addition to the HBM is the concept of self-efficacy, or one's confidence in the ability to successfully perform an action. This concept was added by Rosenstock and others in 1988 to help the HBM better fit the challenges of changing habitually unhealthy behaviours, such as being sedentary, smoking, or overeating and drug abuse.

The programme was launched through a focus group discussion whereby it was carefully explained and the participants were reassured.

During that initial phase of the programme, all participants were encouraged to discuss their perceived susceptibility with regard to their risky behaviour and their health. At first, they all averred that they are used to injecting drugs, and they found no reason to worry because they have been doing that for over a couple of years and that nothing bad happened to them. The participants were then embarked on a sensitization and awareness programme for two weeks where adequate information and education were communicated to them. As the perception of threat is dependent on the level of knowledge, the participants were able to shift from a low perceived threat to a high one, thus increasing their perceived severity and susceptibility about intravenous drug use.

The participants were aware of the impending dangers of injecting drugs, and they averred they were prone to the very serious HIV infection which could affect their health with detrimental impact on their lives and activities of daily living. Besides, they were also very much aware of the threat of the Hepatitis C virus and the various physiological impacts of injecting drugs. On the other hand, they were also aware of harmful health effects that may include inflamed and/or collapsed veins, puncture marks / track lines, skin infection — abscesses, cellulitis, necrotizing fasciitis, bacteria on the cardiac valves, endocarditis, and other

<sup>19</sup> UniversiteitTwente. (2017). Health Communication | Health Belief Model. [online] Available at: [https://www.utwente.nl/en/bms/communication-theories/sorted-by-cluster/Health%20Communication/Health\\_Belief\\_Model/](https://www.utwente.nl/en/bms/communication-theories/sorted-by-cluster/Health%20Communication/Health_Belief_Model/)

cardiovascular infections, swelling of the feet, ankles, and legs secondary to poor peripheral blood flow.

While the above are general injection-related health effects, there are some other dangers common to drugs prepared with many adulterant chemicals, binders and other toxic substances. Black tar heroin, for example, which is named after its tar-like consistency, contains a large amount of additives and contaminants. These can cause local inflammation, clog blood vessels and contribute to widespread damage to the liver, kidneys, lungs and brain. The participants were very much aware of the severity of the consequences of injecting drugs and that has given rise to a very strong perceived severity about injecting drug.

The next construct to be explored was their perceived susceptibility. Due to their increased perceived severity, the participants were concerned about their state of health. They believed that since they regularly indulged in injecting drugs, they were prone to develop adverse health problems. Furthermore, they had shared needles with their friends, putting them at higher risk of contracting the HIV and the Hepatitis C viruses. The participants were anxious of contracting HIV/AIDS and Hepatitis. They feared they would develop the conditions and were very apprehensive of the need to undergo anti-retroviral treatment.

On the whole, all the five participants had a high perceived threat with regards to their health-related behaviours. Since they were all aware of the threats they were facing and showed interest in modifying their behaviour, the Methadone Substitution Therapy was proposed to them. It is to be noted that MST induction is carried out in the prison setting itself and therefore would be easily accessible to the participants. After explaining the benefits of such treatment to the participants, it was observed that their perceived benefits of quitting intravenous drug abuse and starting Methadone Therapy had increased. They were encouraged due to the fact that they could stay away from all the dangers of injecting drugs and at the same time they could palliate their cravings for drugs and the high feeling.

Now that they had very high perceived benefits, the programme was becoming more challenging because these participants were evolving in a prison setting and that various barriers could hinder their behaviour modification. The issue was discussed with them, and it was obvious that they had a high degree of perceived barriers. They stated that they fear not being able to sustain their actions and that they could in a certain way find it difficult to adapt to their new lifestyle. They also averred of having tried to stop using intravenous drugs but could not manage the withdrawal effectively due to the cost implication with regards to food and medicinal items. The participants were reassured that they shall be given all the necessary facilities and support to help them embark on their health behaviour modification.

In order to facilitate the detainees to effectively and successfully be induced on MST and quit injecting drugs, the programme coordinator advocated for certain privileges from the prison administration, which were acceded to. Thus some modifying variables were identified and addressed. The participants were housed in a self-care dormitory away from other detainees. They were given facilities such as late night television, refrigerator, kettle and additional milk and food items. Thus they were placed away from peer pressure and they felt more comfortable. That enhanced their motivation to quit injecting drugs.

As cues to action, various strategies were employed. Health-related posters were placed in their dormitory to remind them of the dangers of drug abuse and of the advantages of quitting and that of Methadone Substitution Therapy. As the participants had a fairly high perceived severity and susceptibility and benefits and at the same time their perceived barriers were reduced, the intensity of the cues to action could be lower. Once in a while, rehabilitated drug addicts were invited to motivate the participants.

During the implementation phase of the programme, that is, around the second month, the participants were placed on the MST and were followed by the Medical Officer, while the Psychologist and the Welfare officers provided psycho-social support to them. The detainees were not indulging in injecting drugs and were very adherent to MST. They showed very little signs of withdrawal due to their tailored treatment plan. By the end of the fifth month, the participants stated that they were not thinking about drugs but about their future, and they thanked the prison personnel for their support. They were released from prison and they maintained their treatment as their self efficacy was very high.

However, due to harsh societal conditions for released detainees, two of these participants relapsed into injecting drugs and were re-incarcerated.

As a conclusion, according to Taylor (2006)<sup>20</sup>, the development of the Health Belief Model was of pioneering significance in the early 1950s. Systematic analyses using the full range of components that it today incorporates might cast light on the impact of social and other factors associated with inequalities in health, and the reasons why individuals and groups may not take up health improvement or protection opportunities.

However, the HBM is not in itself clearly or adequately specified, and the available evidence indicates that in practice its application appears to be inadequate for such purposes. Further, although the HBM may be used to derive information that may then prompt interventions designed to change health beliefs and behaviours, using the model itself cannot inform decision making as to how such interventions might best be structured.

The value of the 'perceived threat' element serving as a central indicator of behavioural motivation in the HBM has been questioned. So has the phenomenological orientation of its design. Notwithstanding components like perceived barriers and demographic and socio-economic descriptors, as normally applied this model may be taken implicitly to assume that people are rational actors, driven by their conscious perceptions of the world. This may misleadingly suggest that health behaviours can always best be understood as being under volitional control, rather than in a large part determined by combinations of circumstantial reality and individuals' habitual, emotional, unconscious and/or otherwise non-rational reactions to the external world. The research identified provides evidence that the overall explanatory power of the HBM is limited, even simply as compared to that of alternative social cognition models.

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<sup>20</sup> prezi.com. (2018). *HEALTH BELIEF MODEL*. [online] Available at: <https://prezi.com/ljprhmxjqg0j/health-belief-model/> [Accessed 24 Apr. 2018].



# THE REHABILITATION OF ILLICT DRUG USERS IN CORRECTIONAL FACILITIES: A STRATEGY OF EFFECTIVE STAKEHOLDER COOPERATION AND COLLABORATION

*Nanja Limbo\**

## I. INTRODUCTION

Namibia is a developing country in the SADC region of sub-Saharan Africa with a population of 2.5 million people; furthermore it is a vast country with 14 regions and borders countries such as South Africa, Angola, Zambia and Botswana. Like many other countries in the region, it is faced with a rising problem of illicit drug use and drug trafficking, which has significantly contributed to social problems such as crime, family disintegration and unhealthy lifestyles. Additionally, Namibia has one of the largest coastal ports, hence a lot of cargo is transported via Namibia to the neighbouring countries and thus is viewed as a drug transit country as well.

In 2009, then Minister of Health and Social Services, Honourable Richard Kamwi, raised a concern regarding drug use in the country, as he said, "Especially worrying, is Namibia's gradual transition from a transit route for illicit drugs to a consumer country." The minister was making reference to the increase in patients with drug-related problems. Subsequently his concern was raised again on the Namibian Broadcasting Channel on the 24th of July 2018, by a psychiatrist from the Mental Health Unit at the Ministry of Health and Social Services. According to Dr Lahja Hamunyela, an addiction specialist and psychiatrist, it was found that 80% of patients admitted at the mental unit and mental regional wards, developed mental illness linked to drug abuse.

It is further reported that the most prevalent illicit drug in Namibia is Cannabis, and it is estimated that its consumption is at an average of 60%, while other illicit drugs such as cocaine, mandrax, heroine and crystal meth are also prevalent at a smaller scale. (Kazembe and Neema, 2015).

Moreover, according to statistics provided by the Mental Health Unit at Windhoek Central Hospital, it was found that during the period of January to December 2017, a total of 346 patients were admitted due to mental and behavioural disorders induced by multiple drug use and use of other psychoactive substances, while a total of 33 patients for the same period were admitted due to mental and behavioural disorders induced by alcohol use. It should be noted that the above statistics are not indicative of Namibia as a whole, as it is only reflecting one health facility. (Health Information System, Windhoek Central Hospital, 2017).

In cognisance of the above concerns the government of Namibia has put in place various mechanisms to try to curb this problem with various levels of success. One of the central role players in this fight is the Criminal Justice System sector which includes Namibian Correctional Service that is primarily charged with the responsibility of implementing rectification programmes with the end goal of effective social reintegration of offenders and reducing recidivism. In order to accelerate the effective implementation of rehabilitation interventions and treatment of offenders, the government of Namibia enacted the Correctional Service Act, Act No. 9 of 2012, to replace the Prison Act, 1998 (Act 17 of 1998).

Although the Namibian Criminal Justice System's approach to the management of offenders with illicit drug use problems is generally strict, the Criminal Procedure Act, Act No.51 of 1977, provides for alternative treatment of accused persons who are found to have committed criminal acts but not criminally responsible by reason of mental illness or mental defect under section 77-79. Such individuals may include illicit drug users. These sections of the CPA allow the courts to refer offenders for mental observation and if found

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unable to appreciate the wrongfulness of their offence based on reports from the psychiatrist, to be declared as State President Patients, thus sentenced to undergo treatment in line with their mental disorder. Bearing in mind the above mentioned, this paper discusses the treatment methods for offenders with illicit drug use problems that the Namibian Correctional Service has implemented following the introduction of the Offender Risk Management Correctional Strategy (ORMCS) in 2010. The paper will also share insight into the significant characteristic of cooperation and collaboration with various strategic partners within the Criminal Justice System.

## **II. REHABILITATION INTERVENTIONS OF ILLICT DRUG USERS IN NAMIBIAN CORRECTIONAL SERVICE FACILITIES: A CASE STUDY**

Jack\* is a repeat offender with a prior conviction for possession of Cannabis in 2012 and was sentenced to six months' imprisonment or with an option to pay a fine. His mother paid his fine. However in June 2015, Jack\* committed his second offence and was charged with one count of malicious damage to property and a second count of theft. He was 30 years old when he was sentenced to two years and nine months' imprisonment. Upon admission to the correctional facility, Jack\* was observed to have severe night sweats and anger outbursts. The medical personnel arranged with the local hospital to have him admitted, and it was discovered that he was experiencing extreme withdrawal symptoms from his mandrax use. He was stabilized and kept under observation for four days. The correctional facility took note of his condition and requested his transfer to a correctional facility that had the required professionals to treat his condition.

He was transferred to a facility in Tsumeb, which had psychological counsellors, social workers and medical personnel able to manage his condition. Upon assessment of his risk factors, the areas of Drug/Alcohol Use, Employment/Education, Anti-Social Thinking and Anti-Social Associates were found to be high, and these areas were flagged to be attended to in his correctional treatment plan. However, due to Jack's immediate need for treatment of his physical withdrawal symptoms, his level of medical care was intensified, and the facility collaborated with the local hospital for his admission, in order for a medical doctor to regularly monitor his progress. Furthermore, the facility engaged his family to render emotional support, considering that he had committed an offence against a family member. The Case Management Officer (CMO) responsible for his case file also liaised with the social worker at the hospital, to obtain feedback on his progress since he was concurrently receiving counselling while at the hospital. Jack was released from the hospital after three weeks and the CMO referred him for continuation of counselling by the Programme Officer to ensure that he was adjusting well to the correctional environment and to consolidate his understanding of his drug use problem.

Jack\* served his sentence and maintained good conduct in the facility; he developed pro-social habits such as participating in rehabilitation programmes. He worked at the garden and attended a cognitive-based rehabilitation programme called Managing My Substance Use (MMSU), which he completed successfully and he was also educated on aftercare services available in the community, which he could approach when faced with challenges. He was released in July 2017 on earned remission and returned to his family in Grootfontein.

However, due to good stakeholder relations with the local social worker in Grootfontein, it was reported that Jack\* had relapsed six months after his release, during the festive season. He had met up with old associates and used mandrax. He overdosed on the mandrax resulting in him being hospitalized. During his stay in the hospital, Jack\* voluntarily approached the social worker for assistance concerning his drug dependency problem and during the consultation with the social worker, he spoke about the aftercare services that were discussed during the MMSU programme in the correctional facility. He further indicated to the social worker that he wanted to gain balance in his life and to stop using drugs. The social worker called the programmes division at the correctional facility to get more information on the programmes offered in the facilities and to report that Jack\* had volunteered to check into a rehabilitation centre. She also indicated that he was attending aftercare meetings with a local support group in addition to undergoing family therapy with his mother and sister to help him with his drug use problems.

### **III. TREATMENT OF ILLICIT DRUG USERS IN NAMIBIAN CORRECTIONAL FACILITIES**

#### **A. The Strategy of Offender Rehabilitation in the Namibian Correctional Service**

The Namibian Correctional Service implemented the Offender Risk Management Correctional Strategy (ORMCS) in 2010, with the aim of transforming the service from the primarily punitive approach to that prioritizing the rehabilitation and empowerment of offenders with the aim of successfully reintegrating back into society as productive and law abiding citizens. Considering the new perspective of the Namibian Correctional Service towards rehabilitation, the service engaged in a range of strategic partnerships and research in order to develop and adopt reformatory initiatives that are evidence-based and have proven ability to reduce recidivism. The implementation of the ORMCS focused on the critical role of the Case Management Process and improved Unit Management structures. In addition the strategy also incorporated the Risk, Needs and Responsivity Principle as a management approach to ensure that all offenders entering correctional facilities were to be screened, assessed and assisted in line with their individual risk and needs to address their criminogenic factors and minimize their chances of re-offending (Nafuka and Kake, 2015).

Ultimately the approach considered criminogenic factors of offenders from an individual perspective, meaning offenders were to receive services in line with their specific risk and needs; thus the approach made provision for the treatment of illicit drug users.

#### **B. Effective Coordination and Collaboration of Illicit Drug User Treatment for Offenders**

The new approach to offender management has specifically improved treatment of offenders with illicit drug use problems, as the Namibian Correctional Service has established partnerships with various service providers in the areas of the Criminal Justice System, Health Care and Social Welfare Services. In addition, the Namibian Correctional Service has invested extensively in capacity-building and employing professional staff to offer specialized services to offenders in line with the rehabilitation philosophy that the service adopted.

Evidence regarding capacity-building and specialized staffing is visible as, according to statistics provided by the Namibian Correctional Service in 2009, it was reported that the service had employed 13 social workers and 1 clinical psychologist (Nakuta and Cloete, 2012). However, much has improved over the years, as currently the service has 1 clinical psychologist, 2 intern clinical psychologists, 13 psychological counsellors, 39 social workers, 3 medical doctors, 1 occupational therapist, 40 nurses and 13 HIV/AIDS counsellors that are registered with the Health Professional Council of Namibia. The above is evident that the Namibian Correctional Service finds it imperative to provide quality multi-disciplinary health care services to offenders.

Furthermore, recognizing the importance of collaboration with stakeholders, it should be mentioned that the Namibian Police Force and the Namibian Correctional Service has an administrative arrangement regarding the management of offenders awaiting trial. Thus the provision for health care, social welfare and legal services is availed to offenders while they are in police custody, as stipulated by the Namibian Police Force Operational Manual. Bearing in mind that the judicial sector tends to be overwhelmed with cases, it is unfortunate that offenders experience lengthy periods as persons awaiting trial, and by the time they get sentenced, they may no longer display severe symptoms of withdrawal from drugs, meaning if an offender is to be arrested while displaying acute withdrawal symptoms, the police and the judicial courts may refer the offender to relevant health care service providers for detoxification treatment and where deemed necessary the courts may apply provisions from section 77-79 of the Criminal Procedure Act, Act 51 of 1977 that allows for the offender to be referred for mental evaluation; if found to have a mental disorder induced by drug use, the offender can be declared a State President Patient, and be housed in a forensic psychiatric unit or a correctional facility with the required professional staff to treat the mental disorder.

The Offender Risk Management Correctional Strategy is an effective approach to rehabilitation that is complementing the national efforts of fighting crime and reducing recidivism; however, its success depends much on stakeholder cooperation and essential collaboration that lead to the smooth provision of treatment to offenders in accordance with their risk and needs.

### **C. Stages of the Strategy within the Correctional Facility and the Role of Stakeholder Collaboration for Illicit Drug Users**

#### **1. Admission Process**

Offenders entering the correctional facility are received at the admission office to process warrants of committal and other documents. During this stage offenders have 48 hours to undergo a health screening by the medical staff as provided for in the NCS Health Policy (2016) in accordance with national Primary Health Care standards. This process enables correctional and medical officers to identify offenders displaying acute withdrawal symptoms for referral to medical centres, thus the Ministry of Health and Social Services renders its services by admitting offenders in hospitals to stabilize and detox. Furthermore, correctional officers also notify family members on offenders' conditions and may arrange for visitation as family reconstruction is encouraged.

#### **2. Reception and Assessment Unit**

Offenders are housed in the Reception and Assessment Unit for a period of 90 days, as a mechanism of conducting extensive individual screening, assessment and observation with the aim of identifying the criminogenic factors. Medical officers' conduct comprehensive health screening, while offenders receive rehabilitation activities such as Orientation Programmes. The programmes focus on psycho-social education with content on illicit drug abuse, treatment intervention and preventive measures. Officers and relevant external stakeholders facilitate the delivery of this programmes to help offenders adjust in a correctional environment.

Recognizing the importance of assessment, offenders are assessed to establish their individual risk and needs in order to develop a treatment plan that will address those criminogenic factors, while serving their custodial term. In the instance of an illicit drug user, the strategy provides for the timely referral of the offender to treatment interventions pertaining to their needs; furthermore the 90-day observation period offers sufficient time for officers to observe and identify offenders who may not disclose their drug use problems in order to offer crucial assistance. It should be noted that all assessment conducted required specialized assessment tools that are standardized to the Namibian norms. Hence the aspect of being evidence based is of great importance to the Namibian Correctional Service.

#### **3. Unit Management, Case Management and Programming**

During this stage, offenders are classified into either the Maximum, Medium, Low-Medium and Minimum-security levels, based on the assessment conducted in the Reception and Assessment Unit. The security levels are not solely determined by the offence but also considers the offenders risk and needs when conducting assessment.

Most offenders spend their custodial terms within the units; hence extensive components of rehabilitative programmes and activities are offered to offenders. Case Management provides offenders with daily motivational support, as Case Management Officers oversee individual needs of offenders such as family contact and facilitate offenders' access to rehabilitation programmes in accordance with the treatment plans that address the risk and needs. Therefore, an illicit drug user may be referred to attend programmes that are in line with the treatment plan, such as the Managing My Substance Use Programme that is currently being delivered in four correctional facilities.

Programming in the Namibian Correctional Service is comprehensive, as the strategy provides for offenders to access programmes that address their criminogenic factors, such as cognitivebased, educational, vocational, religious care, and recreational programmes. The success of programming is reliant on cooperation and collaboration, as specialized officers offering programming often engage external stakeholders to ensure quality services are delivered to offenders that are on par with the services in the community. Additionally, stakeholders are the driving factor to providing offenders with treatment, intervention and activities that are aimed at reforming offenders. Such strategic stakeholders are the office of the Ombudsman, Judicial Courts, Ministry of Gender Equality and Child Welfare, Ministry of Health and Social Services, United Nations Office on Drugs and Crime (UNODC), Prison Fellowship, Local Religious Care Providers and Community-Based Organizations forge a strong framework in rehabilitating offenders.

#### **4. Community Supervision**

Considering that treatment for illicit drug users is an ongoing process, offenders may reach the end of

their sentence and still require additional treatment to ensure the effective rehabilitation and successful reintegration into society as law-abiding citizens. Hence, this stage focuses on the support and supervision of offenders in the community when released from the facility on earned remission, full parole and probation. Community Supervision Officers monitor the reintegration process of offenders, and where applicable ensure that offenders with release conditions comply. In addition, offenders with illicit drug use problems may be requested to attend aftercare programmes in the community and provide proof of attendance and progress to the Community Supervisor. However, when non-compliance is noted, the officer may recommend for conditions to be changed and refer the offender to a rehabilitation centre or social worker. Community-based organizations such as Lifeline Namibia assist offenders by providing therapeutic counselling to illicit drug users, whilst Turning Point Organisation offers accommodation for offenders whose treatment requires them to be placed in an environment that is supportive to their treatment versus returning to their community where they may become vulnerable to relapsing and re-offending. Other stakeholders are the Namibian Police Force, Prison Fellowship and the Ministry of Labour, Industrial Relations and Employment Creation. While the Ministry of Health and Social Welfare is critical as the Etagameno Resource and Rehabilitation Centre may admit offenders who urgently require treatment.

#### 5. Community Service Orders

The Namibian Correctional Service oversees offenders that are sentenced to community service orders by undertaking community service duties instead of serving a custodial term. This form of diversion offers offenders with alternative convictions while being rehabilitated. Community Service Orders Officers supervise offenders to ensure compliance with the service order is enforced. The Community Service Orders Officers do not work in isolation as they collaborate with the judicial courts, the Ministry of Gender Equality and Child Welfare, the Ministry of Health and Social Welfare, the Namibian Police Force, Regional Council Offices and Community Based Organizations, in order to secure centres where offenders can render their services.

#### **D. Offenders' Responsivity to Programming**

In response to the growing concern of substance abuse including illicit drugs in the country, the Namibian Correctional Service developed a programme that would address the risk and needs of offenders who either committed an offence due to being under the influence of substances or had a substance use dependency problem. Hence the service introduced Structured Core Programmes such as the Thinking and Living Skills Programme (TLS) that focused on replacing maladaptive cognitive patterns and promoting pro-social behaviour, while the Managing My Substance Use programme is implemented to specifically assist in the treatment of offenders with illicit drug dependency problems. The programme is based on Marlatt's Cognitive Behavioural Relapse Prevention Model, which focuses on addressing the lifestyle imbalances caused by the dependency problem and how to develop a relapse prevention plan. The relapse prevention plan often involves different stakeholders that provide support to assist the offender to not relapse to substance use.

While the efforts of the Namibian Correctional Service towards the provision of programmes is commendable, the service has realized that a significant number of offenders in correctional facilities could not benefit from rehabilitation programmes due to low literacy levels and English proficiency, which is the country's official language. Hence the aspect of responsivity has become a priority in order to improve treatment of offenders (Chiremba, et al., 2012).

The Responsivity Principle is concerned with the types of appropriate treatments that match each offenders' general learning styles based on cognitive-behavioural and social learning approaches. In addition, the principle also looks at the specific responsivity levels of offenders in order to tailor treatment to address specific cognitive learning interventions such as motivation, language and educational levels (Andrews, et al, 1990).

Taking the above into consideration, offenders with illicit drug use dependency problems have been referred to attend Managing My Substance Use programme, where they receive cognitive intervention by Programme Officers, who are specialized staff in areas such as psychology and social work. However, a large number of offenders do not qualify to attend the programme due to language barriers, as the programme is delivered in English and most offenders have low literacy levels. Subsequent to the above findings, the Namibian Correctional Service applied the responsivity principle by tailoring interventions to the needs of



illicit drug dependency users that could not be in programmes, through offering interventions delivered by translating concepts targeting offenders' risk factors in the offenders' vernacular and on other occasions, inviting external stakeholders such as the Ministry of Health and Social Welfare and NGO's to offer treatment that could not be offered by the correctional officers. The Namibian Correctional Service has embraced the importance of collaborating with strategic stakeholders, as it is in the nation's interest to have rehabilitated and law-abiding citizens.

#### **E. Legislation Supporting Rehabilitation Interventions and Treatment for Offenders**

Namibia, being a member state of the United Nation (UN), has ratified several UN Conventions relating to illicit drugs and trafficking treaties such as the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance. On a national level Namibia has worked on amending the Combating of the Abuse of Drugs Bill and Prevention of Organized Crime Act, Act 29 of 2004 among others. (Kazemba and Neema, 2015)

The Criminal Justice System has recognized the importance of offender rehabilitation and has over the years made critical amendments to various statutes, the most significant change being the repeal of the Prison Act, Act 17 of 1998 which was replaced with the Namibian Correctional Service Act, Act 9 of 2012. This change led to the transformation of the service and implementation of the ORMCS.

Moreover, the treatment of illicit drug users now features prominently on the national agenda, as the country strives to comply with the Nelson Mandela Rules, also known as the United Nations Standard Minimum Rules for the Treatment of Prisoners. As a result, the service has strengthened stakeholder relations with several ministries, agencies and organizations in order to improve treatment programmes, preventive measures and decrease drug use in the country drastically through the provision of detoxification treatment, admission to rehabilitation centres, aftercare support groups and community-based prevention campaigns. One of the prominent community-based initiatives is the Be Free campaign that is overseen by the Office of the First Lady of Namibia; the First Lady is an active advocate on drug control. The country also adopted the National Drug Control Master Plan, which according to His Excellency Simon M. Martuta, Ambassador and Permanent Representative of the Republic of Namibia to the United Nations, entailed an approach of combating drug abuse and illicit drug trafficking through multi-agency coordinating frameworks with the aim of mitigating and reducing drug abuse and illicit drug trafficking, among other crimes. (Martuta, 2015).

Supporting the adoption of the master plan, the Namibian Correctional Service, focused on promoting treatment interventions for offenders suffering from substance dependency by employing increasing numbers of specialized staff like psychologists, psychological counsellors, social workers and medical personnel. It can proudly be stated that all thirteen (13) correctional facilities in Namibia are staffed with registered medical personnel and registered rehabilitation officers overseeing the psycho-social aspects of offender rehabilitation. In addition, the Namibian Correctional Service Health Policy (2016) has been aligned to the Namibia Standard Treatment Guidelines of the Ministry of Health and Social Welfare, (2011), when treating offenders, and applied the section on Psychiatric Disorder on Drug and Substance Abuse, when facilitating the treatment of offenders with illicit drug use problems.

Recognizing that each statute is an essential part of the successful treatment of offenders, it is fair to mention that the following statutes such as the Abuse of Dependence Producing Substance and Rehabilitation Centres Act, Act 41 of 1971, Mental Health Act, Act 18 of 1973, National Health Act, Act 2 of 2015 and the Namibia Correctional Service Health Policy, 2016 have been well integrated resulting in the timely treatment of illicit drug users and the general offender population. Furthermore, the provision of laws supporting offender rehabilitation service delivery has improved, and initiatives such as commemorating International Day against Drug Abuse and Illicit Trafficking has been conducted in correctional facilities with the support of the United Nation Office on Drugs and Crime and the Ministry of Health and Social Welfare to name a few.

In regard to offenders released from correctional facilities whose risks and needs were not fully addressed prior to release, there are provisions to attach conditions to their remission or parole release, which may require them to attend aftercare programmes in the community, such as joining Circle of Friends, Blue Cross and religious community support groups.



#### **F. Challenges and Possible Solutions to Improving Treatment for Offenders with Illicit Drug Use Problems**

The NCS is faced with internal and external challenges that affect the process of effective treatment. The internal factors affecting the treatment of illicit drug users is the effective responsiveness to treatment, as offenders may not be willing to disclose their drug use problem for fear of persecution or stigmatization. Treatment may fail due to offenders concealing critical information that would improve their response to their drug use treatment. However, the NCS has implemented rehabilitation and recreational activities that create platforms for educational campaigns on topics such as drug abuse within correctional facilities and community outreach programmes. The UNODC and the Ministry of Health and Social Welfare have been supportive in commemorating days such as the No Tobacco Day, International Day against Illicit Drug Use and Trafficking and World Suicide Day. Furthermore, the professional staff has provided support to offenders through individual and group therapy treatment within the correctional facilities.

The external challenge is the limited rehabilitation centres in the country, as Namibia currently has Ettagameno Resource and Rehabilitation Centre, which is a state owned and Okonguarii Psychotherapeutic Centre that is privately owned. Hence when offenders are released and require further treatment in rehabilitation centres, this often does not materialize because the state-owned centre can only admit 80 individuals on an annual basis between the ages of 18-39, while the private centre is costly for most offenders. Furthermore, in case of intensive care, the country only has one fully staffed mental health centre with a bed capacity of 200, while 70 beds are allocated to the Namibian Correctional Service, functioning as a forensic mental health centre. Thus, for a population of 2.5 million, the available services are not able to address the demand for treatment.

Based on the above, stakeholders such as the Ministry of Health and Social Welfare that is responsible for the state-owned rehabilitation centre, has introduced alternative treatment programmes, such as the Resource Centre that offers day treatment programmes, prevention programmes and aftercare programmes offered by social workers. In addition, 19 aftercare programmes were active in the regions, offering immediate support to offenders in their regions.

### **IV. CONCLUSION**

The Namibian Correctional Service has been able to provide essential treatment to offenders with illicit drug dependency problems in accordance with its philosophy of rehabilitation. Furthermore, collaboration of strategic partners in the Criminal Justice System, Health Care and Social Welfare Sector has been the driving force to the implementation of the Offender Risk Management Correctional Strategy.

The strategy's effective treatment of illicit drug users in corrections is greatly reliant on continuous multi-disciplinary cooperation, because with the establishment of these partnership areas, research is improved as data is obtained and can direct future reforms, which are in line with the Namibian Correctional Service's evidence-based approach.

Recognizing the challenges in treatment provision, the service has invested greatly in educational and vocational skills training, with the aim of improving literacy levels and increasing opportunities to access cognitive rehabilitation programmes that address the criminogenic factors of individual offenders. Furthermore, understanding that treatment is a continuous process, the service also invested in employing Community Supervision Officers with social sciences backgrounds, to supervise and provide motivational support during the reintegration phase. In doing so, officers would be able to review progress and based on data collected, the service would assess the effectiveness of the programmes currently available in the Namibian Correctional Service and if need be review or introduce new programmes based on best practices from other countries.

It is realized that the Namibian Correctional Service is still in the phase of transformation, as the goal is to reduce recidivism; however the milestones achieved thus far are much appreciated because implementing the strategy was a taxing expenditure on the Namibian country. However, the advocacy for rehabilitation supersedes any cost, because the country gains individuals that are able to contribute to national development.

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# ILLICIT DRUGS AND TREATMENT OF OFFENDERS IN SRI LANKA

*Nishantha Shanthilal Hapuarachchi\**

## I. INTRODUCTION

On 20<sup>th</sup> November 2004, it was another day for the Capital of Colombo, in Sri Lanka. In the afternoon, there was widespread news throughout the country, that a High Court Judge was shot dead. The whole judiciary and the People of Sri Lanka were stunned by this news because this had never happened before.

Sarath Ambepitiya was a Sri Lankan judge, serving as the Judge of the Colombo High Court when he was assassinated. The assassination, planned by a drug lord, Mohammed Niyas Nauer alias *Potta Nauer*, sentenced by the Judge, gripped the nation and forced the government to crack down on drug trafficking and organized crime.

He was shot dead by assassins at his home along with his bodyguard, Police Inspector Upali Bandara, on November 20, 2004. At the time of his death he was one of the most senior Judges of the High Court and was expected to be promoted to the Court of Appeal. The Chief Justice described Ambepitiya as “*the most fearless judicial officer we had. His death is a great loss to the judiciary*”.

Later on, five men were indicted over the murder of Ambepitiya. This included the alleged mastermind, Mohammed Niyas Nauer alias *Potta Nauer* on charges of conspiracy to commit murder; and Sujith Rohana Rupasinghe, Suminda Nishantha, Udara Perera and Lasantha Kumara, who were alleged to have carried out the murder. On July 4, 2005, amid high security and following a three-month trial, a High Court Trial-at-Bar reached a unanimous verdict finding the five men guilty of murdering Ambepitiya and his bodyguard. All five were sentenced to death by hanging; this sentence was affirmed by the Supreme Court of Sri Lanka on appeal<sup>1</sup>.

This assassination indicates the illicit drug trafficking in Sri Lanka is strong and lucrative. The culprits are in the mafia and ready to do anything to gain their profits and potential hindrances to be eliminated, so they assassinated the Drugs Court Judge in Colombo. With this background, the treatment of illicit drug offenders should be considered.

## II. WHAT ARE ILLICIT DRUGS?

In Sri Lanka, illicit drugs are called “*Dangerous Drugs*”. This regime is governed by several Ordinances and Acts and Gazettes of Parliament namely;

- Customs Ordinance No. 17 of 1869
- Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929
- Cosmetics, Devices, and Drugs Act No. 27 of 1980
- Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act No 1 of 2008
- Precursor Control Authority Regulations, Gazette Extraordinary 1653/7 May 10th 2010
- Tobacco Tax Act No. 8 of 1999
- Tobacco Tax Act Regulations, Gazette Extraordinary 1610/28 17th July 2009

In section 48 (1) of Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929 defines the Danger

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\* Judge, Civil Appellate High Court of Galle, Sri Lanka.

<sup>1</sup> [https://en.wikipedia.org/wiki/Sarath\\_Ambepitiya](https://en.wikipedia.org/wiki/Sarath_Ambepitiya) (accessed on 27-05-2018) and Supreme Court Judgement, *THE ATTORNEY-GENERAL v. POTTA NAUFER AND OTHERS (AMBEPITIYA MURDER CASE)* [2007] 2 SLR 144

Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929, which says;

*“(1) the drugs, substances, articles or preparations, specified for the time being in Groups A, B, C, D and E in Part I of the Third Schedule, shall be deemed to be dangerous drugs;”*

Thus, the Poisons, Opium and Dangerous Drugs Ordinance of 1929 which has undergone many amendments, most recently in 1984 (Act no. 13) is the principal statutory enactment regulating poisons, opium and dangerous drugs in the country. Part I, third schedule of this ordinance provides a wide range of dangerous drugs which are not listed here. In the category B, is the most dangerous drugs are scheduled. This list includes heroin, cocaine, morphine or opium and various other illicit drugs. Other statutes with provisions relating to drugs include:

- The Penal Code (Ordinance no. 2 of 1983 as subsequently amended) in particular Chapter 14 which covers public health and safety.
- The Cosmetics, Devices and Drugs Act (Act no. 27 of 1980, as amended by Act no 38 of 1984) The Act regulates the manufacture, sale and distribution, labeling and advertising of all commercial drugs.
- The Ayurveda Act (Act no. 31 of 1961 as amended by Act no 5 of 1962) entitles ayurvedic physicians to obtain opium and ganja for manufacture of their medicinal preparations.
- The Customs Ordinance (Ordinance no. 17 of 1869, as subsequently amended) schedule B of this ordinance contains lists of substances with prohibitions and restrictions on both import & export.

### III. STATUTORY REGIME

Section 52 of the Poisons, Opium and Dangerous Drugs Ordinance states: *‘No person shall obtain or have in his possession any dangerous drug’*. This provision establishes that a dangerous drug is an illicit drug by prohibiting use. Hence, possession of dangerous drugs creates an offence. Section 52(2) creates an offence for illicit users of dangerous drugs.

Section 53 discusses the manufacturing of drugs. It strictly prohibits manufacturing or carrying on any process in the manufacture of any dangerous drug.

Section 54 of the Poisons, Opium and Dangerous Drugs Ordinance prohibits administering, selling, supplying, or procuring or offering to sell, supply, or procure any dangerous drug to or for any person, whether in Sri Lanka or elsewhere, or advertise any such drug for sale, except as permitted by, or otherwise than in accordance with, the provisions of the Ordinance and a licence in that behalf from the Director.

Section 54A establishes the death sentence or life imprisonments for manufacturing of heroin or cocaine or morphine or opium. Manufacture and trafficking are defined as follows:

*“manufacture” in relation to a dangerous drug includes any process of producing such drug and the refining or transformation of one drug into another;*

*“traffick” means*

*(a) to sell, give, procure, store, administer, transport, send, deliver or distribute;*

*or*

*(b) to offer to do anything mentioned in paragraph (a)*

Section 78 of the Ordinance imposes the penalty of other than a person guilty of an offence under section 54A. it says;

*(a) on summary conviction by a Magistrate, to a fine not less than one thousand rupees and not exceeding ten thousand rupees or to imprisonment of either description for a period not exceeding five years or to both such fine and imprisonment;*

*(b) on conviction before the High Court, to a fine not less than ten thousand rupees and not exceeding*

*twenty-five thousand rupees or to imprisonment of either description for a period not less than six months and not exceeding seven years, or to both such fine and imprisonment”.*

It is apparent that the penalties for drug offences now range from fines to death or life imprisonment. The penalty of death (which Sri Lankan courts have interpreted as non-mandatory) or life imprisonment accrues for manufacture of heroin, cocaine, morphine or opium and the trafficking, possession, import or export of a minimum amount of (a) 500 grams of heroin (b) 3 grams of morphine (c) 2 grams of cocaine or (d) 2 grams of heroin. Less severe offences including the regulatory ones warrant sentences of fines or imprisonment, the amount of the fine or the length of imprisonment depend on the quantity of drug, the gravity of the offence and the courts having jurisdiction. It should also be noted that no bail be granted on pending inquiry except for special circumstances<sup>2</sup>.

#### **IV. WHY SRI LANKA IS A HOT SPOT FOR ILLICIT DRUGS AND TRAFFICKING**

The most significant drug problem is the trafficking of heroin from India for local consumption. In this regard, Sri Lanka serves as a transshipment hub for heroin trafficked into the country mainly from Indian locations. The reason being for this is the long-standing violence (Civil War) and political tension has diminished the ability of law enforcement to address drug trafficking concerns adequately. It was debated whether some powerful politicians are behind and involved in drug trafficking which handicaps the combating of drugs.

#### **V. COMBATING THE DRUG MENACE**

In Sri Lanka, the National Dangerous Drugs Control Board, (NDDCB) is the pioneer government institution which discharges its functions with an aim to eradicate the drug menace from Sri Lanka. Among the other functions, providing treatment to the drug dependants and rehabilitation of drug dependants are main roles of the NDDCB. Four treatment and rehabilitation centres are being conducted under the purview of the board throughout the country with greater focus in Colombo, Kandy, Galle and Gampaha Districts. Counselling service and residential treatment facilities are being provided for the drug addicts at these treatment centres.

In response to the growing drug problem in Sri Lanka in the 1970s, a National Narcotics Advisory Board was established by the government in 1973 to co-ordinate the control measures. This was an ad-hoc committee chaired by the deputy minister of Defence and consisting of representatives from various ministries, departments and NGOs. The authority of the board, as implied in its name, was advisory in function and scope.

In the early 1980s the government, having realized the seriousness of the problem, and in keeping with the obligations imposed by the 1961 single convention on narcotic drugs, initiated the process of formulating a comprehensive national policy to reduce drug abuse, and to draft legislation for the establishment of a National Dangerous Drugs Control Board<sup>3</sup>. Thus, NDDCB is the main combating and rehabilitation agency in Sri Lanka.

#### **VI. ARRESTS RELATING TO DRUG OFFENCES**

The total number of persons arrested for drug-related offences was 8,570 from January to June 2015. Of the persons arrested 1,795 were heroin users. 21% percent of the persons arrested were aged between 30 and 34 years.

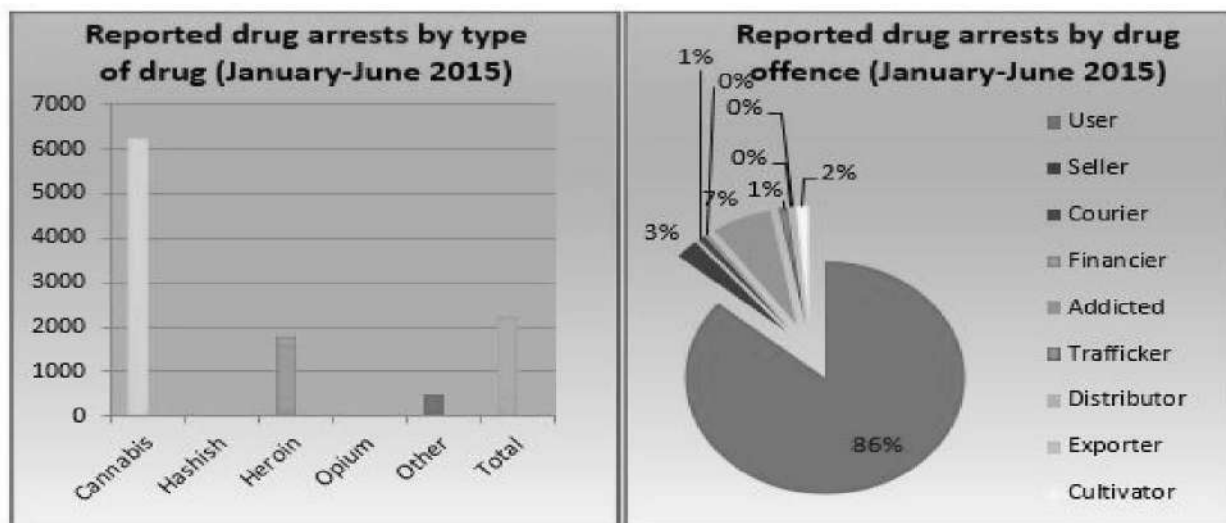
Of the reported arrests, the majority (2,350) were arrested from Colombo District. When considering all arrests, 38% were from Western Province. Among the reported persons, 99% were male and 1% were female. Of the persons reported 5,732 (67%) were married and 2,804 (33%) single. Among the total drug-related arrestees, 58% had studied between year 5 and 10. The prevalence of drug related arrests per million

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<sup>2</sup> Vide section 83(1) *‘No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.’*

<sup>3</sup> <http://www.nddcb.gov.lk/aboutus.html>

population, based on 2012 provisional data of census among ethnic groups, Sinhalese were 476, Tamils 204, Moor 333, Malay 270 and Burgher were 261 during the first half of year 2015. The prevalence rate of drug-related arrests per million population among religions: Buddhists were 492, Hindus 211, Islamic 321 and Christians 235 during the first half of the year 2015<sup>4</sup>.



(Source <http://www.nddcb.gov.lk>)

The statistics show that cannabis is the mainly used drug and heroin takes second place. 86% are users, 1% are traffickers and 3% are sellers. It should be noted 7% are drug-addicted persons. These are the people who need rehabilitation. The 2017 and 2018 statics are not documented and published by NDDCB.

## VII. TREATMENT OF ILLICIT DRUG USERS AND OFFENDERS

As previously discussed, the sentences are harsh on drug manufacturing and trafficking. Thus, they are subjected to mandatory custodial sentences. However, those in possession of illicit drugs as users will get treatment from rehabilitation in centres on a court order.

The total number of drug users reported from treatment facilities during the first quarter of 2016 was 419. Within the period, the number of drug users has increased by 39%, compared to that of 2015. 48% of the total reported drug users were from the government (NDDCB) treatment facilities, 42% was from the prison drug treatment and rehabilitation programme and 10% has reported from NGOs. The prisoner diversion programme changed in 2011 due to enactment of drug dependents (treatment and rehabilitation) act No. 54, 2007 to implement compulsory treatment facilities in Sri Lanka. Under the above act, an exclusive treatment programme has been designed for prisons for drug related offenders. The majority of reported drug users had received institutional treatment facilities and among the treatment admissions 47% was from Colombo district. When considered the entire treatment admissions, 65% was from Western Province.

414 male drug users were admitted to the treatment during this period. The number of male drug users reported during this period had increased compared to the corresponding period of 2015. Only five females were obtained treatment during the period.

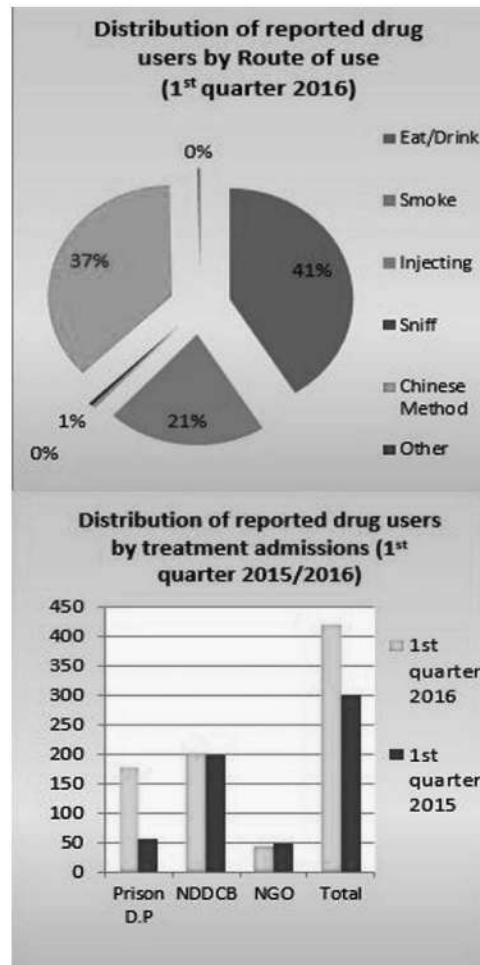
Among the total drug users, 37% had chased the drug and 41% reported eating or drinking it. 21% of the drug users smoke the drug. Of the persons reported 192 (46%) were single and 207 (49%) were married. Of the total 230 (55%) had studied between year 5 and 10.

The prevalence of drug users reported from treatment facilities per million population based on 2012 estimated of census, among the ethnic groups Sinhalese was 23, Tamil 10, Moor 19, Malay 23 and Burger 52

<sup>4</sup> Statistical report on drug related arrests in Sri Lanka (DAMS arrest report) - Volume 49.



during the first quarter 2016. The prevalence rate of drug users per million population among Buddhists was 22, Hindu 7, Islamic 20 and the Christians 26 was represented during the corresponding quarter<sup>5</sup>.



(Source <http://www.nddcb.gov.lk>)

## VIII. RATE OF ADDICTION

The Dangerous Drugs Control Board has said over 250,000 youth of Sri Lanka are addicted to drugs. The Chairman Professor Ravindra Fernando said close to 50,000 youth are found to be addicted to heroin alone. He also said that about 2,500 youth are annually subject to rehabilitation from drug addiction<sup>6</sup>. It is so pathetic that youths of the country have engulfed with drug menace. The youth are the future of the country and the reform and rehabilitation while combating the illicit drugs are essential.

## IX. TREATMENT PROGRAMME

In taking treatments, a client needs to stay three months at the centre for residential treatment. After the residential period is over the client is required to enroll into the relapse prevention programme. Parents/guardians are required to assist the client's recovering process and help to cope with uncomfortable feelings. Wherever possible, the residential programme incorporates activities and experiences consistent with normal lifestyles. The clients will have a formal treatment programme during week days, less structured activities in evenings and on weekends. Daily activities include individual and group counselling sessions, educational programmes, care and maintenance of the centre, work projects such as landscaping,

<sup>5</sup> Statistical report on drug dependents from treatment agencies (DAMS treatment report) - Volume 100 - 1st quarter 2016

<sup>6</sup> <https://www.newsfirst.lk/2017/07/250000-youth-sri-lanka-addicted-drugs/> (accessed on 27-05-2018)

creative pursuits such as pottery, welding work, carpentry and drama, stress management activities like muscle relaxation, meditation and recreation. Television and newspapers are available for residents.

## X. ABOUT CENTRES

The centre consists of counselling rooms, office buildings, vocational training units, kitchen and dining hall (s). Those are located in easily accessed and free locations. The centres provide basic but clean and hygienic accommodation, a balanced diet, in-door and out-door recreational facilities, a group of friendly and trained staff. The treatment programme consists of medical attention, counselling, behavioural therapy, vocational training, in-door and out-door recreational activities. The treatment needs of each person are assessed individually.

The centres are managed by a resident manager with a trained and well experienced counsellor, assistant counsellors and members of treatment staff who take care of the residents. The counsellor would personally talk to parents, spouses or guardians on admission of the client to the centre and would take them around to show the facilities provided at the centre. There is a monthly get-together at the centre for client's parents, spouses or guardians.

Main Private Community Counselling Centres in Sri Lanka



“Siyapatha” Counseling Centre  
Old Ceylon Buddhist Congress Complex  
Buddhaloka Mawatha  
Colombo 07  
Tel : 011 309 1394



Sri Lanka Maha Bodhi Counseling Centre  
Sri Lanka Maha Bodhi Society  
No. 130, Maligakanda Rd, Maradana  
Tel : 011 267 7626 / 011 493 5077<sup>7</sup>

<sup>7</sup> <http://www.nddcb.gov.lk/aboutus.html>

## XI. CASE STUDIES

The author of this document is working as a judge of Southern Province in Sri Lanka. Thus, his two case studies are based in Southern Province. One case was on imperative rehabilitation (Compulsory) and the other case study was on voluntary rehabilitation. It is understood that rehabilitation centres are divided into those run by the government and private-sector run facilities by NGOs<sup>8</sup>. This area is governed by the Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007. The Act provides voluntary<sup>9</sup> and compulsory treatment<sup>10</sup> facilities in Sri Lanka. Under compulsory treatment, the person must be convicted for a drug-related offence. The section 10(4) said Act states as follows;

*“Where a person is convicted and sentenced for any offence under the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 214) and the Court convicting such person is satisfied by evidence on oath led before such Court that such person is a drug dependant person, the Court may, commit the person so convicted to a Treatment Centre for such period of time as may be determined by Court taking in to consideration the degree of dependence of such person. Such period of time may be extended on application made by the Director of the Treatment Centre to which such person is committed. The circumstances on which the extension is requested should be sufficient in the opinion of the Court to necessitate such extension”*

## XII. STORY OF SUDATH

Nanayakkarawasam Masachchi Sudath Dhammika, 36 years, is married and having one child. He and his wife run a fruit selling business in Sandarawala. The author interviewed him after release of undergoing the rehabilitation in Kandakaduwa Rehabilitation Centre which is situated in Polonnaruwa. According to Sudath he tried heroin to get sexual ecstasy. One of his friends told him that heroin gives a long lasting sexual pleasure, and it is a kind of treatment for premature ejaculation. His maiden taking of heroin was a bitter experience because he vomited after taking it. He said he had gone blank. But he said that at initial stages there was a prolonged sexual intimacy but it lasted two to three months. When he tried to stop the habit, he understood that he could not and he is addicted to heroin. He stole money from his own fruit stall. His wife was curious how the business was losing money. While on heroin, Sudath was caught by a Baddegama Police Official. He was convicted on 21-03-2016 by Baddegama Magistrate since he had no previous convictions only Rs. 10,000/= was fined. No rehabilitation was done this time. Sudath said when he came out after paying the fine, again, he could not stop the bad habit and the feeling was unbearable. His body was pleading for heroin all time. He said that sometimes he spent Rs.12,000/= per day for heroin as 5mg heroin packet was Rs. 1000/= . His day to day family life was ruined and he got caught for second offence on 03-04-2017. Then he was charged for possession of heroin 20mg<sup>11</sup>. This time, a full medical report was ordered and from the report, Sudath was identified as drug dependant. Thereafter, Sudath was sent for rehabilitation for 12 months at Kandakaduwa.

Sudath says that it was a blessing in disguise; though he had to separate from the family, he managed to reform and come back to society as a worthy person. He said the first six months was for rehabilitation and second 6 months for training. He said that at Kandakaduwa Rehabilitation Centre, he learned masonry. He said while he was in the camp, his wife developed the fruit stall and he is doing masonry and has no bad habits. He said that now he is completely out of bad habit thanks to rehabilitation.

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<sup>8</sup> By the Section 3 of Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007

<sup>9</sup> By the Section 9 of Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007

<sup>10</sup> By the Section 10 of Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007

<sup>11</sup> Extracted details from case record No. 94185 (B/172/2017).



(Sudath's fruit stall)



(The author was interviewing Sudath while he was working (applying potty, it is evident that masonry training of Kandakaduwa has changed Sudath's life))

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Sudath was completely rehabilitated. He was rehabilitated at Kandakaduwa Camp which is run by the Bureau of the Commissioner General of Rehabilitation under the patronage of the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. According to the sources, drug addicted persons mainly undergo rehabilitation at Kandakadu Centre in Polonnaruwa. It is a rehabilitation centre of youth addicted to drugs at a secure residential facility. It is a place for those who are convicted and remanded for drug abuse, drug trading and possession. These individuals will be subjected to the rehabilitation programme according to their levels of education, social and economic backgrounds. They will be put through psychological therapy that will assist them to gradually get rid of their addiction. Through the variation of the environment and a conducive surrounding, and the continued medical therapy, it is expected that these individuals will within the stipulated timeframe be able to rid themselves of their addiction. The following training and courses are given at Kandakaduwa<sup>12</sup>.

**DETAILS OF VOCATIONAL TRAINING PROGRAMMES**

- Plumbing Course
- Carpentry Course (Building)
- Carpentry Course (Furniture)
- Computer Course
- House Wiring Course
- Masonry Course
- Aluminium Fabrication Course
- Welding Course

**DETAILS OF VOCATIONAL ORIENTATION TRAINING PROGRAMMES**

- Dhamma Anuradha Meditation Programme
- Brahma Kumaris Yoga Centre Meditation Programmes
- Aesthetics/Drama Therapy Programmes
- Spiritual Development Programme
- Sports Activities
- Leadership and Personal Development Programme
- Language Training (Sinhala, Tamil & English)
- Counselling & Mentorship Programme
- Mental Health Programme
- Yoga Programme
- Bakery Products
- Footwear Manufacturing Training Programmes
- Bag Manufacturing Training Programmes
- Leather Goods Manufacturing Training Programme
- Food Technology
- Precast Components Manufacturing Training
- Self-Employment Development
- Animal Products
- Coconut Cell Products

It is seen huge rehabilitation is done under this institution. The following are the details:

Details of Reintegrated Drug Offenders as at February 2017<sup>13</sup>  
Reintegrated Drugs Offenders-District Wise

S/N	District	Less than 20	21-30	31-40	41-50	Above 50	Not Known	Total
1	Colombo	02	142	290	184	91	11	720
2	Gampaha	04	164	140	43	20	04	357

<sup>12</sup> <http://www.bcgr.gov.lk/programsdrugaddicts.php>, accessed on 07-08-2018

<sup>13</sup> [http://www.bcgr.gov.lk/reintegrated\\_drugs.php](http://www.bcgr.gov.lk/reintegrated_drugs.php) accessed on 07-08-2018



RESOURCE MATERIAL SERIES No. 107

3	Kalutara	01	25	50	22	10	04	112
4	Kurunegala	01	37	31	09	01	02	81
5	Puttalam	02	26	18	03	02	01	52
6	Anuradhapura	-	13	15	06	-	-	34
7	Galle	-	12	06	03	02	-	23
8	Kandy	-	09	16	-	01	-	26
9	Kegalle	-	13	04	-	01	-	18
10	Hambantota	-	07	14	02	01	-	23
11	Ratnapura	-	04	01	05	01	01	12
12	Polonnaruwa	-	05	01	02	-	-	08
13	Trincomale	-	-	01	03	03	-	07
14	Badulla	-	-	01	05	-	-	06
15	Ampara	-	01	02	-	02	-	05
16	Matara	-	02	01	-	01	01	05
17	Monaragala	-	01	-	-	-	-	01
18	Nuwara Eliya	-	01	01	-	-	-	02
	Total		462	592	287	135	24	1510

Employment Summary of Monitored Drug Offenders

S/N	Details	Total
1	Monitored	492
2	Unemployment	71
3	Labour	97
4	Masonry	35
5	Fisheries	12
6	Foreign Employment	17
7	Self Employment	24
8	Farming	01
9	Carpentry	05
10	Private Sector	25
11	Painter	14
12	Mechanic	20
13	Driver	32
14	Security Sector	08



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15	Small Business	27
16	Jailed/Unknown Residencies/Others	104

Apart from that, the author also examined the detection details of Galle Police Division in Southern Province. The details are as follows;

Period of 01.01.2018 to 30.06.2018 on illicit Drug detections in Galle Police Division.<sup>14</sup>

Ref. No:	Police Station	Indian Hemp cases (Ganga/Kansa)	Heroin cases
01	Galle	238	362
02	Hikkaduwa	132	48
03	Rathgama	82	58
04	Habour	62	56
05	Habaraduwa	102	62
06	Ahangama	28	22
07	Imaduwa	22	06
08	Akmeemana	46	67
09	Waduramba	12	05
10	Poddala	32	22
11	Yakkalamulla	08	-
12	Udugama	15	-
13	Nagoda	22	07
14	Hiniduma	46	-
15	Neluwa	19	-
	Total	866	715

This table shows though the rehabilitation is done, on the other hand, the addiction is also growing drastically.

### XIII. PLIGHT OF NON-DETECTION OF DRUG OFFENDERS

Drug addiction is a jealous mistress; it always demands money. Thus, if offenders are safe in society, it is obvious the crime rate will increase. It ranges from Murder to minor thefts. Rehabilitation is the only solution to curb the increasing tendency towards drug addiction. To initiate rehabilitation, all Judges were directed by the Secretary to the Judicial Service Commission to send the convicts for drug cases for rehabilitation at Kandakadu Centre<sup>15</sup> for a maximum period of one-year mandatory rehabilitation. During rehabilitation the courts are empowered to call progress reports of the detainees/offenders. It is seen that this mechanism is doing well as Baddegama Magistrate ordered 71 illicit drug users for rehabilitation at Kandakadu in the first half of this year (2018)<sup>16</sup>. The Officers in charge of Baddegama, Nagoda, Thelikada, Poddala and Wanduraba

<sup>14</sup> Extracted from field notes of the author.

<sup>15</sup> Vide JSC Circular No 382

Police station say that the crime rate has rapidly come down due to rehabilitation of illicit drug users in a timely manner<sup>17</sup>.

#### XIV. VOLUNTARY REHABILITATION

The Author visited the voluntary rehabilitation camp in Unawatuna which is run by National Dangerous Drug Control Board. The Manager of the Prevention, Treatment and Rehabilitation Center of Unawatuna informed the Rehabilitation is based on following methods;

- Therapies of re-examining past experiences
- Rational emotional therapy
- Role-play therapy
- Reversal therapy
- Life skill development therapy
- Motivational therapy
- Psychoanalysis
- Affect therapy
- Self-esteem building therapy
- Self-confidence building therapy

The Rehabilitators should undergo a daily routine according to a time table. The duration for rehabilitation is two months which is not sufficient according to the Manageress of the Centre. It is observed therefore no detainees were sent through the courts as the short period of rehabilitation was given. Thus, this institution is mainly for voluntary rehabilitation. The author interviewed one detainee who came for voluntary rehabilitation at the Unawatuna Centre.

Mudalige Rananath Gunawardene of Tewatta Road, Ragama, 31 years old, married, worked in the Middle East and had earned a considerable amount of money. When he returned home, he started working as a Medical Representative. His addiction to heroin started due to peer pressure and on the destined day, he went to a funeral home for a sleep over. He had a chance to use heroin which was given by a friend who came to the funeral home. First he vomited but later on his body demanded to take heroin. He spent Rs 3000/= per day and he borrowed money to buy heroin. Then, his wife realized the change of behaviour of her husband and questioned him. Then, he told her that he was addicted to heroin. After a long discussion, they decided to undergo rehabilitation in Unawatuna.



(Images of Unavatuwna Centre)

Rananath says that he is confident that he could escape the addiction. In the meantime, the author inquired the Magistrate of Galle and he said that he is personally against the forceful rehabilitation as it is

<sup>16</sup> The author refers the Hon Judge's Report dated 20-07-2018 in this regard.

<sup>17</sup> Separate Police Reports were sent to the author through the Magistrate of Baddegama confirming the deduction of crime rate.

against the human rights of the prisoners. It is seen that the Section 10 of Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007 imposes a burden on the court for mandatory rehabilitation, yet some judges are reluctant to implement those provisions stating it is unconstitutional. However, the author inquired prison authorities and they say they have informal programmes outside the prison for rehabilitation. The author noted that repeat offenders can be found in the prison for drug addiction.



(Author questioned a drug addicted and convicted prisoner and he said he is not undergoing rehabilitation which is unfair by him and society wise)

## XV. CONCLUSION

Sri Lanka's experience in dealing with drugs of abuse and with the drug abuse problem is unique in many ways. From the sixteenth century until the middle of the twentieth century, the colonial powers regulated the use of opium as a revenue earning measure. Since independence was achieved in 1948, various measures have been taken to scale down the abuse of opium, cannabis and certain psychotropic substances, but not all these efforts have been successful. In the wake of thirty years of ethnic problems (LTTE civil war), there has been an increase in the involvement of Sri Lankan nationals in smuggling drugs across national frontiers. The absence of a comprehensive national policy on drug abuse has been a major constraint on law enforcement and the development of interventions for education, treatment, rehabilitation and crop substitution. Sri Lanka is fortunate to have a rich tradition of networks of non-governmental organizations and religious institutions, and these can be mobilized to discourage and rehabilitate the use of intoxicating drugs and alcohol<sup>18</sup>.

Mostly the offenders and victims of drug users are youth of the country. The Royal Park Murder case<sup>19</sup> gives ample opportunity to rethink how horrendous the addiction of drugs is. The sale of drugs to youngsters who frequent night clubs in Sri Lanka has led to many violent crimes. The Royal Park murder is one such instance where a young girl died at the hands of her boyfriend in a most brutal manner. The trial court sentenced the culprit to 12 years' imprisonment but on appeal it was converted to the death sentence. Both offenders and the victim were youngsters. The senseless murder of Bharatha Lakshman Premachandra, former Member of Parliament, and Director General of Trade Union Affairs on the streets of Mulleriyawa has been attributed to a feud that erupted due to a conflict of opinion on the drug trade as has been reported recently in the media. The culprit, Duminda Silva, Member of Parliament, is sentenced to death.

In a spiritual manner, drug dealing is one of the greatest sins. Whether a dealer, distributor or user, the repercussions are severe and unthinkable. By using drugs the mind becomes unsound and lunatic. It is said as a result of drug addiction, one's next birth, if born as a human, will be a lunatic with no conscious mind. Lord Buddha has said that the sin follows the sinner as the cartwheel follows the bull tied to the cart. There is no

<sup>18</sup> Jayasuriya DC., Med Law. 1995; 14(1-2): 37-43., PMID: 766674

<sup>19</sup> <http://www.thesundayleader.lk/archive/20060730/spotlight.htm> (accessed on 29-05-2018)

escape, whatsoever in this world or the next to the wrongdoer, who will face punishment inevitably<sup>20</sup>.

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<sup>20</sup> *Dhammapada*, CHAPTER I., THE TWIN-VERSES. 1<sup>st</sup> stanza, Oxford, the Clarendon Press [1881] Vol. X of The Sacred Books of the East “*If a man speaks or acts with an evil thought, pain follows him, as the wheel follows the foot of the ox that draws the carriage.*”

# TREATMENT OF ILLICIT DRUG USERS IN HONG KONG

*Lam Yuen Tak\**

With the mission of protecting the public and reducing crime, Hong Kong Correctional Services Department (CSD) safeguards the integrity of the criminal justice system by identifying itself as “Society’s Guardian”, “Rehabilitation Facilitator” and “Community Educator”. CSD aims at helping persons in custody (PICs) reintegrate into society as law-abiding citizens after discharge. The success of their re-integration depends on four critical success factors, namely 1) safe custody, 2) effective and timely rehabilitation programmes, 3) determination of offenders, and 4) community support for offenders’ rehabilitation.

CSD, as a statutory department, provides compulsory residential addiction treatment under the order of Court. We, in accordance with illicit drug users’ weakness and shortcomings, implement integrated and appropriate rehabilitation programmes ranging from pre-sentence assessment and custodial rehabilitation programmes to statutory supervision after discharge.

In order to promote messages of “leading a law-abiding and drug-free life as well as supporting offender rehabilitation” to the society, CSD also endeavours to communicate with various stakeholders in the community such as leaders and professionals from different walks of life for arranging different kinds of crime prevention activities. To optimize the long-term development of rehabilitation programmes for a safe and inclusive Hong Kong, CSD will also conduct possible research project to assess effectiveness of its programmes.

## I. INTRODUCTION

Hong Kong Correctional Services Department (CSD) carried out the paradigm shift from a penal regime to a correctional system as signified by renaming the Prisons Department to the Correctional Services Department in 1982. We, as the gatekeepers of the last element of the criminal justice system, aim to be an internationally acclaimed Correctional Service helping Hong Kong to be one of the safest cities in the world. Our mission is to protect the public and reduce crime. To achieve it, we identify ourselves as “Society’s Guardian”, “Rehabilitation Facilitator” and “Community Educator”. We are tasked with great responsibilities of upholding our core values by providing a secure, safe, humane, decent and healthy environment for persons in custody (PICs) as well as working in collaboration with the community and other organizations to continually improve the rehabilitation programmes and help PICs rehabilitate and reintegrate into the community as law-abiding citizens after their discharge.

The success of PICs’ re-integration into society depends on four critical success factors [i.e. 1) Safe Custody, 2) Effective and Timely Rehabilitation Programmes, 3) Determination of Offenders, and 4) Community Support for Offender Rehabilitation]. Safe custody and appropriate rehabilitation programmes are the cornerstones of all internationally acclaimed correctional services. It is essential to provide a safe custodial environment for delivery of various rehabilitation programmes to help PICs turn over a new leaf.

In response to the growing concern on the reform of offenders, CSD set up the Rehabilitation Division to focus its work on offenders’ rehabilitation in 1998. Since then, CSD has been striving to strengthen the co-ordination and connection with other concerned organizations on formulating strategies for long-term development of rehabilitation. The Rehabilitation Division, headed by the Assistant Commissioner (Rehabilitation), provides appropriate rehabilitation programmes for all PICs including illicit drug users in Drug Addiction Treatment Centres (DATC), ranging from pre-sentence assessment, welfare and counselling,

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education, work and vocational training, religious, to statutory supervision after discharge. Meanwhile, it mobilizes outside resources for continuous rehabilitation programme enhancement, community education and promotion to the public for their acceptance of rehabilitated persons for an inclusive society, so as to facilitate PICs in reintegrating into society. With the effort of the CSD, the recidivism rate<sup>1</sup> of rehabilitated persons has been in a downward trend with a 7.2% drop from 2008 (34.3%) to 2015 (27.1%).

This paper mainly focuses on how the CSD provides assessment, appropriate rehabilitation programmes, supervision and community education to help illicit drug users to reintegrate into the society and to prevent crime.

## **A. Screening and Assessment of Drug Addiction Treatment Centres (DATC)**

Under Hong Kong Law Chapter 244 Drug Addiction Treatment Centres Ordinance (the Ordinance), Drug Addiction Treatment Centres (DATC) are provided for the cure and rehabilitation of persons found guilty of a relevant offence who are addicted to any dangerous drug.

*Cap.244 S4(1): “Where a person is found guilty of a relevant offence and the court is satisfied that in the circumstances of the case and having regard to his character and previous conduct it is in his interest and the public interest that he should undergo a period of cure and rehabilitation in an addiction treatment centre, the court may, in lieu of imposing any other sentence, order that such person be detained in an addiction treatment centre.”*

### **1. Pre-sentence Assessment**

*Cap.244 S4(3): “Before a detention order is made in respect of any person, the court shall consider a report of the Commissioner on the suitability of such person for cure and rehabilitation and on the availability of places at addiction treatment centres.....”*

The successful re-integration of offenders through effective rehabilitation programmes depends very much on giving offenders appropriate sentence and placement that can best meet their rehabilitative needs. To ensure offenders receive the most appropriate rehabilitation programmes during their incarceration, pre-sentence assessment are provided to young offenders and offenders who are ordered to have the assessment report by courts. After interviewing the offenders under remand and obtaining their background information such as conviction record, offence details, drug addiction history, employment or education, family situation, etc., CSD will advise the courts on the suitability of offenders to be sentenced to being detained in Detention Centre, Rehabilitation Centre, Training Centre, Drug Addiction Treatment Centre (for those illicit drug users), or other sentencing options, including imprisonment.

Pre-sentence Assessment provides the court with profiles of the persons awaiting sentence and makes recommendations on the rehabilitation scheme for them. There were 2,200 cases in 2017.

## **B. Treatment and Programmes for Illicit Drug Users**

### **1. Drug Addiction Treatment Centres (DATC)**

*Cap.244 S4(2):*

*“..... detained in an addiction treatment centre for such period, not less than 2 months and not more than 12 months from the date of such order, as the Commissioner may determine, having regard to the health and progress made by such person and the likelihood of his remaining free from addiction to any dangerous drug on his release, and shall then be released.”*

An illicit drug user, who is convicted of criminal offences, might be ordered by court to detain in DATC to receive treatment and rehabilitation for a minimum period of two months to a maximum of 12 months, followed by one year's statutory supervision. The length of detention is determined by a Board of Review which examines the health and progress of each person in custody and his likelihood of remaining free from drug abuse after release.

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<sup>1</sup> Recidivism rate is the percentage of re-admission (due to commission of a new offence) of local convicts within two years after discharge.



There are 4 institutions under the CSD providing drug addiction treatment to those illicit drug users ordered by court to be detained in DATC. Base on sexuality and age, they will be detained in Hei Ling Chau Addiction Treatment Centre (Male adult drug addicts), Lai Sun Correctional Institution (Male young drug addicts), Nei Kwu Correctional Institution (Female adult drug addicts) and Lai King Correctional Institution (Female young drug addicts).

The drug addiction treatment programme encompasses 3 phases – (i) detoxification and restoration of physical health; (ii) Uprooting psychological and emotional dependence on drugs; and (iii) Facilitating the reintegration of persons in custody into the community after release. DATC inmates undergo the treatment and appropriate rehabilitation programmes during the detention period while a Board of Review composed by officers from different units would monitor their progress and interview with them regularly.

## 2. Risks and Needs Assessment and Management Protocol

Risks and Needs Assessment and Management Protocol have been implemented since 2007. It is a scientific and evidence-based evaluation of PIC's re-offending risks (which will affect the amount and the intensity of rehabilitation that a PIC will receive during incarceration) and rehabilitative needs. After illicit drug abusers are sentenced by courts to DATC, they will be assessed by staff to identify their rehabilitative needs via Risks and Needs Assessment and Management Protocol.

In accordance with the rehabilitative profiles of inmates generated by the Risks and Needs Assessment, the CSD is able to provide better rehabilitation programmes matching and supervision for them. The seven domains of rehabilitative needs and respective rehabilitation programmes are shown in figure 1.



Figure 1) Seven Needs Domains and Respective Rehabilitation Programmes

DATC inmates, who normally have “high” risks in the “Drug Abuse” domain, will be provided with Drug Abuse Rehabilitation Programme and Relapse Prevention Group. The participation of inmates in the programmes is on a voluntary basis as the effectiveness of the programmes very much depends on the extent of their motivation and commitment. For those with low motivation, the responsivity enhancement programme will be provided to them with a view to enhancing their responsivity to counselling and strengthening their motivation to change.

## 3. Welfare and Counselling Services

While undergoing incarceration, inmates might encounter personal problems and cope with difficulties arising from detention. Rehabilitation Officers are responsible for providing timely assistance, guidance and counselling to them. Cultural activities, such as pop bands, essay writing competitions and hobby classes are also promoted among inmates to unveil their talents and potential which could help them develop positive self-image.

The “Pre-release Re-integration Orientation Course” is also organized to help inmates reintegrate smoothly into society upon their release. Through the course, assistance is provided to the pre-discharged inmates for their better understanding of the environment that they would face to after discharge. They are provided with society’s information on different themes including social welfare services, education and social facilities, legal assistance, latest labour market information, job-interview techniques, medical services, community resources, and interpersonal skills. Most significantly, through the knowledge they acquired, the probability of having a smoother re-integration and resocialization process is further enhanced. With such,

the chance of inmates relapsing to drug or crimes would be reduced.

Another specially designed programme is the “Relapse Prevention Course” which helps inmate’s gain correct understanding of drug use and relapse prevention, uplift determination to stay away from drugs and rebuild family relationships that might have been ruined due to drug abuse and committal of offences.

#### 4. Psychological Services

In order to assist inmates in adapting to imprisonment and enhance their psychological well-being, counselling and specific psychological programmes are provided to help them gain an in-depth understanding of their psychological qualities and reflection on their past criminal behaviour, as well as facilitate them in making positive changes and minimizing re-offending risk. Psychological counselling to inmates includes professional assessment, counselling and treatment provided by clinical psychologists and officers of the Psychologist Services Section.

The treatment of psychological dependence is effected through work therapy as well as individual and group counselling which aim at helping inmates gain better insight into their drug problems and preparing them for a pro-social and drug-free life. Furthermore, psychological programmes, for example the “Responsivity Enhancement Programme”, is provided for enhancing inmates’ treatment responsivity including their motivation to change, perceived usefulness of treatment, perceived possibility of success and self-efficacy. The “Abstinence Maintenance Programme” to improve inmates’ efficacy in dealing with problems of drug abuse and identifying high risk situations relating to relapse as well as developing basic skills to deal with high risk situations, and the “Intensive Treatment Programme” to facilitate cognitive and behavioural changes of inmates crucial in maintaining drug abstinence are also provided.

#### 5. Education Programme

Education helps inmates to improve their academic standards, interpersonal skills and restore their self-esteem and confidence, which help their future re-integration. The Education Unit, with Education Officers, who are qualified teachers holding bachelor’s degrees and teachers’ training, provides both young and adult inmates with opportunities to upgrade themselves through education and to assist their participation in public examinations.

To help restore a positive learning habit and encourage young inmates to acquire accredited academic qualifications, half-day compulsory education focusing on general and practical subjects, such as computer-related and commercial, is provided for young inmates under the age of 21. The acquisition of accredited qualifications provides inmates with the opportunity to re-examine their own talents and promoting their self-image.

Tutorial groups and hobby classes conducted by volunteer tutors are also run in adult institutions, where adult inmates can enroll voluntarily. They are also encouraged to participate in continuing education and distance learning for tertiary education by making use of the resources and expertise of external accredited educational organizations. Both young and adult inmates are encouraged to attend local and international public examinations, such as the Hong Kong Diploma of Secondary Education Examination (HKDSE), the London Chamber of Commerce and Industry Examinations and other public examinations required by distance learning courses at degree, diploma or certificate levels. Appropriate rearrangement on the daily routine programmes of inmates is made to facilitate their preparation for examination. Needy inmates may apply for financial assistance from a statutory fund donated by the public specially set up for their education pursuits should they encounter financial difficulties.

#### 6. Industries and Vocational Training (I&VT)

The CSD keeps inmates purposely and gainfully occupied for maintaining the stability of penal institutions. Many inmates might have sluggish working attitudes or might be reluctant to find a job before they are imprisoned. To correct their attitudes, we arrange work for adult inmates according to law with emphasis on regular living style and good working habits. In the pursuit of rehabilitation, we help them reintegrate into society through acquisition of skills in industrial work and vocational training to enhance their employability. For this reason, provision of vocational training to inmates is an important component of the CSD’s rehabilitation regime.

For young inmates, half-day compulsory vocational training including technical, commercial and service industry are provided to facilitate their smooth re-integration into the community. Equal importance is placed on theoretical and practical aspects of the curriculums which prepare them for pursuing further training after release. For adult inmates, they, engaged in industrial production, are trained to acquire necessary skills. Where appropriate, CSD helps them obtain skill accreditation by enrolling them in relevant Intermediate Trade Tests conducted by vocational training organizations, or applying through the Recognition of Prior Learning Scheme under the Hong Kong Qualifications Framework. Besides, in order to enhance inmates' competitiveness in the labour market with promising employment opportunities after discharge, we, in recent years, have been adopting a proactive approach to collaborate with professional training bodies providing more than 40 diversified and market-oriented vocational training courses on a full-time and part-time voluntary basis, including dim sum making, pet grooming, bar bending, and beauty care, etc., which keep pace with developments in the community. To tie in with the employment situation in the market, we will continue organizing more market-oriented vocational training to help inmates enhance their professional skills with recognized qualifications and be considerably well paid.

#### 7. Religious Services

Our programmes are also enriched with religious and spiritual dimensions with the assistance of religious bodies. Through the Correctional Services Chaplain, Honorary Chaplains and volunteers from prominent religious organizations, a wide range of religious services such as teaching classes, counselling groups, religious worships, masses presided by Head of the Church, and so on can be offered to the interested prisoners regardless of their religious affiliations. We believe the effort of our religious partners can boost the harmony of the custodial environment and thus lighten the prison atmosphere.

#### 8. Recreation Activities

A wide range of recreational activities is organized to promote the physical and mental health of the inmates so that they will be able to meet the demands of outside environment upon discharge. The activities include basketball, volleyball, table tennis, Chinese billiards, Chinese chess, library book reading and television watching, etc.

#### 9. Family Support

With family support, inmates could uphold their determination to be good people. In order to improve the communication between young inmates and their families, and to encourage their family members' participation in rehabilitation, the Inmate-Parent Programme<sup>2</sup> is implemented for them. Furthermore, to build up close relationships between inmates and their families as well as their self-esteem, Certificate Presentations on inmate's academic result with their family members taking part are held in various institutions.

#### 10. Community Engagement

The Personal Encounter with Prisoners Scheme (PEPS) has been in place since March 1993. Being integrated as an initiative under the Rehabilitation Pioneer Project (RPP)<sup>3</sup>, the PEPS aims to generate attitudinal and behavioural changes among youths through activities like visits to correctional institutions and face-to-face discussions with rehabilitated persons, e.g. DATC inmates' past experience sharing during the program. Inmates are arranged to share the detriment of drug abuse and their rehabilitation experience with visiting students in RPP and thereby enhance their determination to start anew. By sharing their past experience and assuming the role of "life coach", inmates themselves could also uplift their self-confidence and positive self-identities as models for the younger generation. It also develops their sense of contribution to the society.

### **C. After Discharge**

Reintegration into society does not cease but begins at the completion of detention period in DATC. Various measures are administered and implemented to facilitate reintegration and engage community

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<sup>2</sup> The parents of young inmates are invited to the institutions to have familiarization visit to the facilities and participate in inmate-parent groups organized by rehabilitation unit officers and clinical psychologists.

<sup>3</sup> In May 2008, the CSD launched the RPP, an integrated series of enhanced public education initiatives. The objectives of the RPP are to promote crime prevention by advocating the importance of leading a law-abiding and drug-free life among young people as well as enlist their support for offender rehabilitation.

support for accepting the return of rehabilitated illicit drug users.

#### 1. Statutory Supervision

*Cap.244 S4(5):*

*“The Commissioner may order that a person released from an addiction treatment centre shall, for a period of 12 months from the date of his release, be subject to supervision by such organization or person.....”*

To facilitate inmates’ re-integration into society upon discharge, one-year statutory supervision is provided for DATC inmates. Rehabilitation Officers help inmates in the rehabilitation process and the reconciliation of any conflicts with their families. They are also responsible for monitoring the case during the supervision period. To prepare for effective supervision, Supervising Officers strive to foster a relationship of mutual trust with inmates and their families while the inmates are still in custody. They also offer inmates appropriate support and guidance to help them adapt to the institutional regime. Through regular contacts, home visits, work / school visit, job referral, community resources referral, supervisions, counselling as well as crisis intervention during supervision periods, the supervisees are assisted in leading law-abiding and decent lives. Moreover, to ensure that they have not relapsed to drug abuse, urine specimens will be tested regularly and surprisingly. During the period of supervision, a breach of the conditions of the supervision order may result in the supervisees being recalled for a further period in a penal institution. Furthermore, we also coordinate with community partners to help bring changes to discharges and supervisees under the “Continuing Care Project”. Since 2004, we have made over 2,000 referrals for the needy discharges who have completed statutory supervision to 7 recognized NGOs with specific target groups including women, persons with drug abuse history, clients with family issues, etc.

An initiative worth mentioning is the Half-way House Programme, which is an extension of the rehabilitative efforts sustained in DATC. Following release, supervisees in need of a period of transitional adjustment are arranged to reside in a half-way house from which they go out to work or school during daytime and return at night. It seeks to cultivate a sense of self-discipline and good working habits in a structured and supportive environment.

### **D. Prevention**

#### 1. Community Education

Facilitating changes in offenders to rehabilitate certainly and directly helps reduce re-offending behaviour and crimes. But to move one step forward, educating the youth and students not to commit crimes by utilizing our resources and the distinct nature of the corrections profession could help crime prevention from the source.

To achieve this, we have been running the Rehabilitation Pioneer Project since 2008 for secondary school students and the youth. We seek to disseminate the messages of leading a law-abiding and drug-free life as well as supporting offender rehabilitation through a series of activities<sup>4</sup>. Among them, “The Reflective Path” programme is a new initiative launched. We use a discontinued prison as an education site to provide simulation of real situations in prison for participants to experience custodial life such as mock court hearings, simulated reception procedures, short stays in dormitories and single cells, foot-drill training, simulated work groups and end up with a sharing session by a prisoner. Our aim is to let them experience the bitterness of prison life and thus, make this the one and only chance in their lives of being sentenced to imprisonment. In 2017, attendance was over 39,000, including young people and other participants in various activities. The programmes were well received with positive responses.

#### 2. Publicity Campaign

It is one of our endeavours to engage more and more community support for offender rehabilitation. Since 1999, structured publicity activities have been promulgated to bridge persons in custody and society. Coupled with the support of over 80 Non-Government Organizations (NGOs) to provide counselling and a

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<sup>4</sup> The CSD has enriched and developed more RPP initiatives, which now include education talks, the Personal Encounter with Prisoners Scheme (PEPS), the Green Haven Scheme (GHS), visits to the Hong Kong Correctional Services (HKCS) Museum, Student Forums, RPP Extended Training Camp, and the Drama and Musical Performance of “Creation and Rehabilitation” and Reflective Path.

series of cultural, religious and recreational projects, activities such as “District Fight Crime Committees District-based Publicity Activities on Offender Rehabilitation”, “Thank-you NGO Month”, “NGO Forum and Award Presentation Ceremony for Volunteers of CSDRVG” highlights the importance of collaborative efforts with members of the community and NGOs to accept and help offenders rehabilitate. A portion of NGOs and charity organizations also provide special counselling services for rehabilitated persons who have had associations with gangs and triad society.

### 3. Research and Development

The CSD will broaden and deepen research capacity by reshuffling the resources to expand the scope and diversity of the research studies, strengthening the capacity in data collection and analysis and enlisting research support from external parties to identify areas of improvement in correctional practices. Local criminals are all products of a community. We hope to work with universities and other professional bodies, to make use of this unique database to find out common social issues, juvenile behaviour and deviance distinctive to Hong Kong, and in the long run help the development of Hong Kong in terms of crime prevention. Prisons may serve as a research centre to feedback important messages to the community and inspire us to improve. In 2017, a “Consultancy Study on Social Costs of Crime” was conducted with a local tertiary institution to explore the harms that crimes could bring to society, such as the economic or other losses associated with criminal activity to society as an entity and individual, including those victims, offenders and their families. This is the first consultancy study in Hong Kong and in Asia. It adopts evidence-based methodology to evaluate the effectiveness of the CSD’s work by quantifying in monetary terms the social cost arising from crime and the cost saved through rehabilitation and community education. The cost saved amounts to \$74.3 billion in five years.

On the other hand, in recent years, there has been a rapid change of bio-psycho-socio factors related to drug abuse (e.g. types of drug substances abused, demography of drug abusers, and changes in economic background). In order to combat drug problems, the CSD is conducting another research project, namely the “Review and Development of Rehabilitation Programmes provided for Drug Addiction Treatment Centre Programme” to review the matching programmes under Risks and Needs protocol, vocational training courses and counselling programmes, particularly on exploring effective ways to tackle recallee problems, such as risk factors related to their relapse to drug.

## II. CONCLUSION

The CSD, as “Society’s Guardian”, “Rehabilitation Facilitator” and “Community Educator”, plays a vital role in protecting public safety and helping Hong Kong to be one of the safest cities in the world by safeguarding the integrity of the criminal justice system. For this, effective implementation of rehabilitation programmes is required. Not only does it benefit offenders themselves and their families, but also our community in the long run.

On top of safe custody, the CSD implements integrated and appropriate rehabilitation programmes ranging from pre-sentence assessment and custodial programmes to statutory supervision after discharge. The effectiveness of facilitating offenders’ re-integration into the community hinges not only on appropriate rehabilitation but also on offenders’ responsivity to counselling / treatment and their determination to start anew. Likewise, family and community support are crucial in the process of rehabilitation.

Furthermore, we proactively promote rehabilitation work by collaborating with over 80 NGOs to organize diverse activities for inmates and disseminate the messages of “leading a law-abiding and drug-free life as well as supporting offender rehabilitation” to society for community education in crime prevention.

The CSD will continue striving to strengthen the co-ordination and collaboration with all sectors of the community, and to broaden and deepen research capacity for formulating long-term development of rehabilitation programmes for a safe and inclusive Hong Kong.



# TREATMENT OF ILLICIT DRUG USERS IN KOREA

*Na Gun Young\**

## I. INTRODUCTION

There have been studies about the treatment of prisoners with drug dependence, because these people are one of the most vulnerable to the temptation of drugs even if they finish their times in the correctional facilities and are most likely to recidivate.

Therefore, it is very necessary to treat them physically and mentally while they are incarcerated. Based on the recognition that drug addiction is a disease that must be cured, Korea Corrective Service created a psychotherapy division at the Ministry of Justice for enhancing the efficacy of treatment and modified relevant laws and regulations while running various psychotherapy programmes. As a result, there has been gradual progress for the treatment of inmates with drug dependence.

However, there are still challenges lying ahead of us such as reducing the population of correctional facilities and so on.

## II. CURRENT SITUATION OF THE TREATMENT OF ILLICIT DRUGS USERS IN KOREA CORRECTIVE SERVICE

### A. Establishment of the Psychotherapy Division at the Ministry of Justice

In Korean society, there have been constant drug involved accidents, and these have posed severe threats to the safety of the Korean people. Inmates with a history of drugs are likely to suffer from anxiety, depression, and cause disturbances in the correctional facilities. In regards to recidivism, these people are likely to recidivate at the highest rate. And at some point, we came to realize that drug dependence is a disease that needs treatment and care. Therefore, Korea Corrective Service introduced 'individual psychotherapy' rather than 'general education' to these inmates, putting treatment as the first priority, and established the psychotherapy division at the Ministry of Justice (September 2016). As a subsequent measure, Korea Corrective Service created 11 psychotherapy centres at the correctional institutions and had relevant teams in place at 52 correctional facilities.

### B. Modification of Various Laws and Regulations

On June 2018, a new law called the "Act On Medical Treatment and Custody" was enforced, paving the way for the alternatives to criminal sanctions or imprisonment for drug users, making it possible to provide them with community based treatment.

#### 1. Relevant Law on Alternative Measures to Imprisonment

The Act on Medical Treatment and Custody law was enforced on June 2018. And according to the law, the court can declare a sentence of medical treatment and custody by means of judgement when necessary. A prosecutor may apply only for medical treatment and custody without instituting a public prosecution in cases as follows:

##### *(i) Prosecutors could resort to alternative measures to imprisonment*

Where an accusation or complaint does not exist or is cancelled in a crime which is arguable based on the accusation or complaint, or a victim has expressed a wish not to have the offender punished or has retracted his/her wish to have the offender punished in a crime which is not arguable against the explicitly expressed

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will of the victim;

*(ii) Other special circumstances for the prosecutor to resort to alternative measures*

Where the prosecutor makes a decision not to prosecute the suspect under the Criminal Procedure Act.

2. Establishing Internal Regulations

Korea Corrective Service established relevant regulations and manuals as the new division was created, and main contents of the regulations are as follows:

The Central Psychotherapy Committee was established to assist with counselling in regards to the treatment for drug/behavioural addicts, sexual assaults and so on. And all the correctional facilities started to offer customized counselling to the inmates (based on the severity of illness).

**C. Running Various Psychotherapy Programmes**

Previously, instructors gave lectures to inmates, transferring knowledge, and there were not specialists involved such as clinical psychologists and counsellors. But, nowadays, there are 3 programmes (Basic, intensive, in-depth programme), and inmates with the highest drug addiction join in the in-depth programme, and they receive more than 130 hours of psychotherapy treatment, interacting with psychiatrists and mental health nurses.

1. The Contents of Treatment

Specialists such as clinical psychologists conduct personal interviews with each inmate having drug problems and help them become aware of the importance of rehabilitation through counselling, and they continue to consult with inmates while prisoners go through all the therapy, helping them adapt to the prison settings. There are various programmes: the effects of drugs and alcohol (knowledge about drugs, and the pursuit of right values), drug-related crimes (understanding the connection between drugs and crimes, origins of crimes, and the ways to avoid drug temptation), finding alternatives (what to do when temptation rises, and work-life balance), yoga for stress relief, tea ceremony, and various treatment activities.

2. The Effects of Treatment

*(i) The new medical interventions of Korea Corrective Service*

The new medical interventions of Korea Corrective Service have brought significant efficacy in terms of inmates' attitudes while in prison. The constant treatment helps inmates become aware of the need to change, and this change of attitude can be a turning the point, avoiding the vicious cycle of incarceration.

*(ii) The change of disciplinary cases*

According to an internal study conducted by Korea Corrective Service, the rate of disciplinary cases changed significantly from 19.7% to 4.5% after the treatment programme.

*(iii) The change of self-confidence of inmates with drug dependence*

With the help of treatment programmes, inmates are motivated to find intrinsic motivation and have confidence to live as responsible members of society. According to the study conducted by the Korea Corrective Service, self-confidence of inmates with drug problems saw a significant increase from 66% to 72.9%, and that of inmates with alcohol problems went up dramatically from 63% to 74.17%.

*(iv) Helping inmates find peaceful lives in correctional institutions*

Various activities and counselling by the psychotherapy team help inmates relieve stress and manage peaceful lives at the institution, ultimately realizing a just society free from crimes.

**D. Case Study of Psychotherapy**

According to the basic psychotherapy for the treatment of prisoners with drug dependence, which was conducted by Daegu Detention Center (from March 21-27, 2018), we came to know that there was a big change of personal attitude to drugs, and prisoners became aware of the danger of drugs and their impact of their lives.

The main contents of the programme are as follows: Fostering motivation (based on interviewing prisoners), sharing personal opinions, setting up personal goals, problem recognition, personal review and so

on.

After prisoners finished their programmes, we conducted subsequent prisoners' review whose contents are as follows:

Prisoner A: I came to realize how dangerous drugs are and have a chance to reflect on my life again. I would like to return to my family as early as possible, and never try drugs again, living as a responsible member of society.

Prisoner B: I came to have an interest about the function of the brain and how drugs could affect my brain. And this training became my turning point for a better life.

Prisoner C: I was addicted to drugs and alcohol, but I did not know how much drugs could have an impact on my life. With the help of counsellors and staff, I came to know a lot about drugs and their harmful effect on me. I feel very thankful for all the sincere attention to me.

## **E. Relevant Statistics**

### **1. Prison Population**

As of August 2, 2018, the total number of prisoners was 54,739 (35,570 convicted, 19,169 unconvicted), and the number of drug-related prisoners was 3,548 (2,092 convicted, 1,456 unconvicted).

### **2. Recidivism (by Crime)**

According to the statistics issued by the Ministry of Justice (Judicial Yearbook 2016, 2017), the recidivism rate of drug-related inmates recorded highest among other crimes (42.3% in 2011, 49.6% in 2012).

## **F. Relevant Laws (About the Treatment of Drug-Related Inmates)**

### **1. Administration and Treatment of Correctional Institution Inmates Act**

#### *(i) Article 104 (Management of Persons who Commit Crime Related to Narcotics, etc.)*

(a) With respect to prisoners prescribed by Ordinance of the Ministry of Justice, such as persons who commit crimes related to narcotics and organized violence, a warden may manage them separately from other prisoners to maintain security and order of a correctional institution, as prescribed by Ordinance of the Ministry of Justice, by preventing them from contacting other prisoners, keeping safe guard of them strictly, or taking other measures.

(b) In cases of managing prisoners under paragraph (a), each warden shall not limit the basic treatment to them.

### **2. Enforcement Decree of the administration and Treatment of Correctional Institution Inmates Act**

#### *(i) Article 112 (Inspection of Wards, etc.)*

Each warden shall have a correctional officer periodically inspect the wards and places of work of prisoners and other places where prisoners live (hereafter referred to as "wards, etc." in this Article): Provided, That any warden may have a correctional officer frequently inspect the wards, etc. of prisoners suspected of hiding the prohibited goods referred to in Article 92 of the Act and prisoners determined by Ordinance of the Ministry of Justice, such as prisoners who committed crimes related to narcotics and organized violence.

#### *(ii) Article 66 (Censorship of Content of Correspondence)*

(a) When a prisoner who falls under any of the following cases exchanges correspondence with another prisoner pursuant to Article 43 (4) 4 of the Act, a warden may censor the contents thereof.

(b) Where the relevant person is a prisoner determined by Ordinance of the Ministry of Justice, such as a criminal of narcotics or organized violence under Article 104 (1) of the Act.

### III. CHALLENGES AND PROPOSED SOLUTIONS

#### A. Challenges

##### 1. Overcrowding

As of June 2017, there were 57,754 prisoners at the 53 Correctional Facilities, exceeding 22.9% of correctional capacity. (As of August 2nd, 54,739 prisoners, exceeding 14.5%) prison overcrowding is one of the biggest obstacles for the edification of convicted prisoners and their sound rehabilitation into society, and without the minimum space, prisoners with cramped accommodation are likely to be violent, ultimately leading to higher recidivism. If this situation persists, prison authorities have to focus on the management of the facilities, rather than treatment.

##### 2. Security Reasons which Make It Difficult for Prison Authorities to Provide Vocational Training and Jobs to Drug-Related Inmates

According to the study, prisoners who participated in education programmes while incarcerated showed lower rates of recidivism<sup>1</sup>. However, as for the correctional authorities, it is very hard to for each warden to determine types of work to be assigned to drug-related inmates because the warden may manage them separately from other prisoners to maintain security and order of a correctional institution, as prescribed by Ordinance of the Ministry of Justice, by preventing them from contacting other prisoners, or taking other measures to prevent drugs from coming into the prisons.

##### 3. Lack of Qualified Staff

Korea Corrective Service hired many talented clinical psychologists, and so on, but still, there has been a shortage of staff for the treatment of inmates, both physically and psychologically.

##### 4. Nimby Syndrome (Not in My Backyard Syndrome)

Korea Corrective Service has tried to build additional correctional facilities but often faces strong resistance from local citizens claiming that building new prisons in their communities violate their pursuit of happiness and the mere presence of them could pose big threats to their security. (Even though there was a survey proving that crime rates near the prisons have been dramatically lower than any other regions).

#### B. Proposed Solutions

##### 1. Reducing Overcrowding in Correctional Facilities

Overcrowding has been one of the biggest tasks to solve by the Korea Corrective Service. In December 2016, the Constitutional Court of Korea ruled that it is unconstitutional for inmates to live in less than one square meter, declaring it a clear violation of a human's pursuit of happiness, and basic rights. And as a subsequent ruling, the civil court ruled that the Korean Government should compensate the prisoners whose rights were infringed by living in cramped spaces.

To address this problem, the Korea Corrective Service initiated an overcrowding committee at the Ministry of Justice while closely cooperating with prosecution and relevant authorities such as courts. As a result, there has been a remarkable decline of prison population. Still, the present number of prisoners exceeds its capacity by 14.5% (As of August 2, 2018)

##### 2. Building Rehabilitation Facilities for the Treatment of Drug-Related Inmates

To maximize the efficacy of treatment, I think that it is advisable to build rehabilitation facilities and centres so that inmates can focus on their training.

##### 3. Forming a National Consensus

For Korea Corrective Service to push forward its projects such as building rehabilitation centres and so on, it is very important to form a national consensus. Therefore, we need to publicize the importance of treatment for inmates with drug dependence while emphasizing better treatment of general prisoners. If Korea Corrective Service continues to do so, the Korean people will become more aware of the needs to cure drug-related prisoners, not just punishing them.

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<sup>1</sup> A United States-based three-state recidivism study (Steurer, Smith & Tracy 2001)

4. Inauguration of Central Correctional Agency Independent from the Ministry of Justice

For the effective management of corrective service and sound rehabilitation of inmates into their community as responsible members of society, I believe that it is very necessary for Korea Corrective Service to be a Central Correctional Agency independent from the Ministry of Justice.

#### **IV. CONCLUSION**

Inmates are the ones who are separated from the society but will eventually return to the society as responsible members and will become our neighbours. Therefore, it is in our best interest for them to be free from illness and have confidence through vocational training, necessary treatment and so on.

According to the First Article of Administration and Treatment of Correctional Institution Inmates Act, the purpose of this Act is to promote correction and edification of convicted prisoners and their sound rehabilitation into society and to prescribe necessary matters concerning treatment and rights of prisoners and operation of correctional institutions. Therefore, we have our own duty to return prisoners to their community armed with confidence and good health. To achieve that goal, there are challenges lying ahead of us. I do not think that it is an easy task.

However, if we put our hands together and move forward, I believe that we can make our society or our world better. Drug addiction is a disease that must be cured, and we can do better jobs if we share our knowledge and wisdom together.

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## REPORTS OF THE COURSE

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### GROUP 1

#### EFFECTIVE TREATMENT MODALITIES AND INTERVENTIONS FOR INCARCERATED DRUG USERS

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### I. INTRODUCTION

The 170<sup>th</sup> International Training Course held by the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) is aimed at creating a platform that offers international views regarding improving effective treatment of illicit drug users. During group discussions, which are a major component of the above-mentioned training programme, participants were called upon to express their expert opinion on the following topics: A. Treatment Methods in Prison; B. Coordination and Cooperation between Prison and Community Organizations. Illicit drug users are viewed as the most at-risk population with multiple health problems encompassing the physical, mental, social and psychological dimensions as a result of prolonged precarious lifestyles. Furthermore, this population's risk factors amplify when entering correctional settings

### II. ISSUES AND CHALLENGES

Challenges were noted to differ from country to country, yet several similarities were agreed upon during extensive discussion sessions:

1. **Lack of Trained Personnel:** Treating drug users within correctional settings requires adequately trained personnel to effectively and efficiently provide optimal treatment interventions. However, it has been unanimously noted that lack of knowledge and training among the correctional staff in specific rehabilitation approaches will contribute to ineffective treatments and high relapse/reoffending rates.
2. **Specialized Assessments:** Illicit drug users require specific assessments to identify the risks and needs, because they have multifactorial social problems and chronic health disorders. However, comprehensive assessment tools that focus on detecting the multiple risks are lacking. Furthermore, the group noted that most existing assessment tools are not gender and age specific.
3. **Diversity of Drug Use Programmes:** Evidence-based treatments such as relapse prevention programmes, cognitive behavioural therapy and motivational interviewing are actively utilized within the correctional settings. However, since drug users have multifactorial health disorders, the public health approach of harm reduction is lacking within most correctional treatments as most programmes are not diverse. Additionally, currently implemented programmes lack systematic monitoring and evaluation mechanisms to assess effectiveness of interventions and training.

4. **Lack of Community Support and Partnership:** Considering that the UNODC strongly advocates for alternative treatment for drug users, the lack of strong community support and partnership with correctional services decreases the success rate of treatment, as an extensive part of drug use treatment is the provision of community-based treatment programmes.

### III. BEST PRACTICES

1. **Training:** Mandela Rules 75-76 emphasize training for correctional officers. Based on best practices discussed, it is suggested that every country is required to conduct a training-needs analysis to have adequately trained personnel for drug treatment programmes. Training should focus on enhancing assessment skills and optimal service delivery. Training strategies should comprise the following:
  - a. Specific training from external expertise: (selecting officers to attend academic training at universities and professional training bodies to obtain relevant qualifications). Hong Kong Correctional Services Department provides for selected officers to obtain certificates in Social Work for Correctional Service.
  - b. In-service training provided by internal experienced staff and external experts (legal, medical, social, community-based organizations, like DARC in Japan).
2. **Drug Use Assessments:** Risk and needs assessments are critical for early detection. Assessment tools for drug users should be able to assess the risk of relapse and reoffending in order to match programme intervention intensity, while also detecting the risks of infectious diseases (HIV, TB, and Hepatitis) and mental health disorders. The UNODC recommends the use of the SBIRT approach as a screening protocol to identify people with drug use in non-specialized healthcare settings such as corrections. The approach has been proven effective by SAMHSA (US)<sup>1</sup>, and it allows flexibility in utilizing assessment tools. Furthermore, ASSIST<sup>2</sup>, DAST 20<sup>3</sup> and C-SRRS<sup>4</sup> are considered as appropriate tools to use during screening.
3. **Diversified Programme Options:** The unique multifactorial risks and needs of drug users require diversified rehabilitation programmes as follows.

Psychological	Social	Pharmacology
<ul style="list-style-type: none"> <li>- Cognitive Behavioural Therapy (use virtual reality stimulation and role play-Dr Zhang)</li> <li>- Self Help Groups - 12 steps programmes</li> <li>- Behavioural Therapy-positive reinforcement</li> </ul>	<ul style="list-style-type: none"> <li>- Family involvement (Probation Office Family Programme-Japan)</li> <li>- Religious support / activities</li> <li>- Art, Physical Exercise, Cultural Activities</li> <li>- Educational and Vocational skills</li> <li>- Alternative programme (Weekend Release-Samoa)</li> <li>- Cooperation with external bodies in prison (DARC-Japan)</li> </ul>	<ul style="list-style-type: none"> <li>- Detoxification treatment (Buprenorphine-Mauritius)</li> <li>- Substitution treatment and Maintenance therapy (Methadone-Mauritius)</li> <li>- Related Pharmaceutical treatment (Mental Health Treatment-Japan / Brazil)</li> </ul>

It is suggested that voluntary treatment is the ultimate goal; however, mandatory treatment for drug users within correctional facilities is equally important under special circumstances, such as life-threatening

<sup>1</sup> Pg. 4 Screening, Brief Intervention and Referral to Treatment in Behavioral Healthcare, Substance Abuse and Mental Health Services Administration, US

<sup>2</sup> Pg. 21 International Standards for the Treatment of Drug Use Disorders, UNODC

<sup>3</sup> Pg. 363-371 The Drug Abuse Screening Test, Addictive Behaviours, Skinner. H.A. (1982)

<sup>4</sup> Development of the Correctional Stimulant Relapse Risk Scale, Yamamoto *et al* (2011)



situations, etc., as stipulated in the Drug Dependence Treatment: Interventions for Drug Users in Prison by the UNODC<sup>5</sup>.

4. **Community-Based Partnership:** Mandela Rules 107-108 support the early involvement of community-based organizations in treatment programmes, in order to coordinate the offenders' treatment effectively. Community partnership should be adopted as follows:
  - a. The throughcare approach provides for continuous assessment and assistance from the first contact with the criminal justice system for drug users. It entails providing pre-sentencing, during incarceration and aftercare treatment and support from community and governmental agencies. There is a publication validating the effectiveness of this treatment method in the U.K.<sup>6</sup>
  - b. Aftercare is an essential component to assist drug users to reintegrate into society after release. The Volunteer Probation Officer approach in Japan could be considered as a good practice because community members actively participate in the aftercare of drug users by establishing halfway house services.
  - c. Public awareness is instrumental to enhancing effectiveness of rehabilitation programmes for drug users as it helps appeal for acceptance and support in the community. A good practice is engaging community stakeholders through utilizing channels such as social media, publications, symposiums and rehabilitation ambassadors (Rehabilitation mascots, Hogo Chan and Sara Chan).

#### IV. CONCLUSION AND RECOMMENDATIONS

In conclusion, the best practices mentioned above are evidence based and are reported to have great impact on the treatment of drug users in several countries. However, it is also argued that ensuring effectiveness of recommended treatment interventions requires a systematic evaluation process. Additionally, gender and age sensitivity should be focal considerations during the assessment and treatment phases.

The most important recommendation is for policymakers to acknowledge and align existing criminal justice laws with current public health policies, including harm reduction strategies (Portugal is an international benchmark)<sup>7</sup>.

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<sup>5</sup> Pg. 28 Drug Dependence Treatment: Interventions for Drug Users in Prison, UNODC

<sup>6</sup> Pg. 60 Drug Dependence Treatment: Interventions for Drug Users in Prison, UNODC

<sup>7</sup> Ms Anja Busse Presentation on 3 Sept 2018 Treatment for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment

## GROUP 2

### DIVERSION OPTIONS AND TREATMENT METHODS IN THE COMMUNITY SETTING

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## I. INTRODUCTION

### A. Framework of Discussion

Diversion is a form of approach in which offenders join specified programmes that help people to reintegrate successfully into society. These programmes can be done by police, prosecutors and courts depending on each country. Many evidence-based studies imply that alternative measures to imprisonment can produce benefits for the treatment of drug offenders. Therefore, the group discussed how the criminal justice system could create and implement effective alternatives to imprisonment and how effective initiatives for treatment and reintegration could be offered in the community setting.

### B. Our Target

In this group discussion, alternative measures were targeted to drug users/abusers, drug peddlers and drug users committing petty crime under the influence of drugs. Drug traffickers shall not be targeted for diversion options in the community because drug traffickers in the community can remain a potential threat to society.

## II. ISSUES AND CHALLENGES

Drug-related crimes are considered to deserve relatively heavy punishment in many countries, even for the crime of personal use. This is because use of illicit drugs harms not only the users' mental and physical health but also causes harm to society by encouraging other crimes. Also, the drug money can be used to increase funds of organized anti-social groups. In some of the participant countries, many drug addicted people are not willing to get help, because drugs are considered punishable crimes, and they are afraid of getting involved in the criminal justice system.

To enhance the effective treatment of drug addicted people in the criminal justice system, collaboration among inter-governmental agencies should be encouraged, but any information sharing about the people seeking treatment outside of the criminal justice system should not take place. Therefore, the group discussed promising ways to promote public understanding and create an environment where drug addicts are free to visit and receive treatment, while addressing many challenges such as social stigma, staff training, clearing obstacles to continual treatment, and lack of facilities, interagency collaboration and confidentiality.

### III. BEST PRACTICES

#### A. Benefits of Alternative Measures and Their Impact on Relevant Stakeholders

Alternative measures to imprisonment should be taken into consideration for drug users. Alternative measures bring big advantages in reducing prison populations and saving money for managing correctional facilities while reducing the risk of infectious diseases. Also, it is shown that imprisonment affects the economic status of the inmate's family and, what is worse, after release from prisons, people have low prospects for employment, perpetuating the vicious cycle of incarceration.

#### B. Our Ideal Model for Diversion

##### 1. Pre-Trial Stage

Pre-trial diversion can be taken into consideration at two different levels:

- (a) Police—for offenders with no previous criminal records: advice, warning, fine and bail can be implemented.
- (b) Prosecutor—for offenders with minor previous offences: house arrest, bail and suspension of prosecution can be used.

##### 2. Trial Stage

During the trial stage, a judge can employ various options such as fine, probation, suspension of execution of sentence, parole and so on.

##### 3. Post-Trial Stage

In the post-trial stage, probation and parole officers conduct relevant diversion options such as day parole, weekly parole and so on. At each stage, relevant stakeholders such as police, prosecutors, and judges can decide to put the offender under community-based treatment. Community-based treatment is mainly based on assessment that needs to be carried out prior to trial to identify the most effective method of rehabilitation in the community.

#### C. Other Options

Group 2 unanimously agreed that each country should implement legal reform, so that police and prosecutors are empowered to discharge an offender pre-trial or impose non-custodial measures in minor cases. The rules should encourage the use of non-custodial sentencing options including warning, conditional discharge, referral to non-institutional treatment and so on depending on each country's situation.

The group agreed that drug misuse is a complex problem which needs a multidimensional approach, and each country should work hard to employ and coordinate various opinions of many stakeholders in the treatment of drug offenders. Also, judges, prosecutors, treatment personnel along with probation officers must work together in providing alternative measures to imprisonment. To effectively cope with drug problems, each governmental agency should closely cooperate with each other while guaranteeing the confidentiality of people in the non-criminal justice system. Also, those seeking treatment on a voluntary basis should be given encouragement in a way that is more tailored to the needs of each person. As the offender is considered a patient, a holistic approach, in terms of social, psychophysical and economical, educational aspects is essential for selecting a proper diversion option.

### IV. CONCLUSIONS AND RECOMMENDATIONS

The group agreed that drug addiction is a disease that needs to be cured and a continual monitoring system should be in place in connection with community resources. Therefore, it is very necessary that each country should utilize community resources such as volunteer probation officer systems, village mediation, village community and so on.

#### **Summary of Recommendations:**

##### 1. Legal reforms adopting diversion methods

Since government officials cannot carry out their duties without a legal basis, it is necessary to introduce new laws and regulations creating diversion options.

##### 2. Training and skills development of officers

Trained officers are prerequisites for the efficient management of community-based treatment as well as the penal setting for the effective treatment of drug addicts, since diversion could be a new practice in some countries; the officers and personnel involved in the area need to be well trained and skilled.

3. Community outreach programmes / public awareness  
Continuous education about drugs should be accessible to all interested people, since without public support, it is impossible to implement effective community-based treatment and initiate appropriate legal reforms adopting diversion methods.
4. Countering stigmatization and prioritizing community rehabilitation  
Each government should work on eliminating stigmatization of people with drug problems, so that they can live as responsible members of society, while making it one of their priorities to build community rehabilitation centres and manage them efficiently.

Finally, the group recommended that all countries should join hands to solve drug problems.

**PART TWO**  
**RESOURCE MATERIAL SERIES**

**No. 107**

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**Work Product of the 21st UNAFEI UNCAC Training Programme**

**Combating Corruption through Effective Criminal Justice Practices,  
International Cooperation and Engagement of Civil Society**

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**UNAFEI**

### THE STRATEGY AND EXPERIENCE OF EUROJUST REGARDING ANTI-CORRUPTION MEASURES

*M. Sc. Boštjan Lamešič\**

#### I. INTRODUCTION

Corruption has many complex social, political and economic implications and its criminal activity is taking place both within state borders and beyond them. Nowadays it is not unusual for perpetrators to commit corruption-related criminal offences in one State, hide or launder their illicitly gained proceeds in a second State and utilise the means of communication (telephone, postal service, internet) and the financial system of a third State. In this way, corruptive criminal offences are becoming transnational. Consequently, the law enforcement agencies and prosecution services responsible for the investigation and prosecution of such offences must have a thorough knowledge of international criminal law and its tools to properly address the challenges brought up by perpetrators whose activities affect different states. They have to know how to obtain information or evidence and assistance from another state, often in a form admissible before their domestic courts.

That is why anti-corruption measures not only fall within the remit of national politics and law making but also take the form of awareness that corruption is a problem that can only be addressed effectively by a collaborative approach between international actors.

This awareness is relatively high within the Member States of the European Union,<sup>1</sup> where 28 different national legal systems including EU law exist. This makes cooperation between law enforcement and judiciary challenging but necessary. Bear in mind that between Member States there is free movement of goods, people (no border controls), services and capital, but there is no EU police or EU prosecutor because jurisdiction ends at the borders of the Member State(s).

#### II. EUROJUST AND ITS STRATEGIC AND OPERATIONAL ANTI-CORRUPTION MEASURES

The awareness that corruption could be tackled by a collaborative approach within the EU was also recognised by EU Member States in 2002 with the establishment of the European Union's Judicial Cooperation Unit, or a body of the European Union which has legal personality and is capable of supporting national authorities in the fight against corruption in its international dimension<sup>2</sup>. This Unit referred to as Eurojust was set up by Council Decision 2002/187/JHA and further strengthened by Council Decision 2009/426/JHA. Eurojust is made up of 28 National Members who are experienced EU prosecutors, judges or police officers of equivalent competence<sup>3</sup> from each Member State and who are required to have their regular place of work at the premises of Eurojust, which is in The Hague, the Netherlands.

The main mission of Eurojust is to stimulate and improve the coordination of investigation and

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<sup>1</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (Brexit: For the time being, the United Kingdom remains a full member of the EU and rights and obligations continue to fully apply in and to the UK).

<sup>2</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (Official Journal L 063 of 6 March. 2002) and further strengthened by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime ((Official Journal L 138 of 4 June 2009) hereinafter: Eurojust Decision).

<sup>3</sup> They could be supported by their Deputies, Assistants, Seconded National Experts or European Judicial Network Trainees.



prosecution among the competent judicial authorities of the European Union's Member States when they deal with serious cross-border and organised crime<sup>4</sup>. Eurojust may also assist investigations and prosecutions concerning a particular Member State and a non-Member State if a cooperation agreement between Eurojust and the non-Member State has been concluded or an essential interest in providing such assistance exists<sup>5</sup>. Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust<sup>6</sup>. Eurojust has concluded such agreements with Switzerland, Montenegro, Norway, the United States of America and Ukraine to second their liaison officers or liaison magistrates to Eurojust. There is also an additional tool commonly used for improving cooperation between Member States and third States through Eurojust and this takes the form of the Eurojust Contact Points in third States<sup>7</sup>, but their involvement does not provide for the possibility of exchanging operational information, including personal data<sup>8</sup>. Eurojust is not limited to establishing and maintaining cooperative relations only with third States, but can also conclude agreements with organisations such as international organisations governed by public law, other bodies governed by public law based on an agreement between two or more States and with the International Criminal Police Organization (Interpol)<sup>9</sup>. So far Eurojust is also closely cooperating with several organisations<sup>10</sup>.

Eurojust is committed to supporting the Member States prosecutorial and judicial authorities in their efforts to fight corruption. This can be done through support at the strategic level and at the operational level.

### A. Strategic Anti-Corruption Measures

Support provided by Eurojust on a strategic level refers to the hosting of meetings of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (hereinafter: Consultative Forum), at which the participants share their opinions and exchange experiences of different topics relating to the fight against different types of crime including corruption. The Consultative Forum has dealt with the topic of corruption and the problems faced by prosecutors in corruption-related cases with an international element in its meeting on 23 June 2011<sup>11</sup> and meeting on 11

<sup>4</sup> According to Article 4 of Eurojust Decision, the general competence of Eurojust shall cover the same types of crime and offences as those for which Europol has competence, such as terrorism, drug trafficking, trafficking in human beings, counterfeiting, money laundering, computer crime, crime against property or public goods including fraud and corruption, criminal offences affecting the European Union's financial interests, environmental crime and participation in criminal organisations. Additionally, for other types of offences, Eurojust may assist in investigations and prosecutions at the request of a Member State.

<sup>5</sup> Article 3(1) of Eurojust Decision.

<sup>6</sup> Article 26a(2) of Eurojust Decision.

<sup>7</sup> So far Eurojust's network of judicial contact points in third States totals 44, namely: Albania, Algeria (there is no active contact point for Algeria at the moment and Eurojust is in the process of clarifying the status of the Contact Points with the Algerian authorities, so requests for cooperation and assistance to Algeria should be channelled via diplomatic routes), Argentina, Bolivia, Bosnia and Herzegovina, Brazil, Cape Verde, Canada, Chile, Colombia, Egypt, fYROM, Georgia, Iceland, India, Iraq, Israel, Jordan, Japan, Republic of Kazakhstan (informal contact), South Korea, Lebanon, Libya, Liechtenstein, Mauritius, Moldova, Mongolia, Montenegro, Niger, Nigeria, Norway, Palestinian Authority, Peru, Russian Federation, Saudi Arabia, Serbia, Singapore, Switzerland, Taiwan (Republic of China), Thailand, Tunisia and Turkey, Ukraine and the USA.

<sup>8</sup> Matters dealt by Eurojust Contact Points are speeding up or facilitating the execution of mutual legal assistance (MLA) requests or extradition requests; ensuring communication between Eurojust and the concerned third State, and providing information on the state of play of a particular case; clarifying particular provisions of the national law or legal advice related to the legal system of the third State concerned; providing assistance on how to submit a MLA request or an extradition; facilitating the organisation or the competent authority's participation in coordination meetings or in joint investigation teams; attendance of coordination meetings at Eurojust; identifying the national competent authorities and establishing contact with them and with central authorities; solving any kind of problems occurring in the framework of judicial cooperation with Eurojust; and sending queries to Eurojust National Members on specific cases or on particular provisions of the national law of the Member State concerned.

<sup>9</sup> Article 26a(1) of Eurojust Decision.

<sup>10</sup> International Criminal Court (ICC), La Red Iberoamericana de Cooperación Jurídica Internacional (IberRed), United Nations Office on Drugs and Crime (UNODC), European Judicial Training Network (EJTN), European Union Agency for Law Enforcement Training (CEPOL), European Anti-Fraud Office (OLAF), European Union Agency for Law Enforcement Cooperation (Europol), European Commission, International Criminal Police Organization (ICPO-INTERPOL), European Border and Coast Guard Agency (FRONTEX), The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), European Union Agency for Fundamental Rights (FRA), European Union Naval Force Mediterranean (EUNAVFOR MED), European Union Intellectual Property Office (EUIPO) and European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA).

June 2014.<sup>12</sup>

At the meeting held on 23 June 2011, the Consultative Forum identified the major obstacles to investigation and prosecution of corruption-related crimes, such as problems related to gathering of evidence and its admissibility before courts; insufficient coordination of investigations that are ongoing in different Member States simultaneously; difficulties in obtaining timely intelligence information; the attention of media and the general public in cases of high-level corruption and the impact of those cases on the political situation in the country and often fragmented national systems. Best practices were also identified and recommended, for instance the usefulness of Eurojust coordination meetings and establishment of joint investigation teams (hereinafter: JIT) in cross-border cases and their more extensive use; specialisation of prosecutors to fight corruption efficiently; establishment of specialised prosecution units, training and instructions on specific problems, features and legislation on corruption should be provided for prosecutors at all levels; prosecutors should be involved early on in the investigation of the corruption-related criminal offence; prosecutors should closely cooperate with financial and other experts in relevant professions; use of covert investigative measures with respect to basic fundamental rights and increased transparency in the area of taxation and use of public funds<sup>13</sup>. The Consultative Forum also touched upon the topic of seizure and confiscation of criminal assets and concluded that seizure, confiscation and recovery of the proceeds of crime are crucial tools in the fight against serious cross-border crime, in particular in the fight against corruption and money laundering, but due to prosecutors' lack of direct access to relevant registers (vehicles, vessels, real estate and bank accounts) there are many obstacles in identifying assets and asset holders in Member States and even more when hidden in third States. The Consultative Forum has therefore concluded that the lack of consolidated registers should be overcome and that direct access to them by prosecutors is essential. It was also proposed that the European Union should take certain measures through a clear and simple regulatory framework to ensure the development of common standards in anti-corruption legislation and its definitions; laws and regulations in specific areas of criminal procedure and in various areas of crimes, including corruption, should be further approximated; the reinforcement of the principle of mutual recognition; difficulties in judicial cooperation and execution of requests for mutual legal assistance could be overcome with minimum standards of criminal procedure; common standards for the gathering and admissibility of evidence are required and conflicts of jurisdiction must be addressed.

At the meeting held on 11 June 2014, the Consultative Forum members discussed their practical experiences of investigating and prosecuting complex high-profile corruption cases with an international dimension and their views on how best to tackle corruption. They reported that most common challenges arise from complex cross-border corruption cases involving the investigation and prosecution of information and communications technology, defence, transportation and public procurement sectors; delays identifying, gathering and assessing evidence and in connection with the execution of requests for mutual legal assistance; lack of a uniform approach to legislation, in particular regarding privileges and immunities and the use of intercept evidence. Consultative Forum members also shared their best practices, such as providing protection to whistle-blowers; providing specialised training to national authorities and stimulating cross-border coordination; access to relevant databases by national competent authorities; establishment of multidisciplinary teams or taskforces with the cooperation of different experts in relevant fields (tax, customs and excise, forensic IT, finance and accounting); adoption of legislative and non-legislative measures to increase transparency; ensuring the independence of the prosecution service and judiciary; establishment of a European public prosecution office; prioritising identification and asset recovery within the EU and in third States; raising awareness by publishing guidance and information about procedures, broadcasting trials or publishing judicial decisions and details of confiscation measures executed; and mutual recognition of judicial decisions.

At both these meetings of the Consultative Forum, the role of Eurojust was emphasised in facilitating and supporting judicial cooperation in corruption cases not only between Member States but also with third States. It was also stated that the practitioners should make more extensive use of the tools that Eurojust

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<sup>11</sup> Council of the European Union, Outcome report 17457/11 (Brussels, Belgium, 23 November 2011); <http://data.consilium.europa.eu/doc/document/ST-17457-2011-INIT/en/pdf>; accessed 12 September 2018.

<sup>12</sup> Council of the European Union, Outcome report 13581/14 (Brussels, Belgium, 24 September 2014); <http://data.consilium.europa.eu/doc/document/ST-13581-2014-INIT/en/pdf>; accessed 12 September 2018.

<sup>13</sup> Would a register of how much individuals earn and owe to tax authorities help transparency and discourage corruption?

could offer, in particular coordination meetings and the establishment and financing of JITs.

Furthermore, at strategic level Eurojust contributed to the European Commission's first EU Anti-Corruption Report<sup>14</sup>. Eurojust provided information on its efforts in the fight against corruption, its corruption casework, including case specifications and involvement of third States, as well as corruption cases registered for the purpose of creating a JIT. Finally at strategic level, Eurojust has been participating as an observer in the Camden Asset Recovery Inter-Agency Network (CARIN) and in the Asset Recovery Offices Platform (ARO) since 2004 and 2008 respectively.

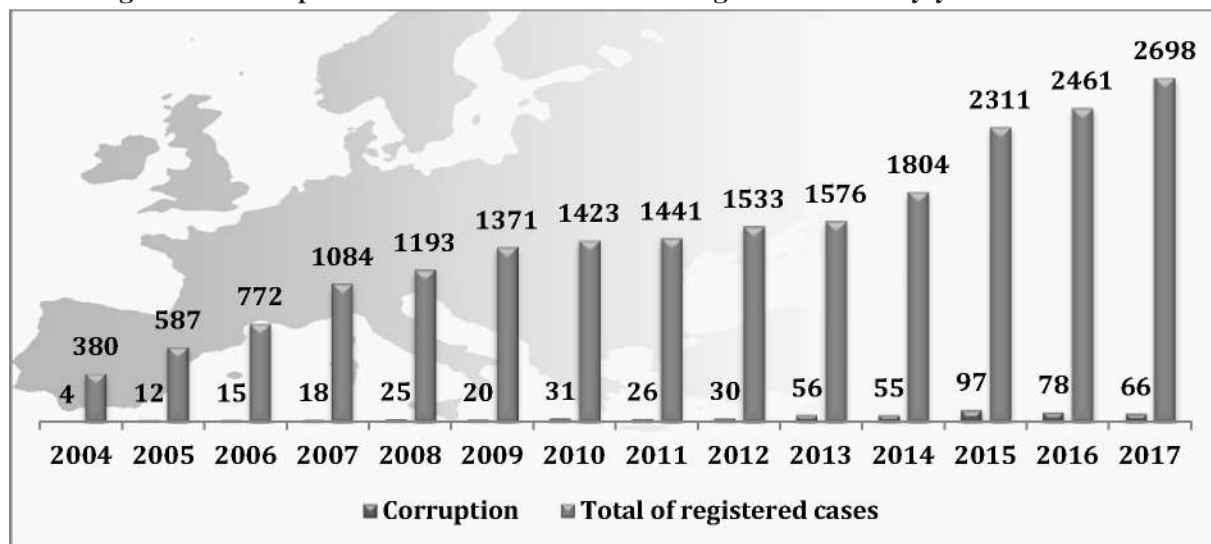
## B. Operational Anti-Corruption Measures

At operational level, National Members at Eurojust are able to assist national authorities in Member States on a 24 hour/7 day basis<sup>15</sup> through facilitation and execution of Letters of Request (hereinafter: LoR) or European investigation orders, organising coordination meetings and coordination centres and through establishing and financing JITs, although their assistance and support may be given only upon request or notification by the Member States' competent authorities.

### 1. Facilitation of Letters of Request or European Investigation Order

The competent authorities of Member States can send the mentioned requests to Eurojust either spontaneously or on the basis of the information exchanged pursuant to Article 13 of Eurojust Decision. In relation to corruption, the competent national authorities must inform their National Member "without undue delay of any case in which at least three Member States are directly involved and for which requests for or decisions on judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, have been transmitted to at least two Member States<sup>16</sup>." Requests for assistance or information may also be received from other institutions or bodies, such as Europol, OLAF and the European Judicial Network (EJN). In the period from 2004 to 2017, 588 cases of corruption were registered at Eurojust. Chart 1 shows the number of corruption cases registered in comparison to all registered cases broken down by year<sup>17</sup>. Corruption cases were registered most frequently by Greece (102), Romania (58), Italy (34) and the United Kingdom (34).

**Chart 1: Registered corruption cases vs total number of registered cases by year**



<sup>14</sup> European Commission, EU Anti-Corruption Report, (Brussels, Belgium, 03.02.2014); [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf) accessed on 12.09.2018.

<sup>15</sup> Article 5a of Eurojust Decision.

<sup>16</sup> Article 13(6) of Eurojust Decision.

<sup>17</sup> The Operations Department at Eurojust produced and analysed the relevant statistics covering the period from 1 January 2002 to 31 December 2017. There is no available data for the years 2002–2003. The sources for the statistics are the Case Management System (CMS) and data available on coordination meetings and JITs. Please note that Eurojust has only systematically collected information on coordination meetings and JITs from 2012 onwards. The data was retrieved on 20 September 2018.

Chart 2: Corruption cases registered by Member State

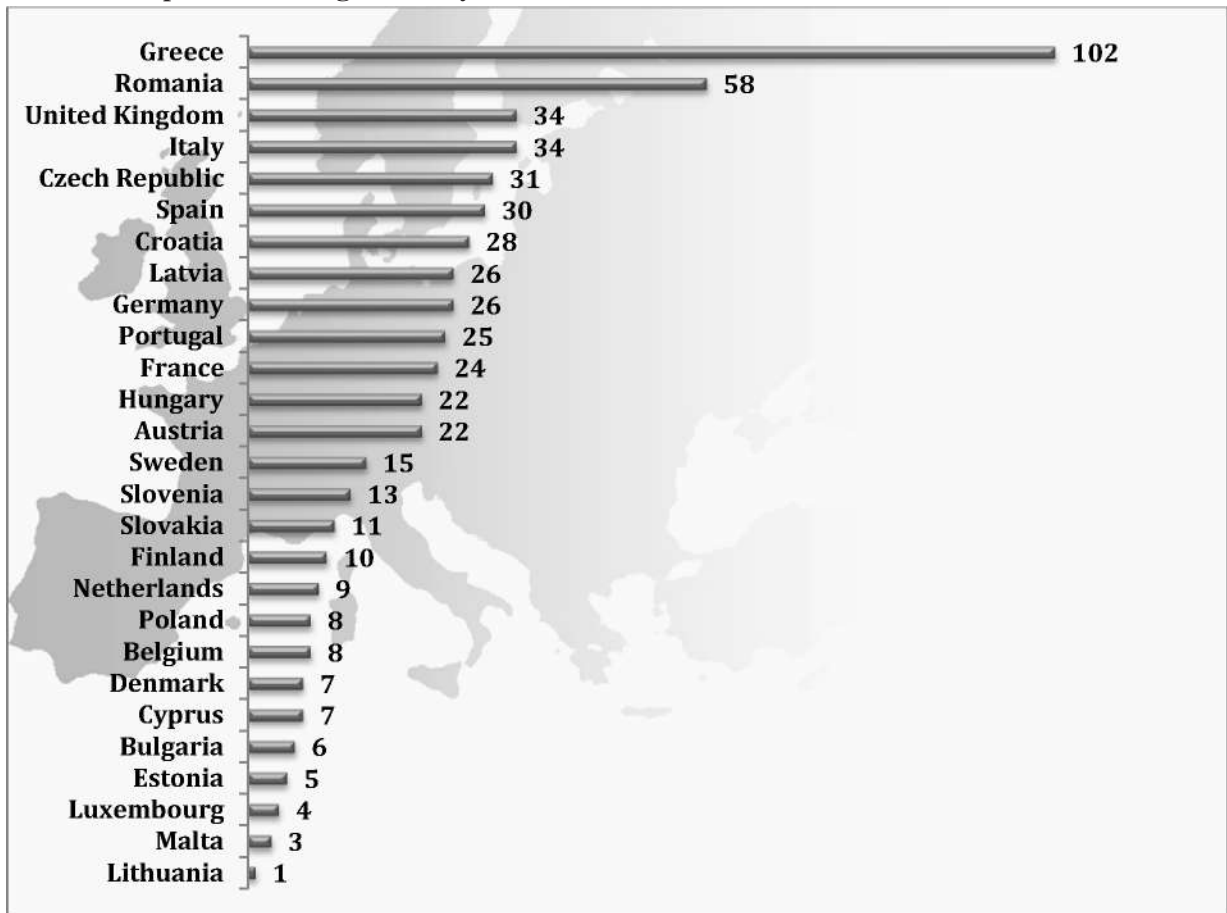


Chart 2 shows the number of cases registered by each Member State. Ireland did not register any corruption cases at all in this period.

A total of 117 Eurojust corruption cases involving non-EU jurisdictions were registered at Eurojust; these are shown broken down by year in Chart 3 and by country in Chart 4.

Chart 3: Registered corruption cases involving non-EU jurisdictions by year



**Chart 4: Registered corruption cases involving non-EU jurisdictions by country in the period from 2012 to 2017<sup>18</sup>**



After receiving an LoR or European investigation order from domestic national authorities or a National Member of another Member State, the request or European investigation order should be examined by the National Member visually<sup>19</sup>, linguistically<sup>20</sup> and for content<sup>21</sup>. Depending on the complexity of the case and possibility of resolving issues related to the request and its swift and efficient execution, the National Member may discuss at a preparatory meeting<sup>22</sup> with the National Member(s) concerned an assessment of the need, purpose and objective of a coordination meeting<sup>23</sup>.

## 2. Organisation of Coordination Meetings

The purpose of a coordination meeting is to stimulate and achieve agreement between national authorities on their cooperation and/or the coordination of investigations and prosecutions at national level. In order to organise a coordination meeting, the National Member(s) have to check the availability and necessity of the national authorities' participation at this coordination meeting<sup>24</sup>, the use of videoconferencing for all or some of the participants as an alternative to their being physically present at the coordination meeting, confidentiality and disclosure obligations, decide on whether interpretation services are required

<sup>18</sup> On 1 July 2013 Croatia joined the EU and Eurojust, so for that reason was not considered to be under EU jurisdiction before that date.

<sup>19</sup> Whether the request is signed, stamped and readable because sometimes scans of copies are not very good quality.

<sup>20</sup> Quality of translation.

<sup>21</sup> Description of the offence; statutory qualification of the offence and evidence on which suspicion rests; what is requested (perhaps publicly available information is requested and can be immediately provided by the National Member. For instance in Slovenia there is a register of bank account numbers assigned to legal persons but not physical persons; in order to obtain the bank account number of a physical person an LoR is needed); urgency of the case (statute of limitations is about to expire, detention, covert measures, media coverage); supplementary information for LoR possibly needed (missing information; mostly orders/decisions by competent authority).

<sup>22</sup> So-called Level II meeting.

<sup>23</sup> So-called Level III meeting.

<sup>24</sup> If one Member State only has to provide bank records, it is not necessary for its authorities to participate in the coordination meeting.

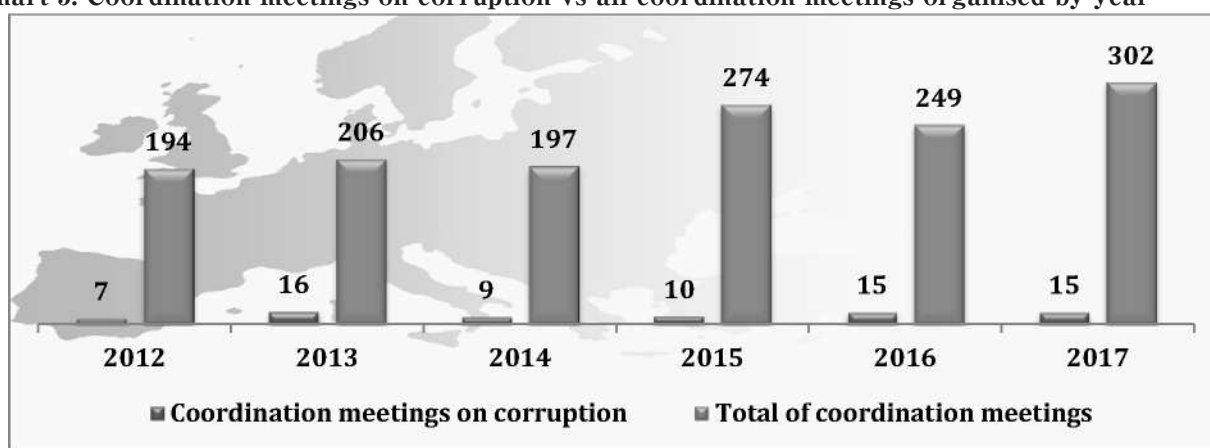


during the coordination meeting and on the venue of the coordination meeting<sup>25</sup>.

For an efficient coordination meeting to take place, the National Member should explain the assistance requested for facilitation, support and coordination or information to their national authorities that are participating in the meeting<sup>26</sup> before the coordination meeting is actually held. National Member(s) should anticipate and propose to address practical and legal issues at the coordination meeting to participants of the coordination meeting and prepare the requested documents or evidence in advance so they can be shared at the coordination meeting. For reasons of efficiency, the participants of the coordination meeting are asked to prepare a short presentation briefly explaining the facts of the case and focusing on explaining what kind of evidence is in their possession and what requests they will make of other participants at the coordination meeting<sup>27</sup>. The presentations should be sent in advance to the responsible organiser at Eurojust in order to prepare the necessary materials for the meeting.

Chart 5 and Chart 6 show the number of coordination meetings on corruption in comparison to all coordination meetings organised broken down by year and which Member States organised and participated in them<sup>28</sup>.

**Chart 5: Coordination meetings on corruption vs all coordination meetings organised by year**



<sup>25</sup> In principle it should be held at Eurojust premises but it can be also elsewhere if this reduces costs, if critical participants in the Member State concerned are able to attend and for other reasons of convenience related to the operational needs of the case.

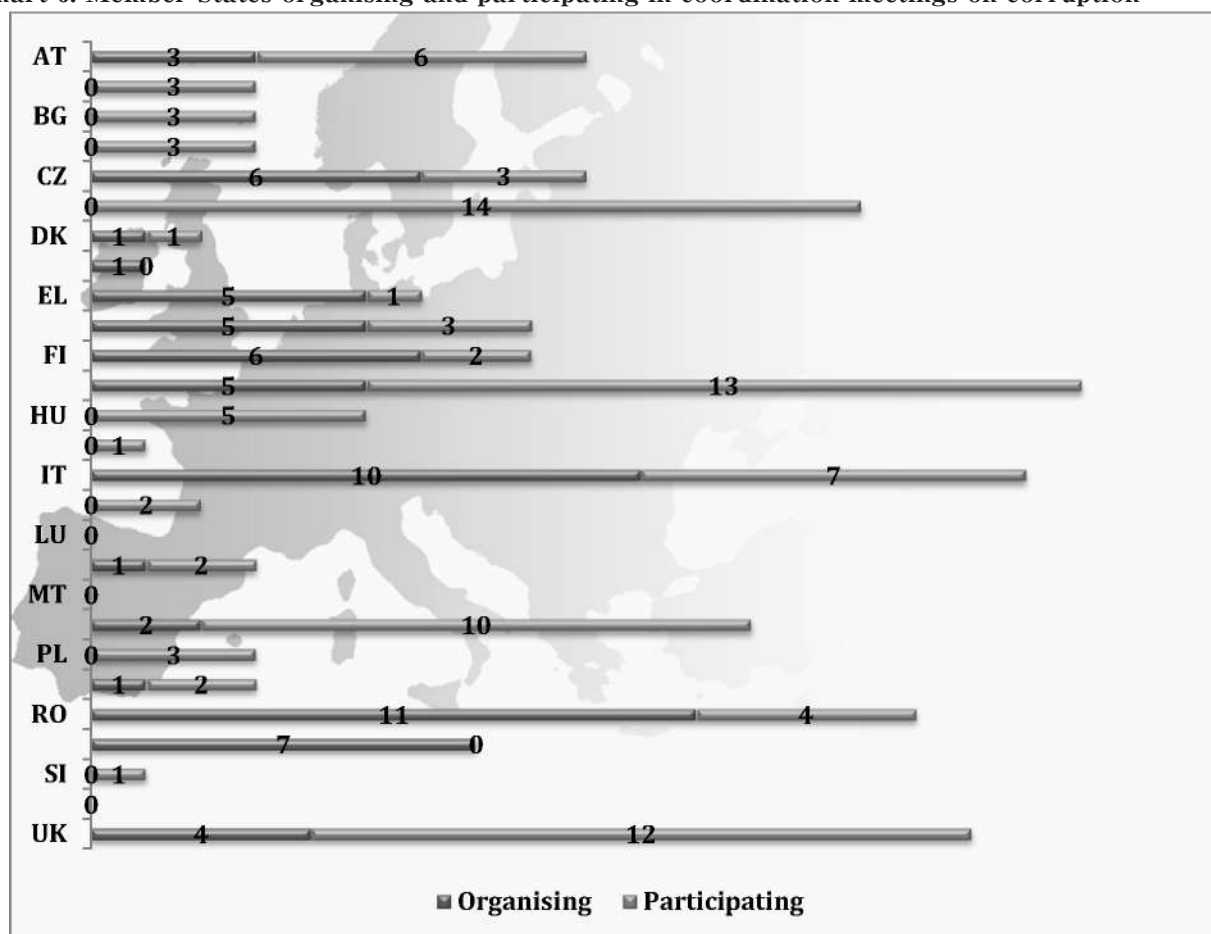
<sup>26</sup> Prosecutors, judges, magistrates, police officers or others from the national authorities who are in charge of the case and the National Members concerned. Liaison Magistrates and representatives from third States involved may be invited. If the coordination meeting is held in The Hague, Eurojust covers catering and lunch during the coordination meeting, accommodation for one night and travel expenses for only two participants from each involved State. Simultaneous interpretation could also be provided, which allows direct communication between the participants on legal and practical issues.

<sup>27</sup> Whether they are planning to issue or execute requests for additional evidence, discussion of prevention and/or settlement of conflicts of jurisdiction and related procedural steps; establishment of joint investigation teams; possibilities for transfer or taking over the proceeding, planning of a common action day and coordination centre etc.

<sup>28</sup> Please note that Eurojust has only systematically collected information on coordination meetings from 2012 onwards.



Chart 6: Member States organising and participating in coordination meetings on corruption



Representatives of non-EU jurisdictions participated in a total of 24 coordination meetings held on corruption cases in the period from 2012 to 2017 but please bear in mind that in 2012–2013 no third State representatives participated in any coordination meetings on corruption.

Chart 7: Non-EU jurisdictions participation in coordination meetings on corruption cases by year

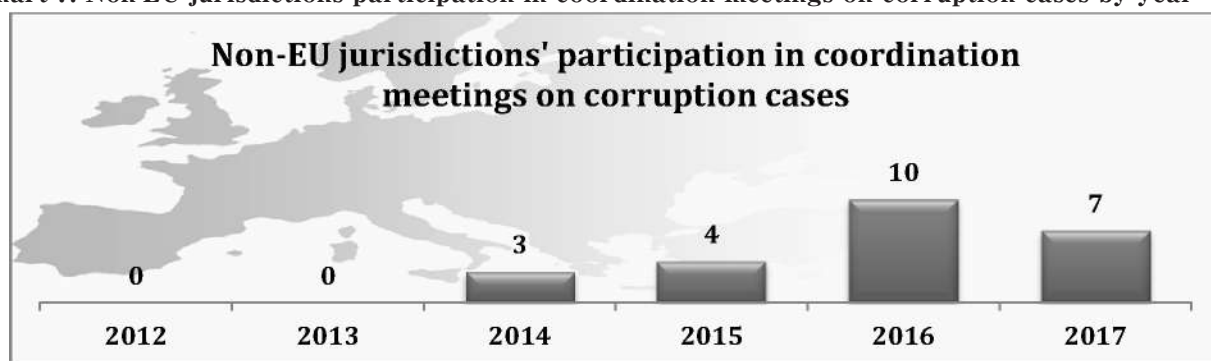
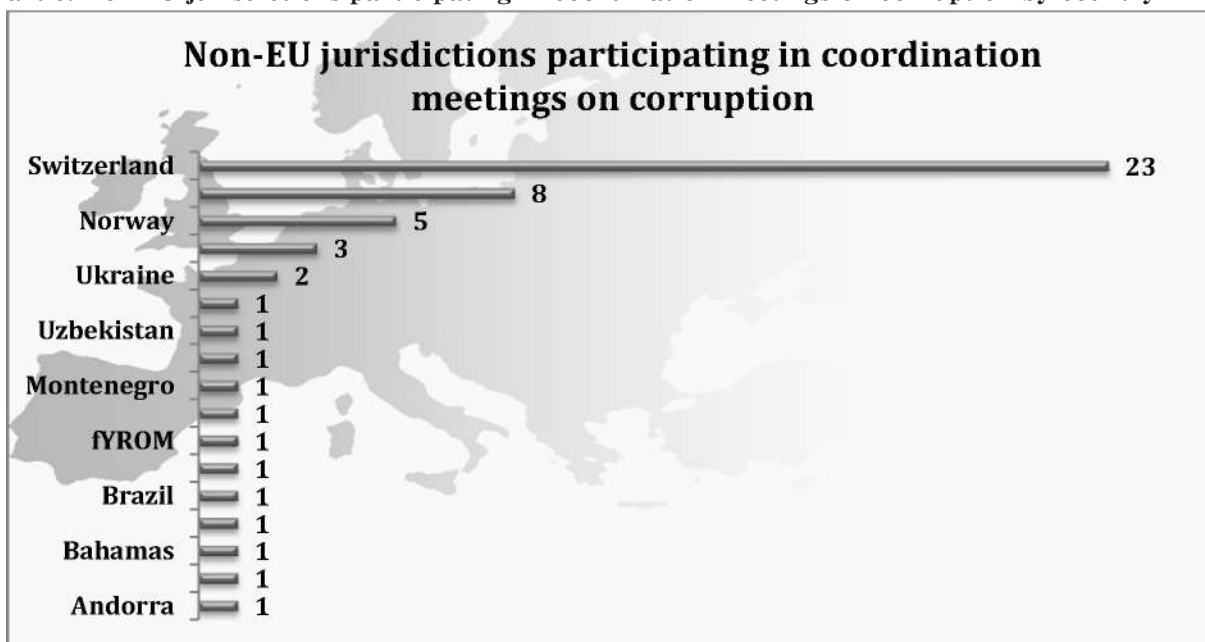


Chart 8: Non-EU jurisdictions participating in coordination meetings on corruption by country



### 3. Setting Up and Financing of Joint Investigation Teams

The second international cooperation tool that Eurojust has to offer to practitioners in the fight against corruption is its assistance in establishing and financing JITs. Firstly I would like to briefly present some basic facts about JITs, such as the statutory framework and the prerequisites for their establishment; the content of JIT agreements; the structure and activities of JITs; and the benefits and problems associated with JITs.

A JIT is established with an agreement between competent authorities of two or more States to carry out criminal investigations on their territory for a limited time period. The statutory framework usually regulates the conditions under which the JIT must be set up and its working methods. There are regulations in place for the establishment and operation of JITs between EU Member States<sup>29</sup>, other regulations govern JITs between EU Member States and third States<sup>30</sup> and some regulations governing JITs were adopted by the United Nations General Assembly<sup>31</sup>.

The establishment of a JIT is required in cases where an ongoing investigation in one State requires

<sup>29</sup> Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union; Article 13; Official Journal of the European Communities C 197/1 dated 12 July 2000 and Council Framework Decision of 13 June 2002 on Joint Investigation Teams (2002/465/JHA); Official Journal of the European Communities L 162 dated 20 June 2002.

<sup>30</sup> I. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959; Article 20; Council of Europe; European Treaty Series – No. 182);

II. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol; Official Journal of the European Communities L 26 dated 29 January 2004;

III. Agreement between the EU and the US on mutual legal assistance; Article 5; Official Journal of the European Communities L 291, 7 November 2009;

IV. Police Cooperation Convention for Southeast Europe (PCC SEE) of 5 May 2006 applicable between several Member States (Austria, Bulgaria, Hungary, Romania and Slovenia) and countries of the Balkans (Albania, Bosnia and Herzegovina, FYROM, Moldova, Montenegro and Serbia); Article 27; and

V. Convention on Mutual Assistance and Co-Operation between Customs Administrations of 18.12.1997, Article 24.

<sup>31</sup> I. United Nations Convention against Transnational Organised Crime of 15 November 2000; Article 19;

II. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988; Article 9;

III. United Nations Convention against Corruption of 14 December 2005; Article 49.

complex and demanding investigative activities by other States and where the circumstances of the case necessitate coordinated and harmonised action by all the States involved. A JIT should be established at as early a stage in the procedure as possible. Please bear in mind that the severity of the criminal offence committed is less important than its cross-border nature. Usually the request to establish a JIT comes from competent authorities of one State; it is rarely at the request of Eurojust. Before setting up a JIT, it is advisable for the competent authorities to meet and review the case files and exchange relevant documentation.

The content of an agreement for establishing a JIT is best defined at the beginning of operational activities. I propose that only general elements be defined in the agreement and that the description of the facts of the case and the type of the offence should be brief as possible. My advice would also be that rather than citing and presenting numerous domestic material and procedural criminal provisions in the agreement, the JIT parties should instead only state that JIT must carry out its operations in accordance with conditions stated in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or another international document and the law of the (Member) State in which it operates and by stating only the provisions of domestic legislation regarding establishment of JIT.

A model agreement<sup>32</sup> has been developed<sup>33</sup> to facilitate the setting up of a JIT in 23 different official languages. National Members at Eurojust, with the help of the JITs Network Secretariat,<sup>34</sup> can provide assistance in drafting the JIT agreement and discussing which clauses are required to supplement or deviate from the model agreement. Parties to the agreement are national authorities and not necessarily persons in charge of the case. Nevertheless, parties designate the persons in charge of the case as JIT leaders and other members of the JIT. JIT objectives are to gather evidence and share relevant information, to identify those responsible and where appropriate to disrupt their activities and use evidence gathered for the purpose of prosecution and the seizure and confiscation of the proceeds of crime in involved States. Parties should agree not only on which authority should investigate but more importantly also on which authority will prosecute whom. Parties to the JIT should also agree in which involved States JIT will operate and its duration and scope. The parties may also agree on some other details<sup>35</sup>.

A JIT consists of a team leader, team members and team participants. The team leader is usually a prosecutor or judge due to the fact that a JIT is considered a special form of mutual legal assistance. The team should have one leader, but practice to date has shown that countries prefer multiple leaders to be appointed, i.e. one team leader for each involved State. The team leader must be informed about each investigative measure and operational activity. Team members are mostly representatives of law enforcement. The role, purpose and tasks of other team participants such as the National Member at Eurojust, Europol, OLAF or FBI should be clearly designated in the agreement. National Members are entitled to participate in JITs and National Members must be invited to participate when a JIT benefits from EU funding<sup>36</sup>. The question of whether other national authorities such as tax office, customs and excise administration, office for prevention of money laundering, court of audit, etc. could be a member of JIT can only be answered by domestic legislation. In Slovenia they cannot because Article 161b of the Slovenian Criminal Procedure Act states that the agreement on the establishment and operation of joint investigation teams in the territory of the Republic of Slovenia or other countries has to be concluded by the Public Prosecutor General after obtaining the opinion of the Director General of the Police, meaning that only these two organisations can participate in JITs.

<sup>32</sup> This document can be downloaded from the Eurojust website: <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/Model%20Agreement%20for%20setting%20up%20a%20Joint%20Investigation%20Team/JIT-2017-MODEL-EN.pdf> accessed on 13.09.2018.

<sup>33</sup> Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT), Official Journal of the European Communities C 18 dated 19 January 2017.

<sup>34</sup> The JITs Network Secretariat was established in 2011 in accordance with Article 25a(2) of Eurojust Decision. The Secretariat promotes the activities of the Network, supports the National Experts in their work and since September 2013 it is also responsible for the funding of JITs.

<sup>35</sup> Such as possible changes to the agreement; performance assessment and work evaluation every three to six months or not at all; language of communication; communication with the media; right to carry firearms; costs/expenditures/insurance; translation/interpretation expenses; financial support for the JIT (submission of applications for EU funding – dedicated form); use of facilities (office accommodation, vehicles, other technical equipment); etc.

<sup>36</sup> Article 9f of Eurojust Decision.

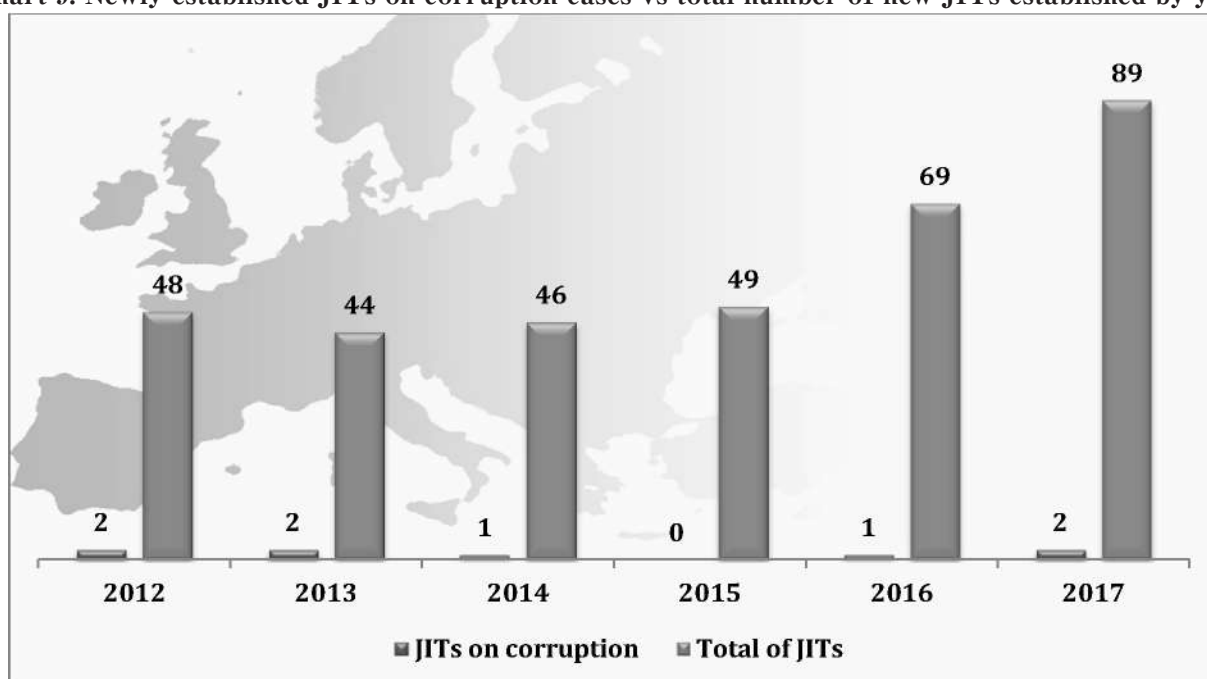
Team members must have clear information and guidelines regarding differences in criminal legislation of the involved States and evidence-gathering methods to ensure the admissibility of evidence. Team members should be aware of the hierarchy and competences of other JIT members or participants. A JIT is usually established in a State where the investigation is predominantly expected to take place but that does not mean that all members have to be physically in same the location. JIT members can regularly meet and exchange information in person, by exchanging emails or holding telephone conversations. In some cases, each State can undertake operational actions in its territory, but may act outside its territory if so agreed (house searches and interrogations, review of seized documents; presence on the spot). The JIT organisation should be determined on a case-by-case basis and consideration should also be given to the costs of making staff available, the length and nature of the investigation, number of judicial bodies, etc.

One of the best advantages of JIT in comparison with MLA requests is that each involved State operates in line with its own laws and that there is joint decision-making as to what operational activities should be carried out and when, and which authority will prosecute whom. There is direct exchange of information between JIT members and direct requests for investigative actions between team members, which means that MLA requests are not needed. As a consequence, JITs save time and money. Team members can also be present during home searches and the interrogation of witnesses and suspects, something which can bring added value to the investigation of criminal offences. Informal exchange of specific knowledge takes place between team members. When National Members at Eurojust are invited to participate in JITs, this means that JIT members and/or national authorities can also benefit from EU funding.

In complex cross-border cases where sometimes huge amounts of documents are gathered despite a JIT being established, lengthy and costly translations may delay investigation and prosecution. That is why it is important for the team members to be fluent in the language of another involved State. If that is not possible, then they should at least be fluent in a language that is used in communications and defined in the JIT agreement<sup>37</sup>. JIT members should also try to benefit from funding which is available and provided by Eurojust.

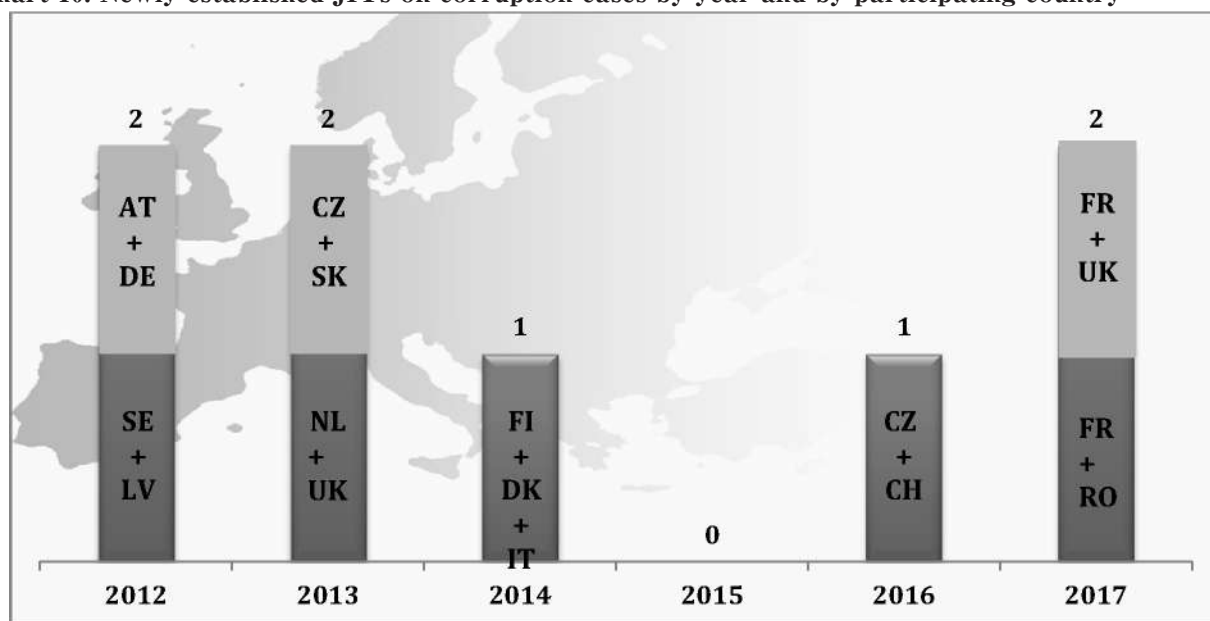
In the period from 2012 to 2017, 12 JITs on corruption (3.5% of all JITs, 345 JITs in total) were established. Chart 9 and Chart 10 illustrate the number of new JITs on corruption in comparison to all new JITs established broken down by year<sup>38</sup> and by participating country.

**Chart 9: Newly established JITs on corruption cases vs total number of new JITs established by year**



<sup>37</sup> Usually English is the language used.

<sup>38</sup> Please note that Eurojust has only systematically collected information on JITs from 2012 onwards.

**Chart 10: Newly established JITs on corruption cases by year and by participating country**

There was one corruption JIT with a third State (Switzerland) in 2016.

#### 4. Setting Up of Coordination Centres

Eurojust can also offer a third international cooperation tool to practitioners in the fight against corruption: the organisation of coordination centres. In cases where involved States have a joint action day<sup>39</sup>, they should consider the possibility of coordinating their national authorities and immediate exchange of operational information and/or evidence or resolving any other legal and practical issues by setting up a coordination centre. A dedicated meeting room is available at Eurojust premises for this exact purpose. This room is equipped with the requisite technical equipment, such as computers, printers, telephones and videoconference facilities (dedicated lines), which can be used by participants from national authorities, National Members and Eurojust staff responsible for the technical facilities, other administrative matters and for the joint press release.

The first coordination centre was organised in 2012 and coordination centres started to be used as a tool for judicial cooperation in cross-border cases. A total of 50 coordination centres have been organised since then but none for a corruption case.

### III. CONCLUSION

The fight against corruption does not manifest merely in implementing sets of reforms and regulations into national and international legislation; it is also manifested in law enforcement, prosecution and judicial proceedings. If the fight against corruption is not effective in cases when corruption-related criminal offences were detected, then we can say that crime does pay. Practitioners from Member States dealing with corruption cases usually have many legal and practical issues which they need to resolve and this is where Eurojust comes perfectly into play. The role and significance of Eurojust's work in the field of multilateral judicial cooperation, coordination and exchange of information in cases involving serious cross-border crime is being increasingly recognised by practitioners in Member States because Eurojust is providing its effective coordination, cooperation and support services on a daily basis to national authorities in operational cases, mainly as follows:

- its ability to act on a 24 hour/7-day basis;
- facilitating transmission of information;

<sup>39</sup> Operational activities are executing simultaneously in involved States.

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- advising on drafting LoR and European investigation orders before their issue, including translation of these documents;
- speeding up the execution of LoR and European investigation orders;
- identifying and analysing legal issues and practical difficulties;
- providing possible solutions to legal issues and practical difficulties;
- collecting and analysing information coming from the Member States conducting investigations into possible further links and new aspects of investigation;
- organising coordination meetings and setting up coordination centres;
- stimulating further exchange of information during and after coordination meetings and coordination centres;
- developing and sharing best practices against corruption;
- raising awareness in the fight against corruption;
- avoiding duplication of investigations and prevention of the conflicts of jurisdiction and double jeopardy (“ne bis in idem”);
- numerous formal and informal contacts inside and outside the EU; and
- facilitating the setting up of JITs and their funding.



# ACQUISITION OF EVIDENCE ABROAD AND THE QUESTION OF ITS ADMISSIBILITY

*M. Sc. Boštjan Lamešič\**

## I. ADMISSIBILITY OF EVIDENCE ACQUIRED ABROAD IN SLOVENE CRIMINAL PROCEDURES AND THEIR EXCLUSION

The Slovene courts and state bodies that participate in a criminal procedure are entitled on the basis of the first paragraph of Article 18 of the Slovene Criminal Procedure Act (hereinafter: ZKP)<sup>1</sup> to decide whether a certain fact has been established or not, whereby they are not bound by or restricted by any special formal evidentiary rules<sup>2</sup>. Discretionary consideration of evidence applies both to evidence that was obtained in the territory of the home state as well as to the evidence that was obtained in the territory of a foreign state<sup>3</sup>. The Slovene legislation does not differentiate between evidence obtained domestically and the evidence that was obtained abroad. In both instances the issue revolves around evidence, which, however, may have been obtained in different ways.

It is nonetheless up to the court alone to decide which evidence it shall consider at all and how it shall consider its credibility. A Slovene court may also decide to include in evidence materials that were not obtained in accordance with the ZKP, as it must, given the principle of material truth, truthfully and completely establish the facts relevant for the issuance of a lawful decision and thus ensure that the matter at hand is investigated wholly and that the whole truth of the matter is brought to light<sup>4</sup>.

A Slovene court is indeed not bound to any formal rules on the basis of discretionary consideration of evidence, however, the court may not establish a court decision on the basis of evidence that was obtained in violation of constitutionally determined human rights and fundamental freedoms, nor on the basis of evidence that was obtained in violation of the provisions of criminal procedure whereby this Act stipulates with regard thereto that a court decision may not be established thereon, or which were acquired on the basis of such inadmissible evidence<sup>5</sup>. Undoubtedly, foreign evidence is, in principle, admissible as per Slovene legislation; however, the provision of the second paragraph of Article 18 of the ZKP is applicable to it as well, which means that if it was obtained contrary to this provision, it must be excluded from the brief<sup>6</sup>.

There are no legally binding rules on the consideration of evidence admissibility in the European Union, and the regulation of the field dedicated to the issue of evidence admissibility is left up to the Member States, which is why I believe that when considering evidence obtained abroad, a Slovene court must firstly determine whether this evidence was obtained abroad:

- i. independently for the purpose of a procedure in the foreign country in accordance with its regulations,

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<sup>1</sup> Official Gazette of the RS, no. 63/1994 of 13 October 1994, with amendments.

<sup>2</sup> The principle of discretionary consideration of evidence.

<sup>3</sup> In relation to the stated, it should be noted that the 'territory of a foreign state' may relate to a Member State of the European Union, or to another country that is not a member of the European Union, or 'third country'.

<sup>4</sup> Article 17 of the ZKP.

<sup>5</sup> The second paragraph of Article 18 of the ZKP states: 'The court may not base its decision on evidence obtained in violation of the human rights and basic freedoms provided by the Constitution, nor on evidence which was obtained in violation of the provisions of criminal procedure and which under this Act may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence'.

<sup>6</sup> Evidence that was obtained in another country cannot be admissible if it was obtained using torture contrary to Article 3 of the European Convention on Human Rights or if the right to defence was violated contrary to Article 6 of the European Convention on Human Rights.

- or on the basis of
- ii. international legal assistance or a European investigation order, or
- iii. international cooperation in joint investigation teams.

In this consideration the court must further consider the following:

- i. whether the evidence obtained abroad was obtained legally, and
- ii. whether it was obtained in violation of a constitutionally<sup>7</sup> or internationally legally determined human right and fundamental freedom.

#### **A. 'Independent' Acquisition of Evidence**

If Slovene bodies obtain evidence in the territory of the Republic of Slovenia, they are bound by national constitutional and statutory regulations. In the same manner, foreign bodies are bound by their constitutional and statutory regulations when detecting and investigating criminal acts in their territory. It cannot be expected from foreign bodies to comply with foreign law when detecting and investigating criminal acts in their own territory. Foreign bodies must comply with their own legislation and it cannot be requested from them to comply with foreign constitutional and statutory provisions, especially those that may only be addressed to state bodies in the territory where a state exercises its sovereignty. We cannot expect that foreign security or judicial bodies question themselves whether they are complying with foreign legislation when investigating criminal acts in their own territory. When foreign bodies investigate a criminal act that was committed in their territory and that is punishable in accordance with their legislation, they must comply only with their own regulations, and foreign bodies cannot and must not have an influence in this respect.

It cannot be expected in the field of international cooperation in criminal matters that all states will have their legislation harmonized with the legislation of the Republic of Slovenia. Insisting on complete compliance of evidentiary rules would disable international assistance in criminal matters and therewith international cooperation in criminal matters as well. When Member States of the European Union act independently in the investigation of criminal acts in their territories for the purposes of their own procedure, then the principle of trust applies for such obtained evidence, as concluded from the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union that the Council prepared on the basis of Article 34 of the Treaty on European Union<sup>8</sup>. The Convention further implies trust in the structure and operation of the legal systems as well as the competence of all Member States to ensure a fair trial. Given the fact that sometimes criminal procedures take place parallelly in states, it would be practically and theoretically impossible to expect that all foreign bodies would act simultaneously on the basis of at least two different sets of legislation when investigating criminal acts. The thought that this could or even should be done is also contrary to the preamble of the Convention that alerts to the fact that it is in the common interest of the Member States to ensure mutual legal assistance among Member States in a speedy and efficient manner.

In Slovene case law, several decisions argue that from the standpoint that individual procedural acts performed by a foreign body are valid despite the fact that they were not carried out in the manner prescribed by the ZKP (e.g. judgement Kp 16/2007 of 30 May 2005<sup>9</sup> and judgement XI Ips 44415/2010 of 22 June 2010)<sup>10</sup> or that evidentiary materials obtained and submitted to Slovene bodies by a foreign security body have equal evidentiary value as the materials obtained by the Slovene police in accordance with the provisions of the ZKP (judgement I Ips 290/2006 of 31 August 2006)<sup>11</sup>. The latest case law has also taken the view that acts performed by the foreign competent bodies are to be firstly assessed in the light of their domestic constitution and legislation, and only then it is to be assessed whether such acts are materially compliant with the standards prescribed by our Constitution<sup>12</sup> (judgement I Ips 199969/2010-279 of 14 February 2012)<sup>13</sup>.

<sup>7</sup> And not also a statutory determined human right and fundamental freedom, as it has already been considered.

<sup>8</sup> The Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (Official Journal of the European Communities C 197/1 of 12 July 2000).

<sup>9</sup> Summarized from the webpage: <http://www.sodisce.si/vsrs/odlocitve/22347/>, accessible on 20 August 2018.

<sup>10</sup> Summarized from the webpage: <http://sodisce.si/vsrs/odlocitve/2010040815245481/> accessible on 20 August 2018.

<sup>11</sup> Summarized from the webpage: <http://sodisce.si/vsrs/odlocitve/26125/>, accessible on 20 August 2018.

<sup>12</sup> Official Gazette of the RS, no. 33-1409/1991 of 28 December 1991 with amendments.

Slovene case law shows that when considering the admissibility of evidence obtained from abroad, the object of consideration must be whether the evidence was collected in accordance with the national laws of the state where such evidence was collected, and whether such acts are materially compliant with the standards of the Constitution of the Republic of Slovenia. We must contemplate certain institutes of the Constitution only in the sense that they are binding upon Slovene bodies and not upon foreign ones. The object of consideration must not be foreign legislation and its compliance with the Slovene ZKP or Slovene Constitution, as it is impossible to expect that the content of foreign regulations and the performance of individual procedural acts would be identical to those in Slovenia. The mere different regulation of an individual procedural act does not automatically imply its illegality and the exclusion related thereto. Procedural acts performed by foreign bodies must not be considered on the basis of the Slovene ZKP, but only in light of the foreign legislation.

In a Slovene criminal procedure, the defence may propose to the court that individual evidence be excluded from the brief, whereby the legality of the collected evidence must also be monitored by the prosecutor and the judge<sup>14</sup>. The defence may therefore object that a piece of evidence obtained abroad is illegal and that it must be excluded, as it was not obtained in an admissible manner, under the conditions and procedure as per domestic law, namely, due to the fact that:

- the house search abroad was ordered by a police officer and not a judge;<sup>15</sup>
- two witnesses were not present during the performance of the house search abroad;<sup>16</sup>
- the foreign criminal procedural act does not include a legal instruction on the privilege against self-incrimination or the right to remain silent, and that foreign bodies did not explicitly state the right to remain silent<sup>17</sup> in the record on the interrogation of the suspects<sup>18</sup>.

The response by the prosecution or the court to the defence's objection could be that if the foreign evidence was obtained independently of the request or cooperation of another state, i.e. by foreign bodies for the purposes of their own procedure, then the procedural acts performed by the foreign body are also valid in a criminal procedure that takes place in Slovenia, despite the fact that they were not carried out in the manner prescribed by the ZKP, and that other requirements laid down either by the Constitution or the ZKP, such as the presence of two witnesses during a house search, and the necessity of an issued court order for a house search, are merely procedural requirements prescribed by the Constitution and only bind Slovene bodies, and that we cannot request that a foreign state has to comply with the Slovene procedural constitutional and statutory provisions, and that Slovenia protects human rights in its territory in accordance with Article 5 of the Constitution<sup>19</sup>.

<sup>13</sup> Summarized from the webpage: <http://www.sodisce.si/vsrs/odlocitve/2012032113042029/>, accessible on 20 August 2018.

<sup>14</sup> The second paragraph of Article 83 of the ZKP states that a court decision may not be based on a deposition by the suspect or accused, witness or expert, or on the records, objects, recordings, reports or pieces of evidence, the investigating judge or the judge who carries out individual acts of investigation shall issue *ex officio*, or on the motion of a party, a decision excluding the aforesaid evidence from the files as soon as he establishes that the statements or evidence of such a nature are involved. He shall act in the same manner in respect of the information referred to in the preceding paragraph unless the public prosecutor has already excluded it, as well as in respect of the information disclosed to the police by persons who may not be examined as witnesses (Article 235) or who under this Act have renounced testimony (Article 236) or may not under this Act be appointed as experts (Article 251). The parties may request the exclusion of records and other evidence only until the opening of the main hearing and may request it in the main hearing only if they were not able to do it before.

<sup>15</sup> Article 215 of the Criminal Procedure Code states that a search shall be ordered by the court in the form of a reasoned warrant.

<sup>16</sup> The fourth paragraph of Article 36 of the Constitution states that a search of a dwelling or other premises may only be conducted in the presence of two witnesses.

<sup>17</sup> Article 4 of Criminal Procedure Code/Act states that any arrested person must be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

<sup>18</sup> The tenth paragraph of Article 227 of Criminal Procedure Code states that if the accused was not instructed about his rights under the second paragraph of this Article, or the instruction and the statement of the accused concerning the right to a defence counsel are not entered in the record, or the interrogation was conducted in violation of the provisions of the eighth or ninth paragraph of this Article, the court may not base its decision on the statement of the accused.

<sup>19</sup> Article 5 of the Slovenian Constitution states that in its own territory, the state shall protect human rights and fundamental freedoms.

The prosecution or the court could further invoke the fact that foreign legislation does not require the presence of two witnesses during a search, but that such a requirement is not prescribed by the European Convention on Human Rights (hereinafter: ECtHR)<sup>20</sup>, either. It is my opinion that the presence of two witnesses during a search of an apartment as required by the Slovene Constitution in Article 36, is not a basic human right. A basic human right is 'the inviolability of one's premises' that is also protected by Article 8 of the ECtHR<sup>21</sup>. The presence of two witnesses during a search only represents a procedural provision or condition that police officers have to consider or meet in order to render their actions legal. The presence of two witnesses as prescribed by Article 36 of the Constitution is only binding upon the Slovene police in the territory of the Republic of Slovenia, whereby the purpose of the presence of witnesses is only aimed at exercising control over the work of the police. This is the so-called procedural dimension of constitutional guarantees, as they can only be exercised in the territory of the Republic of Slovenia. We must not forget that, under strict conditions, the ZKP itself also allows for a house search to be carried out without the presence of two witnesses<sup>22</sup>, which additionally points to the fact that the 'presence of two witnesses' is not a human right, but merely a provision binding upon the police when performing its acts.

The prosecution and the court could respond to the defence's objection with regard to the jurisdiction of the body ordering the invasion of a human right, that in certain countries, other bodies are authorized to order invasions in human rights and that it is not prescribed in the ECtHR anywhere, which body may order invasions in human rights (e.g. house searches), and that this is not a matter of importance, as long as there is a preliminary or subsequent judicial control over the ordered investigative act. This is also confirmed by the extensive case law of the European Court of Human Rights (hereinafter: ECHR)<sup>23</sup>.

The ECHR stated in paragraph 44 of the Judgement in *Harju v. Finland*<sup>24</sup> and paragraph 45 of the Judgement in *Heino v. Finland*<sup>25</sup> that the absence of a prior judicial warrant may be counterbalanced by the availability of an *ex post factum* judicial review. Judicial review plays an important part in the control or the admission of an invasion of the right to privacy and inviolability of one's premises, however, it is not necessarily the case that judicial review is regulated in the same manner as prescribed in the Slovene Constitution that is binding only upon Slovene bodies with regard to the performance of investigative measures in the Slovene territory. In line with this view, countries decide themselves which body and under which procedure they shall carry out a certain procedural act, however, the legality thereof is also to be verified by the court before or after the procedural act is carried out.

In relation to the note of the legal instruction in the record, the prosecution and the court could argue that the privilege against self-incrimination<sup>26</sup> is a constitutional category that is stipulated in item 4 of Article 29 of the Constitution<sup>27</sup>, however, the note of the legal instruction is indeed a means for the protection of this privilege, which is a statutory category and is prescribed in the tenth paragraph of Article 227 of the ZKP,

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<sup>20</sup> Ratified in Slovenia with the Act Ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms amended by protocols Nos. 3, 5 and 8, and completed by protocol No. 2 (Official Gazette of the RS – International Agreements (MP), no. 7-41/1994).

<sup>21</sup> The first paragraph of Article 8 of the ECHR states that everyone has the right for his private and family life, his home and his correspondence, to be respected. The second paragraph states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law, and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>22</sup> The third paragraph of Article 218 of the ZKP states that a search may be carried out without witnesses being present if their presence cannot be secured immediately and it would be unsafe to delay the act. The reasons for the search without the attendance of witnesses shall be cited in the record.

<sup>23</sup> Cases *Smirnov v. Russia*, *Varga v. Romania*, *İşıldak v. Turkey*, *Kruslin v. France*, *Silver and Others v. the United Kingdom*, *Sorvisto v. Finland*, *Sallinen and Others v. Finland*, *Heino v. Finland* and *Harju v. Finland*.

<sup>24</sup> Judgement was on 27 August 2018 accessible on [https://hudoc.echr.coe.int/eng#{"itemid":\["001-103397"\]}](https://hudoc.echr.coe.int/eng#{).

<sup>25</sup> Judgement was on 27 August 2018 accessible on [https://hudoc.echr.coe.int/eng#{"itemid":\["001-103394"\]}](https://hudoc.echr.coe.int/eng#{).

<sup>26</sup> The essence of this privilege is its voluntary nature.

<sup>27</sup> Article 29 of Slovenian Constitution states that anyone charged with a criminal offence must, in addition to absolute equality, be guaranteed the following rights:

- the right to have adequate time and facilities to prepare his defence;
- the right to be present at his trial and to conduct his own defence or to be defended by a legal representative;
- the right to present all evidence to his benefit;
- the right not to incriminate himself or his relatives or those close to him, or to admit guilt.

and that this procedural provision only applies in the territory of Slovenia, which is why it cannot be expected that a procedural standard based on a Slovene act would be stated in a procedure before the bodies of another state that has a different procedural regulation when it comes to notes of instructions.

It is not relevant that the right to remain silent is written; it is, however, important that the suspects were instructed of this right and that they had a choice whether they will testify or defend themselves by remaining silent. The instruction, in which the accused is warned that he is not obligated to testify against himself or that he may exercise his defence by remaining silent, must be such that the accused's decision on whether he will exercise the right to remain silent or not, entirely depends on his free will<sup>28</sup>.

It is my assessment that the omission of legal instruction on the right to remain silent does not constitute a violation of the ECtHR. Article 6 of the ECtHR prescribes the right to a fair trial<sup>29</sup>. The third paragraph of Article 6 of the ECtHR prescribes the minimal rights to which a person is entitled, if accused of committing a criminal act. The right to remain silent or the privilege against self-incrimination is not listed among these rights. Despite the fact that the right to remain silent is not expressly included in the ECtHR, the ECHR has considered several cases when individuals complained due to the violation of their right not to incriminate themselves. The main factor that the ECHR considered in these cases was whether it is possible to consider all of the circumstances related to the alleged self-incrimination as repressive.

The ECHR determined that such repressive circumstances exist when an employee of a company is forced to give statements or information on company activities to official bodies that investigate potential irregularities, whereby such obtained data are stated in a subsequent criminal procedure against such an employee (cases of *Saunders v. United Kingdom* (1996))<sup>30</sup> and *I.J.L. and others v. United Kingdom* (2000))<sup>31</sup>. The ECHR made the same determination when a French citizen was fined because he refused to submit bank statements and legal deeds with regard to which the customs officials presumed they existed, but were not able to find during a legal search of premises (case of *Funke v. France* (1993))<sup>32</sup>.

In the case of *Jalloh v. Germany* (2006)<sup>33</sup>, where police officers forced the appellant to vomit a bag of cocaine that he had swallowed before the eyes of the police, the ECHR held that forcing a person to vomit and using the vomited bag of cocaine as the key evidence supporting the appellant's conviction, was a violation of the appellant's right to a fair trial and his privilege against self-incrimination. This case involved a repressive, excessive invasion to the body that represented inhumane and degrading conduct, carried out for the acquisition of the evidence that was the basis for the decision.

The ECHR established a violation of Article 6 of the ECtHR in several cases related to police

<sup>28</sup> The decision by the Slovene Constitutional Court Up-134/97 of 14 March 2002, that was accessible on 24 August 2018 on the official link of the Slovene Constitutional Court on the webpage: <http://odlocitve.us-rs.si/sl/odlocitev/US21295>.

<sup>29</sup> The right to a fair trial:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and the public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Anyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Anyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not the means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

<sup>30</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58009>, accessible on 21 September 2018.

<sup>31</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58800>, accessible on 21 September 2018.

<sup>32</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-57809>, accessible on 21 September 2018.

<sup>33</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-76307>, accessible on 21 September 2018.



interrogations, namely, in instances when the self-incriminating statements were used in a trial as essential ones, whereby the appellant gave these statements to the police while he was in solitary confinement undergoing cruel detention and without access to an attorney (case of *Magee v. United Kingdom* (2000))<sup>34</sup>. Or in the case where individuals were sentenced because they refused to answer the questions asked by the police (case of *Heaney and McGuinness v. Ireland* (2000))<sup>35</sup>. The ECHR also established a violation of Article 6 of the ECtHR in the case of *Averill v. United Kingdom* (2000)<sup>36</sup>, where the police gave disputable or vague advice on the scope of the right to remain silent while the person did not have access to legal representation.

In all these cases the suspects were, more or less, actually psychologically or physically forced to incriminate themselves in some way, and in some cases, they also did not have access to adequate legal assistance. The acquisition of such statements is undoubtedly a violation of Article 6 of the ECtHR. In particular, the right to remain silent presumes that it is up to the prosecution to prove the charges and that it does not resort to methods of repression or oppression to obtain evidence, thus acting contrary to the will of the accused (case of *Saunders v. United Kingdom*, *Heaney and McGuinness v. Ireland*, *J.B. v. Switzerland* (2001)<sup>37</sup> and *Allan v. United Kingdom* (2002)<sup>38</sup>. Given the case law of the ECHR, the consideration of whether Article 6 of the ECtHR was violated, requires that the 'degree of force' aimed at the acquisition of a statement of a suspect as well as access to legal representation is taken into account.

The prosecution and the court must determine by way of examining the interrogation records<sup>39</sup> and by posing additional questions to the suspects<sup>40</sup>, i.e. accused<sup>41</sup> at the main hearing as to whether there was any degree of force present at the interrogation of the suspects, i.e. whether there was any indirect or direct force or any physical or psychological violence, and whether the suspect voluntarily decided to submit their defence and whether they understood the meaning of their rights. Investigators must allow for the suspects undergoing interrogation to be passive and that they decide by themselves, consciously, rationally and above all, voluntarily, whether they will give statements or not.

Even if an individual procedural act is not carried out abroad in the manner prescribed by the domestic law, it does not mean that such evidence must be excluded from the brief; on the contrary, I believe that such evidence may be used in a domestic procedure, however, the court must first establish that such evidence was not obtained in violation of a constitutionally or internationally legally determined human right and fundamental freedom<sup>42</sup>. If that were the case, it would have to be excluded from the court brief.

The main purpose of evidence exclusion is surely the prevention of illegal searches and seizures. Under Slovene legislation, the decision on the exclusion of evidence is aimed at teaching the police a lesson with regard to its future conduct, which means the strict consideration of constitutional and statutory rights. However, a Slovenian decision on the exclusion of evidence is not to be used as a lesson directed at foreign

<sup>34</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58837>, accessible on 21 September 2018.

<sup>35</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-59097>, accessible on 21 September 2018.

<sup>36</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58836>, accessible on 21 September 2018.

<sup>37</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-59449>, accessible on 21 September 2018.

<sup>38</sup> Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-60713>, accessible on 21 September 2018.

<sup>39</sup> The records must show that the suspects were instructed on their status in the pre-trial procedure (that they are suspects to a criminal act, which act, that they have a right to an attorney and other rights that are laid down by the domestic legislation); who held jurisdiction at the interrogation (presence of an attorney); duration of the interrogation (whether there was a recess, time for lunch); whether the records was signed by the suspect (and attorney); whether the suspect (and/or attorney) made any comments on the record; it is advisable to write records as per the question/response system, as this is the only way to check the manner of interrogation as well as the nature of the questions, i.e. whether they were of a suggestive or captious nature.

<sup>40</sup> According to Article 144 of the ZKP, the suspect is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he had committed, or participated in the commission of, a criminal offence.

<sup>41</sup> According to Article 144 of the ZKP the defendant is the person against whom the charge sheet has become final.

<sup>42</sup> Equality before the law, prohibition of torture, protection of personal liberty, orders for and duration of detention, protection of human personality and dignity, equal protection of rights, right to judicial protection, public nature of court proceedings, right to compensation, presumption of innocence, principle of legality in criminal law, legal guarantees in criminal proceedings, right to rehabilitation and compensation, prohibition of double jeopardy, freedom of movement, right to private property and inheritance, right to personal dignity and safety, protection of right to privacy and personality rights, inviolability of dwellings, protection of the privacy of correspondence and other means of communication, protection of personal data, right to use one's language and script.



police that complied with these regulations during its work. Only their competent bodies may teach them such a lesson. It would be downright absurd, if Slovene bodies were to give lessons on compliance with Slovene regulations to foreign competent bodies when the latter independently act in their territory and in accordance with their own regulations.

## **B. Acquisition of Evidence by Way of Requests or a European Investigation Order**

If Slovene bodies acquire evidence from third countries, they must prepare a request for international legal assistance that is usually conveyed through the Ministry of Justice to the competent bodies in these countries<sup>43</sup>. However, if they acquire evidence<sup>44</sup> from another Member State of the European Union on the basis of the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: ZSKDČEU-1B)<sup>45</sup>, which implemented the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters<sup>46</sup> in the Slovene legal order, whereby they have been obtaining evidence as of 5 May 2018 by way of a European investigation order<sup>47</sup>. They may submit this order directly to the competent body of a Member State and it does not have to be submitted through the Ministry of Justice which contributes to its speedier execution.

On the basis of Article 34 of the Directive of 22 May 2017, when the implementation deadline has lapsed, the Directive shall replace the respective provisions<sup>48</sup> of the following conventions that apply in relations between the Member States of the EU in which the Directive is binding:

- i. European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959 and two additional Protocols to this Convention and bilateral agreements that were concluded based on Article 26 of the aforementioned Convention;<sup>49</sup>
- ii. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2) and Protocols (3) to this Convention<sup>50</sup> and
- iii. Convention Implementing the Schengen Agreement<sup>51</sup>.

In addition to the ZSKDČEU-1B, the Slovene bodies have also been obtaining evidence until 5 May 2018

<sup>43</sup> In cases of bilateral agreements or agreements between individual states, they may also be submitted directly (e.g.: Agreement on Legal Assistance in Civil and Criminal Matters of 14 April 2011 (Official Gazette of the RS - MP, no. 13/2015 and 16/2015) entered into by the Republic of Slovenia and the Republic of Serbia).

<sup>44</sup> Such as obtaining information or evidence which is already in the possession of the executing authority; obtaining information contained in databases held by police or judicial authorities; hearing of a witness, expert, suspected or accused person, victim, third party; identification of persons holding a subscription of a specified phone number or IP address; temporary transfer of a person held in custody to the issuing State; temporary transfer of a person held in custody to the executing State; hearing by videoconference or other audiovisual transmission of a witness, expert or suspected or accused person; hearing by telephone conference of a witness or expert; information on bank and other financial accounts, information on banking and other financial operations; investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time; monitoring of banking or other financial operations; controlled deliveries; covert investigations; interception of telecommunications and other provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence.

<sup>45</sup> Official Gazette of the Republic of Slovenia, no. 48/2013, 37/2015, 22/2018.

<sup>46</sup> Directive 2014/41/EU of the European parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (Official Journal of the European Union no. L 130/1 of 1 May 2014).

<sup>47</sup> A European investigation order is a judicial decision which has been issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence.

<sup>48</sup> A non-binding interpretation of the term 'respective provisions' of the Conventions replaced by the Directive was adopted in the scope of Eurojust and the European judicial network, and therewith the types of measures that are not included in the area of application of the European investigation order and regarding which the aforesated Conventions continue to apply. One of such measures is the service of procedural documents, joint investigation teams, spontaneous exchange of information, abandonment and assumption of law enforcement, return of items to their lawful owner, seizure and recovery of assets, exchange of information from the criminal records, measures of cooperation between the customs' bodies, etc. (Council doc. No 9936/17 LIMITE: on 18 September 2018 accessible on <http://data.consilium.europa.eu/doc/document/ST-9936-2017-INIT/en/pdf>).

<sup>49</sup> European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Council of Europe, European Treaty Series - No. 30).

<sup>50</sup> Official Journal of the European Communities C 197/1 of 12 July 2000.

<sup>51</sup> Official Journal of the European Union no. L 239/19 of 22 September 2000.

based on the European Convention on Mutual Assistance in Criminal Matters<sup>52</sup> and Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>53</sup>. Both Conventions were ratified in Slovenia with a law<sup>54</sup> and they were both in effect simultaneously.

When obtaining evidence under the European Convention on Mutual Assistance<sup>55</sup>, more emphasis is given on the law of the requested state, while the contrary is true regarding the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>56</sup>, i.e. more emphasis is given on the law of the requesting state. The European investigation order is recognised and executed in the same manner and under the same conditions as if the investigation measure or act was ordered by the executing state. However, it is possible that the ordering state states which formalities must be met to ensure the admissibility of evidence. The executing body must meet them, unless they are contrary to the fundamental regulations of the executing state<sup>57</sup>.

In the investigation and criminal prosecution of the gravest criminal acts such as terrorism, illicit trafficking in narcotic drugs, trafficking in human beings, counterfeiting (of products, official documents, money), cybercrime, frauds, corruption, crime against the environment and participation in a criminal organisation, the growingly predominant aspect is their international element, as these criminal acts are not executed in one state alone. Due to the more efficient detection and criminal prosecution of this type of criminal acts, action in a single state or the submission of individual European investigation orders and/or requests for international legal assistance is no longer enough and is not efficient. It may be inefficient mainly due to the following reasons:

- i. with requests, the cooperation of foreign bodies is limited only to a specific request or procedural act;
- ii. information and evidence are submitted after the request is executed (loss of time);
- iii. after the receipt of information, a new request must be prepared for each additional measure which can be inefficient in terms of time and costs;
- iv. participation is limited to the competent bodies of the executing state;<sup>58</sup>
- v. limited participation of the competent bodies of the ordering state;<sup>59</sup>
- vi. in principle, the investigation does not commence in the executing state.

To ensure the greatest degree of efficiency when fighting international crime, it is necessary to ensure an unlimited and simultaneous exchange of information and evidence between the representatives of foreign bodies that are equal and active in the investigation and criminal prosecution of the gravest criminal acts both at home as well as abroad. This, however, can only be achieved with their close cooperation which is provided with the formation and operation of joint investigation teams.

### **C. Acquisition of Evidence by Way of International Cooperation in Joint Investigation Teams**

It is typical for joint investigation teams that they represent cooperation between foreign competent

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<sup>52</sup> European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Council of Europe, European Treaty Series - No. 30).

<sup>53</sup> Official Journal of the European Communities C 197/1 of 12 July 2000.

<sup>54</sup> Act ratifying the European Convention on Mutual Assistance in Criminal Matters and Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Official Gazette of the Republic of Slovenia, no. 25/1999) and the Act ratifying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by the Council in accordance with Article 34 of the Treaty on European Union (Official Gazette of the Republic of Slovenia – International Agreements no. 7/2005).

<sup>55</sup> Article 3 of European Convention on Mutual Assistance in Criminal Matters states: 'The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for procuring evidence or transmitting articles to be produced in evidence, records or documents.'

<sup>56</sup> Article 4 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union states: 'Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.'

<sup>57</sup> Article 9 of Directive 2014/41/EU of the European parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

<sup>58</sup> It is the state whose competent body executes a decision or measure for another state.

<sup>59</sup> It is the state whose competent body issued the decision or measure to be executed in another state.

bodies in the investigation and criminal prosecution of criminal acts containing an international element based on a time-limited agreement. The agreement is concluded on the initiative of a competent body of the domestic or foreign state. This means that the precondition for the conclusion of the agreement is an already commenced pre-trial procedure in the state that usually initiates the conclusion of the agreement. This is so because the investigative bodies in this state already possess certain evidence and require additional evidence or information from other countries to bring the matter to a successful conclusion.

A joint investigation team can have one or more leaders, depending on the number of participating countries. The practice of establishing joint investigation teams is going in the direction where each participating state designates its leader. In the meantime, the investigation and criminal prosecution may be carried out in one or several or all participating states. It is also possible that some states conclude an agreement on the establishment of a joint investigation team in the investigation and criminal prosecution, while the others participate through international legal assistance, or accede to the agreement at a later stage.

The definition and terms for the establishment of a joint investigation team, its composition, time and geographical aspect of operations, its purpose and manner of operations as well as organization is regulated by several bilateral<sup>60</sup> and international<sup>61</sup> documents as well as Practical instructions for joint investigation teams prepared by the Secretariat of the Network for joint investigation teams in cooperation with Eurojust, Europol and OLAF<sup>62</sup>. These Practical instructions also include a template agreement on the establishment of a joint investigation team<sup>63</sup>.

The Member States of the European Union must notify their national representatives at Eurojust<sup>64</sup> about the establishment of a joint investigation team and the results of its work<sup>65</sup>. A mere notification by Member States could not in any way contribute to the efficiency of joint investigation teams as the cooperation of national members in their activities and in the establishment as well<sup>66</sup>. In any case, the support of national members and the Secretariat of the Network of joint investigation teams that are part of the Eurojust<sup>67</sup> personnel, is of key importance when it comes to the preparation of the agreement on the establishment of a joint investigation team, as Eurojust promotes the template agreement in which all the relevant articles are already included that may later on be subject of discussions and negotiations among the signatories of the agreement. It should not be overlooked that regarding the latter, the Secretariat of the Network of joint investigation teams is always available with its specific knowledge and extensive experience. When the parties agree on the agreement content, Eurojust also provides the agreement translations. However, the role of Eurojust does not end only in the adoption of the agreement on the establishment of a joint investigation team or in relation to changes to the agreement content; it can also continue in the very investigation and criminal prosecution, as the competent bodies often require legal advice in the criminal prosecution of the

<sup>60</sup> Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto and Agreement on Mutual Legal Assistance between the European Union and the United States of America (Article 5).

<sup>61</sup> Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 12 July 2000 (Article 13); Council Framework Decision on 13 June 2002 on Joint Investigation Teams (2002/465/JHA); Police Cooperation Convention for South-East Europe ((PCC-SEE) Article 27); Second Additional Protocol to the European Convention on Mutual Legal Assistance (Article 20); United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 9); United Nations Convention against Transnational Organised Crime (Article 19) and United Nations Convention against Corruption (Article 49).

<sup>62</sup> Issued by the Council of the European Union in Brussels on 14 February 2017 (summarized from the webpage: <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/JITs%20Practical%20Guide/JIT-GUIDE-2017-EN.pdf>, accessible on 14 August 2018).

<sup>63</sup> Official Journal of the European Union C 18, 19 January 2017, p. 1–9.

<sup>64</sup> On the basis of Article 2 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (Official Journal L 063 of 6 March 2002) and further strengthened by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime ((Official Journal L 138 of 4 June 2009) hereinafter: Eurojust Decision), this is usually the prosecutor or the judge.

<sup>65</sup> Article 13 of the Eurojust Decision.

<sup>66</sup> Article 9f of the Eurojust Decision.

<sup>67</sup> Article 25a of the Eurojust Decision.

more grave forms of cross-border crime that pertain to a referral of a case, European arrest warrant, European investigation order, and last but not least, also to the answers relating to the settlement of a dispute on jurisdiction. An important factor is also the financing of the operations of joint investigation teams, whereby it is based on anticipated costs of operative activities<sup>68</sup>, which is also provided by Eurojust. Eurojust therefore prepares everything necessary for the signature of an agreement on the establishment of a joint investigation team and finances all the necessary logistics related to its operations which surely saves time and costs for the investigation and law enforcement bodies at their work.

In the Republic of Slovenia, the establishment of joint investigation teams is regulated in the ZSKDČEU-1B, namely, Article 53 regulates the procedure of its establishment and Article 54 regulates the manner of its work. The procedure of the establishment and the operations of the joint investigation team is also regulated in Article 160b<sup>69</sup> of the ZKP.

However, neither the ZSKDČEU-1B nor the ZKP regulate the issue of obtaining evidence in a joint investigation team, and thereby the admissibility thereof as well, due to which the answer to this question is to be sought in international acts that regulate the operations of a joint investigation team.

#### 1. Application of the Law in Joint Investigation Teams

International criminal law agreements that are relevant for the cooperation between countries in criminal prosecution of the criminal offenders override domestic law, under the condition that such agreements have been ratified and published. The provisions of a ratification act with which an international agreement is included in the internal legal order of a state, have the power of a law both in the formal as well as material sense given *lex lata*. However, with the publication of the ratification act, an international agreement starts to apply directly.

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<sup>68</sup> Reimbursement of the costs of transport and accommodation, interpretation and translation costs as well as the costs of evidence materials' transport and/or seized items' transport costs.

<sup>69</sup> The Article 160b of the ZKP states: (1) In the case which is the subject to the pre-trial procedure, investigation or court proceedings in one or more countries, the police may cooperate with the police staff of the other country in the territory or outside the territory of the Republic of Slovenia in carrying out tasks and measures in the pre-trial procedure and investigation procedure for which it is responsible according to the provisions of this Act. (2) In carrying out the tasks and measures referred to in the preceding paragraph, the police shall be directed by the public prosecutor pursuant to Article 160.a of this Act and may cooperate with the public prosecutors of the other country in the territory and outside the territory of the Republic of Slovenia in carrying out the stated activity and in exercising other powers in compliance with the provisions of this Act (joint investigation team). (3) The tasks, measures, guidance and other powers referred to in the previous paragraphs of this Article must be carried out in accordance with the agreement on the establishment and operation of joint investigation team in the territory of the Republic of Slovenia or other countries that shall be concluded on a case by case basis by the Public Prosecutor General or under his authorisation by his deputy with the Public Prosecution Office, court, police or other competent authorities of other states as set out in the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the European Union, No. L 162/1, 20.6.2002) or in the existing international treaty concluded with a country not being a member of the European Union after obtaining the opinion of the Director General of the Police. The agreement shall be concluded on the initiative of the Public Prosecutor General, the Head of the District Public Prosecution Office or the Head of the Group of Public Prosecutors for Special Affairs or on the initiative of the competent authority of another state. (4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of the operation of the team, the Public prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its operation. The Public Prosecutor General must notify the ministry responsible for justice in writing of any agreement concluded. (5) The police staff, public prosecutors or other competent authorities of other states shall only carry out tasks, measures, guidance and/or other powers referred to in the first and second paragraphs of this Article in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article. (6) If so provided for in the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article, the representatives of competent authorities of the European Union, such as EUROPOL, EUROJUST and OLAF, may participate in the joint investigation team. The representatives of competent authorities of the European Union shall only exercise their powers in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement referred to in the third paragraph of this Article. (7) The police organisation units and Public Prosecution Offices of the Republic of Slovenia are obliged to offer all the necessary assistance to the joint investigation team. (8) Upon the completion of the work done by the joint investigation team, the head of the joint investigation team shall make a report in writing to all its members and the Public Prosecutor General.

Since the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union was also ratified with an appropriate law in Slovenia<sup>70</sup>, this Convention is also directly applicable in Slovenia in the basis of Article 8 of the Constitution<sup>71</sup>, which means that Article 13 of the said Convention is also directly applicable, whereby this Article precisely determines under which conditions a JIT may be established, who is in the composition, how and where it operates etc. It is stated in item a) of the third paragraph of Article 13 that the team leader acts in the scope of its competencies as per his national legislation. However, item b) of the third paragraph of Article 13 prescribes that the JIT performs its tasks in accordance with the legislation of the Member State in which it operates. These provisions are therefore directly applicable and in effect in the Republic of Slovenia.

We find the same diction about the operations of the team leader and the performance of team tasks, i.e. that these teams should comply with the national legislation of the Member State in which they operate, in the following:

- items a) and b) of Article 3 of the Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA);
- items a) and b) of Article 5 of the Police Cooperation Convention for Southeast Europe;<sup>72</sup>
- items a) and b) of the third paragraph of Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;<sup>73</sup>
- the fourth paragraph of Article 5 of Agreement on Mutual Legal Assistance between the European Union and the United States of America<sup>74</sup> that includes a provision that refers to the application of the national law of the state in which the joint investigation team operates.

Item c) of the first paragraph of Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>75</sup> also stipulates that team members may, upon the authorization of appropriate bodies on the territory of which the investigation is to be executed, act on the basis of the authorization and that all parties must ensure the complete consideration of the sovereignty of the party on the territory of which the investigation is being carried out. It may be concluded that this provision, too, refers the operations of the joint investigation team to the application of the national law of the state where the investigation is being carried out.

Article 19 of the United Nations Convention against Transnational Organised Crime<sup>76</sup> and Article 49 of the United Nations Convention against Corruption<sup>77</sup> entail an identical text, namely, that the relevant contracting states ensure the complete consideration of the sovereignty of the contracting state on the territory of which the investigation is to be carried out.

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<sup>70</sup> Ratified in Slovenia with the Act ratifying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Official Gazette of the Republic of Slovenia – International Agreements no. 7/2005 of 18 May 2005).

<sup>71</sup> Article 8 of Slovenian Constitution states that laws and regulations must comply with the generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

<sup>72</sup> Ratified in Slovenia with the Ratification of the Police Cooperation Convention for Southeast Europe Act (Official Gazette of the RS no. 108/2012 of 29 December 2012).

<sup>73</sup> Ratified in Slovenia with the Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Act (Official Gazette of the RS no.92/2012 of 6 December 2012)

<sup>74</sup> Ratified in Slovenia with the Ratification of the Agreement on Mutual Legal Assistance between the European Union and the United States of America Act (Official Gazette of the RS no. 121/2005 of 30 December 2005 – International Agreements, no. 22/05).

<sup>75</sup> Ratified in SFRJ with the Ratification on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (Official Gazette of the SFRJ no. 14 of 23 November 1990).

<sup>76</sup> Ratified in Slovenia with the Ratification on the United Nations Convention against Transnational Organised Crime Act (Official Gazette of the RS no. 41/2004 of 22 April 2004).

<sup>77</sup> Ratified in Slovenia with the Ratification on the United Nations Convention against Corruption Act (Official Gazette of the RS no. 5/2008 of 4 March 2008).



Given the international acts, I can state that joint investigation teams must, when acquiring evidence in the territory of a team Member State where it collects evidence, comply with its national legislation and collect evidence in line with the procedures that apply in this state. This means that if a joint investigation team is operating and collecting evidence in the territory of three states, it must comply with three different sets of legislation. However, this does not mean that the evidence that was obtained in the scope of a joint investigation team in different states is also automatically admissible for an evidentiary procedure in another state. On the contrary. Its admissibility should always be diligently considered especially in the light of the standards of the national legal order and the European Convention on Human Rights<sup>78</sup> and the Universal Declaration of Human Rights<sup>79</sup>.

## II. CONSIDERATION OF EVIDENCE CONTENT BY SLOVENE COURTS

As stated at the outset, the court must, when considering whether evidence was collected in accordance with the national law of the country where such evidence was collected, also consider whether such acts materially comply with the standards of the Constitution of the Republic of Slovenia. This means that the court further considers two more sets of questions, namely: 1. the evidentiary basis for consideration at the moment when procedural acts by foreign investigators are ordered, and 2. whether the evidentiary basis meets the standards that, in accordance with the Slovene ZKP, allow this type of invasion in basic human rights. Such an opinion was also adopted by the Slovene case law<sup>80</sup>.

A Slovene court must check the evidentiary basis that was handled by foreign bodies before they carry out individual procedural acts. Evidentiary basis may be acquired (bank) documentation, hearing of witnesses and data obtained with special methods and means, such as telephone tapping and following. If such an evidentiary basis meets the Slovene evidence standards (i.e. justified grounds for suspicion and reasons for suspicion), and the same procedural acts would have been ordered on the evidentiary basis, then the procedural acts by the foreign bodies were materially compliant with the standards of the Constitution of the Republic of Slovenia and such evidence is also admissible on the same grounds in a Slovene procedure.

## III. CONCLUSION

When acquiring evidence from abroad, their admissibility before the court must be verified. This means that both the law enforcement bodies and prosecution services as well as the courts must, along the legality of the acquisition of the evidence obtained abroad, also consider whether such evidence was obtained in violation of a constitutionally or internationally legally determined human right and fundamental freedom. If evidence obtained abroad was obtained illegally, it must be excluded from the brief. The mere fact that evidence obtained abroad was obtained under a different procedure than in the state in which the court will use it for an evidentiary procedure does not necessarily mean that such evidence is automatically inadmissible.

Evidence obtained abroad that was obtained independently of a request or participation of another state must be obtained legally in such a state, whereby it is valid also in a criminal procedure being held in another state, even though it was not obtained in a manner prescribed in this other state where it will be used.

If evidence was obtained abroad illegally or in violation of basic human rights, then such evidence is undoubtedly inadmissible and must be excluded from the brief with which we prevent illegal investigations and seizures and prioritize the respect of human rights and not the establishment of truth and the efficiency of criminal procedure.

Given the fact that the acquisition of evidence from abroad through requests may be inefficient in terms of time and costs, the objective of an efficient fight against international crime calls for employing other instruments of international cooperation as well. One of the more efficient instruments of gathering evidence is undoubtedly through the formation and operation of joint investigation teams. They can operate and obtain

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<sup>78</sup> Ratified in Slovenia with the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms Act amended by protocols Nos. 3, 5 and 8, and completed by protocol No. 2 (Official Gazette of the RS-MP, no. 7-41/1994).

<sup>79</sup> United Nations General Assembly Resolution 217A on 10 October 1948.

<sup>80</sup> Judgement by the Supreme Court of the Republic of Slovenia ref. no. XI Ips 44415/2010 of 22 June 2010.



evidence in the territory of one participating state or in the territory of several participating states. A joint investigation team undoubtedly saves on time and costs that would have otherwise been spent for writing and translating time-consuming requests; operating through investigative bodies is not only limited to one or two investigating acts – investigative bodies can actually carry out several investigative acts simultaneously and work actively both at home as well as abroad; they can receive evidence and information immediately; direct communication is established with foreign bodies; most importantly, the collection of evidence is subject to the law of the state in which the joint investigation team operates, with which errors in the legality of evidence collection and consequently, the possibility of their exclusion in another state, are decreased.

However, in the establishment and provision of the financial means for the operation of joint investigation teams, and consequently also in the admissibility of evidence before the courts, we must not overlook the efficient assistance provided by Eurojust as shown by the numbers as well, as the number of newly-established joint investigation teams whose operations were financially supported by Eurojust is growing every year<sup>81</sup>.

It can in no way be expected that a joint investigation team is a ‘magic wand’ and that all investigation, evidentiary, legal, financial, logistic, technical, translation and other problems will be solved simply with the conclusion of an agreement on the establishment of a joint investigation team. However, it may be expected that these problems will be resolved more easily with the close cooperation and a speedy decision on the country in which a criminal procedure will be held and against whom<sup>82</sup> it will be brought.

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<sup>81</sup> Summarized from the webpage: <http://www.eurojust.europa.eu/doclibrary/corporate/Pages/annual-reports.aspx>, accessible on 24 September 2018.

<sup>82</sup> I propose for the sake of an easier execution of a procedure, especially from the aspect of the protection of the rights of the accused and economy of the procedure, that in principle, each state participating in the team, shall perform the criminal prosecution of its own citizens unless other state is in a better position to prosecute.

# **ANTI-CORRUPTION MEASURES OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION, HONG KONG SPECIAL ADMINISTRATION REGION, CHINA AND STRATEGIES AND EXPERIENCE OF ITS COMMUNITY RELATIONS DEPARTMENT**

*Corinna Wong\**

## **I. INTRODUCTION**

Through the efforts of the Independent Commission Against Corruption (ICAC) working in partnership with the public, Hong Kong has been transformed from a city with widespread corruption into one of the cleanest places in the world. This paper gives an overview of the history and the anti-corruption measures of the ICAC, highlighting the strategies and experience of its Community Relations Department in changing the public attitude towards corruption.

## **II. HISTORY AND BIRTH OF THE ICAC**

Hong Kong was in a state of rapid changes in the 1960s and 70s. The massive growth in population and fast expansion of the manufacturing industry accelerated the pace of social and economic development. The Government, while maintaining social order and delivering the bare essential public services, was unable to meet the needs of the swelling population. This provided a fertile environment for the unscrupulous. Many people had to take the “backdoor route” simply to earn a living and secure the basic services. Paying “tea money”, “black money”, “hell money” — whatever its name — became not only familiar to many Hong Kong people, but was also accepted as a necessary way of life.

Corruption was rampant in the public sector. We had stories like an ambulanceman who demanded money before picking up a sick person or a hospital ward attendant who asked for “tips” before giving patients a bedpan or a glass of water. Offering bribes to the right officials was also “part of the procedure” when applying for housing, schooling and other public services. Corruption was particularly serious in the Police Force. Corrupt police officers offered protection to vice, gambling and drug activities. Law and order was under threat and many in the community had fallen victim to corruption.

At that time, investigation of corruption cases, as viewed like any criminal cases, was the responsibility of a dedicated Anti-Corruption Office within the Hong Kong Police Force. However, corruption remained largely unchecked and people had great doubt about government’s political will in addressing the problem. Public resentment escalated to new heights when a corrupt senior expatriate police officer, Peter Godber, was able to flee to England whilst under investigation by the Anti-Corruption Office. Godber’s escape unleashed a public outcry and students took to the street to demand action from the Government against rampant corruption.

In response to mounting public demand, the then Governor appointed Sir Alastair Blair-Kerr, a Senior Judge, to look into Hong Kong’s corruption problem in 1973. Noting the public’s loss of confidence in the ability of the police to investigate bribery cases, Sir Alastair raised the suggestion of setting up a dedicated agency separated from the civil service, including the police, to pursue corruption.

I think the situation calls for an organisation, led by men of high rank and status, which can devote its whole time to the eradication of this evil..... A further and conclusive argument is that public confidence is very much involved. Clearly the public would have more confidence in a unit that is entirely independent, and separated from any department of the Government, including the Police.

Alastair Blair-Kerr Report

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Against this background and the strong determination of the Government, the ICAC was established in February 1974 after the enactment of the ICAC Ordinance. The new agency is a statutory body specializing in fighting corruption to help keep Hong Kong fair, just, stable and prosperous. To enable the effective functioning of this new agency, the Government had conferred a unique status on the ICAC, which is also guaranteed in Article 57 of the Basic Law<sup>1</sup> of the Hong Kong Special Administrative Region (HKSAR), China. The ICAC is independent from the civil service and was directly accountable to the then governor (now the Chief Executive of HKSAR), mandating its operation is free from any interference. The Government lends its support to the fight against corruption and allocates sufficient resources to the ICAC. The ICAC's independent status and the grant of adequate provision of resources, which accord with Article 6<sup>2</sup> and Article 36<sup>3</sup> of the United Nation Convention Against Corruption (UNCAC), are instrumental to the success in its anti-corruption work.

### III. ADOPTING THE HOLISTIC THREE-PRONGED STRATEGY

Since its inception, the ICAC has recognised that it could not win the battle against corruption only by punishing the corrupt. A holistic and coordinated strategy embracing detection of crime, prevention of potential loopholes and education on the evils of corruption was required. Hence, from the outset, the ICAC has been advocating its three-pronged strategy to fight corruption by:

- building a strong enforcement arm to make corruption a high risk crime;
- implementing system changes to minimize corruption opportunities; and
- transforming social values and behavior patterns to reinforce the principles of justice and fairness.

Under the ICAC Commissioner and serviced by the Administration Branch, three distinct but interdependent functional departments, namely, the Operations Department (Ops), Corruption Prevention Department (CPD) and Community Relations Department (CRD) strategically carry out their anti-corruption missions enshrined in the ICAC Ordinance.

#### A. Operations Department

The Ops is the investigative arm of the ICAC. It is the largest department in the Commission, comprising about 70% of the ICAC's workforce of about 1,500. Its statutory duties include:

- receive and consider allegations of corrupt practice;
- investigate any alleged or suspected offences under the ICAC Ordinance, Prevention of Bribery Ordinance (POBO) and Elections (Corrupt and Illegal Conduct) Ordinance (ECICO)<sup>4</sup>;
- investigate any alleged offences of blackmail committed by a prescribed officer through misuse of office; and
- investigate any conduct of a prescribed officer, which is connected with or conducive to corrupt practices and report thereon to the Chief Executive.

The three pieces of legislation, ICAC Ordinance, POBO and ECICO provide the legal basis for combating corruption. The ICAC Ordinance provides for the appointment of the Commissioner and his officers and other matters relating to the management of the ICAC. It also sets out the duties and responsibilities of the Commissioner and empowers the ICAC to investigate corruption-related offences. The POBO sets out the offences of bribery and corruption in both the public and private sectors and the penalties for them. The ECICO governs the conduct of public elections and sets out the offences to be investigated by the ICAC.

<sup>1</sup> Article 57 of the Basic Law of HKSAR: A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

<sup>2</sup> Article 6 of UNCAC: Each State Party shall grant the corruption prevention body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.

<sup>3</sup> Article 36 of UNCAC: Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

<sup>4</sup> More information on the ICAC Ordinance, POBO and ECICO can be accessed from the Bilingual Law System (<https://www.legislation.gov.hk/>)

The ICAC is given wide-ranging powers to investigate corruption offences which are difficult to detect and investigate because of their secretive nature. The ICAC Ordinance sets the parameters of the ICAC investigation, the procedures for handling suspects and disposal of property connected with relevant offences. It also gives the investigators the power of arrest, detention, search and seizure to deal with bribery offences as well as offences which are facilitated by or connected with bribery. The POBO gives the ICAC special powers of investigation, such as searching bank accounts held by the suspect, his family members or associates. With judicial supervision, the investigators may freeze accounts or restrain assets, require suspects and any person to provide information, surrender travel documents and not to leave Hong Kong. All these powers are essential to the investigation of corruption.

The increasing mobility in international travel, rapid development of financial and banking systems as well as the advancement of information technology make corruption a transnational crime. International cooperation between the ICAC and other jurisdictions has been well-established under UNCAC and bilateral agreements of mutual assistance on criminal matters, bringing the culprits to justice no matter where they are.

## **B. Corruption Prevention Department**

The CPD believes "Prevention is better than cure". Opportunities for corruption can be removed through transparent and accountable procedures; effective leadership and supervisory control; and improved system controls and safeguards. Its statutory duties are to:

- examine the practices and procedures of government departments and public bodies, and secure revision of any methods of work or procedures that may be conducive to corruption; and
- advise upon request of private organisations or individuals on how to prevent corruption.

The CPD monitors developments in public policies, law and government initiatives to provide timely advice to government bureaux, departments and public bodies to ensure anti-corruption measures are built in from the start through consultation. Concurrent corruption prevention advice is also given in the process.

The CPD conducts assignment studies to make recommendations to minimise opportunities for corruption and monitors completed studies to ensure effective implementation of the agreed recommendations. Almost all government departments and most public bodies have had their key procedures studied, including all major public functions such as law enforcement, licensing and regulatory systems, procurement, contract administration, staff management and public works, etc.

Also, the CPD has been increasingly proactive to provide advice for private organisations. Its Corruption Prevention Advisory Services team provides tailor-made corruption prevention advice to individual private companies upon request. It adopts a cross public-private sector strategy in preventing corruption in the private sector where public interest is involved, e.g. grantees in subvention schemes, contractors of works projects, etc.

## **C. Community Relations Department**

The ICAC had a difficult start in 1974. With a skeptical public that believed the Government condoned corrupt practices. The real challenges for the ICAC were to bring about a drastic and collective change of public attitude towards tolerating corruption and rebuilding public confidence in Government's determination in fighting corruption. Sir Jack Cater, the founding Commissioner of ICAC wrote in the first ICAC Annual Report:

Success in the Operations Department and success in the Corruption Prevention Department are essential as a springboard to the work of the Community Relations Department. And this is vital, for there can be no real victory in our fight against corruption unless there are changes of attitude throughout the community.

To effect a change in people's attitude towards corruption was no easy task at the early time. While it was considered mission impossible, the mammoth task of changing public attitude is entrusted to the CRD, with the following statutory duties:

- educating the public against the evils of corruption; and
- enlisting public support in combating corruption.

In carrying out these duties, the CRD extensively uses multimedia publicity and reaches out to the society through a network of seven Regional Offices located in densely populated and strategic areas to initiate proactive and intensive communication with the general public. It promotes public awareness of the evils of corruption, fosters public confidence in and support for the work of the ICAC, explains the laws relating to corruption and encourages the public to report corruption.

#### **IV. THREE-PRONGED ANTI-CORRUPTION STRATEGY IN PRACTICE: THE CONSTRUCTION INDUSTRY AS AN EXAMPLE**

The three-pronged anti-corruption strategy has been put in practice in different fields in both the public and private sectors. One of the significant examples is the construction industry. The construction industry, which ranks 7th in terms of its contribution to our GDP of US\$16 billion in 2016<sup>5</sup>, is one of the major pillars of the economy of Hong Kong, embracing all the construction activities of major infrastructure and real estate properties, and involving many stakeholders such as real estate developers, professionals, academics, contractors, workers and government officials. Corruption in the construction industry is of particular public concern because, monetary costs aside, public safety is at risk.

One could see how costly corruption was when Hong Kong was plagued by two major cases in the construction industry. The first one occurred in 1982 involving the use of substandard cement for building up concrete structures of 26 public housing blocks through bribery. While investigating the case, the ICAC investigators vetted a mountain of documents and records, enquired 3,730 persons/companies and visited overseas countries like Australia, Canada, Cyprus, New Zealand, Spain, United Kingdom and United States of America. In the end, three contractors and seven serving or former civil servants were among the accused and charged with a total of 46 corruption-related offences under the POBO. The culprits were charged and sentenced for 3 to 33 months' imprisonment. The 26 public housing blocks had to be demolished, and 78,000 people had to be relocated. The re-building costs amounted to US\$100 million. The second case took place in 2001 concerning the short-piling problem in a housing project. The staff of the piling sub-contractor fabricated site records to conceal the short-piling construction. In the end, the offenders were sentenced for 42 months to 12 years imprisonment. The two housing blocks involved had to be pulled down, resulting in a loss of US\$83 million.

Under the three-pronged strategy, other than criminalizing the corrupt by law enforcement, we turned the observations gained from investigations into system enhancement to plug corruption loopholes and lessons to learn in training and mass education programmes.

On the prevention front, the CPD identified the common causes to the problems and proposed corruption resistant measures to plug loopholes, including recommending the Government to implement drastic site supervision system, stringent probity requirements concerning acceptance of advantages, handling of conflicts of interest and confidential information. Moreover, the CPD produced a Best Practices Checklist to alert practitioners about the corruption risks and preventive measures in the construction field. The Best Practices Checklist covers specific vulnerable areas such as the award and administration of construction contracts and consultancy agreements, as well as testing of materials. The CPD also helps individual private companies to strengthen their corporate governance and internal controls through a dedicated team, the Corruption Prevention Advisory Services. A set of capacity building training package containing common corruption pitfalls in the construction industry and their preventive safeguards was also produced with the collaboration of major stakeholders. The electronic version of the package has been uploaded onto the ICAC website for public access.

On the education front, the CRD aims at heightening awareness of ethical values and strengthening

<sup>5</sup> Hong Kong in Figures in 2016" by the Census and Statistic Department, HKSARG ([www.censtatd.gov.hk/hkstat/hkif/index.jsp](http://www.censtatd.gov.hk/hkstat/hkif/index.jsp))

integrity throughout the construction industry. We organised integrity trainings, seminars and workshops for the professionals, contract administrators, site supervisory staff and students of construction related courses. Besides, anti-corruption talks are regularly arranged for staff members of individual companies, alerting them to important issues such as bribery and misconduct in public office, managing staff integrity and handling conflicts of interest, etc.

This three-pronged anti-corruption strategy also applies to all trades and industries in both the private and public sectors. Our ultimate aim is to eradicate the root of corruption while bringing the issue of corruption to the forefront of public awareness.

## **V. MISSION OF THE CRD**

The CRD believes that high ethical standards are the first line of defense against corruption. Our mission of “Ethics for All” aims at gaining the support of people from different walks of life in maintaining high ethical standards, showing zero tolerance for graft, and reporting it whenever it occurs. To achieve this, the CRD uses four effective strategies which are summarized in the acronym “TAPE”:

1. Target-oriented strategy
2. All-round communication strategy
3. Partnership strategy
4. Engagement strategy

## **VI. THE TAPE STRATEGIES IN ACTION**

### **A. Target-Oriented Strategy**

Educating the public against the evils of corruption and enlisting public support in combating corruption are the mandate of the CRD. Driven by this ultimate objective, the thrust of CRD's efforts is to unite all segments of the community to build and sustain a culture of probity. However, individual sectors have distinctive needs and concerns in anti-corruption education. We have to be target-oriented and customise our services to cater for the needs of different target groups through segmentation. Hence, we have organised our work into various programme areas for different targets and formulate target-oriented education programmes for their specific needs. These include the government and public sector, business community, young people, non-governmental organisations, the general public, including the new arrivals and ethnic minorities, etc. Each programme area is tailored to enhance the targets' ethical standards and understanding of the anti-corruption law, equip them with knowledge about common corruption pitfalls and provide them with practical advice on how to address these problems.

The segmentation of target groups has been suitably refined and adjusted to suit the changing social and economic environment. For instance, in the business sector, we tailor-made our education and prevention programmes for different trades. Our training modules are recognised or accredited by more than 60 professional bodies as their continuing professional development courses for members, including company directors, lawyers, engineers, surveyors, estate agents, securities intermediaries, etc. Over 40,000 business executives and practitioners are reached through ICAC training sessions every year.

### **B. All-Round Communication Strategy**

To enlist public support for the ICAC, the public needs to be constantly assured that the ICAC is capable of carrying out its duty effectively without fear or favour. The CRD integrates face-to-face contacts and multimedia publicity to spread the messages to people from all walks of life, like civil servants, private sector practitioners, young people and the general public, etc. through an all-round communication strategy via multiple platforms. The face-to-face contacts and multimedia publicity complement and supplement each other in enhancing the education efforts and publicity impact of the probity messages.

#### **1. Face-to-Face Contacts**

“Reaching out to the community” is a major feature of CRD's work. Through the network of seven Regional Offices located in densely populated or strategic areas which cover the entire geographical area of Hong Kong, the CRD officers reach out to the community by engaging in face-to-face visits and talks to members of the public, from classroom to boardroom. They also serve as the focal point of contact with local



community leaders and organisations with which the Regional Offices jointly organise publicity activities to disseminate probity messages. The face-to-face education work enhances the cognitive understanding of the public on what corruption is; serves to impart the anti-corruption messages and dispel misconception; and helps build up the long-term rapport and public trust in the ICAC. It also facilitates our officers to grasp first-hand public sentiments and comments on the work of ICAC which could shed light on our work planning and long-term development. The Regional Offices also receive corruption complaints and enquiries from members of the public.

Moreover, the Regional Offices regularly organise meet-the-public sessions for people from different strata, from district leaders to housewives, ethnic minorities to young people, etc. to collect their feedback on our work and enlist their support for anti-corruption work.

## 2. Multimedia Publicity

To change the public attitude and effectively create awareness of corruption intolerance, we have also used the mass media extensively for publicity since the establishment of the ICAC. The anti-corruption messages have penetrated into the lives of the public through different media channels, such as TV, radio, printed media and other forms of promotions. In fact, the ICAC is the first non-commercial organisation in Hong Kong to use TV advertisements to promote its messages. Over the years, we have produced many TV advertisements which are uploaded on the ICAC corporate website with different approaches and themes to maximize the publicity impact. They include:

### *(a) TV advertisements*

- (i) Create deterrent effect — to scare people off corruption by emphasising that corruption is a high risk crime which leads to grave consequences.
- (ii) Highlight evils of corruption — to educate the public on the evils of corruption.
- (iii) Promote fair society — to urge the young people to adopt a “zero tolerance” attitude towards corruption. We tried to speak their language and present the messages in a lively manner.
- (iv) Encourage reporting corruption and enlist support to ICAC — over 90% of our investigations start with a report by a member of the public. We therefore attach great importance to encouraging this essential help from the community.
- (v) Keep close tabs on the public’s concern — these advertisements carry specific messages. For example, we remind voters not to sell their votes through bribery and to support clean elections during public election years.

### *(b) TV drama*

- (i) The TV drama series based on real ICAC cases depicts how the ICAC brings the corrupt to justice without fear or favour. It also educates the public on the evils and consequences of corruption. These series are very popular and effective. It is also a soft approach for brand building and educational purposes, building public trust in ICAC’s ability and determination to fight corruption.

### *(c) Social media*

- (i) With the rapid development of social media, more diversified formats with interactive communication with the general public are now in place. They include the ICAC corporate website, various thematic websites, YouTube, Facebook, Weibo, mobile phone applications, and Instagram. Social media is a powerful and effective way to promote ICAC messages to a larger number of people, particularly the youth. Through the multimedia channels in Hong Kong, the community can receive anti-corruption messages anytime and anywhere.

## **C. Partnership Strategy**

The ICAC is independent but we are not alone. The CRD sees the need to leverage on resources in the

community to serve as a multiplier for CRD's preventive education work. Our corporate slogan is "Hong Kong — the Advantage is always you and the ICAC", which underlines the importance we place on our partnership with the public in fighting the anti-corruption battle. With our efforts of district entrenchment and collaboration, our partners share the probity value of the ICAC and are willing to offer their expertise in assisting the CRD to produce anti-corruption products and online programmes. Throughout the years, the CRD has collaborated with different strategic partners in the community:

1. Business Sector

The CRD forms strategic collaborations with various trades and professions in the business sector. Pioneer work in engaging the private sector started in the 1980s and culminated into the establishment of the Hong Kong Ethics Development Centre in 1995 (now renamed as the Hong Kong Business Ethics Development Centre). Today, with 10 major chambers of commerce<sup>6</sup> forming an advisory committee to steer the work of the Centre, and through networks set up respectively with over 70 trade associations of different industries and more than 70 banks, corruption prevention messages are promoted effectively to a wider business community.

2. Public Sector

In collaboration with the Civil Service Bureau of the Government (CSB), the ICAC initiated in 2006 the Ethics Officers Network which now comprises 150 officers from all bureaux and government departments. Since the set up of the Ethics Officers Network, 17 thematic workshops have been organised to enhance the Network members' capabilities to implement integrity management in their departments. Our latest initiative is the launching of a web learning portal on integrity management together with the CSB for all civil servants to complete the online training courses at their own pace and obtain online reference materials on relevant integrity issue.

3. General Public

At district level, liaison clusters with all 18 district councils, non-governmental organisations and community-based associations are established to jointly organise anti-corruption activities in the local communities. We also encourage district organisations to take ownership for anti-corruption activities so as to align them with the "Ethics for All" mission. In 2017, over 820,000 people and 1,600 organisations were reached through partnership with around 830 organisations. These collaborations reinforce the culture of probity in the local communities.

**D. Engagement Strategy**

Active participation is the best proof of public support. By involving and encouraging members of the public to take part in or even to take ownership of preventive education activities is the most effective means of aligning them with the anti-corruption cause.

Young people are our future. To build up a community intolerant of corruption, we disseminate probity messages to the younger generation ranging from kindergartens to universities and further engage them to spread probity messages to their peers. We have launched the Ambassador Programme in 2007/08 to mobilise tertiary students to organise activities promoting integrity messages to their fellow students on campus. After a decade of hard work, now all the 20 tertiary institutions in Hong Kong have joined the programme. Similarly, through another iTeen Leadership Programme for secondary school students launched in 2013/14 school year. The iTeen Leaders assist their teachers in organising integrity activities to instil positive values such as honesty, fairness and self-discipline into their schoolmates.

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<sup>6</sup> The 10 major chambers of commerce are:

- Federation of Hong Kong Industries,
- The American Chamber of Commerce in Hong Kong,
- The Chinese General Chamber of Commerce,
- The Chinese Manufacturers' Association of Hong Kong,
- The Hong Kong Chinese Enterprises Association,
- The Hong Kong General Chamber of Commerce,
- The British Chamber of Commerce in Hong Kong,
- The European Chamber of Commerce in Hong Kong,
- The Hong Kong Japanese Chamber of Commerce & Industry, and
- The Indian Chamber of Commerce Hong Kong.

The ICAC also proactively mobilises citizens to take part in the anti-corruption drive by recruiting them as volunteers to assist in education and publicity projects, and as multipliers to spread probity messages to all walks of life. In 1997, the ICAC Club was set up to provide these supporters a platform for direct participation and engagement in ICAC activities. Currently, the ICAC Club has over 2,600 members and the accumulative service hours provided by members have exceeded 60,000.

## VII. EFFECTIVENESS OF ICAC'S WORK

### A. Current Corruption Situation

After over four decades of hard work, the current corruption situation and some survey findings suggest that the ICAC is effective in its anti-corruption work.

In recent years, an average of 3,000 corruption reports were received each year, with about two-thirds against the private sector and one-third concerning the public sector. Around 200 persons were prosecuted each year and the case-based conviction has been well over 80%. The overall corruption situation in Hong Kong is well under control. There is no sign of a new and notable corruption pattern that calls for concern, nor is there any deterioration in the overall corruption scene.

In recent years, the ICAC has undertaken investigation of a few high profile cases involving very senior government officials, well known businessmen and listed companies, which were widely reported in both local and overseas media. These are isolated cases and they show evidently that ICAC conducts investigations without fear or favour, regardless of the background or status of the persons involved.

### B. Achievements

Hong Kong now has fundamentally a clean public service. In 1974, the ICAC's first year of operation, 86% of the corruption reports were related to government departments. With the relentless efforts of the ICAC and government departments to tackle corruption and promote integrity, the figures were substantially reduced to 40% in 2000 and 27% in 2017 respectively.

In the business sector, with the ICAC's proactive approach to outreach, the businessmen were getting convinced that the ICAC could help in protecting the erosion of profits of the company by corruption. Since the 1990s, a relationship of close cooperation was gradually built up between the ICAC and the business sector. The business sector is now more alert to business ethics and corporate governance and Hong Kong has been hailed as a place providing a level playing field for business.

Internationally, Hong Kong is now recognised as one of the least corrupt places in the world. In its 2018 Index of Economic Freedom, the Heritage Foundation ranked Hong Kong the world's freest economy for 24 consecutive years, and praised that Hong Kong has a high quality legal framework that strongly supports the rule of law, and there is little tolerance of corruption, and a high degree of transparency which enhances government integrity. Hong Kong was ranked the second most competitive economy among 63 economies in the World Competitiveness Yearbook 2018. According to Transparency International's Corruption Perceptions Index 2017, Hong Kong was ranked the 13th least corrupt place among 180 countries and territories.

Locally, as shown in the ICAC Annual Survey 2017, 99.2% of the respondents agreed that keeping Hong Kong corruption-free was important to the overall development of Hong Kong; 96.8% of the respondents expressed their support to the ICAC. Last but not least, 99.1% had not encountered corruption in the past 12 months. More importantly, over 70% of the corruption reports are lodged non-anonymously nowadays which is a great leap when compared with the 30% non-anonymous reports in the early days of the ICAC.

## VIII. THE MISSION CONTINUES

To mark its 45th Anniversary in 2019, the ICAC is launching a series of activities to encourage citizens to support the ICAC in fighting corruption through a multi-year cross-sector "All for Integrity" territory-wide campaign. On the international front, the ICAC will organise the ICAC Symposium in May 2019 to provide graft busters and law enforcement officers the platform to exchange and learn from each other the latest strategies and tactics to fight corruption in its totality. Apart from that, the ICAC, through its Centre of Anti-

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Corruption Studies and International Training, is ready to provide training and advisory services to other jurisdictions to fulfil our obligation under UNCAC to help other state parties in anti-corruption capacity building.

The ICAC, partnering with the international graft fighters, is always staying vigilant to fight corruption. We will continue to keep up with the changing times, strengthen our capability and professional training to maintain our effectiveness in upholding a clean community in Hong Kong. The ICAC will continue to partner with all graft-fighters over the world in fighting corruption.

# EFFECTIVE PRACTICES OF ANTI-CORRUPTION EDUCATION: HONG KONG'S EXPERIENCE

*Corinna Wong\**

## I. INTRODUCTION

The fight against corruption is always more than bringing culprits to justice and plugging loopholes conducive to the crime. It is also about changing people's attitudes towards corruption and misconduct. Corruption perpetuates if the population tolerates it and sees it as a way of life. On the other hand, in a community with a strong probity culture, people are more likely to appreciate fair competition, reject bribery, and cooperate with law enforcement agencies when encountering corruption. Public support is therefore fundamental to the success of an anti-corruption campaign.

Hong Kong has come a long way in changing people's attitude towards corruption from "passive acceptance" to "zero tolerance". Since its inception in 1974, the Independent Commission Against Corruption (ICAC) of Hong Kong has been required by law, among other things, to educate the public against the evils of corruption, as well as to enlist and foster public support in combating corruption. These statutory duties echo the requirements in the United Nations Convention Against Corruption (UNCAC), which applies to Hong Kong as part of the People's Republic of China, for promoting good practices in the public and private sectors and active participation of society in the prevention of and the fight against corruption.

The ICAC carries out its education function through its Community Relations Department (CRD). The CRD is currently staffed by around 170 members working in the headquarters and seven regional offices. With the "Ethics for All" mission, the CRD aims at gaining the support of the public from all walks of life in maintaining high ethical standards, showing zero tolerance of graft, and reporting corruption wherever it occurs. It reaches virtually every sector of the society through four effective strategies, which are summarised in the acronym "TAPE":

- (i) **Target-oriented strategy** — to customise anti-corruption services for different target groups.
- (ii) **All-round communication strategy** — to integrate face-to-face contacts with multimedia publicity to spread the probity messages to people from all walks of life through multiple platforms.
- (iii) **Partnership strategy** — to partner with different stakeholders in the community to promote integrity.
- (iv) **Engagement strategy** — to engage members of the public to take ownership of the anti-corruption cause and garner their support for preventive education activities.

This paper outlines how these strategies have been carried out in the anti-corruption education of Hong Kong during recent years, including what factors have been considered in devising action plans and allocating resources, as well as how the anti-corruption messages are conveyed to the target audiences.

## II. FROM STRATEGIES TO ACTION: FACTORS CONSIDERED

The CRD considers a number of factors when putting the anti-corruption education strategies into practice. A few significant factors are discussed below. The social environment in which people perceive corruption and react to it evolves over time. The awareness of and need for anti-corruption education are also different among segments of the community. Therefore, the tactics adopted for different targets have to be kept adjusted in light of the changing environment. Indeed, the rule of thumb is keeping up with the times.

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### **A. Corruption Trend**

Anti-corruption education cannot succeed in the long run if it is not extended to every corner of the community. Nevertheless, in order to maximise its impact despite limited resources, priority has to be given to areas in which corruption is more likely to occur or its consequences are more detrimental to livelihood. In Hong Kong, the corruption trend remains largely steady in the past decade. Corruption complaints received by the ICAC each year have been kept below 3,000. Around one-third of these complaints concern the public sector, while the remaining two-thirds are related to the private sector. Trades attracting more corruption complaints include finance and insurance, construction and catering. Cases in which senior government officials, listed company directors, and/or professionals were involved often caused grave repercussions to society, such as huge financial loss to investors, weakened public confidence in the institutions and, on some drastic occasions like site inspectors being bribed for conniving substandard construction works, a threat to public safety. The ICAC is mindful of these high-risk corruption areas and accords significant resources to tackle them.

### **B. People's Attitudes towards Corruption**

How the population perceives corruption and the ICAC's work is another area to which the ICAC pays attention. Being mindful of the perception of the public, the CRD tailors publicity and education programmes to suitably address people's concerns or blind spots about corruption. An important tool to monitor people's attitudes is opinion polls. The ICAC conducts community-wide opinion surveys annually through independent research firms. The survey results in recent years are in general encouraging: the respondents were on average nearly zero-tolerant of corruption<sup>1</sup>; almost all of them had not come across corruption personally during the past 12 months; and over 95% of them stated that the ICAC deserved their support.

However, some survey findings reflect that there are still areas requiring the ICAC's special attention. For example, a fifth of the respondents were unwilling to report corruption or might report corruption but depending on circumstances. The reasons for their reluctance were multi-folded, including the idea that corruption did not concern them, the worry about personal safety and the concern about the time needed for making a report. In addition, youngsters appear to be less intolerant of corruption than adults<sup>2</sup>. This may be due to the fact that youngsters have no personal experience of corruption and consider corruption too remote to them. The situation has been more challenging in recent years because the general public has become increasingly divergent in their views on the performance of the government including the ICAC. The ICAC has therefore strengthened its publicity and education which aims to dispel the misconceptions and consolidate public confidence in the ICAC.

### **C. Behavioural Changes of Audiences**

The rapid development of communications technology and social media has revolutionised people's behaviour in receiving, selecting and handling marketing information. Thanks to smartphones and the high-speed broadband network, many people, in particular youngsters, can conveniently access multimedia messages anywhere and anytime, promptly connect and share information with each other through social media, and make comments on current affairs in the online community. Since the new media allows information to be disseminated much faster and to wider audiences, it can enhance the impact of a publicity or education campaign greatly if well utilised. In fact, the ICAC has been making extensive efforts in expanding its reach to the public through the new media. On the other hand, people receive a sheer amount of information every day and tend to spend shorter time on each piece of information. The ICAC therefore has to sharpen the contents and enhance the techniques of its online and offline publicity, so as to catch the audience's attention to the anti-corruption messages more effectively.

## **III. ANTI-CORRUPTION EDUCATION IN PRACTICE**

In order to carry out its anti-corruption work for different sectors of society with customised tactics, the CRD categorises its work into a number of "programme areas" according to target audiences like the youth, the public sector, business organisations and the general public. While training activities and publicity

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<sup>1</sup> For example, in the 2017 survey, on a 0 to 10 point scale where 0 represents total intolerance and 10 represents total tolerance, the mean score of the respondents' tolerance of corruption was 0.6.

<sup>2</sup> In the 2017 survey, the mean score of tolerance of corruption of the respondents aged 15-24 was 1.0, while that of the respondents aged 25-64 was 0.6.



projects are usually organised under a programme area, there is much collaboration across programme areas for achieving synergy in publicity impact. This part will give an overview of the major programme areas, highlighting their features and tactics and illustrated with examples of significant initiatives.

### **A. Promoting Positive Values: Young Generation**

The ICAC believes that anti-corruption training, and moral education in a wider sense, should begin with the young generation. Being the future of society, the young generation which treasures the probity culture is fundamental to the fight against corruption in the long run. The more determined they are to live by upright personality such as integrity, fairness and honesty, the more likely that they are resistant to corruption and ethical challenges. Preventive corruption is also necessary for Hong Kong young people because they, as mentioned above, appear to be less intolerant of corruption. The ICAC must help them realise that it was never easy to build a society with strong probity culture, and they have a role in safeguarding Hong Kong's hard-earned success.

The CRD promotes positive values to the young generation with the following four tactics, which will be explained below:

- (i) Inculcation of positive values at different developmental stages of the youth;
- (ii) Co-creation and engagement;
- (iii) Alignment with school curriculum; and
- (iv) Collaboration with stakeholders.

#### 1. Inculcation of Positive Values at Different Developmental Stages of the Youth

The messages and means of the ICAC's preventive education for the youth are customised according to the youngsters' developmental stages. For kindergarten and primary school students (aged 3-11), the messages are simple, focusing on fundamental moral virtues such as honesty, fairness, responsibility and self-discipline. Cartoon characters, including a flying rabbit named "Gee-dor-dor", which literally means "The Quick-witted", are created and featured in the ICAC's teaching packages, cartoon books and worksheets. These iconic figures also appear in the animations broadcast via television and Internet.

For those studying in secondary schools (aged 12-17), training topics are extended to the evils of corruption, the anti-corruption legislation and how to make an ethical decision. Teaching packages in line with the school curriculum, which will be further elaborated below, are developed for teachers' use. While schools may conduct the training on their own, they may also invite the CRD officers to give anti-corruption talks to their students. To make the training even more interesting, schools may arrange interactive drama performances, organised by the CRD and performed by professional troupes, for their students at school halls. They may also arrange visits to the headquarters of the ICAC to enrich their students' learning experience and understanding of the anti-corruption work.

In comparison with teenagers, university students (aged 18 and above) possess the intelligence and capability required for more in-depth integrity training. ICAC talks on professional or work ethics, and the legal requirements against bribery have formed part of many undergraduate and postgraduate programmes. The CRD also organises workshops on handling ethical dilemmas at universities to enhance students' personal ethics and capability of resisting temptation.

#### 2. Co-creation and Engagement

Apart from conveying the messages with conventional, "passive" learning methods such as lectures and talks, the CRD has been developing projects in which the students are heavily engaged. With active involvement in these educational activities over a longer period of time, the students learn, consolidate and internalise the positive values. Creativity is often featured in these co-creation projects and activities. For example, a multimedia production project was organised in primary schools in 2016-17. Under the project, primary school students joined a competition in teams to produce videos on integrity themes under the guidance of their teachers and parents. Many of these videos were presented as short stories featuring the importance of positive values such as fairness, honesty and responsibility. The students also promoted integrity messages on campus through quizzes, games and video programmes broadcast inside their schools.

For secondary schools, an "iTeen Leadership Programme" has been organised since 2013. Over 500

students are recruited from secondary schools as “iTeen Leaders” every year to assist their teachers in organising activities, such as exhibitions, booth games, film shows and competitions, in their schools to promote integrity. The CRD supports the students in areas such as training and contents of the activities. Training sessions are organised for the students to have an overview of the ICAC, build up the team spirit and develop public speaking skills. The students may also join a job shadowing programme to observe the work of CRD officers. Through actively participating and assisting in these activities, the students know more about the work of the ICAC and are more aware of the evils of corruption. They also consolidate their own positive values when disseminating integrity messages to their fellow schoolmates.

### 3. Alignment with School Curricula

In Hong Kong, schools operated or subsidised by the government adopt the curricula devised by an independent advisory body appointed by the administration. The ICAC's moral education packages and programmes are developed in alignment with these curricula for pre-primary, primary and secondary education, so that teachers can incorporate these resources into their teaching work. For example, senior secondary school students are required under the curriculum to study the “Liberal Studies” subject, in which topics like respect for the rule of law, fair society as a safeguard for quality of life, as well as integrity as a fundamental value for interpersonal relationships, are discussed. In order to assist teachers to teach this subject, the CRD developed a teaching package explaining the anti-corruption work in Hong Kong, the evils of corruption and ways to handle ethical challenges. The package is based on episodes of the ICAC's television drama series, and provides teachers with lesson plans, videos, presentation materials and worksheets. In addition, the above-mentioned iTeen Leadership Programme can form part of the students' “Other Learning Experiences”, a component of senior secondary school curriculum which aims to nurture the students' whole-person development through active involvement in activities.

### 4. Collaboration with Stakeholders

There are over 1.6 million young people aged below 25 in Hong Kong. Since it is difficult for the ICAC to reach all the youngsters on its own, teachers and parents become an important link between the ICAC and the youngsters. They have been the ICAC's strategic partners in preventive education in many ways. When the CRD develops teaching packages, teachers are consulted to ensure that the packages suit their teaching objectives and students' needs. There are also active platforms for the ICAC and the stakeholders to share resources and exchange views about moral education. The CRD organises seminars for teachers to discuss topical issues on moral education and introduce its teaching packages. It publishes a triannual periodical containing articles on moral education contributed by teachers, parents, social workers, researchers and students. Training videos on values education, teaching materials based on the latest integrity-related news and interviews with persons with stories about positive values are also made. All these materials can be downloaded, free of charge, from the ICAC's online resource centre “Moral Education Web”. The CRD also taps the expertise and resources of other strategic partners, such as universities, youth bodies and non-governmental organisations, by co-organising publicity projects. This creates synergy of the various organisations' efforts in promoting positive values to the youth.

### 5. Showcase 1: ICAC Ambassador Programme

Among the ICAC's diversified efforts in promoting positive values, the ICAC Ambassador Programme for university students should be explained more specifically for it is a good example of integrating various strategies and tactics in a single project. Since 2007, the CRD has recruited every year a team of students in each of the participating tertiary institutions (i.e. universities and other institutions which award university degrees) as “ICAC Ambassadors”, who are tasked to organise activities to promote integrity among their peers. At the start of the programme, the Ambassadors need to attend training sessions, in which they learn the basic knowledge of the ICAC and anti-corruption laws, join team-building exercises and sharpen skills in organising projects. Subsequently each team is given a small budget to devise an activity plan and implement it. While conventional activities such as exhibitions on the ICAC and quizzes introducing anti-corruption laws are organised, the Ambassadors often come up with activities which are very creative and interesting. For example, they produced videos featuring street interviews, short dramas and dances with integrity themes. Being the digital generation, the Ambassadors also skilfully utilise online and offline platforms in their publicity campaigns. Social media like Facebook and Instagram are widely used to publicise their activities to their peers.

The tertiary institutions are supportive of the ICAC Ambassador Programme. In the 2017/18 academic

year, all the 20 tertiary institutions in Hong Kong joined the programme as co-organisers. They helped recruit students to the teams, worked with CRD officers on coaching the Ambassadors in planning and implementing activities, and provided activity venues and other administrative support to the Ambassadors.

What makes this programme significant is not only the vast size of students reached, although the figures themselves are impressive. Between 2007 and 2018, more than 1,200 university students served as ICAC Ambassadors, and their campus activities reached over 220,000 students. More importantly, by engaging these dedicated and energetic university students as ICAC Ambassadors, the CRD lets them have personal experience in promoting anti-corruption messages together with the ICAC. These future leaders will be more likely to uphold integrity as their core value and support the ICAC and its anti-corruption work in their lifetime. In order to sustain the ties with the Ambassadors, a network *i-League* was formed, through which veteran and current Ambassadors can receive further training or join volunteer activities organised by the CRD. For example, *i-League* members may work as full-time voluntary helpers of the CRD during the summer vacation. These helpers are attached to various units of the CRD, where they work closely with CRD officers to carry out projects to promote integrity. Many of them have established personal friendships with CRD officers, and become loyal supporters of the ICAC. A few of them even joined the Operations Department of the ICAC after graduation and are pursuing their careers as graft-fighters.

#### 6. Showcase 2: Youth Integrity Fest Programme

Another recent example showing the integration of strategies in the anti-corruption work for the youth is the two-year “Youth Integrity Fest Programme” rolled out in 2017. The programme involved youngsters at different stages of schooling with the four beliefs, namely Integrity, Creativity, Art and Collaboration. Component activities included a collaborative art project for primary school students, a photo-taking activity for secondary school students and the above-mentioned ICAC Ambassador Programme. A carnival-type fest was hosted to galvanise the youngsters to spread positive values through photography, creative arts and crafts activities and stage performances by young artists with positive images. Creativity, which was made the theme of the programme, appealed much to youngsters. The programme was also successful for its diversity in participants’ ages and activity formats. The various activities attracted wide participation by some 73,000 people. In addition, around 460,000 people were reached through the programme website and social media publicity.

Despite the extensive youth education programmes in place, the CRD has been exploring new areas in promoting positive values to the youngsters. The CRD has recently launched a youth chapter under its volunteer team “ICAC Club” to encourage youngsters to disseminate probity messages through community services. Innovative technologies and creative ideas will also be used in the CRD’s educational initiatives, so that the ICAC and its anti-corruption messages will stay close to the young generation.

### **B. Promoting Clean Civil Service: Public Sector**

Corruption in the public sector in Hong Kong was rampant during the 1970s. In 1974, the year when the ICAC was established, over 85% of the corruption reports received were related to government departments. Corruption involving a large number of public servants was uncovered from time to time. After years of efforts by the ICAC and the government, the Hong Kong civil service is now efficient and clean. There is no sign of a revival of syndicated corruption in the government.

It is not difficult for one to recognise the evils of public sector corruption: government inefficiency, loss of public resources, social unfairness and, in extreme cases, threats to human lives. Article 7 of UNCAC also underlines the importance of anti-corruption education for the civil service<sup>3</sup>. It is therefore a priority of the ICAC and the Hong Kong government to promote and sustain a clean and honest public sector culture. The ICAC works for this goal with three tactics, namely partnership, leadership and ownership.

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<sup>3</sup> Article 7 of UNCAC stipulates that “each State Party shall... endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants... that promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions...”

1. Partnership

Since the ICAC is an independent anti-corruption agency operating outside the civil service, it needs to work with government departments when providing anti-corruption training to civil servants. There are over 70 policy bureaux, departments and agencies in the government, staffed by over 170,000 people. The Civil Service Bureau (CSB) is the government's policy bureau which assumes overall policy responsibility for the management of the civil service, including appointment, staff management, training and discipline. Individual departments are responsible for the daily management of their own staff. Training for civil servants is carried out by both the CSB, through its "Civil Service Training and Development Institute", and individual departments. The ICAC has long worked closely with individual government departments in offering anti-corruption training. In the recent decade, such efforts have been made more structured and comprehensive by strengthening the partnership with the CSB in promoting ethical leadership.

2. Leadership

The ICAC's educational work for the civil service nowadays emphasises not only civil servants' responsibilities of observing anti-corruption laws and regulations, but also the importance of building an ethical culture in the government. As determination, coordination and resources are required for the government to achieve this goal, the leadership and commitment of the senior management becomes vital. The senior management of government departments now keep a dialogue with the ICAC over integrity-related matters. Liaison groups are formed between individual government departments and the ICAC for their senior representatives to exchange views on integrity management, such as review of internal procedures for preventing corruption, anti-corruption training programmes and other conduct and discipline matters. The ICAC also conducts regular briefings for top officials to enhance their understanding of the anti-corruption laws and regulations, and to remind them of the importance of properly managing conflicts of interest. With the senior management who support and practise a high level of integrity, an ethical culture is being developed in the government departments.

3. Ownership

An ethical culture cannot take root in an organisation if the people there do not think they own it. The ICAC therefore encourages government departments to formulate their own plans for integrity management according to the actual situations, such as what functional areas are more vulnerable to corrupt practice, what training the staff need, and what resources are available to implement the proposals, etc. It is not necessary that projects promoting an ethical culture must be initiated only by the management. Staff members may also, with the support from their departments and the ICAC, organise their own activities to promote integrity among their peers. Past examples included video production, sports competitions and slogan design competitions with integrity-related themes.

In order to strengthen the government departments' sense of ownership in their ethics promotion work, each department is required to send a summary to the CSB and the ICAC every two years to list its efforts in building the department's ethical culture, such as review of the code of conduct, training activities as well as studies in improving procedures for preventing corruption. In fact, most of the government departments now formulate integrity programme plans periodically so as to monitor and improve their integrity-building efforts in a more structured way.

4. Showcase: Ethical Leadership Programme

The above three tactics can be best illustrated by the "Ethical Leadership Programme", a project jointly organised by the ICAC and the CSB with an aim to consolidate the value of integrity in the civil service through leadership and commitment of the senior management of government departments. Under the programme, a directorate officer is appointed as "Ethics Officer" in each government department to take charge of all integrity-related activities. Roles and responsibilities of an Ethics Officer include reviewing the department's codes of conduct and procedures from the corruption prevention angle, building an integrity culture through training and other activities, and handling referrals about corruption and misconduct from and to the law enforcement agencies.

Support and assistance are given to the government departments and their Ethics Officers in a number of aspects. For example, the ICAC and the CSB organise thematic seminars on topical issues about civil service integrity, such as the latest development in anti-corruption laws, the offence of misconduct in public office, contract management, conflict of interest and supervisors' responsibilities of overseeing staff integrity. An

intranet was created for the Ethics Officers for sharing the up-to-date information and reference materials. The ICAC, through its Corruption Prevention Department, reviews the government departments' procedures and gives advice on preventing corruption.

The ICAC provides government departments with training activities in various topics and formats. Since civil servants' corrupt practices and misconduct now often appear in the form beyond mere bribery, training topics have been extended from anti-corruption laws and regulations to issues like conflicts of interest, abuse of authority and poor staff management. Government departments are encouraged to arrange anti-corruption training for the serving staff, in addition to new recruits, at a regular interval.

Apart from lectures, anti-corruption training is now conducted in other formats. The ICAC joined hands with the CSB to roll out a "Web Learning Portal on Integrity Management" in the cyber-learning centre for civil servants. Moreover, government departments promote to their staff a healthy lifestyle, which helps the employees resist the temptation of corruption and misconduct. Sports and leisure activities are organised among the staff, sometimes with anti-corruption messages incorporated. All these diversified efforts show the determination of the ICAC and the government departments to sustain the probity culture within the civil service.

### **C. Promoting Business Ethics: Business Sector**

Hong Kong is one of the best places in the world to do business. It was ranked by the 2018 World Competitiveness Yearbook of the International Institute of Management Development as the second most competitive place internationally. This achievement is contributed to by a number of factors, including the existence of a level-playing field for businesses in a corruption-free society. In spite of this, the business sector is still one of the key target groups of the ICAC's anti-corruption education. It is because around two-thirds of the corruption complaints received by the ICAC in recent years are related to the private sector, of which business organisations have a large share. The repercussions caused by business-sector corruption to society are no less severe than those taking place in the civil service. Anti-corruption education in the business sector also helps the ICAC fulfil the requirements of Article 12 of UNCAC concerning the partnership with the private sector<sup>4</sup>.

The ICAC has gone much beyond merely reminding business practitioners of complying with legal and regulatory requirements against bribery. Since the early 1990s, the ICAC has been promoting business and professional ethics as the first line of defence against corruption. The mission of building a clean corporate culture is carried out by the ICAC's Hong Kong Business Ethics Development Centre (HKBEDC). The HKBEDC adopts the following three tactics in its work:

- (i) Public-private partnership;
- (ii) Client-focused services; and
- (iii) Ethics resources.

#### **1. Public-Private Partnership**

The ICAC is one of the pioneers in promoting business ethics through the partnership between a law enforcement agency and the business community. The HKBEDC has secured firm support from chambers of commerce, professional bodies and trade associations in Hong Kong. The work of the HKBEDC is steered by an advisory committee which comprises representatives of the city's ten major local and foreign chambers of commerce<sup>5</sup>. Partnering with industry regulators and professional bodies, the HKBEDC incorporates anti-corruption elements into the professional training for company directors and practitioners of various trades and professions such as law, accountancy, construction, finance and insurance. In some trades, such training has even been made part of the licensing requirements. From time to time, the HKBEDC organises educational programmes for specific trades. Many of the key stakeholders in these trades joined the programmes as co-organisers, supporters and/or contributors.

The ICAC's public-private partnership in promoting business ethics is a leading example internationally.

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<sup>4</sup> Article 12 of UNCAC stipulates that "each State Party shall take measures... to prevent corruption involving the private sector." Measures may include, *inter alia*, promoting cooperation between law enforcement agencies and relevant private entities.



Research conducted by the World Bank and the Conference Board commended Hong Kong: “having a government agency directly involved in the dissemination of business ethics is quite exceptional worldwide and reflects the very strong policy of prevention implemented in Hong Kong<sup>6</sup>”.

## 2. Client-Focused Services

The preventive services provided by the ICAC to business entities are customised according to their trades, sizes and needs. For example, companies may invite the ICAC to conduct staff training in legal and regulatory requirements, managing staff integrity and/or ethical governance. The training usually covers the information specific to the company or the trade to which the company belongs, such as corruption-prone areas of the industry, trade-specific legal and regulatory requirements for practitioners' conduct, as well as ICAC cases related to the trade. Companies may also request the ICAC's tailor-made consultancy services on ethical management, such as assisting in formulating/reviewing their code of conduct and advising on procedures for functional areas like procurement and financial management.

## 3. Ethics Resources

HKBEDC develops a wide range of resources to assist entrepreneurs, executives, professionals and company employees in understanding principles of preventing corruption and practising ethics in the business context. Guidelines, toolkits, training videos, case studies and e-learning packages on preventing corruption, most of which are tailor-made for different trades, are published. An ethical decision-making model has been devised for managers and professionals to handle difficult situations where their moral values are challenged. These resources focus more on practical solutions than theoretical discussion, so as to provide users with handy tools in dealing with their ethical challenges at work. All of them can be easily downloaded from the thematic website of the HKBEDC.

## 4. Showcase: Ethics Promotion Programme for Listed Companies

There are over 2,200 companies listed on the stock exchange of Hong Kong, with a market value of over US\$4,000 billion (figures as at August 2018). In view of their profound influence on the economy, it is important for these companies and their leaders to practise ethical governance to ensure the healthy development of these enterprises, the stock market and the whole economy. The HKBEDC therefore launched a three-year Ethics Promotion Programme for Listed Companies in 2015 in collaboration with market regulators and professional bodies to promote good corporate governance, enhance the leaders' personal integrity and fortify internal control systems.

Under the programme, the ICAC published guidebooks for directors and senior executives of listed companies, explaining the latest legal and regulatory updates on duties of listed company directors, common corruption risks they faced and ways to implement corporate anti-corruption policies. In addition, the HKBEDC developed a comprehensive training package, which includes training videos and explanatory notes, to sharpen skills of directors and professionals in upholding corporate governance. A large-scale conference on business ethics was held for leaders of listed companies and stakeholders to exchange their experience in practicing ethical governance. Integrity training programmes are organised for company directors and related professionals on a regular basis. The co-organisers contribute to the entire programme in one way or another, such as commenting on drafts of the training package, speaking at the conference, and/or organising training events with the ICAC.

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<sup>5</sup> The ten major chambers of commerce are:

- Federation of Hong Kong Industries,
- The American Chamber of Commerce in Hong Kong,
- The Chinese General Chamber of Commerce,
- The Chinese Manufacturers' Association of Hong Kong,
- The Hong Kong Chinese Enterprises Association,
- The Hong Kong General Chamber of Commerce,
- The British Chamber of Commerce in Hong Kong,
- The European Chamber of Commerce in Hong Kong,
- The Hong Kong Japanese Chamber of Commerce & Industry, and
- The Indian Chamber of Commerce Hong Kong.

<sup>6</sup> Jean-François Arvis and Ronald E. Berenbeim, *Fighting Corruption in East Asia: Solutions from the Private Sector* (Washington, D.C., The World Bank, 2003), p. 85.



In addition, the ICAC approaches all Hong Kong listed companies, offering them tailor-made ICAC services for strengthening ethical governance. By September 2018, over 90% of them have been approached. Since the launch of the programme, more than 900 talks and seminars on corruption prevention and business ethics were conducted for around 34,000 business executives. The companies listed on the stock exchange in the future will also be approached within three months of their listing.

#### **D. Promoting “All for Integrity”: General Public**

Under the “Ethics for All” mission, the ICAC aims to promote integrity to the whole community in Hong Kong. Community publicity forms a significant part of anti-corruption education because, although education programmes targeting specific social groups, such as the youth, the civil service and business firms, may provide more customised and in-depth messages to the audiences, they do not reach every citizen. Moreover, people who do not belong to any particular social groups, such as housewives, retired persons, new immigrants, are no less vulnerable to corruption and no less important to the fight against it. In fact, the importance of participation of society in the anti-corruption work is also enshrined in Article 13 of UNCAC<sup>7</sup>.

In view of the diversity of the 7-million people in Hong Kong, the objectives and messages of community publicity have to be simple but capable of appealing to the public to support the anti-corruption cause. First, the publicity aims to increase the public awareness that integrity and fairness is a cornerstone of the development of Hong Kong. Every citizen has the responsibility to safeguard this hard-earned success. Second, it tries to reinforce the public confidence that the ICAC continues working hand in hand with citizens in fighting corruption, without fear or favour. Third, citizens are encouraged to report corruption. Their reports, which are always handled confidentially, are crucial to cracking down on corruption. Misconceptions about making reports are also addressed and dispelled in the publicity.

Community publicity is promulgated through multimedia, which will be elaborated further in the next part, and face-to-face contacts. In addition to the daily liaison with the general public at the seven regional offices, the CRD reaches the population through partnering with civil society and engaging passionate citizens in publicity activities.

##### 1. Partnering with Civil Society

Hong Kong has an active civil society. The government set up 18 elected district councils across the city and other consultative committees in the neighbourhood with local leaders as members. These bodies serve as the bridge between citizens and the administration, and organise leisure, cultural and community-building activities to promote the well-being of residents. There are also many non-governmental organisations, such as residents’ associations, clubs, social services centres, voluntary agencies and trade associations. Since all these local organisations have their own liaison network and resources, it is more cost-effective for the ICAC to publicise anti-corruption messages in collaboration with them. Over the years, the CRD has established close working relationships with these organisations through paying visits to them, conducting talks or exchange sessions for their members and organising publicity projects with them.

##### 2. Engaging Passionate Citizens

Apart from spreading anti-corruption messages to wider audiences by partnering with community organisations, engagement represents another tactic in promoting the probity culture in the community. The CRD engages citizens who have a passion for building a corruption-free community to assist in its publicity programmes. Through personal involvement, these citizens will have a stronger sense of ownership of the anti-corruption work and promote the probity culture in their families and among their peers.

##### 3. Showcase 1: “All for Integrity” Programme

A good example to show the scale of the CRD’s partnership with civil society to maximise the publicity impact is the multi-year, territory-wide “All for Integrity” Programme launched in 2015. With the support of over 900 organisations in the community, hundreds of component activities, varying in format and scale, have been organised under the programme. There were large-scale events, such as the ICAC Open Day, publicity booths at the Hong Kong Book Fair (one of the largest exhibition events held annually in Hong Kong) and bus

<sup>7</sup> Article 13 of UNCAC stipulates that “Each state party shall... promote the active participation of individual and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise awareness regarding... corruption.”

parades across the city, each time reaching thousands of citizens. Some others were more confined to residents in the neighbourhood, such as game booths, quizzes, day camps, etc. In 2017/18, over 1,600 local organisations and more than 800,000 people were reached through all these community involvement projects.

Multimedia publicity is an important means to draw the attention of the public to the programme. A theme song was written for the programme and performed by a pop singer. Videos on interviews with celebrities, activity highlights and other promotional messages were produced. An iconic figure “iSir”, modelled on an ICAC investigator, was featured in publicity materials. The programme was advertised through the online and printed media, such as the ICAC’s website and Facebook fan page, radio, newspapers, posters and pamphlets.

#### 4. Showcase 2: ICAC Club

The ICAC Club is the CRD’s main initiative to engage passionate citizens to actively participate in its publicity activities. It is a volunteer team under which citizens provide voluntary services in the ICAC’s community publicity work. Such voluntary services are multi-faceted, ranging from maintaining order in publicity events, distributing publicity items to citizens, staging show performances in carnivals to planning projects with CRD officers. In order to recognise the members’ efforts in promoting the anti-corruption cause, there is an award scheme in which members contributing a certain amount of service hours are commended by the CRD. The Club members may also join in-house activities organised for them. Examples are orientation courses, training sessions on various skills like story telling and balloon twisting, exchange sessions with other volunteer teams in the community and annual gatherings for members.

In 2018, the Club has over 2,600 members from all walks of life, including around 1,400 young members under the youth chapter. Despite the small membership size in comparison with the entire population, the Club members are important to the ICAC’s community publicity work because they are staunch supporters of the ICAC and “multipliers” of anti-corruption messages in the neighbourhood. There is an interesting example illustrating the enthusiasm of the Club members. A Club member, who is also a community leader and businessman, dedicated his time and efforts in helping the Club to perform anti-corruption dramas for the aged at elderly homes. Apart from providing assistance in ICAC publicity activities, he also took the initiative to spread probity messages through his own network by making around 500 “mooncakes”, a Chinese bakery product for celebrating a traditional festival in autumn, showing anti-corruption messages on the cakes’ surface and in the packaging. The Club member then distributed these mooncakes to the elderly and residents in the neighbourhood as a means to promote integrity.

### **E. Multimedia Publicity**

Anti-corruption education will not be effective unless it is appealing both in content and presentation. The ICAC pays attention to not only to whom the anti-corruption messages are disseminated, but also through what channels these messages are disseminated. Multimedia publicity, which conveys the messages by text, speech, images, animations, video or other interactive means, has become increasingly important in every aspect of the ICAC’s anti-corruption education. In order to be better equipped in this area, the CRD houses a small team of graphic designers, video producers and new media marketing experts specialising in multimedia publicity.

The ICAC has a long history of using multimedia publicity. During its early years, the ICAC conducted most of such publicity through television, a mass media which became increasingly popular among ordinary citizens in Hong Kong from the 1970s. In fact, the ICAC was one of the first government departments in Hong Kong producing television advertisements to disseminate educational messages. The first ICAC television advertisement was launched in 1975 to encourage the public to report corruption. In the following years, the themes of ICAC television advertisements have been diversified to the dire consequences of committing bribery, the evils of corruption and the importance of integrity to society. Alongside with television, the advertisements are also rolled out on many platforms in Hong Kong, such as television networks in the railway system and commercial buildings, public transportation poster sites, outdoor giant banners, bus bodies, social media and mobile applications.

Conventional mass media has remained a powerful means for the ICAC to reach the community, but it is not without shortcomings. Advertising campaigns are relatively costly. The advertisements have to be short in content, and the communication is one way only. On the other hand, the new publicity channels that

emerged in the Internet era enjoy a number of advantages. People can receive and share information anytime and anywhere via websites, social media and mobile apps. Multimedia publicity can be published to a larger audience within a shorter time, with contents and formats more customised for specific targets, in particular youngsters. The communication between the ICAC and the audiences can also be more instant and interactive.

The ICAC has been well aware of this trend and has expanded its reach in the new media. The corporate website of the ICAC has long been an easily accessible channel for the public to obtain the information and latest news about the ICAC. Thematic websites were built to house anti-corruption resources for specialised groups such as businessmen, teachers, scholars, youngsters and candidates in public elections. A mobile application was promulgated to allow smartphone users to obtain the information about the ICAC more conveniently.

Social media is another fast-growing arena of the ICAC's multimedia publicity. A YouTube channel was set up to show the ICAC's audio-visual productions, such as television advertisements, training videos, animations and feature interviews with celebrities. The ICAC created its first Facebook fan page in 2011, targeting secondary school students. Hosted by four cartoon figures, the page publishes text posts, short videos, animations, cartoons, e-games, often with slang and derivative works incorporated, to promote positive values. Another fan page for the general public has also been established to promote community engagement activities to the wider audience through Facebook. The ICAC's newest drive of social media publicity is on Instagram: an account has been created for "Greedy Kin", an adorable cartoon sloth known for minor character flaws such as greediness and laziness. By following the sloth's Instagram account and viewing its pictures and stories, people are reminded to reject these negative examples in a humorous way.

The new media may give an even greater publicity impact if it is used in conjunction with the conventional mass media and face-to-face contacts. This online-offline integrated approach has proved to be a new direction of the ICAC's publicity work. One of the illustrative examples is the television drama series. Similar to the television advertisements, the television drama series has been the ICAC's signature mass media publicity since the 1970s. It was first broadcast in 1976, two years after the establishment of the ICAC, and was followed by over 15 series in the past four decades. The episodes are based on real cases, depicting the evils of corruption and the ICAC's determination, capabilities and professionalism to fight graft. Jointly produced with local television stations, the drama series has long been a hit television programme in Hong Kong.

To make it better known among the population, each of the drama series is now integrated into a comprehensive online-offline publicity campaign. People may now watch the episodes not only via television channels, but also through the websites of the ICAC and the broadcasters. A making-of programme is broadcast on television to let the audience better understand why and how the drama series is produced. The production crew and the artists appear in press interviews, television entertainment shows, social media platforms and neighbourhood events of the ICAC to increase exposure of the drama series. In order to engage the community in the campaign, a large-scale premiere is organised for community leaders, work partners and volunteers of the ICAC Club. The episodes are shown in publicity events organised by the ICAC and local organisations in the neighbourhood. Quizzes, games, cartoons, short stories and teaching materials are also produced with reference to the drama series. They are uploaded to the ICAC's website as useful anti-corruption education resources for teachers, parents and youngsters.

In the future, the ICAC will keep exploring new innovative technologies which can convey anti-corruption messages more effectively and efficiently. A recent initiative is interactive games with virtual reality (VR) and augmented reality (AR) technologies. Citizens may play the games, which are adapted from landmark corruption cases, to experience the evils of corruption in a three-dimensional (3D) interactive environment.

#### IV. CONCLUDING REMARKS

The above account shows that although the ICAC has the same mission over the years to conduct anti-corruption education to every citizen, it has to keep adapting itself to the ever-changing social environment and adjusting the format and mode of its work. Keeping up with the times remains the key to the effective

practices of anti-corruption education.

Anti-corruption education may be culture-specific in content and format. Hong Kong's experience may not be invariably applied to other jurisdictions. However, no matter in what form anti-corruption education is carried out in other parts of the world, it is crucial for anti-corruption agencies to make the public realise the evils of corruption and enlist their support for the anti-corruption work, so that an ethical culture can take root in the community. After all, fighting corruption, building a fair society and achieving a world of probity require every person's participation.

# INTELLIGENCE-BASED INVESTIGATION: EFFECTIVE PRACTICES TO COMBAT CORRUPTION

*Dato' Sri Ahmad Khusairi Bin Yahaya\**

## I. INTRODUCTION

Corruption is an act that destroys the integrity of individuals, communities and nations. It is a practice that is so detrimental to a nation's economy and good governance that it will also undermine the public's belief in law enforcement agencies. To quote the <sup>1</sup>Royal Address of His Majesty Sultan of Perak, Sultan Nazrin Shah in conjunction with the 47th Anniversary of the Establishment of the Anti Corruption Agency Malaysia, His Majesty has labeled corruption as:

*Corruption : among the main reason that inhibits economic growth, eliminates the interest of foreign investments, increases administrative and transaction costs, denies the people from receiving services and prompts political instability. A lot of nations are blessed with numerous sources of wealth, but corruption lands them instead in regression - some are even buried so deep in poverty. The nation's wealth is mismanaged - internal revenues disappear, consequently regression persists and poverty continues to spread. When there is no determination to fight corruption, it shall grow thrivingly, then accepted as a norm and eventually permeates into a culture until it destroys the nation state.*

In a statement by Mr. Jose Ugaz, Chair of Transparency International:

*It is perceived as a very complex phenomenon that affects a large part of humanity. If we look at the world map painted in red according to the latest Corruption Perception Index (measurement done every year covering most countries), corruption severely impacts more than two thirds of the planet<sup>2</sup>.*

The landscape of corruption crimes around the world has evolved with time. Corruption is no longer concentrated on spontaneous acts, but is now more submersed in organised, conspiratory and covert crimes. The world's development has taken a step towards globalization, accompanied by economic growth and information technology advancement, and corruption is going through an evolution phase where petty corruption has begun to shift into more structured and organised crime that is more complex and covert. This trend is a phenomenon known as syndicated corruption. It doesn't only involve government sectors; if syndicated, the involvement of the private sector will also create a major impact in the evolution of methods in corruption.

Although petty corruption is an occurrence that happens on a smaller scale and is different from syndicated corruption, if not contained it could become a culture within a community or organization. Failure to control these activities will create a profound impact on society.

## II. WHY IBI

When discussing the corruption issues in Malaysia, where before an act of corruption is considered petty corruption involving two individuals with interest, whether the giver or receiver, both of whom are seeking to benefit. However, it is undeniable that since Malaysia's independence in 1957 until today, through the country's rapid growth and development, corruption has also seen its evolution; it has become more

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\* Director, Intelligence Division, Malaysian Anti-Corruption Commission.

<sup>1</sup> Royal Address by His Majesty Sultan of Perak, Sultan Nazrin Muizzuddin Shah in conjunction with the 47th anniversary of BPR/MACC on 1st October 2014

<sup>2</sup> Official Interview with Mr. Jose Ugaz, Chair of Transparency International by Fernando González Barroso, published in the first digital edition of the "International Journal of Transparency and Integrity" - August 2016

structured, organized and covert, thus allowing this crime to become more difficult to track and expose.

To ensure the continued efforts in combating corruption in Malaysia, the Malaysian Anti-Corruption Commission has also undergone its evolution to stay relevant with current times. Previously known as the National Bureau of Investigation (BSN), then the Anti Corruption Agency (BPR), the Malaysian Anti-Corruption Commission (MACC) has since 2009 strived to contain the crimes of corruption that have taken root as a culture in Malaysian society. Various efforts were undertaken through punitive measures as well as conducting education and prevention programmes to help curb the spread of this phenomenon.

In Malaysia, the public tendency to expose crimes of corruption is focused more on information disclosure as opposed to stepping forward to report a complaint to MACC. This notable difference is not due to lack of confidence in MACC, but is on account of various factors; the refusal in involvement as a witness in court, the change of corrupt crime from petty corruption to syndicated corruption; technological advancement and accessible information delivery mediums; and latest trends show that criminals of corruption are getting more adept at conducting said crimes without public knowledge and remains undetected by MACC.

Based on these developments, employing regular or reactive investigation methods becomes less effective in order to prove cases that involve syndicated and high profile crimes. This is due to obstacles that are difficult to penetrate, namely witness cooperation and the significant decrease in public complaints to MACC. Apart from that, the community also prefers to offer information compared to filing a complaint to avoid testifying in court.

*The chart shows the significant difference in Malaysian's preference to offer information compared to filing complaints to MACC.*



Between 2012 and 2016, statistics show that MACC typically receives an average of 6,000-7,000 reports of information yearly. It causes MACC to become more selective in producing quality information that consequently leads to case development that utilises proactive investigation methods through the Intelligence-Based Investigation (IBI) approach. The efforts and actions planned by MACC are not solely focused on solving crimes of corruption, but also taking into account the aspects of time, cost and manpower as well as suitable investigation methods, to yield a more effective and successful investigation. Therefore, MACC isn't just focusing on more holistic punitive efforts, but at the same time the IBI approach is able to assist MACC in identifying various genres of corruption crimes that were previously difficult to unravel.

### III. WHAT IS IBI?

Intelligence-Based Investigation (IBI) is an art, an investigation approach that puts emphasis on exploration, manipulation and exploitation of intelligence ability to commence and facilitate investigations that work within a process. To yield covert output through *techniques of undercover, surveillance, intelligence analysis, deployment of agent and sources, technical equipment and others*, are basic components used in the IBI approach to unravel syndicated cases that are complex and involve middleman.

The application of the IBI approach is parallel with the current trend of corruption mediums. Corruption nowadays is deemed sophisticated. Where before, transactions were often in cash, now it involves banking transactions, involvement of a third-party in a transaction, provisions of reward in the form of entertainment and luxury, or even the acquisition of cooperation in the country's mega projects.



In order to improve IBI to become a more successful and structured approach, MACC has tried to encourage the utilisation of this approach through the MACC Transformation Plan that began in 2011. During this process, three items were given priority, namely the law and SOP, proficiency of Undercover Officers and profiling analysis capability. Although the first time the IBI approach was applied during an Undercover Operation ‘*Operation Melayang*’ in 2000, for the past decade MACC has strived to explore and try its best to use the IBI approach as an alternative in its punitive actions. This is in line with the recommendations outlined in <sup>3</sup>Article 50, United Nations Convention Against Corruption:

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

Through the MACC’s Transformation Plans 2011 - 2015, among the first effort that was implemented is to improve the operational ability of Undercover Operations. This process doesn’t focus solely on the development of training modules, but efforts in other aspects have been undertaken, such as the strengthening of human resource capabilities, establishing more organised operation management procedures and acquiring of technical equipment that are more modern and appropriate.

The second aspect that was given priority during the transformation and enhancement of the IBI approach is to improve Profiling Analysis capabilities. Expertise in profiling is the most important scope in the IBI approach as it is an important contributing data in identifying criminal networks, criminal involvement as well as providing input for proactive operation actions. Profiling analysis of targets in general is to be done comprehensively, due to the fact that most corruption criminals are creative in not acquiring bribery directly in person, but instead employ family members or proxies. Therefore, aside from individuals and companies/ agencies/ institutions/ clubs/ organisations that are involved directly or indirectly with the case, it is of utmost importance to develop a comprehensive profiling of a target, his/her family members, spouse/partner’s family members as well as their spouse/partner. The next challenge is to analyse all the gathered data in order to produce the case’s hypothesis. These processes can only be accomplished by enhancing and diversifying the cooperation of information sharing between agencies, creating a system database platform that is able to store and process information data, and empowering intelligence officers with a suitable data analysis and profiling knowledge.

The MACC transformation program emphasises aspects of procedures and implementation of each initiative that was created. The third aspect that was given emphasis is the upgrading of work implementation procedures that have since become the backbone of the IBI approach. Overall, several standing orders were established through the jurisdiction under Section 12 of the Malaysian Anti Corruption Act 2009. Among those are;

- Chief Commissioner Standing Order (Chapter F) No. 1 Year 2013 “Telecommunication Interception Using Lawful Interception Monitoring System (LIMS) Under The Jurisdiction of Section 43 of The Malaysian Anti Corruption Commission Act”;
- Order of Deputy Chief Commissioner (Operation) No. 4 Year 2013 “Preparation of Quality Information”;
- Order of Deputy Chief Commissioner (Operation) No. 5 Year 2013 “Sources Management Procedures”;
- Order of Deputy Chief Commissioner (Operation) No. 7 Year 2013 “Central Intelligence Operation and Safe House Management Procedures”; and

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<sup>3</sup> Page 41, Article 50, United Nations Convention Against Corruption, 2004

- Order of Deputy Chief Commissioner (Operation) No. 4 Year 2014 “Undercover Operations Guidelines”.

#### IV. DECISION MAKING & MONITORING

The implementation of the IBI approach is managed on a *case-to-case basis*, whereby each implementation focuses on the issue of gathered information and is therefore different from information issue to the other. Details of information issue and situation that should utilise the IBI approach are as follows:

- Cases of corruption, abuse of power or pre-determined offenses against a certain individual or network of individual categorised as syndicate including the involvement of a middleman that are difficult to execute through reactive (regular) investigation approaches;
- Cases where there is no complainant who will step forward to file a complaint to MACC;
- When there is an informer or internal source that could cooperate to make the operation a success; or
- Analysis is made of failed cases that using reactive investigations : where offenses under the MACC Act 2009 are on-going and must be approached using IBI.

Although cases that are developed through the IBI approach may seem different, the process used is still the same, and intelligence acts throughout the process are divided into two important phases which are Intelligence Gathering (IG) and Evidence Gathering (EG).

Overall, both phases are monitored by the same executive powers namely the Chief Commissioner (CC) or the Deputy Chief Commissioner (Operations) (DCCO) who are authorised to grant execution permission. However, during the pre-project stage, the Department/State Director is responsible for monitoring. Also, reports of project's progress shall be monitored from time to time throughout the duration of the project. The following is the command hierarchy of project monitoring based on phase:

##### Intelligence Gathering Phase

Director Dept./State  
↓  
Deputy Director  
↓  
Head of Operation

##### Evidence Gathering Phase

CC/DCCO  
↓  
Director Dept./State  
↓  
Deputy Director  
↓  
Head of Operation

Each project must refer to the Director Department/State in order to understand the methods and implementation procedures of a project. Based on the details of information that should be developed as an IBI project, the Head of Operation should first and foremost prepare a Project Planning Paperwork (PPP) based on gathered information. The PPP will then be presented to the Project Committee (PC)<sup>4</sup> for implementation approval and project allocation. During this stage is where a project's suitability and feasibility is determined. Below are the main officers involved in a monitoring and decision making process;

- CC/DCCO
  - Consideration and approval of PPP,
  - Decision to delay or terminate any operation subject to reason and demand, and
  - Decision to authorise implementation of investigating operation after the EG process is finished and

<sup>4</sup> **Project Committee (PC):** The committee that convenes to review, consider and approve any Operation based on the presented Project Planning Paperwork by the Head of Operation. The PC consists of Chief Commissioner/Deputy Chief Commissioner (Operation) as Chairman, as well as 3 other members namely the Director of Intelligence, Director of Investigation and Deputy Director of Intelligence.

has reached necessity.

- Director or Deputy Director Department/State
  - Consider and decide any necessary actions prior to and during the implementation of the operation,
  - To advise DCCO on decisions pertaining to any delay, termination of operation and authorisation of EG implementation, and
  - Monitor implementation of operation that is being conducted by each department/state and to receive periodical reports from the Head of Operation.
- Head of Operation
  - To present PPP to PC
  - To guide and advise the Case Officer in handling and steering a project, and
  - To monitor implementation of every operation conducted by each department/state and to report on supervised operation progress to the Director.

Based on the roles mentioned above, the most crucial task is placed upon the Project Committee (PC), where based upon the Intelligence Report (IR) that is generated following each Intelligence Gathering (IG) process, the PC will have to decide on which method will be adapted to pursue an operation, whether they'll be adapting the Undercover Method or the Analysis Method. These decisions are crucial and must be based upon a specific benchmark when selecting a method;

- Risk level of an operation and estimation of damage to the operation team, target or any possibility of collateral damage;
- Effectiveness of operational cost implemented compared to the ROI;
- Possibilities that need to be expected in deciding the feasibility of an infiltration or penetration during the operation; and
- The strengths and weaknesses of the case development to help decide if it can be pursued or not.

## **V. IMPORTANT TOOLS IN THE IBI PROCESS**

Undoubtedly, when defining the IBI approach, naturally the process that is applied can be described in one big Intelligence Cycle, especially during the Pre-Project Phase (Intelligence Gathering -IG) and Project Implementation Phase (Evidence Gathering -EG). And while explaining aspects of Intelligence Cycle, the following are several important tools that are used throughout the IBI process:

- Informant  
In the introduction section, it has been explained that an informant is an individual who plays a crucial role in providing information covertly for the purpose of intelligence. Although at times the information given might not be competent; however, each information has its own weight that must be taken into account.
- Profiling  
In the IBI approach, profiling is the most important responsibility as it is with this that a target or any other individual or organisation involved in the case can be identified thoroughly. In the context of IBI, offensive profiling is adapted, which means the identity of the target is not the only profiling but should also include all aspects of information pertaining their financials, assets and properties, movements in and out of the country, business ownerships, stock and share ownerships, etc. This aspect also applies when profiling any individuals or organisation involved with the target.
- Reconnaissance  
Reconnaissance or Recon is a method used by most intelligence agencies around the world, where agents are scattered to assist in the information verification process. In the IBI approach, MACC adopts the same method where intelligence officers are responsible, not only for verification purposes, but also to gather new information related to the case using the elicitation technique.

- *Casing*  
Is a combination of tasks: to assess the suitability of an undercover operation area and meeting place, to gather information needed relevant to the area to facilitate infiltration, and to evaluate probabilities of challenges and threats especially in operations that utilise the undercover method.
- *Surveillance*  
Derived from the words 'watching over' in French '*surveiller*', the task of surveillance is the monitoring of activities of a target, their behaviors and collecting other useful and relevant information on the target.
- *Interception*  
In the context of MACC, communication interception is an important element in assisting the development of an operation using the IBI approach, specifically employed to extract and gather information through the target's communications with any individuals relevant to the case. By adapting the Lawful Interception Monitoring System (LIMS) under the jurisdiction of Section 43 of the Malaysian Anti Corruption Act, all conversation data, messages whether by post will be analysed to assist in the information analysis and verification of a case.
- *Undercover Work*  
Like any intelligence agency around the world, the usage of undercover agents is a certifiable technique in information gathering and verification. However, in the context of IBI, undercover agents are not only employed during the intelligence gathering process through information assessment and verification, but are also useful in gathering evidence. The undercover evidence can be used to bring a case to court based on Section 52 of the Malaysian Anti Corruption Commission Act:

**Section 52 (1)(b) MACC Act 2009:** *"No agent provocateur, whether he is an officer of the Commission or not, shall be presumed to be unworthy of credit by reason only of his having attempt to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and"*

**Section 52 (1)(c) MACC Act 2009:** *"Any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial."*

**Section 52 (2) MACC Act 2009:** *"Notwithstanding any written law or rule of law to the contrary, a conviction for an offence under this Act solely on the uncorroborated evidence of any accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgement to the need to warn itself against the danger of convicting on such evidence."*

However, in the IBI approach that employs undercover methods, although the human undercover statements could be used as evidence in court, it could be a liability on MACC to ensure that there are no elements of entrapment and instigation from the target's operation handler, and a predisposition of the target should be done with the utmost care in relation to prejudiced information of the target.

## VI. THE IMPORTANCE OF INTELLIGENCE ANALYSIS

Analysis is defined differently according to each knowledge field and skills context. In general, analysis is defined as a process that breaks down and rearranges a particular component to one that is comprehensible and generates a hypothesis of a particular matter. It's no different when applying analysis in the IBI approach, where a hypothesis of information and gathered data is of utmost importance, and this discipline is known as Intelligence Analysis. In the IBI approach, the Intelligence Gathering (IG) is not only focused on the ability to gather data and information relating to the case, but it also involves important processes in order to interpret all the data and information via an analysis that is appropriate to generate an overall hypothesis of the intelligence process. Among the importance of Intelligence Gathering and Intelligence Analysis are:

- Manage to evaluate progress or status of intelligence work,

- Discover past events and things you didn't know,
- Understand the situation of the cases more deeply,
- Assist in identifying follow-up actions that should be taken, and
- Facilitate all teams to communicate accordingly and create better understanding.

In the IBI approach, there are several analyses such as the Target Profile Analysis, Crime Pattern Analysis, Risk Analysis, Network Analysis and Demographic Analysis. Although there are various analysis methods to be employed, it depends on the type of case, the suitability of data categories and information that were gathered. What matters is that the process of the analysis is to ensure that the case being developed involves the right target, the right modus operandi and the relevant individuals involved in the case.

## VII. CONCLUSION

The wide use and application of IBI methods in corruption cases domestically and internationally was considered as a good practice and initiative and caught the eyes of other anti-corruption authorities including international bodies like United Nations Office on Drugs and Crime (UNODC). MACC has also received requests from many countries to learn the IBI approach. It is an honour to us (MACC) that we have already received almost 150 participants from various agencies and countries from 2012 until July 2018 who came to learn IBI. For MACC sincerely, it would be part of our duty to share and exchange ideas and good practices with other agencies or departments, locally or internationally, as part of our efforts to fight corruption globally. Let us work together to combat corruption and strive to maintain the harmony of the world community.

### References:

1. Malaysian Anti-Corruption Commission website: [www.sprm.gov.my](http://www.sprm.gov.my)
2. United Nations Convention Against Corruption (UNCAC) 2004
3. Malaysian Anti-Corruption Act 2009
4. Transparency International website: [www.transparency.org](http://www.transparency.org)

### WHAT EFFECT DOES CORRUPTION HAVE ON THE HIGHER EDUCATION SYSTEM IN KAZAKHSTAN?

*Dulat Omar\**

#### I. INTRODUCTION

Education is the only specialized basis of society, the objective function of which coincides with the purpose of the whole society. If the various spheres and sectors of the economy produce material and spiritual goods, and services for personal use, the education system produces the person, acting on its intellectual, moral, aesthetic and physical development. This defines a key social function of education — the humanistic one (Curren 2007). But what if the people do not trust the objective evaluation of students' performance by teachers? What would happen if the process of higher education is corrupt?

The purpose of this paper is to investigate how corruption affects higher education (HE) in Kazakhstan, to outline academic and professional approaches to the problem and to discuss possible solutions for fighting this social malaise. Despite the vastness of this problem, the issue of corruption in higher education has only recently become such a critical topic.

A story is told of how once at a university in Kazakhstan students had to take the final exam, and suddenly someone suggests buying a plane ticket for the professor who was going to fly to Moscow to participate in a conference of teachers (Kalanava 2008). This is a typical example of how corruption matters and spreads among students and academics. According to Rumyantseva (2008), corruption in higher education can take different forms. It is manifested in various ways such as providing illegal support for admissions to a university, selling student assessments, favouritism in public procurement, cheating and plagiarism.

While a variety of definitions of corruption in higher education have been suggested, this paper will use the one suggested by Anechiarico and Jacobs (1996), who defined corruption in education by relating it to corruption in other similar areas, "principally the abuse of authority for material gain". However, it seems that because education is critically important to the public, its significance is more than just material gain; hence the definition of "education corruption" includes the abuse of authority for individual profit and advancement in an academic and professional sense. It might be that the social issues of corruption in education can be more harmful than other types, since it involves juveniles and young people (Heyneman et al., 2007).

#### II. BACKGROUND

Kazakhstan is a vast country — the ninth largest in the world; nearly twelve times the size of the United Kingdom; it has significant oil and gas reserves and a variety of mineral resources. A former part of the Soviet Union, it is located in Central Asia and borders Russia to the North, China to the East and other former Soviet countries and the Caspian Sea to the West. In Kazakhstan, where per capita GDP is the highest of all former Soviet republics, a recent statistic indicates that there are 131 higher educational institutions in Kazakhstan, including 51 public and 80 private ones. The number of private colleges is almost 2 times higher than the number of public colleges, with half of all the nation's students attending private colleges. There are 747,100 students in the country of which about 400,000 study in public colleges and universities while 347,000 attend private colleges. Interestingly, gender disparities in access to HE in Kazakhstan seem to be absent as women constitute around 60 per cent of all students (Osipian 2007).

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\* Chief Prosecutor, Prosecutor's Office of Korgalzhyn District, Kazakhstan.



However, market reforms and an increasing interest in such majors as Law, Economics, and Finance has not reduced the level of corruption (Osipian 2007). Anecdotal evidence suggests that the level of corruption in the former Soviet Union was not as high as it is now in Kazakhstan. This was achieved through a standard system and the strong centralization of power. During the economic transition to the market economy, the central government collapsed while a variety of agents (government officials, professors, and staff) did not act in concert (Heyneman et al. 2007).

### III. THE CONSEQUENCES OF POOR REFORMS IN EDUCATION

Since gaining its independence, the government of Kazakhstan has begun carrying out extensive reforms in higher education. The main purpose of these reforms was the privatization of most state universities and their subsequent commercialization. Here it should be noted that during the period of the Soviet Union the universities did not have admissions fees for applicants and were completely free and accessible to the majority of young people. As a result of governmental policy, within a short period there were numerous private colleges and higher institutions, most of them did not have sufficiently high admission requirements for the provision of university education. According to Heyneman (2007) it is probable that there was educational corruption in the former USSR, although it was not on such an enormous scale in comparison with today's level. Corruption has spread rapidly in the educational sector due to decentralization of decision making, which has had a negative impact on the control of the agents (i.e. the universities), the privatization of the objects of education and the inexperience of the management of the private universities.

However, despite the existence of legal regulation, in fact, implementation of these regulations remains an insurmountable problem; university students continue to violate the law, unethical and informal contracts — at both high and low levels. For instance, Chapman (2005) argues that corruption has two kinds of effects. Firstly, educational corruption leads to a loss of financial resources or, in other words, it significantly affects the other sectors of the economy. Secondly, educational corruption causes a loss of moral conscience among the students involved in the process of corruption, even as far as admissions to university and bribery in the examination.

While these rapid changes are having a serious effect on the educational process, the university officials have not been helpful in assisting investigations in corruption. Moreover, universities have not cooperated in assisting in the struggle to stop this harmful issue. Since education is for the public good, corruption in education is a broader issue than the illegal receipt of bribes. There is no doubt that illegal actions can be found in different occupations, but when the action affects children and young people the consequences are more serious and the punishment should be harder (Heyneman 2004).

The effects of corruption in education that we have identified therefore assist in our understanding of the role of education in the further development of the country. It can be seen that the success of corrupt transactions relies on two sides: students that offer the bribes and faculty academics that demand them. Surveys of university students illustrate that many students had rather abstract thinking about corruption. Indeed, only a few students said that they would report it if observed, while a majority would not have done so if they could avoid it and feel bad about this (Heyneman et al. 2007).

In addition, there are also various forms of bribery across different faculties and departments. This is confirmed by data from the Kazakh-Turkish University. In 2007, gift taking was highest in Economics, Political Science and World History, and lowest in Fine Arts and Russian Language. Four years later, the incidence declined in all departments except Law and Economics, where the competition to enter is greater, the fee and tuitions are larger, and the stakes for graduating are higher (Heyneman et al. 2007).

As Becker and Stigler (1974) pointed out, the probability that a teacher would take a bribe is higher if his salary is extremely low, and it also depends on how easily a bribe can be detected and if the sanctions of this punishment are too weak. In this regard, during the transition to a market economy in Kazakhstan, teachers' salaries remained relatively low compared to other professions. As a result, it can be assumed that this fact is central in determining the causes of corruption in the higher education institutions.

#### **IV. THE SIGNIFICANT IMPACT FOR SOCIETY AND THE ECONOMY**

There is no doubt that corruption has a negative impact on society, particularly on the young generation, who study at the university, begin to get used to corrupt acts. In this context, Rumyantseva (2009) concludes “when higher education is corrupt, young people come to believe that cheating and bribing is an acceptable way to advance their careers”.

Another issue relating to corruption in education is a profound effect on the state economy, which is catalyzed by the illegal circulation of hush money and a black economy in the country. The harmful impacts of this issue on economic growth were analysed in the works of Leff (1964), Huntington (1968), Myrdal (1968), Soto (1989) and Svensson (2003, 2005). Although, in general, the negative effects of corruption are not apparent, some issues may be quantified and measured. It can be argued that there is a decline in the quality of higher education, and the university officials admit unqualified students and teachers; in this way higher education becomes ineffective and has poor quality outcomes. As Bardhan (1997) notes “instead of increasing the success within the university, bribery limits competition and reduces the quality”.

The present study was designed to determine the effect of corruption in higher education in Kazakhstan. The problems of this issue can be broader, and to consider its field is extremely complex; in this regard it would be divided into the following categories. First, corruption in higher education is an irreparable damage to society and therefore overall to the country, where the image can be lost or, in other words, it is a painful impact for the whole nation. Second, the economic consequences — corruption in education is automatically extended to other areas of the economy; as a result it may cause huge and detectable consequences for the welfare of the people. Finally, the ethical problems, where the new generation that is involved in corruption can change their right vision for the future development of mankind and its values. Consequently, this will require greater efforts to fight the substantial effects of corruption in education, and primarily, the coming together of society, reforming the system and gaining from the experiences of other countries.

#### **V. HOW TO TACKLE CORRUPTION IN HIGHER EDUCATION**

It is probable that solving the problem of educational corruption is not significantly different from solving this in other sectors since abuse of authority in the field of education is governed by the same laws and regulations as in other parts of the economy. On the other hand, there are certain preventative measures specific to corruption in education. In this context, Heyneman (2004) stated that effective reforms in the education process are, possibly, able to minimize the risks of educational corruption. These reforms can be divided into four categories: firstly, structural reforms are necessary to reduce the opportunity for corruption; secondly, improvements in adjudication and management to help in the implementation of the issues in the education process; thirdly, measures are necessary to actually prevent corruption; and finally, sanctions are required to demote or punish when offences are committed.

Tackling corruption in higher education is a priority for public policy of the Republic of Kazakhstan. Interacting with the outside world, Kazakhstan is trying to maintain a dialogue with other countries and to participate in unified international activities in order to coordinate actions in a single international legal system. It should be noted that the Republic of Kazakhstan is a member of the United Nations Convention against Corruption (UNCAC).

Kazakhstan has adopted the Law «On Combating Corruption» of 18 November 2015, in general, coordinating stricter anti-corruption sanctions. This law is pointed at the comprehensive scope of the issue of corruption as a phenomenon in general and defines the principles and priorities for the implementation of anti-corruption policy. It sets the objectives and errands of the state to guarantee the anticipation, early caution and usage of legitimate supervision in connection to culprits of corruption exchanges. Accomplishing the objective of combating corruption is executed as well by producing a social climate of intolerance towards corruption. Particular attention is paid to the identification of the causes and conditions conducive to corruption offences and the elimination of their consequences.

The main goal of the new approach of Kazakhstan on countering corruption is the arrangement of a common anti-corruption culture. This intentional action suggests a set of measures of instructive, enlightening and organizational measures to raise public intolerance to corruption offences. In order to

ensure transparency of officials at all levels on a par with the state control bodies set up community councils. The Law of the Republic of Kazakhstan «On Public Councils» on November 2, 2015 defines the purpose of creating opportunities performance expression of civil society views on matters of public concern. The objectives of public councils are to develop interaction between the central and local executive authorities and bodies, as well as the organization of public oversight and transparency of central and local executive bodies and local self-government.

## VI. CONCLUSION

In recent decades, society has not developed and reformed law sufficiently to control the issues of corruption in higher education. There are many other problems to be solved, ranging from the transition to a market economy to reforms in the judicial system. However, now, it is time to turn to education, and it is necessary for the new generation. Reduced government support has brought the institutions to create their own financial resources (i.e. through extensive commercialization) which are not governed by precedent or legal regulations. Heyneman (2004, 12) puts it like this: "one thing is abundantly clear: whenever rules and regulations are confusing one must expect a high level of corruption". It seems that legislation reforms must be promoted in the fight against corruption. Changes in educational legislation are of critical importance to the whole society, and are now under review by the government. It is important to refrain from further restructuring of the education system.

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# INVESTIGATION, PROSECUTION AND ADJUDICATION AGAINST ILLICIT PROPERTY OF PUBLIC OFFICIALS IN NEPAL

*Gokul Banstola\**

## I. INTRODUCTION

Good governance is a key to sustainable development and social well-being of a nation. However, corruption is considered as a strong constraint of good governance towards the way of prosperity. Corruption is spread throughout the world in different forms. The corruption perception index shows that more than two-thirds of countries in the world score below 50 out of 100. At least 6 billion<sup>1</sup> people around the world are witnessing rampant corruption. Therefore, corruption is a global problem, and the entire world is trying to combat corruption through various institutional and policy measures.

## II. CURRENT SITUATION OF CORRUPTION IN NEPAL

Naturally, Nepal is one of the most beautiful countries in the world. It has a wide range of geographical and cultural diversity which is unique and incredible itself. But economically Nepal is known as one of the least developed countries. Corruption, no doubt, is one of the causes of Nepal's underdevelopment<sup>2</sup>.

Even though corruption is a criminal offence in Nepal, all forms of corruption, like bribery, embezzlement, fraud, extortion, illicit enrichment etc., are present. Nepotism and favouritism have been rooted in Nepali society and the public sphere. Almost all spheres, i.e. the executive, legislative, judiciary, political parties, non-governmental organizations, and the private sector, are perceived to be suffering from corruption. Transparency International's Global Corruption Barometer (GCB) Survey Report 2013 is evidence of the above-mentioned statements. In a 2011 survey, the total percentage of respondents saying "corruption increased a lot in Nepal" was 62.8 percent. This figure rose to 72 percent<sup>3</sup> in 2013. The GCB survey also revealed political parties (90%) as highly corrupt institutions in Nepal, followed by public officials (85%), police (80%), and parliament (79%), the judiciary (77%), business (54%), Non-Government Organizations (46%), the military (43%) and the media (33%). Based on daily bribery experiences of the people, other corrupt institutions in Nepal include customs, land revenue, judiciary, and tax revenue<sup>4</sup>.

Revenue leakage, misappropriation of public funds, damage or loss to public property, bribery, fake and falsified documents, breaching of laws and procedure and illicit enrichment, etc. are the common current prevalent corruption tendencies in Nepal<sup>5</sup>. The bitter truth is that no sectors/areas escape the grip of corruption in the country. The table presented below also supports that corruption is a fact.

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\* Under Secretary, Commission for the Investigation of Abuse of Authority, Nepal.

<sup>1</sup> <https://www.economist.com/graphic-detail/2018/02/22/corruption-is-still-rife-around-the-world>

<sup>2</sup> Corruption in Nepal: An Anthropological Inquiry Madhusudan Sharma Subedi, Central Department of Sociology/Anthropology, Tribhuvan University Kirtipur, Nepal.

<sup>3</sup> Global Corruption Barometer survey report 2013, [www.transparency.org](http://www.transparency.org)

<sup>4</sup> Institutional Strategy of the Commission for the Investigation of Abuse of Authority (2014-2019).

<sup>5</sup> Based upon yearly reports of CIAA.

**Table-1**  
**Corruption Perception Index and Nepal's status**

S. No.	Year	Score	Rank
1	2017	31	122
2	2016	29	131
3	2015	27	130
4	2014	29	126
5	2013	31	116

Source: Transparency International Corruption Perception Index reports, [www.transparency.org](http://www.transparency.org)

### III. ANTI-CORRUPTION AGENCY AND LAWS TACKLING ILLICIT ENRICHMENT IN NEPAL

Illicit enrichment is defined in the United Nations Convention against Corruption (UNCAC) as “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income<sup>6</sup>”.

#### A. Commission for the Investigation of Abuse of Authority

The Commission for the Investigation of Abuse of Authority (CIAA, henceforth) is an apex constitutional body mandated with controlling corruption involving public responsibility. All arrangements for its independence and competency are also managed by the Constitution. There is one chief commissioner and four other commissioners. All commissioners are appointed by the President for six years on the recommendation of the Constitutional Council. They may be removed from their responsibility if a motion of impeachment is passed by a two-thirds majority of the members of the House of Representatives. It is a unique anti-corruption agency and the first agency established in the SAARC region which is acting as ombudsman, investigator and prosecutor.

#### B. Laws Relating to Illicit Enrichment

##### 1. The Prevention of Corruption Act, 2002

Section 20 of this Act criminalized illicit enrichment as an offence of corruption, resting the burden of proof on the suspect. According to this provision, In case the statement of property submitted in accordance with prevailing laws by a public servant deemed to have held a public office in accordance with prevailing laws seems to be incompatible or unnatural or in case he maintains an incompatible or unsuitable lifestyle or it is proved that he has given someone a donation, gift, grant, present or has lent money beyond his capacity, he shall prove the sources from which he has acquired such property, and if he fails to do so, such property shall be deemed to have been acquired in an illegal manner.

##### 2. Commission for Investigation of Abuse of Authority (CIAA) Act, 1991

The CIAA is empowered by this act to search, seize, and suspend the suspects from their posts. The CIAA has the right to arrest and hold the suspect in custody for a maximum of six months with the competent court's consent. It may obtain details of financial transactions and even stop the fixed real estate of the suspect. In addition, it may seize the accused's passport.

##### 3. Illegal Property Investigation Procedure, 2018

The illegal property investigation procedure is a new document issued by the CIAA incorporated and updated with different practices, norms and verdict of court to make the investigation scientific, evidence-based and reliable. This is a detailed guideline to investigate upon the complaints received by the CIAA against illegal property earning by any public position holders. The procedure covers the norms related to

<sup>6</sup> United Nations Convention against Corruption, United Nations Office on Drugs and Crime.

calculation of income and expenditures of suspects during the investigation process.

#### **IV. INVESTIGATION, PROSECUTION AND ADJUDICATION OF ILLICIT ENRICHMENT CRIMES**

##### **A. Investigation**

The CIAA is mandated to investigate corruption matters committed by persons holding public office based on received complaints. There are other anti-corruption agencies authorized to investigate in their respective area, as permitted by relevant laws; however, the crime of acquiring property illegally by public officials can be investigated only by the CIAA.

The CIAA has been receiving a large number of complaints relating to various irregularities and earning of illicit property through complaints lodged by any person, or it obtains information via its own source. The investigation procedure is basically divided into two stages:

##### **1. Preliminary Inquiry**

During the preliminary inquiry, the complaints are analysed with regard to their merit and the first-hand available evidence. At this stage, the “Special Investigation Division” works with an aim to collect most of the possible evidence. For this purpose, the CIAA may write to any concerning agencies to send any relevant information and details of a concerned suspect which may be useful in investigation. One major document, the annual property details form, is collected from concerned agencies. After receiving necessary documents are collected, a brief report is prepared.

##### **2. Detailed Investigation**

When the Commission deems it necessary to conduct an investigation upon findings, a preliminary inquiry investigation officer is designated. The investigation officer collects further evidence, makes all necessary inquiries and analyses the findings. Upon the completion of the specified procedures, a report is submitted to the Commission. Such report shall be reviewed by the Commission and a decision to this effect shall be taken.

##### **B. Prosecution**

The CIAA is the only authorized institution to prosecute in the Special Court against illicit earnings of holders of public posts. Based upon the recommendation of the investigator, the Commission decides whether to prosecute. If a charge can be proved on the grounds of the collected evidence, the Commission prosecutes in the special court; otherwise the case is disposed of. On behalf of the CIAA, the Special Government Attorney Office pleads at the Special Court as well as the Supreme Court.

##### **C. Adjudication**

The Special court is mandated to adjudicate all the corruption cases filed by the CIAA at the trial level. This court has the same status of the appellate court. So the Supreme Courts have appellate jurisdiction over the decisions of this court. The table presented below is a summary of complaints received and resolved by the CIAA.



**Table-2**  
**Complaints Received and Resolved by the CIAA**

S.No.	Particulars	Fiscal Year				
		2013/14	2014/15	2015/16	2016/17	2017/18
1	Total number of complaints received	22,602	31,213	24,691	19,580	19,488
2	Total number of resolved complaints	12,892	21,648	16,694	11,861	12,400
3	No. of complaint of illicit enrichment	2,060	2,591	1,083	606	425
4	Total cases filed in court	168	303	144	154	192
5	Cases of illicit enrichment filed	2	2	7	11	4
6	Success rate on total prosecution	80%	80%	81%	60%	NA

Source: CIAA Annual Reports 2013-2017

## V. BEST PRACTICES OF ANTI-CORRUPTION MEASURES IN NEPAL

The following are some of the mechanisms and practices in use in Nepal that are worth mentioning.

- Independent constitutional agency (CIAA) for investigation and prosecution;
- Distinct special court for adjudication of corruption cases/crime;
- Burden of proof is on the defendant in illicit enrichment cases;
- Additional punishment for high-ranking officials who commit corruption offences;
- Imprisonment is mandatory for almost all corruption offences.

During the investigation and prosecution of corruption cases, the following rights of the suspect are valued with due respect.

- No arrest or custodial detention without informing the arrestee of the grounds of arrest and provision of a detention slip;
- No custodial detention for more than 24 hours without the order of adjudicating authority;
- Right to consult a legal practitioner;
- Right to be presumed innocent until proved guilty of the offence;
- Right to privacy;
- Right against torture;
- Right to fair trial by independent, impartial and competent court;
- Right of the person during taking of a statement:
  - Right to remain silent,
  - Right not to incriminate themselves,
  - Provide interpreter if necessary.

## VI. MAJOR CHALLENGES REGARDING CORRUPTION CONTROL IN NEPAL

Corruption control is not an easy job; hence it is challenging itself. Major challenges regarding the control of corruption in Nepal are as presented below:

### A. Political Commitment and Full Support

Lack of political support is a challenge. Even though the political parties publicly express commitment for controlling corruption, the behaviour has not been exactly the same in practice. Here are some other examples: about 83.2 percent of the participants in a survey thought that corruption in Nepal was caused by the lack of political commitment<sup>7</sup>. The CIAA can investigate and prosecute the political people holding public

<sup>7</sup> Tek nath Dhakal and Ratna raj niroula, "Prevalence of corruption and its challenge for improving governance in Nepal."

positions, so it is difficult to get real support from them. The post of chief commissioner has been repeatedly vacant in the history of the CIAA. It shows lack of political commitment to corruption control.

#### **B. Legal/Political Transition and Instability**

After a decade long conflict, the adoption of a constitution by a Constituent Assembly, restructuring the state to federal system, and the election of all levels of the federal government were completed. The number of complaints received by the commission against the local level of government is increasing. On the other hand, there is still contradiction among the constitution and some legal provisions. There is a need to amend the existing laws as well as to build new laws. In this situation, ending the legal and political transition and getting stability and a comfortable environment remains challenging.

#### **C. Limited Jurisdiction of the CIAA**

The CIAA is a major anti-corruption institution of the nation, but a new constitution of Nepal narrowly restricted the jurisdiction of the CIAA. The constitutional bodies and judges, Nepalese army, policy decisions of the cabinet and the corruption in the private sector are outside of the CIAA's authority. It is another challenge to control corruption within the nation with limited jurisdiction.

#### **D. Limited Mandate by Other Laws**

The new constitution of Nepal has not given the right to investigate improper conduct. In the present situation, after the removal of the improper conduct from the Commission's jurisdiction, the challenge has been added to the Commission, because the majority of the corrupt practice starts with improper conduct. It is not easy to separate improper conduct and corruption. This limited mandate is an obstacle in the strategic campaign of zero tolerance against corruption.

#### **E. Mindset of Other Stakeholders**

The general mindset of other state agencies seems to be that the CIAA is the only responsible agency for controlling corruption. But corruption control is a common responsibility of the whole nation. Sometimes the CIAA is not getting whole-hearted cooperation and support from other institutions as expected due to that mindset which is unfavourable to control corruption.

#### **F. Nature of Nepal's Economy**

The economy of Nepal has not been completely formalized. Even informally various economic activities are going on. On the other side Nepal's law has not made a compulsory provision to each individual and public official for maintaining a strict record of all income and expenditures. This situation also added the challenge to investigation especially investigation of illicit property.

#### **G. Protect and Maintain the Rights of Suspects**

If there is any prosecution until the court adjourns, no person is guilty. But when someone is prosecuted, the Nepalese society views that he/she is guilty so the suspect will lose social reputation. Even if the court says not guilty, someone cannot restore his or her reputation. Under this condition there is a challenge for the CIAA to balance between protecting and maintaining the rights of suspects and investigation and prosecution.

#### **H. Open Border and Relation to India**

There is about 1750 km of open border between Nepal and India. There are linguistic and cultural similarities as well as family relations of people between the two neighbouring countries. People of the two countries can easily cross international borders without visas or any registration. In this situation it is easy to hide illegally acquired assets in India. This is a big challenge to uncover the property when investigating illicit enrichment cases.

#### **I. Gaining Public Confidence**

The CIAA is blamed sometimes for not focusing on the big corruption cases based on the expectations of the people. On the other hand, large numbers of complaints received daily in the CIAA are the proof of public trust in the CIAA. Maintaining this belief by bringing all corruption cases to the scope of investigation and being successful is also another challenge.

**J. Implementation of International Commitments and Developing Interconnection**

Since Nepal is signatory to UNCAC, its implementation is a national obligation, but it does not have significant action yet. It is also challenging to bring into light the functional and operational management of UNCAC. On the other side, corruption is emerging in new forms, colours and the dimensions in the contemporary world. To overcome this social crime, nations should develop networks, collaboration and cooperation among countries, international organizations and diplomatic agencies. It has also been challenging to develop such interconnection and delivery of mutual legal assistance on time.

**VII. PROBLEMS REGARDING CORRUPTION CONTROL IN NEPAL****A. Lack of Enough Laws, Legal Provisions and Implementation**

The assessment of the National Integrity System Assessment Nepal, 2014 reveals there is significant variance between law and practice. The legal framework is sound, but it is not implemented consistently<sup>8</sup>. There are various weaknesses and lapses in prevailing anti-corruption laws. Prevailing law has not covered all the possible corruption offences. There is no clear definition of unsuitable lifestyle regarding illicit enrichment, neither of the legal provisions calculate net worth of a suspect by analysing total assets and liabilities. There is a maximum of two years' imprisonment if found guilty of illicit enrichment.

**B. Lack of Coordination and Collaboration Mechanisms**

Mechanisms to exchange information related to corruption among the law enforcement agencies and joint research system is crucial but there are not such practices yet.

**C. Complexity in Investigation**

New trends, techniques and methods of corrupt practices are emerging day by day which is a challenge and problem itself in investigation. To adopt new techniques, technologies and speed up investigation of crimes is not easy due to legal and resource limitations.

**D. Lack of Capable Human Resources and Capacity Development**

The CIAA does not have its own human resources. All personnel are deputed by the government from various disciplines as per the need of the CIAA. The job nature of the CIAA demands various specialized manpower. Availability of this manpower and capacity development of them is important, but due to the lack of resources, capacity development as per the necessity is not even possible. Frequent transfers and poor retention of capable human resources is also an issue.

**E. Difficulties in Gathering Evidence and Establishing the Case**

Corrupt activity is done in secret and by abusing law. A corrupt official tries to hide it as far as possible by using the loopholes of law and tries to protect oneself. In this situation to collect evidence of corruption is not easy itself. In the ground of investigation, prosecution is not so difficult, but it is not easy to establish the offences in court.

**F. Time Consuming and Different Verdicts Regarding Similar Issues**

Investigating issues related to corruption takes time. Court procedure also consumes a long time to take a decision. Sometimes the court reaches different verdicts in similar cases. That creates confusion as to which verdict to follow while investigating the corruption cases.

**VIII. A CASE STUDY ON CORRUPTION: MINISTER FOUND GUILTY ON CORRUPTION CHARGES****A. Introduction**

There was a young and popular Nepali political leader who had been holding different public positions during different time periods. His family background was a simple farming family. He was in a high-level public post from June 1991 to September 2002 in different capacities. At the first time, he was an advisor to the then Prime Minister. Later, he was elected as a member of parliament and also appointed as a cabinet minister of the government.

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<sup>8</sup> National Integrity System Assessment Nepal 2014, Transparency International Nepal

## **B. Complaint and Investigation**

The Commission for the Investigation of Abuse of Authority (CIAA) had received a complaint on September 2002 against him alleging that he was living at an unreasonably high standard of living by earning illegal assets, i.e. corruption. The CIAA started an investigation designating an investigation officer on October 24, 2002. During the investigation interesting facts relating to him were revealed.

Before being appointed to a public post, his bank balance was quite nominal: just Nepalese Rupees (NPR) 22000.00. But when he was in public position his bank balance increased unexpectedly to 9.191 million Nepalese rupees. In addition to this, he acquired fixed assets (land and a house) of 8.485 million. Apart from these; he purchased vehicles worth NPR 2.463 million. While he was taking important public posts, his and his wife's bank balances increased. He bought land and cars, built modern houses. Finally it was found that he collected a total of NPR 24 million 332 thousand (24,332,664.78 NPR). Out of this amount, the CIAA found that only 3.5 million Nepalese Rupees (NPR 3,524,618) was obtained from legal sources. He had collected vast property within about 11 years, which was quite impossible to earn by legal means by holding such public post in Nepal.

## **C. Some Facts Revealed by the Investigation**

- Before holding public posts, his bank balance was only NPR 22 thousand, but from June 1991 to July 1994, within a three-year period, he deposited cash in the amount of NPR 4.04 hundred thousand in his and his wife's bank account.
- He purchased real estate worth more than 8.55 million rupees while he was a cabinet minister of the government, and he purchased land worth NPR 53 million when he was a member of the parliament.
- During the period of 7 years 10 months while he was in a public position, he deposited 8.755 million in his and his wife's bank account.

The CIAA filed a case against him and his wife before the Special Court claiming that he had earned NPR 20.8 million illegally, i.e. by corruption.

## **D. Judgement of the Special Court**

After filing the case by the CIAA, the Special Court give its verdict on June 2007. The court decided that he had total property of NPR 11.263 million, and he was found to have legal property of NPR 10.557 million. The Special Court found only NPR 706,139 illegal. So the claim of the CIAA was not approved by Court. In connection with the decision taken by the special court, the CIAA had appealed before the Supreme Court disagreeing with the verdict of the Special Court.

## **E. Supreme Court's Verdict**

The Supreme Court pronounced its decision in March 2012. The Court held that under the Corruption Prevention Act, the culprit earned unlawful property worth NPR 8.409 million which is unrealistic and illegal, and the fact that the source could not be satisfied. The income claimed by the defendant did not appear to be reliable. The Court decided against him to be imprisoned for a term of one and half years and also imposed a penalty of NPR 8.409 million.

The decision of the Supreme Court seems to have raised serious questions on the decision of the special court and ordered to take necessary action against the concerned Judges of the Special Court.

While being the final decision from the Supreme Court, the culprit was the incumbent Minister of government of Nepal. Even after he was found guilty of corruption by the Supreme Court of Nepal, his political party had decided to continue him in his position as the president of his party. After the final decision of the Supreme Court he claimed that he was being sentenced for his political activities and not for the crimes he committed.

## **F. Conclusions**

After the final verdict of the court, the culprit was sentenced to jail, his property earned by illegal sources was confiscated and he had to pay a penalty. Thus, due to his involvement in corruption, an emerging political leader not only got punished but was also penalized such that he was ineligible for any public posts in the

future as per the existing law of Nepal<sup>9</sup>.

## IX. THE WAY FORWARD

### A. New Laws and Improvement in Existing Laws

New laws are necessary concerning whistle-blower and witness protection. Legal provisions are also required for corruption control in the private and non-governmental sector. Not only to control corruption, laws and policy regarding integrity development should also be made and enforced.

The property declaration system is mandatory under present law, but its effectiveness should be reviewed. The present cabinet ministers declared their property, but it became spicy news in Nepali media entitled "Poor ministers, rich wives<sup>10</sup>".

### B. Implementation of UNCAC

Nepal should take necessary arrangements to implement UNCAC and other international obligations.

### C. Coordination and Collaboration

Effective coordination and cooperation among law enforcement and investigating agencies are necessary. That is also essential for close collaboration and networking among civil society, media and individual citizens. Information sharing systems among law enforcement agencies and financial information units is another requirement to overcome present rampant corruption.

### D. Human Resources Development

Manpower with high morale is an important factor for controlling corruption. Capable and smart human resources with high integrity are required for investigation. The Commission should have a concrete plan and resources to develop the capacity of human resources.

### E. Effective Investigation

Success in corruption cases depends on investigation. Investigation should be technology based and evidence based. Use of new technology and equipment in investigation makes better results. The Commission should give more emphasis on the use of technology for effective investigation.

### F. Emphasis on Promotional and Remedial Activities

The Commission should focus on promotional activities as well. Creating an atmosphere that stops corrupt activities is more important than investigating, prosecuting and taking action. It is crucial even though it is not easy task. Awareness and civic education programmes should be conducted frequently.

## X. CONCLUSION

Corruption is a social as well as a criminal offence. As mentioned in the preamble of UNCAC, corruption is no longer a local matter, but a transnational phenomenon that affects all societies and economics. Anti-corruption laws, institutions and policies have been set up to combat corruption, but it is increasing day by day.

Corruption in Nepal is rampant. Lack of political commitment and low priority, long transition period, lack of strong coordination mechanisms with stakeholders and lack of adequate awareness are some causes of increasing corruption in Nepal.

There is no single prescription to control corruption. Combating corruption is not possible in isolation and requires a holistic approach. Focus on preventive as well as promotional measures along with punitive measures should be adopted simultaneously to combat corruption. The criminal justice system regarding

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<sup>9</sup> **References:**

The Charge sheet filed by CIAA to the Special Court

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[http://www.nepalmonitor.com/2012/03/corruption\\_in\\_nepal\\_.html](http://www.nepalmonitor.com/2012/03/corruption_in_nepal_.html)

<sup>10</sup> [myrepublica.nagariknetwork.com/news/poor-ministers-rich-wives](http://myrepublica.nagariknetwork.com/news/poor-ministers-rich-wives)

21ST UNAFEI UNCAC TRAINING PROGRAMME  
PARTICIPANTS' PAPERS

corruption has to be strong and effective.

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# MIGRATION IN NIGER: A NEW MATRIX FOR CORRUPTION

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## I. INTRODUCTION

Confronted by challenges such as food insecurity, war, school failure and poor governance, young people see migration as the ultimate solution against poverty. Many leave their villages or countries to seek a better future in order to help their families but also to emancipate themselves. This adventure is not easy. They most often use the desert of Niger via several checkpoints where unfortunately they are taken advantage of by some agents who are supposed to secure them. This form of extortion increases the rate of corruption in our country.

## II. CORRUPTION RELATED TO MIGRATION: A SCOURGE THAT THREATENS DEVELOPMENT

Corruption is currently considered as an obstacle to our development. This scourge has its causes and consequences.

### A. Causal Link between Migration, Poverty and Corruption

Migration is mainly caused by poverty. Other factors may contribute to increasing this phenomenon such as alimentary insecurity, school failure, war. People who are candidates of migration in general come from some countries like Mali, Senegal, Gambia, Mauritania, Sudan, Cameroon, Nigeria, and Burkina Faso. They decide to attempt their chance in order to succeed in their life.

On the path of migration, they are forced to corrupt the defence and security forces placed at the borders. They have to offer the agent money to avoid delays and heavy administrative paperwork. Moreover, the responsibility of the State can be emphasized. This responsibility is perceived through the question of remuneration and staffing of screening officers. Indeed, the working conditions such as the material and financial constraints make difficult the accomplishment of the assigned missions. Low salaries can be a source of corruption that can lead the agent into deviant practices. The salary is rarely enough to cover the needs of the police officer; hence the permanent attempts of corruption. There is a link between the low income of the police officer, the strong social pressure he suffers and corruption. This social weight can be seen as the redistributive dimension of corruption. This whole situation is related to illicit enrichment, in which the lifestyle of the agent greatly exceeds his income. This constitutes the offence of unjust enrichment. This increase in illegal income is the fruit of corruption.

### B. The Mesh

This migration involves many actors.

#### 1. Police and Gendarmerie

Recent studies of corruption perception in Niger point to the responsibility of security services in corrupt practices. According to the results of the International Transparency Investigation and recently the High Authority for Combatting Corruption, the police and Gendarmerie are among the most corrupt public services<sup>1</sup>. Many police officers were punished by their hierarchy for professional deviation. The police appear as the central matrix of this corruption on the migratory path. The Gendarmerie is also cited as an actor of corruption across border areas according to the narrative of migrants. However, Gendarmerie is less

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<sup>1</sup> URBAMED Investigation, May 2018.

incriminated than the border police and still retains a certain ethics and deontology.

2. National Army

Among the migrants surveyed, 46% believe that they have been controlled by the military, particularly at the check points located along the roads and especially in the desert. These controls are less violent and more respectful of human rights. The army that previously was less indexed fell into the trap of corruption.

3. Smugglers, Carriers, Drivers: Actors of Circumstance

These people benefit more from the important migration industry, particularly in the region of Agadez, which is the main transit zone for sub-Saharan migrants to the Maghreb and Europe.

The smugglers are real brokers of corruption. Most of the time, they are young and old people who on the border, particularly in Agadez, ensure the passage of migrants to Algeria, Morocco and Europe. They ensure the long-distance transfer of migrants by car.

Also, we have another category of traffickers essentially composed by motor drivers commonly called « kabou kabou ». They organize the small-scale passage by connecting border localities (Nigeria, Benin, Mali, Burkina) to the border cities of Niger such as konni, petel kolé, Makalondi, zinder. It is a transport on small distance (maximum 50 km).

Indeed in the region of Agadez, corruption begins at the entrance of the city. Migrants are welcomed by smugglers. The smugglers negotiate the passage of each migrant to 13000FCFA. Migrants who do not have smugglers at their arrival at the border are spoiled and sometimes searched by the police. However, these smugglers have seen their activity shrink sharply since the application of the law N°2015-036 on the repression of the smuggling of migrants.

It should be noted that migrants are also actors of corruption. They prefer to pay money at checkpoints to avoid delays. In this case, without migrants there would be no corruption. These smugglers are for the most part unemployed and roam around the city in different bus stations to search for migrants. They are often apprentice drivers working on their own. Over time, some bought their own cars to indulge in this activity.

In order to accomplish their project, migrants are ready to practice many forms of corruption. They prefer to pay money at different checkpoints to avoid delays that may be caused by systematic searches of transport vehicles. Most of the time, they are not in a regular situation because they do not have the required travel documents.

### III. FORMS OF CORRUPTION

In most cases, the police agent is passive. It is the migrant who makes the proposal of corruption. Then the migrant becomes an active briber and the controlling officer a passive corrupted. official Several types of corruption are detected in the field of migration. We can cite concussion, which is a crime close to corruption, extortion, bribery, and at last illicit enrichment which is the result of corruption.

#### A. Concussion and Extortion

Our penal code punishes "concussion" in article 124. Any civil servant, officer, agent clerk or servant is liable to prosecution for having received, demanded or ordered to collect duties, taxes, contributions or money or wages and salaries that they knew were not due or exceeded the actual duty owed. Defence and security forces subcontract state power for private purposes. This leads to the payment of undue costs that are collected by these border defence and security forces. These fees are paid even being in a regular situation. As a result, travel documents become irrelevant for migrants. This situation is an infringement of article 39 of the Free Trade Agreement of the ECOWAS. From the establishment of the passport to the departure each candidate for migration can pay between 80 thousand FCFA to 100 thousand FCFA. Once they arrive in Niger these fees can double at least at the various checkpoints.

Extortion is the act of obtaining a sum of money from someone by force. This is also a corrupt practice. According to a migrant, the police pick up the identity cards or passports and the migrants enter one by one into the office to pay amounts between 1000 FCFA to 10.000 FCFA.

## **B. Bribery**

This offence mentioned in article 132 of our penal code is treated as corruption. It is the act of promising, offering or giving to a public official or any other person directly or indirectly an undue advantage so that the agent or person may abuse his actual or supposed influence. In this case, as the borders are considered as lucrative posts, the procedure is for a public official to solicit directly or indirectly the favours of the hierarchy for an assignment. The agent comes inside of the heart of the basic system of corruption based on favouritism. So to be posted as the police officer at the border, you have to know someone or give something. Normally the transfer to a border post lasts 3 years but people can stay there for 7 years without being affected<sup>2</sup>.

## **IV. CONSEQUENCES**

The phenomenon of migration in connection with corruption today has huge consequences both on the legacy we have to leave to our children and on the security of our countries.

### **A. Heavy Legacy for the Future Generation**

The development of corruption on a large scale can have serious repercussions on posterity. The future generation will grow with the seeds of corruption. Our children will be affected and will internalize and adopt these negative and unworthy behaviours. The pillars of integrity will be replaced by immorality. A worthless society is doomed to disintegrate. This may create a state of nature where the reason of the strongest is always the best.

### **B. Threat to the Security of Our Countries**

Corruption promotes illegal migration. In addition, a good part of the resources to be returned to the State takes a personal destination. This is a shortfall for the public treasury. This loss of income in corruption related to transactions along borders and road corridors reduces public investment, particularly in the area of access to basic social services. Corrupt practices in border areas reinforce insecurity with the absence of serious control of migratory flows. This situation fosters the entry and stay of undesirable migrants who may be linked to armed or terrorist groups. We have no idea about the profile of people entering who can be bandits or criminals. Corruption promotes migratory flows and impacts on regional security. Members of terrorist networks can easily pass control points.

## **V. ANTI-CORRUPTION TOOLS**

### **A. Legal Arsenal**

#### **1. Universal Legislation**

The United Nations have adopted several instruments to fight corruption and regulate international migration.

- United Nations Convention against Corruption or Merida Convention of October 31, 2003;
- Convention on the Protection of All Migrant Workers and Members of Their Families of 18 December 1990, entered into force on 1 July 2003;
- United Nations Convention against Transnational Organized Crime, known as Palermo Convention, adopted on November 15, 2000, entered into force on September 29, 2003.

#### **2. Regional and Sub-Regional Legal Instruments**

- Inter-American Convention against corruption signed in Caracas on March 29, 1996 and entered into force March 6, 1997;
- Criminal Law Convention on corruption adopted by the Council of Europe on 27 January 1999;
- Civil Law Convention on corruption adopted by the Council of Europe on 4 November 1999;
- OECD Convention on Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997;
- African Union Convention on Preventing and Combating Corruption of 11 July 2003.

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<sup>2</sup> Provisional Report on the link between corruption and migration, May 2018.

3. Internal Legal Corpus

- Constitution of 25 November 2010;
- Pénal Code and Penal Code of Procedure, January 2018;
- Code of the public markets;
- Law number 2016-44 of 06 December 2016 establishing, missions, attributions, composition, organization and operation of the high authority to fight against corruption and related offences.

**B. Anti-Corruption Organs**

In Niger, several anti-corruption organs have emerged. Institutional and non-institutional actors work to fight against corruption and regulate international migration.

1. High Authority for Combating Corruption and Related Crimes (HALCIA) and National Anti-Corruption Strategy (SNLC)

The High Authority for Combating Corruption and Related Crimes, known as HALCIA, is a permanent organ attached to the Presidency of the Republic, whose main mission is the prevention and fight against corruption and related offences. It was created by decree number 2011 of July 26 and its mission is to monitor and evaluate the anti-corruption programme. It is responsible in relation with the other actors to design, develop, implement and monitor the national strategy as well as an action plan. This structure has spurred the adoption process of the national anti-corruption strategy (SNLC), which is the reference document for the prevention and fight against corruption. This structure has powers to investigate all cases of corruption throughout the country.

2. National Financial Information Processing Unit (CENTIF)

The unit existed since 14 September 2004. It is under the authority of the Ministry of Finance. It handles reports of suspicions. It can directly transmit the case to the Prosecutor's office if the facts are likely to constitute money laundering or the financing of terrorism.

3. Green Line and Information Claim Office

- In the context of corruption Nigeriens can call 08 00 11 11 at any time and lodge their complaint. This number is nominated Green Line. It is a tool for controlling the management of some administrations and play the role of alert. Complaints and denunciations are recorded and prosecuted if founded.
- The Information Claim Office fights against corruption in the judicial sector at the beginning. Over time the mission of this office was extended to five ministries, namely justice, national education, scientific research, economy and finance, and public health. It offers to citizens several types of services. Its purpose is to provide to people with all possibility useful information on all acts done in these administrations including the nature of the acts, their costs, the procedure to follow, the place of deposit or withdrawal of the act, the processing time of each service. Now it becomes an instrument to help denounce corruption.

4. General Inspection of the Security Services

It includes the inspections of the National Police, the National Guard and the Civil Protection. Its main purpose is the administrative and disciplinary control of these services and their activities. It was created by decree in 2011 revised by the decree of 16 June 2017. It includes three operational components: the three inspections of the security services, the division of disciplinary investigations, studies, audits and pedagogical control and the division of judicial investigations and body constraints. It also has the power to terminate the functions of the incriminated agent without prejudice to criminal sanctions. General inspection had 21 cases related to ethical and deontological breaches. Among these cases six have been brought to justice.

5. The National Coordinating Committee Against Trafficking In Persons and Its Action Plan

Under the authority of the Ministry of Justice, the committee is the driving force for design and development of policies and strategies for combating human trafficking and the smuggling of migrants. The operational arm of the committee is the National Agency for combating human trafficking. It is therefore responsible for implementing the Committee's strategies and action plan. It is also responsible for developing and undertaking awareness and education actions to prevent and reduce human trafficking.

## 6. Civil Society

Civil society is very active in the fight against corruption:

- Human rights organizations
- Organizations and journalists' associations. These organizations include the Nigerien network of journalists for integrity and transparency and the Nigerien association of anti-corruption journalists

## 7. Judicial Pole Specialized in Economic and Financial Matters

It was created in 2015 by law Num 2015-02 of 13 January. The judicial pole is competent for the investigation, prosecution and adjudication of offences of economic and financial aspects which are or appear to be highly complex, including the large number of perpetrators, accomplices or victims, the importance of harm, etc. These offences are:

- Corruption;
- Misappropriation of public funds and goods;
- Subtraction of public or private money, effects or objects perpetrated by public depositaries or accountants;
- Illicit enrichment;
- Money laundering;
- Bribery and trading in influence;
- Fake cash;
- Scams;
- The abuse of social goods;
- Breach of faith;
- Fiscal and customs offences (fraud, smuggling, tax evasion);
- Bankruptcy and related offences;
- Offences related to the use of the check;
- Offences related to bank cards and other instruments and processes electronic payment;
- The interference of officials;
- Infraction of the freedom and equality of candidates in public market and public service delegations.

# VI. DIFFICULTIES IDENTIFIED IN THE FIGHT AND POSSIBLE SOLUTIONS

In this struggle, it is necessary to point out some difficulties and inadequacies and try to find them possible solutions.

## A. Difficulties

The fight against corruption meets some difficulties among which we can cite:

### 1. Weak Denunciation

There is very often a lack of complaint because corruption remains the domain of silence by excellence. Despite immense efforts done by the government to expand its legal and institutional framework for the fight against corruption and related offences, a number of limitations exist. The criminal code which penalizes both the briber and the corrupted thus limits the possibilities of denunciation but also the collaboration of the victims or perpetrators. To avoid this problem, it was necessary to grant a derogation to the briber to facilitate the denunciation. The lack of promotion and popularization of the texts contributes to the enfeeblement in the fight against corruption. This opens the way to misunderstandings and manipulations by the actors. The problem of coordination between the defence and security forces who arrest and the judicial police who accomplish the proceedings.

### 2. Weak Political Will

The political will at this level is faltering. The authorities want both a thing and its opposite. Most often in an indirect way we can note a laxity coming from the public powers. They hesitate to engage the prosecution against some agents because of their social or political rank.

### 3. Low Penalty

Even if corruption happens, people rarely denounce it. These cases undergo slight treatment because of the difficulty to show evidence. For the Nigerien context it is inconceivable that the briber comes to denounce the corrupt.

## **B. Legislative Reform and Technical Assistance**

These shortcomings deserve to be corrected for a better fight in accordance with international legal instruments.

### **1. Legislative Reform**

There is a need to review our texts and harmonize them with international legal instruments already adopted. For this reform, the government must involve all the actors concerned by this question. The following reforms will strengthen anti-corruption measures in Niger:

- Adopt adequate measures to allow confiscation of corruption offences and extend the scope of these measures beyond money laundering. Specify the competent authority for the administration of property;
- Adopt the necessary measures to ensure protection against any unjustified treatment of any person who denounces corruption;
- Adopt appropriate measures to ensure the effective protection of witnesses, experts and victims;
- Take the necessary measures to lift bank secrecy for corruption offences<sup>3</sup>.

### **2. Need of Technical Assistance**

In order to improve its anti-corruption arsenal, Niger wishes for better compliance with the UN conventions and technical assistance by elaboration of an action plan for their internal application:

- Anti-corruption experts;
- Cooperation with detection and repression services of foreign countries;
- Cooperation between national authorities and the private sector;
- Finance specialists;
- Formation of all actors involved;
- Bureaucratic means;
- Conclude bilateral or multilateral agreements or arrangements to establish joint investigations.

## **VII. CONCLUSION**

The phenomenon of migration related to corruption is complex and mobilizes actors whose posture and position may vary according to the issues and opportunities. This complexity is reinforced by the fact that the guilty parties are important actors in the fight against corruption. In view of these mentioned difficulties above, the establishment of operating synergies is essential to solve the challenge. And that goes through the necessary legislative reforms and technical assistance.

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<sup>3</sup> All these measures come from the review report by Mauritius and the Russian Federation of the application by Niger of the United Nations Convention against Corruption for the 2010-2015 Cycle



# COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES, INTERNATIONAL COOPERATION AND ENGAGEMENT OF CIVIL SOCIETY IN TIMOR-LESTE

*Henrique Lopes Soares\**

## I. INTRODUCTION

Corruption is known as a disease that undermines all aspects of human life (socioeconomic) and destroys the development process of the state (law and democracy). And also corruption has become a global problem, because it happens in all countries in the world. So combating and fighting corruption is the responsibility of all people, not only a group or an institution.

Based on the fight against corruption, through this paper, I will share how to combat and prevent corruption in Timor-Leste (TL), with the topic “*Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society In the Context of Timor-Leste*”.

I will divide the paper into four parts: *First*, the National Strategy of combating corruption. *Second*, Anti-Corruption Commission (ACC) Responsibilities. *Third*, how Timor-Leste takes part in cooperating internationally to combating corruption, and *Fourth*, prevention methodology to engage the public to prevent corruption in Timor-Leste. And last, I will share some challenges that the ACC faced, by sharing the challenges we experienced with the aim of getting feedback from other participants’ experiences in dealing with combating corruption in their countries.

### A. The National Strategy of Anti-Corruption

Since Timor-Leste’s independence in 2002, there has been increasing apprehension about corruption. The public has been very critical about this perceived rise in corruption. There are several main institutions that share the mandate of combating corruption. These can be divided into two categories, namely, independent state bodies and executive bodies. Prior to the ACC’s establishment, several institutions, such as the Inspector General (OIG), were tasked with inspecting, auditing and investigation of disciplinary and administrative matters (established by UNTAET in 2002). In May 2004, based on the National Constitution article 27, the Government-established Office of Provedor for Human Rights and Justice/PDHJ (Ombudsman) was mandated with good governance, human rights and anti-corruption.

In 2008 the National Parliament of the Democratic Republic of Timor-Leste ratified the United Nations Convention against Corruption (UNCAC). In 2009, Law No. 8/2009 created the Anti-Corruption Commission (ACC) and assigned it an expanded mandate on preventing and fighting corruption. When the ACC was established, the responsibilities and functions of PDHJ regarding anti-corruption were transferred to the ACC. And the ACC has been officially handling its work since the National Parliament elected the first Commissioner in 22 February 2010. In 2011 Law no 17/2011 created the Financial Information Unit under the Central Bank, which has some role in preventing corruption, especially in relation to the issue of money laundering. And in July 2011 the National Parliament established an Audit Court; it is an important institution with an auditing function to oversee state expenses in particular. And in 2014 by the Decree Law no. 15/2014, the ministry of Justice created the Scientific Police of Criminal Investigation (PSIC), to prevent and combat organized crime, money laundering and drugs.

### B. Establishment of the Anti-Corruption Commission of Timor-Leste

According to the law that established the ACC, law no. 8/2009, the Commission is given the status of an independent, specialized criminal police body with technical independence and administrative and financial autonomy. Based to article 4 law no. 8/2009, the mission of the ACC is to undertake preventive action and

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criminal investigation action against corruption in any of its forms, such as embezzlement, abuse of power, trading of influence and financial participation in public affairs, as defined by penal legislation. In article 5 the ACC has the power of criminal prevention and investigation. *In terms of criminal prevention, the Commission has the power to:* a) Gather and analyse information on the causes and the prevention of corruption. b). Undertake awareness, limited, and motivating public to prevent corruption. c) Advise any institution or public authority on the way to prevent and fight against corruption.

*In terms of criminal investigation, the commission has the power to* exercise the duties assigned under the terms of the law to the criminal police bodies, notably, a). to conduct the inquiry or practice acts of inquiry delegated to it by the Public Prosecutor's Office, b). to gather news of crime, c). to discover those agents responsible for practicing criminal acts, d). to proceed to the identification and detention of people, e). to make the necessary notification by itself or by resorting to another police authority, f). to conduct interrogations within the scope of the investigation and other investigative measures necessary for the performance of their duties, g). to conduct searches and body searches, to seize objects and documents, h). to stand on watch, i). to intercept and record conversations or telephone calls, with a court order, j). to examine books, documents, records, archives and other pertinent elements in the possession of the entities which are under investigation, as well other pending offences, k). to draw up expert reports, take measurements and gather samples for laboratory exams and to seal off premises.

In terms of criminal investigation, the Commission may also suggest to the public prosecutors that precautionary measures be adopted under the terms of the applicable penal procedural legislation, notably: that an order be made to freeze bank accounts when there are strong indications that they contain funds resulting from crimes as set out in article 4, and that an order be made that any assets in the possession, custody or control of a person are not to be used. Acts carried out by the Commission without a court order from the competent judicial authorities, under the terms set out in the law, shall be validated by the competent judicial authority within a maximum time limit of 72 hours, under penalty of it being rendered null and void and the validation shall be requested with urgency by the Public Prosecutor's Office.

The regime of protection of investigation secrecy set out in criminal procedural law shall govern the investigation and inquiries under the responsibility of the Commission (article 14), the documents, information and evidence gathered by the Commission shall be confidential until the trial in accordance with the regime of secrecy established by law.

Without prejudice to the overall rule of confidentiality established by law, the Commission may, before, during or after the investigation of a matter, transmit any matter for investigation or other action to the Attorney General or other legally competent authority; also the Commissioner may request information and reports from any authority, *vis-à-vis* matters concerning the corresponding activity.

Any investigation conducted by the ACC must first obtain permission from the Public Prosecutor's Office, because the prosecutor has the power under article 132, paragraph 1 Constitutional law Timor-Leste, and regulated in article 48 of Decree Law no.13/2005 particular criminal procedural law of Timor-Leste, which explains that the prosecutor is the holder of a criminal case, and here, the prosecutor must cooperate with the court to discover the truth and should be based on the law and the objective in any action by any process.

### **C. International Cooperation**

To combat and prevent corruption, Timor-Leste has ratified and become a state party to UNCAC in 2008. Based on the International Cooperation framework is established by the Constitution and the Law no. 15/2011 on International Judicial Cooperation in Criminal Matters. The Penal Code and the Criminal Procedure Code also contain provisions applicable to international cooperation.

Extradition (articles 44, 45, 47): Timor-Leste is a party to the extradition convention among the Portuguese Speaking Countries. Timor-Leste has not concluded any bilateral extradition agreements. According to the Constitution and Law No. 15/2011, the convention could be used as the legal basis for extradition by Timor-Leste on the condition of reciprocity.

Mutual legal assistance (article 46): Timor-Leste has not concluded a bilateral agreement on mutual legal assistance. Under Law no. 15/2011, Timor-Leste may give and ask for assistance, including search for and

seizure of objects or property, persons in transit, warrant service and to interview the suspect, the accused person, witness or expert, the procurement of evidence, notice of the action and service of document, and communication of information about the law or the laws the foreign Timor, as well as the communication of information relating to judicial record of the suspect, accused or convicted.

Law enforcement cooperation (based on articles 48, 49 50): The police have cooperated with other police forces of the region, either directly or through the Interpol network, both spontaneously and upon request, only regarding organized crime matters. Cooperation included the establishment of joint investigation teams and transmission of information which may be useful for foreign police forces. Special investigative techniques may be used by the police, ACC and the future Financial Intelligence Unit (FIU) if allowed by a court decision.

In terms of capacity-building in the area of prevention and investigation of corruption, the ACC also has made MOUs with other countries and international agencies, such as: KPK Indonesia, CPIB Singapore, ICAC Hong Kong, MACC Malaysia, ILEA Thailand, UNDP, UNODC, GIZ, JICA, COICA etc.

#### **D. Engagement and Public Awareness**

In this part, as an officer of prevention in the ACC, I will share about how the ACC takes action to engage and raise public awareness to prevent corruption. Based on the ACC's Organization Chart, there are three Units under the Directorate of Public Awareness and Prevention. The Units are the Studies and Risk Assessment Unit, the Inspection and Monitoring Units, and the Promotion of Values and Integrity Unit. Based on the decree law no. 23/2015 about the ACC Organic Structure, the Units have the responsibilities such as: a). Identify and classify the factors that favour of corruption in the public administration and private sector, b). Carry out awareness-raising actions aimed at prevention of corruption and related crimes, c). Adoption and dissemination of good transparency and visibility in administrative and financial decentralization, as well as in public procedures, with special supply of goods or public rights, in the purchase and sale of subsidies and other financial support, d). Production of thematic programmes and campaigns in collaboration with the media in dissemination of the fight against corruption, e). To develop within the scope of the attribution of the ACC measures to prevent corruption and related crimes in the public and private sectors.

Based on the responsibilities mentioned above, there are some best practices of prevention that were implemented since the ACC was established.

1. Supervise the private sector using the state budget to implement development projects. There is always work to see the implementation of the construction process. Provide input to the private sector about how to do a good construction process and to prevent corruption during implementation of the construction process.
2. Inspection and monitoring of public property, public projects run by the private sector / companies. The aim is to protect public property and avoid fraud in construction.
3. Raising public awareness through socializing the anti-corruption value to: public servants, community leaders, political parties, veterans, youth, women, students (primary school-university).
4. Join with the State Secretary of Communication to share the ACC programme and anti-corruption values to the public through Radio and TV.
5. Join with the NGO (CEPAD) to enhance the capacity of the media to share information about preventing corruption to the public about corruption cases.
6. Monitoring political parties in election campaigns to prevent money politics and misuse of public property.
7. Studies and risk evaluation about the lack of laws and make recommendations to the competent organ to change laws that allow or give opportunity to corruption.
8. Survey public subsidies offered by the government to measure the advantages to groups or society.

## II. THE CHALLENGES THAT THE ACC FACED

1. The ACC has no anti-corruption and asset recovery law;
2. Lack of human resources, especially existence of IT experts in the Commission to do searches regarding criminal activity (Including Corruption); this is to trace the communication that had been done between criminals through email, and to check equipment whenever conducting an investigation;
3. The lack of specialized resources to detect fraud in procurement and construction;
4. The ACC also has limitations such as: budget for operations (observation, surveillance) and limited operations equipment (for example, wiretapping).

## III. CONCLUSION

The people of Timor-Leste perceive there to be a high occurrence of corruption in their country. This perception has given rise to some common expression associated with growing allegations of corruption. All these expressions reflect a subtle consciousness of corruption shared by all sides, namely by potential contractors, the general public and public officers. Therefore, to combat corruption effectively in Timor-Leste, we need to strengthen law enforcement and all institutions that have the responsibility against corruption, to cooperate with other countries and effective engagement of public awareness in fighting and preventing corruption.

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# MUTUAL LEGAL ASSISTANCE WITHIN THE INVESTIGATION OF CRIMINAL CORRUPTION OFFENCES

*Anna Dzhavaha\**

## I. SPECIFIC CORRUPTION OFFENCES

Nowadays, the problem of corruption has become time-sensitive and inevitable. Such negative phenomenon as corruption destroys sustainability of the State by raising the lack of confidence of the society in the state authorities, reducing public activity in political and social life, and leads to diminishing of the rule of law and the law in general.

Therefore, detection and demolishing of corruption crimes are issues of a great importance. However, corruption crimes are relatively close to economy and finance, which makes them quite complicated. Also, one of the difficulties is that corruption is not bound by the boundaries of only one country. It actually has its own space and spreads far abroad. As a result, in high-profile corruption cases it is nearly impossible to gather evidence without using the tools of mutual legal assistance. That is why the detectives of the National Anti-Corruption Bureau of Ukraine (hereinafter — the NABU) often have to seek assistance and advice from foreign colleagues.

For example, in order to find out circumstances of crimes the NABU needs information about the final beneficiaries of foreign companies involved in corruption schemes, the use of money on accounts of foreign business entities and the facts of possible money laundering. Sometimes investigations require conducting procedural actions with citizens of other states. All this is achieved through the mechanism of international legal assistance.

At the same time, it is a well-known fact that mutual legal assistance is a cooperation process of a long duration, but for proper and accurate investigation we should be as quick as possible, sometimes even faster.

In such a manner I am going to cover some problematic issues frequently arising within mutual legal assistance and provide some examples of successful and fruitful international cooperation.

### A. High-Profile Investigations

The NABU's investigations turned out to be a series of resonant events — detentions, notices of suspicion, large-scale corruption schemes exposing and unusual court hearings. And now we are going to talk about two of the biggest corruption cases which were under investigation of the NABU.

#### 1. The Martynenko Case

At the beginning of December 2015, the investigation into embezzlement of funds of the state enterprise in the energy complex named «Energoatom» worth EUR 6.4 million was launched. Within the case NABU's detectives were examining the facts of acceptance by officials of the Energoatom of an improper advantage during public procurement procedures. The investigation revealed that the state enterprise suffered losses of more than 6.4 million EUR for overpayment for the equipment purchased from the Czech joint-stock company «Škoda JS». However, to prove this by appropriate evidence and seek all persons alleged for the commitment of crime it was crucial to gain the registration documents of Škoda JS, commercial documents regarding the purchase of the equipment, information that showed the money flows and contained the bank secrecy etc. But all mentioned documents and information were in possession of foreign companies and authorities. As a result, it was important to carry out the procedural actions in the territory of a foreign country, so the first MLA request was drafted and sent to the competent authorities of the United Kingdom.

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Lately the bank information was received and it became clear that money had been transferred to several other accounts in different banks in different countries. Also, received information showed the other foreign companies which were involved in the corrupt scheme, so new MLA requests were sent to the competent authorities of the Republic of Latvia, Switzerland and Czech Republic.

Due to the MLA requests NABU got information that after receiving the funds according to agreements with the SE «NNEGC» «Energoatom», Škoda JS transferred 6.4 million EUR to the account of BRADCREST INVESTMENT S.A. (Panama Republic), owned by the former MP. Therefore, the other MLA request was sent and consequently the funds in the amount of 86.4 million UAH (3.2 million Swiss francs) were seized at the account of the abovementioned company at a Swiss bank.

*(i) Parallel Investigation*

Moreover, under the international cooperation it turned out that law enforcement authorities of Switzerland and Czech Republic conducted the pre-trial investigations in related matters. When it was discovered, on the initiative of a Czech representative at Eurojust that a decision was made to organize several meetings at Eurojust with representatives of Swiss, Czech and Ukrainian law enforcement agencies which were conducting relative investigations. During the meetings investigators shared information, made a plan about further investigative actions in their parallel investigations and outlined what information they could share with each other on the basis of MLA requests to get all necessary, appropriate and admissible evidence.

Furthermore, the pre-trial investigation into the facts of 17.28 million USD embezzlement of the SE Eastern Mining and Processing Plant was started in December 2015. In this case several MLA requests were sent to the foreign competent authorities as well. And when some of them were satisfied and NABU got the execution materials in late April 2017, the detectives of the NABU under the procedural guidance of the anti-corruption prosecutors gave a notice of suspicion to the former MP for allegedly committing crimes under Part 1 Article 255 (Creation of a criminal organization), Part 5 Article 191 (Misappropriation, embezzlement or conversion of property by abuse of official post) of the Criminal Code of Ukraine.

In November 2017, the prosecutor of the Specialized Anti-Corruption Prosecutor's Office (hereinafter — the SAPO) decided to join two criminal proceedings. In terms of the unified proceeding 11 persons were given notices of suspicion, 5 of them were put on the wanted list.

On January 9, 2018, according to the order of the prosecutor of the SAPO the detectives of the NABU provided the former Member of Parliament (also known as the Former Head of the Verkhovna Rada Committee on Fuel and Energy Complex) and his defence with access to the documents of the pre-trial investigation of the criminal proceeding as of the facts of funds embezzlement of the State Enterprise (SE) Eastern Mining and Processing Plant and the SE «National Nuclear Energy Generating Company «Energoatom».

The former Member of Parliament is suspected of committing crimes qualified under:

- *Part 3 Article 27, Part 5 Article 191* of the Criminal Code of Ukraine (CCU) (Organization of embezzlement of property by abuse of official post committed in especially gross amount);
- *Part 1 Article 255* of CCU (Creation of a criminal organization for the purpose of committing a grave or special grave offense, and also leadership or participation in such organization, or participation of offenses committed by such organization);
- *Part 3 Article 27, Part 4 Article 28, Part 5 Article 191* of the CCU (Organization of embezzlement of property by abuse of official post committed in especially gross amount);
- *Part 3 Article 27, Part 4 Article 28, Part 3 Article 209* of the CCU (Organization of legalization (laundering) proceeds of crime).

In addition, among other suspects there are executives of the SE Eastern Mining and Processing Plant, State Concern Nuclear Fuel, National Joint Stock Company Naftogaz of Ukraine, Public Joint-Stock Company United Mining and Chemical Company and structural unit of the SE NNEGC «Energoatom».

Finally, after 5 months of becoming acquainted with the suspects and the defence with the documents of the pre-trial investigation, the detectives of the NABU completed investigation of the embezzlement of the



funds of the (SE) Eastern Mining and Processing Plant and the «National Nuclear Energy Generating Company «Energoatom». As a result, they handed over the indictment to the former Member of Parliament and other suspects. On May 22, 2018, the prosecutors of the SAPO sent the indictment to court.

To summarize the abovementioned during the preliminary investigation of the case 54 MLA requests were sent to more than 10 foreign competent authorities (United Kingdom, Switzerland, Austria, Latvia, Lithuania, Czech Republic, Cyprus, Kazakhstan, Italy, Greece, Panama and even Singapore). It is the biggest corruption case where so many MLA requests were sent and so many foreign jurisdictions were involved.

## 2. The Amber Case

In early 2016, the NABU conducted a study to determine the most “corrupt spheres” of the economy. One of such spheres appeared to be the illegal amber business in the Rivnenska, Zhytomyrska and Volynska regions. Based on the gathered information, acting in accordance with the Law of Ukraine “On Operational and Investigative Activity”, in November 2016 the NABU started a special operation undercover. The “amber case” became the first one in Ukrainian history in the set of anti-corruption special operations of this level.

### *(i) Undercover operation*

The NABU detectives prepared an undercover operation in cooperation with the Federal Bureau of Investigation of the United States, which has many years of experience in conducting such actions. In the fall of 2016, a special agent of the NABU, under the pretense of a representative of a foreign company interested in investing in the organization of extraction and export of amber, began to establish contacts with some stakeholders. According to rumor, the company was ready to invest in Ukraine, but demanded the changes in the legal regulation of the extraction and export of amber. Further the agent-entrepreneur received corresponding offers along with the “price list” for services: a total of 15,000 USD. The agent passed these funds to MP Maksym Poliakov’s assistant and the security guard of the MP Boryslav Rosenblat. Both MPs initiated the changes to the Tax and Customs Codes of Ukraine regarding the taxation of amber extraction activities and the import of digging equipment. According to the investigation when it became clear that the adoption of changes “are stuck”, the MP Boryslav Rosenblat offered, on his own initiative, plan “B”: to establish a company in Ukraine to extract amber in the territory of Zhytomyrska region through PJSC “State Joint-Stock Company Ukrainian Polymetals” (a subsidiary of Ukrburshytyn State Enterprise). Implementation of this plan would require a number of approvals by officials of the State Geological Cadastre, the State Service of Geology and Subsoil of Ukraine, the State Forestry Agency, local authorities, the prosecutor’s office and the court. In general it touched the abolition of special permits for the use of subsoil, issued to a number of private companies that have already worked on the areas that, according to the MP, should have been transferred to a foreign company he promoted. Having no idea of the special operation, the MP even sent a letter to the NABU with a request to find out how private companies have got permits for the use of subsoil. In six months it turned out that the plan could not be realized and Boryslav Rosenblat suggested another option — to buy a 30 hectares land plot for digging amber in the Zhytomyrska region. As before, the MP promised to solve all bureaucratic issues. He appraised this as a “turnkey” project at 200-250 thousand USD. In parallel, a person affiliated with Rosenblat offered an agent to export about 100 kg of amber, which has already been extracted in an illegal manner. Subsequently, the detectives seized this “trial” lot during searches.

In general, within the operation the undercover agent met with the suspects in the case more than 60 times and made over 50 phone calls. The NABU detectives have obtained over 50 court permissions for undercover investigative actions within the proceeding. According to the disclosed materials of investigation, the positive solving of the issues required financial incentives, as the MP informed the agent during meetings. According to him, the agent should always have about 100,000 USD at hand. It is important to note that the agent have never offered any “encouragement” — in all cases it was the initiative of the MPs.

On June 19, 2017, at a meeting in a restaurant the security guard of Boryslav Rosenblat was detained at the time when the NABU agent handed him 200,000 USD. On the same day, the assistant of the MP Poliakov was detained (she, according to the detectives’ investigation also played the intermediary role in the funds transfer to her boss, and to several other persons). As of now the investigation has established eight persons’ involvement in committing a crime. On June 20, six of them were given a notice of suspicion. They are two guards, two MP’s assistants, a lawyer and a representative of the parliament association “Parliamentary Control”. Two suspects were placed under house arrest. Another two have been released on insignificant bail.

The most controversial issue was the abolition of parliamentary immunity of key figures — the MPs Maksym Poliakov and Boryslav Rosenblat. On June 21, 2017, the Prosecutor General of Ukraine submitted to the Verkhovna Rada an appeal for permission to prosecute, detain and arrest “key figures” of the amber case. On July 6-7, at the meeting of the Verkhovna Rada’ Rules Committee, the MPs and the public watched a documentary film, made of videos recorded by the undercover agent during the investigative actions.

On July 11, the Verkhovna Rada voted for bringing Maksym Poliakov and Boryslav Rosenblat to justice, but did not consent to their arrest and detention. On July 12, the Prosecutor General of Ukraine gave notices of suspicion to Boryslav Rosenblat for allegedly committing a crime under Part 4 of Art. 368 of the Criminal Code of Ukraine («Accepting an offer, promise or receiving an illegal advantage by an official»), Part 2 of Art. 369-2 (“Trading in influence”), and to Maksym Poliakov for allegedly obtaining illegal advantages (Part 4 of Ar. 368 of the Criminal Code of Ukraine). On July 18, Solomyansky District Court of Kyiv chose a preventive measure in the form of 7 million UAH bail for Boryslav Rosenblat and imposed on him an obligation to wear an electronic monitoring device. On July 21, the court chose a preventive measure in the form of 304,000 UAH for the MP Maksym Poliakov and imposed on him an obligation to wear an electronic monitoring device and surrender his foreign passports. The detectives of the NABU under the procedural guidance of the prosecutors of the SAPO completed a pre-trial investigation of the criminal proceeding as to the facts of receiving an improper advantage for the assistance to a foreign company in the realization of amber mining in Ukraine (the so-called «amber case»). On February 15, 2018, 6 suspects (including 2 Members of Parliament) and the defence had been granted access to the documents of the pre-trial investigation.

As we see from the abovementioned examples in NABU’s high-profile investigations international cooperation are frequently used. In spite of the effectiveness of international cooperation there are still some issues which arise during preparation and execution of MLA requests.

## **II. ISSUES CONCERNING MUTUAL LEGAL ASSISTANCE**

### **A. Temporary Access to Objects and Documents**

#### **1. Bank Secrecy**

As it has been noted earlier, during the implementation of corruption schemes monetary funds and/or other proceeds of crime with the purpose of laundering are transferred abroad. In this connection, at the stage of pre-trial investigation it is necessary to conduct investigative actions in foreign countries where banking institutions attending relevant companies or public officials of state authorities are located.

The only basis for obtaining confidential banking information (cash flow on accounts, banking materials, etc.) is the existence of court permission (court ruling). So, while addressing the competent authorities of foreign countries in the framework of pre-trial investigation with request for mutual legal assistance in criminal matters related to execution of the temporary access to objects and documents, it is also necessary to obtain court permission (investigating judge’s ruling).

Meanwhile, in practice, there is a question regarding the procedure of implementation of such investigative actions as temporary access to objects and documents in the context of international cooperation because the said question is regulated by the national legislation of Ukraine without taking into account peculiarities of the investigation in the framework of international cooperation. Thus, in Part 2 of Article 562 of the CPC of Ukraine it is indicated that it is required to obtain a Ukrainian court’s permission for temporary access in foreign countries but neither the procedure for obtaining such permission nor its validity are set by the act. Thus, the order of obtaining court permission and the term of its validity are equally stipulated by the current CPC of Ukraine either for implementation of the mentioned action on the territory of Ukraine, or for its implementation abroad in the course of international cooperation.

In particular, when engaging in international cooperation in criminal matters, namely when temporary access to objects and documents constituting bank secrecy is required, the detective in accordance with the Criminal Procedural Code of Ukraine applies to the court with an appropriate request in which he indicates that the mentioned actions are requested in the framework of mutual legal assistance and refers to relevant international treaties.

In case of a positive decision and granting the appropriate request, the investigating judge issues a ruling

obligatorily indicating, among others, the term of validity, which may not exceed one month from the date of issuance.

As it has been mentioned, by the provision of the CPC of Ukraine it is stipulated that the term of validity of the ruling may not exceed one month. However, according to specialized regulations of the criminal procedural law in the sphere of international cooperation, there are no exceptions to this rule. In practice there are few cases when problems arise when it comes to implementation of temporary access to objects and documents constituting bank secrecy in foreign states.

For example, during the pre-trial investigation of the criminal proceedings for use of authority by officials of the central executive authorities with application of corruption schemes during open tender procurement for purchase of goods, it has become necessary to obtain access to information from banks located outside Ukraine. In this case, the detective of the NABU prepares a request to the competent authority of the State to provide international legal assistance in criminal proceedings. Along with the request, a full package of documents is prepared including the duly attached certified copy of the investigating judge's ruling on permission to conduct temporary access to objects and documents containing confidential banking information. Preparing a request for mutual legal assistance and a package of documents takes time. In addition, the request and the documents attached to it must be translated. Moreover, it is not always done in the official languages of the UN, which also requires more time.

Thus, while the request for international legal assistance is prepared, the validity of the investigating judge's ruling expires. Moreover, after preparation of the request and the documents in accordance with the national legislation of Ukraine, international documents are sent by international post which also takes time. Therefore, at the moment when the request for mutual legal assistance is directed to the executor, the ruling's validity often expires.

As far as for the majority of foreign states, the availability of a court ruling is a mandatory basis for such investigative actions as temporary access to objects and documents, the investigating judge's ruling with expired term of validity makes it impossible to conduct the investigative action in a foreign state. In addition, in case of getting temporary access after the expiry of the ruling's, validity, there is a question as to the admissibility of evidence obtained as a result of the temporary access to objects and documents during international cooperation.

So by Article 86 of the CPC of Ukraine it is stipulated that evidence is admissible if it is received in the manner stipulated by this Code. Illegal evidence cannot be used by a court to take procedural decisions; the court cannot refer to it in a court order.

Thus, in case the evidence has been obtained as a result of procedural infringement stipulated by the CPC of Ukraine, such evidence at the request of the parties of the criminal proceedings may be declared inadmissible, which in turn can completely destroy the public prosecution in court.

Currently, the NABU is drafting a law on introduction of amendments into legislative acts in the sphere of criminal justice including the Criminal Procedural Code of Ukraine with the purpose of putting the current legislation into compliance with international agreements and solving problematic issues which arise in practical application of these standards during pre-trial investigation.

Prior to implementation of appropriate amendments into the current legislation, the central authorities in the sphere of international cooperation during pre-trial investigation (by the National Bureau and the General Prosecutor's Office of Ukraine) agreed their position that the mentioned court permissions may be used as collateral estoppel within the international legal assistance. Thus, the availability of the investigating judge's ruling shows that the appropriate judicial permission confirming the validity and necessity of the specified investigative action was received by the pre-trial investigation authorities of Ukraine.

Also, the NABU established cooperation with the competent authorities of certain foreign countries on the issues of additionally sending new rulings. As a consequence, when the request for international legal assistance has been filed to the foreign competent authority, in case of expiry of the term of the ruling, the competent authority in due course<sup>1</sup> sends a notice to the NABU on the need of provision of several rulings,

the validity of which has not expired yet.

In such a manner, the NABU ensures compliance with the requirements of criminal procedure law during the execution of investigative acts in the territory of foreign countries, which ensures formation of a strong evidence base, where the issue of the evidence admissibility will not be one more disputable issue between the parties of the criminal proceedings, which in its turn will reduce the time of the criminal proceedings and allow completion as soon as possible.

## 2. Freezing Assets

In spite of the temporary access to objects and documents during the pre-trial investigation of criminal corruption offences, often there is a need to freeze assets to ensure their availability during the criminal proceedings. For example, during the preliminary investigation of the criminal proceedings for use of power by the officials of the central executive authorities by application of corruption schemes during the open tenders for purchases of goods, information on bank accounts of these officers and related companies was received within mutual legal assistance. In order to ensure indemnification of damages to the State caused by the criminal corruption offences, the detective who conducts the pre-trial investigation should contact the competent authority of the foreign country in which the relevant banking institution is located to request the freezing of bank accounts of the offender and/or related companies.

Despite the fact that in the majority of international multilateral agreements on mutual legal assistance in criminal matters it is noted that the member countries of such agreements shall afford to each other the widest assistance in investigations, prosecutions and judicial proceedings regarding offences covered by such treaties<sup>2</sup> in practice, while application to foreign countries with requests to freeze assets through international legal assistance, a range of practical application issues of certain procedural regulations is raised.

### *(i) The difference between the status of a suspect / accused in Ukrainian legislation and legislation of foreign countries*

Thus, part 1 Art.170 of the CPC of Ukraine establishes that the asset freeze is temporary, up to the moment of abolition by this Code, deprivation on the basis of ruling of the investigating judge or court of a right on alienation, disposal and / or use of property, to which there is a set of reasonable grounds or suspicion to believe that it is evidence of a crime, subject to special confiscation from the suspect, accused, convict, third parties, confiscation from the legal entity to secure a civil claim, recovery from the legal entity of undue benefits received, possible confiscation of property. Asset freezes are cancelled as prescribed by this Code.

The said provision of the CPC of Ukraine corresponds to the criminal procedure legislation of the majority of the foreign countries in relation to obtaining court permission and the requirement of criminal offence status of the suspect or accused person. However, there are some differences in the context of understanding and grounds to become suspected or accused under the national laws of Ukraine and criminal procedure law of foreign countries.

In many countries the status of a suspected person is acquired if there is a reasonable suspicion of having committed a criminal corruption offence by the person and / or involvement of such person in the commission. In addition, in some countries, the subject of the crime can be either an individual or legal entity.

Under the criminal law of Ukraine, the offender, pursuant to Article 18 of the Criminal Code of Ukraine, may be only an individual, but measures for legal entities are stipulated. Such measures may be applied only in case of certain grounds exhaustively listed in Article 96-3 of the Criminal Code of Ukraine, but the use of these measures does not create a basis for legal entities becoming suspected or accused.

Thus, in accordance to part 1, article 42 of the CPC of Ukraine, the suspect is the person who, in the

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<sup>1</sup> In such case it is meant the notification sent by e-mail to the address of the International Legal Department of the Anti-Corruption Bureau of Ukraine indicated in the cover letter to the request.

<sup>2</sup> Part 1 of Article 46 of the UN Convention against Corruption dd. 2003, General Assembly Resolution 58/4 of 31 October, 2003, part 1, article 1 of the European Convention on Mutual Assistance in Criminal Matters dd. 1959 (ETS 30).

manner prescribed by Articles 276-279 hereof, was reported on the suspicion, the person detained on suspicion of a criminal offence or a person in relation to whom there was a notice of suspicion but it has not been served because of non-identification of his/her location, but the relevant steps for service have been taken as stipulated by the current Code for the notifications service.

By part 2, Article 42 it is established that the accused (defendant) is the person against whom the indictment was submitted to the court in the manner provided by Article 291 of the Code.

*(ii) Delay in the pre-trial investigation*

Thus, when a detective is applying to freeze bank accounts to the competent authority of a foreign state, often there are cases when the requested state sends a letter to provide clarification on the acquisition by a person in respect of which the preliminary investigation in the territory of Ukraine is conducted, the status of the suspect or the accused, which in turn leads to delay in the request for international legal assistance and slows the progress of pre-trial investigation.

Meanwhile, the delay in freezing of bank accounts increases the probability of withdrawal of funds or transferring them to other accounts, which leads to loss of material evidence and makes it impossible to provide compensation for losses to the State.

### III. CONCLUSION

At present, corruption in Ukraine is a quite widespread, negative phenomenon which disturbs people's confidence in government, leads to delayed development of the State and decline in the economy. Consequently, preventing and combating corruption is one of the main vectors of state policy.

Taking into account the specificity of criminal corruption offences, their complexity and permanent development of corruption schemes, formation of strong evidence by the detectives of the NABU under pre-trial investigation is an important instrument in fighting against corruption.

Collection of evidence during pre-trial investigation of high-profile corruption cases is hardly possible without use of international cooperation instruments. Often in corrupt schemes companies incorporated under the legislation of foreign countries are involved, and cash received from crime are transferred abroad for further laundering. However, the tools of mutual legal assistance are very useful and could be fruitful. Moreover, establishing of contacts between anti-corruption agencies, foreign law enforcement authorities and related authorities, strengthening of cooperation between them are quite essential issues for pre-trial investigation of such cases.

So, today Ukraine faces the task to improve legal framework taking into account the experience and positive practice of foreign states in the sphere of combating corruption and to develop broad links with international anti-corruption and other competent authorities. As a result of these actions, Ukraine will form a positive practice in the sphere of fighting corruption and will develop new effective methods of preventing and combating corruption.



# INVESTIGATION OF TOP-CORRUPTION IN UKRAINE

*Oleksii Geiko\**

## **I. ANTI-CORRUPTION REFORMS IN UKRAINE: MAIN CHALLENGES AND POSSIBLE SOLUTIONS**

After the Revolution of Dignity largely instigated by endemic corruption, Ukraine adopted a comprehensive anti-corruption package of laws and established new specialized institutions: National Anti-Corruption Bureau of Ukraine (NABU), Specialized Anti-Corruption Prosecutor's Office (SAPO), National Agency on Prevention of Corruption of Ukraine (NACP) and Asset Recovery and Management Agency (ARMA). Ukraine also achieved an unprecedented level of transparency, inter alia, by introducing the electronic asset disclosure, e-procurement, opening up the public registries and making a number of datasets publicly available in open data format. Civil society continues to play a significant role in pushing the reforms forward and the international community supports Ukraine's anti-corruption fight. The formation of the legislative, policy and institutional foundations for fighting and preventing corruption and putting in place various transparency initiatives are the main accomplishments in Ukraine since the last monitoring round.

Despite the achievements, the level of corruption remains very high. Anti-corruption enforcement, particularly against the high-level officials, is stalling and meets enormous resistance and the public trust in the Government has further decreased in recent years. Yet, the most pressing challenge for Ukraine now is ensuring the sustainability of the institutional framework and boosting anti-corruption efforts that are being constantly undermined by the governing elite. The recent measures aimed at discouraging the anticorruption activism are alarming and must be stopped urgently. Enabling an environment for open and full participation of civil society in anti-corruption policy development and monitoring must be ensured.

Ukraine has not yet firmly established itself on its path of steady anti-corruption reforms but is certainly on a right trail. However, the political will of the Government to genuinely fight corruption is seriously questioned. Resilience, persistence and full determination of the anti-corruption fight of the Ukrainian society at large will be critical in the coming years. Time has long come for Ukraine to take decisive steps to root-out pervasive corruption.

NABU is the first law enforcement agency in the modern history of Ukraine that, to such a wide extent, began taking proactive measures in detecting corruption cases. There are abundant examples where such detection methods have been effective. Because many of the investigative techniques require court approval obtained by the SAPO, SAPO also is credited for these achievements.

The number of detected cases by NABU is impressive, especially if compared to limited enforcement efforts on high-profile corruption cases before their establishment. As of end of June 2018 detectives of NABU were working under procedural supervision of the SAPO prosecutors on 370 proceedings with 220 persons in the status of suspects.

Firstly, NABU is staffed with detectives, which is a new "procedural position" in Ukraine; it combines the functions of the intelligence officers (operatives) and investigators. This position ensures that the primary job of detectives is to detect. Secondly, along with detectives, NABU has been staffed with analytical officers (analytics) working within NABU's Department on analytics and information processing. Both detectives and analysts have access to and use in their work the main registries and databases. They undergo numerous trainings on detection and investigative methods that are being applied world-wide in complex corruption

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cases. NABU has also made effective use of mentoring by foreign law enforcement officers and analysts who are experts in this area. And finally, its leadership seems to be setting the tone from the top, encouraging its staff to be proactive. These results go hand in hand with proper resourcing and would not be possible without the independence that the detectives have been enjoying so far.

There are other new possibilities that opened to law enforcement in terms of detection. Among them, access to open source databases of information, such as the Unified Court Registry, and registry of legal entities, as well as databases that contain closed information, such as the asset declarations database to which detectives have access. These should open new possibilities, and it is encouraging to see that they have already being utilized in Ukraine for the purposes of detection and investigation of corruption.

Establishment of the NABU was finalized and it became fully operational and managed to meet the expectations of delivering real high-profile investigations. The SAPO has also since then been established and became fully operational. Again, just like the NABU is has delivered procedural guidance on NABU cases and submitted high-profile cases to courts. Unfortunately, further progress on these cases stopped there. Nevertheless, these two new institutions (the NABU and the SAPO) demonstrated that high level officials and grand corruption are no longer beyond the remit of the law enforcement in the country. They also sent some unsettling messages to the powerful oligarchs and the well-rooted corrupt high-officials in the public administration of Ukraine.

New law enforcement anti-corruption bodies are being attacked in various forms from media and legislative initiatives, to investigation and prosecution of the leadership and staff, as well as to various other methods applied to prevent them from doing their jobs. Measures need to be taken to ensure that their independence is preserved and that the cases that they have accumulated are finally resolved:

- (i) Establish without delay specialized anti-corruption courts insulated from corrupt and political influences which can fairly and effectively hear and resolve high level corruption charges. Select the judges through a transparent, independent and highly trusted selection process which will guarantee integrity and professionalism.
- (ii) Ensure strict compliance with exclusive jurisdiction of NABU and SAPO.
- (iii) Provide NABU with capacity (legally and technically) to conduct wire-tapping autonomously.
- (iv) Step up the level of investigations and prosecutions of corruption throughout all responsible government bodies.
- (v) Ensure that independence of the National Anti-Corruption Bureau is maintained without undue interference into its activities, including by providing for independent and unbiased audits of its activities and safeguarding against abuse of criminal process.
- (vi) Ensure that operational and institutional autonomy of the Specialized Anti-Corruption Prosecutor's Office is maintained.

## **II. INVESTIGATION OF EMBEZZLEMENT OF BUDGET FUNDS (CASE STUDY 1)**

The article 191 of the Criminal Code of Ukraine prohibits the embezzlement of budgetary funds by the abuse of official position in especially large size, committed by a group of persons by prior conspiracy.

### **A. The Initial Information**

Based on the results of the processing of open sources of information, circumstances have been established that may indicate a commitment of criminal offence, stipulated by Part 5 of Art. 191 of the Criminal Code of Ukraine. Namely, in the period of 2017-2018, officials of "Anaconda LLC", "Fifth Element LLC" by prior conspiracy with Deputy Minister of Health of Ukraine — the chairman of the tender committee Mr. Safarsky and Deputy Director of the Procurement Department of the Ministry — the secretary of the tender committee Mrs. Lavrova committed an embezzlement of budgetary funds by the

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abuse of official position in especially large size.

1. Breach of Procurement Procedure

(a) 31<sup>st</sup> of August 2017 Ministry of Health of Ukraine announced the planned purchase of medical products for the treatment of patients with vascular diseases (4 lots). Expected cost of purchase was total USD 5,000,000.00;

(b) The proposals were provided by 5 enterprises, among them — “Anaconda LLC” and “Fifth Element LLC”. It was established that “Fifth Element LLC” is an enterprise closely associated with “Anaconda LLC” (founders — Mr. Petrov and Mrs. Petrova, director — Mr. Petrov), since the original founders of the “Fifth Element LLC” were Mr. Petrov and Mrs. Petrova, the director was Mr. Petrov, and today the founder and director of “Fifth Element LLC” is Mrs. Ivanova, who has close business connections with Mr. Petrov and Mrs. Petrova. Also, “Anaconda LLC” and “Fifth Element LLC” are official sellers of medical products produced by “BSE Company” (USA);

(c) With abuse of influence of Mr. Safarsky and Mrs. Lavrova, the technical demands for medical products for the treatment of patients with vascular diseases were prepared by responsible officials in a way that allows participation in procurement only for enterprises that sell medical production of “BSE Company” (USA). The consequences are that 3 out of 5 enterprises (besides “Anaconda LLC” and “Fifth Element LLC”) were eliminated from procurement procedure. As a result of the procurement process, the contracts were concluded with 2 remaining enterprises out of 5, namely:

- “Anaconda LLC” in accordance with 3 out of 4 lots for the total amount of USD 4,000,000.00;
- “Fifth Element LLC” in accordance with 1 out of 4 lots for the total amount of USD 1,000,000.00;

(d) After transferring of budgetary funds from bank accounts of the Ministry to the bank accounts of “Anaconda LLC” and “Fifth Element LLC” as payment for further delivery of necessary medical products, officials of these enterprises give bribes to Mr. Safarsky and Mrs. Lavrova in the amount of money equivalent to 15 percent of the total contract price (USD 750,000.00).

2. Breach of the Legal Order of Work of Customs Authorities

(a) “Anaconda LLC” and “Fifth Element LLC” purchased medical products from the manufacturer “BSE Company” (USA). “BSE Company” (USA) sends the original invoice to the address of “Anaconda LLC” and “Fifth Element LLC” in paper form. After this, Mr. Petrov personally counterfeits an invoice by creating a similar invoice, but with an overstatement of the purchase price. For this purpose, Mr. Petrov uses counterfeit stamps of “BSE Company” (USA). After delivering the purchased products to Ukrainian customs, the replacement of the original invoice is forged by customs officials;

(b) In accordance with the Ukrainian legislation on prices of medicines and medical products purchased at the expense of the state budget, the marginal trade (retail) allowances may not be higher than 10 percent of the purchase price, taking into account taxes;

(c) “Anaconda LLC” and “Fifth Element LLC” add 10 percent to the purchase price and sell medical products to the Ministry under the terms of the signed contracts. The state budget incurs losses due to the overcharging of purchased medical products.

3. Money Laundering

(a) Money for the delivered goods and products according to the conditions of foreign economic contracts is transferred to the bank accounts of the following companies:

- ICP Limited (Dublin, Ireland);
- GSG Limited (London, United Kingdom).

These companies have signs of “shell”-companies and can be used for withdrawals of budgetary funds and money laundering. The shipper and recipients of the mentioned funds is “BSE Company” (USA);

(b) It is ascertained that bank accounts of “ICP Limited” and “GSG Limited” are being controlled and managed by officials of “Anaconda LLC” and “Fifth Element LLC”;

(c) After transferring of budgetary funds from bank accounts of the Ministry to the bank accounts of “Anaconda LLC” and “Fifth Element LLC” as payment for further delivery of necessary medical products, officials of mentioned enterprises transfer these funds to the accounts of “ICP Limited” and “GSG Limited”. After this transaction, according to the conditions of foreign economic contracts of “Anaconda LLC”/ “Fifth Element LLC” and “BSE Company” (USA), amount of money for delivered goods is transferred from accounts of “ICP Limited” and “GSG Limited” to the bank accounts of “BSE Company” (USA);

(d) Residual amount of money from bank accounts of “ICP Limited” and “GSG Limited” is transferred to personal bank accounts of “Anaconda LLC” and “Fifth Element LLC” officials as “financial help”;

(e) “Anaconda LLC” and “Fifth Element LLC” officials withdraw money from accounts in cash, and use them for purchasing different assets — real estate, cars, stocks, bonds, collectibles, precious metals, commodities etc. Also part of this money is used for giving bribes for officials in Ministries, customs etc.

#### 4. Tax Avoidance

(a) The consequences of overpricing and counterfeiting of invoices are that the real number of delivered goods to “Anaconda LLC” and “Fifth Element LLC” is several times higher than the number of goods declared during customs procedures;

(b) Officials of “Anaconda LLC” and “Fifth Element LLC”, using their close connections with chief medical officers of different clinics and understanding the real needs of the population for medical products for the treatment of patients with vascular diseases, sell the undeclared medical goods without documentation and without preparation of accounting documents.

### **B. Special Investigative Techniques During Investigation**

#### 1. Main Challenges During Investigation

(a) find evidence of inappropriate behaviour and criminal intention of officials of the Ministry of Health of Ukraine (abuse of authority, abuse of influence, bribery, embezzlement of budgetary funds);

(b) find evidence of inappropriate behaviour and criminal intention of officials of Ukrainian customs (abuse of authority, bribery, forgery);

(c) find evidence of inappropriate behaviour and criminal intention of officials of “Anaconda LLC” and “Fifth Element LLC” (proposing and giving a bribe, forgery, counterfeiting of documents and stamps, tax avoidance, money laundering, embezzlement of budgetary funds);

(d) find evidence with help of mutual legal assistance and joint investigation teams of inappropriate behaviour and criminal intention of officials of “ICP Limited” and “GSG Limited” (money laundering, creation of “shell”-enterprises);

#### 2. Investigative Techniques

(a) electronic surveillance;

(b) undercover audio and video recording of suspects;

(c) wiretapping;

(d) physical surveillance;

(e) communications interception by installing video recording devices in offices and houses of suspects;

(f) communications interception by installing audio recording devices in clothes/goods of suspects;

- (g) interceptions of e-mail communications;
- (h) conducting searches in houses and offices of suspects;
- (i) interviewing of victims and witnesses;
- (j) interviewing of suspects;
- (k) requests on information about cash flow on bank accounts of mentioned companies, including the precise time of receipt of money, and information about further transferring of this money;
- (l) requests on tax and customs documentation;
- (m) mutual legal assistance — requests to the law enforcement agencies of other countries.

### III. INVESTIGATION OF BRIBERY IN THE JUDICIAL SYSTEM (CASE STUDY 2)

The article 368 of the Criminal Code of Ukraine prohibits acceptance of an offer, promise or receipt by the official of illegal benefit, as well as a request to provide such benefits for themselves or a third person for the Commission or such officer in the interests of the person who offers, promises or provides illegal benefit, or in the interests of a third person of any action with the use of her power or official position.

#### A. The Initial Information

Circumstances have been established that may indicate commission of a criminal offence, stipulated by Part 4 of Art. 368 of the Criminal Code of Ukraine. Judges of the Chamber of Criminal Cases of the Supreme Court of Ukraine, through an intermediary of an attorney-at-law, demanded a victim of a bribe of USD 120,000 to satisfy a cassation appeal against a court order of the appellate instance.

##### 1. Case Elements Description

(a) The Supreme Court of Ukraine opened the cassation proceedings following a cassation appeal by victim Mrs. Sidorova on the decision of the court of appellate instance;

(b) In order to receive legal aid Mrs. Sidorova went to attorney-at-law Mr. Kozlov for consultation, informing him about the circumstances of the court case and providing him with copies of court decisions and other documents relating to the cassation appeal;

(c) After listening to the circumstances of the case and having read the documents provided by Mrs. Sidorova, Mr. Kozlov, for the purpose of personal enrichment, decided to seize the money of Mrs. Sidorova and persuade her to give a bribe to a judge of the Supreme Court of Ukraine;

(d) In the presence of Mrs. Sidorova, Mr. Kozlov called his classmate — judge of the Supreme Court of Ukraine Mr. Pavlov and arranged with him a personal meeting. Also, Mr. Kozlov has indicated that Mrs. Sidorova should prepare for giving a bribe to judges in the amount of USD 120,000;

(e) During the next meeting, Mr. Kozlov informed Mrs. Sidorova about the mechanism and stages of the bribe, and commented on the need to provide the bribe in three stages:

- initially in the near future, USD 10,000 for putting the case to the list of cases that will be considered by the court in the near future;
- USD 55,000 after receiving the court decision about appointment to trial of the case under the cassation appeal;
- USD 55,000 two days prior to the date of the judicial review of the cassation appeal.

##### 2. Special Investigative Techniques During Investigation

(a) Main challenges during investigation:

- find evidence of inappropriate behaviour and criminal intention of attorney-at-law Mr. Kozlov as an intermediary giving a bribe to the judge;
- find evidence of acceptance of an offer and receipt of bribe by the judge of the Supreme Court of Ukraine Mr. Pavlov;

(b) Investigative techniques:

- electronic surveillance;
- undercover audio and video recording of suspects;
- wiretapping;
- physical surveillance;
- communications interception by installing video recording devices in offices and houses of suspects;
- communications interception by installing audio recording devices in clothes/goods of suspects;
- using identified money for further giving to suspects;
- conducting searches in houses and offices of suspects;
- interviewing of victims and witnesses;
- interviewing of suspects.

# COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES IN VIETNAM

*Hoang Hai Yen\**

## I. OVERVIEW

In recent years, Vietnam has been promoting the fight against corruption. The guidelines, policies and laws of Vietnam express a strong determination to prevent and eliminate corruption. In 2005, the government adopted the Anti-Corruption Law, which criminalizes several types of corruption, establishes asset disclosure requirements for governmental officials, and establishes whistle-blower protection. Vietnam ratified the United Nations Convention against Corruption (UNCAC) in 2009, adopting an implementation plan in the following year. The country has participated in several regional and world forums against corruption, has endorsed the Anti-Corruption Action Plan for Asia and the Pacific in July 2004, and has joined the South-East Asian Parties against Corruption (SEA-PAC).

Especially, the Amended 2015 Penal Code has some major policies for corruption crimes as follows: i) Expanding the concept of corruption crime in the private sector like property embezzlement, taking bribes...; (ii) Expanding the content of “bribery” to include “non-material benefits”; (iii) Modifying and supplementing some criminal elements; (iv) Specifying details of offences and determining penalty frames.

However, Vietnam still suffers from a poor ranking in the Corruption Perceptions Index. In the Corruption Perceptions Index 2017, which measures the perceived levels of public sector corruption, Vietnam performed below average with a score of 35 on a 0 (highly corrupt) to 100 (highly clean) scale. Vietnam ranked 107 out of 182 assessed countries worldwide.

The National Anti-Corruption Strategy 2020 by the government highlighted that the system of policies and laws has not been well synchronized or well aligned; especially there is the lack of a comprehensive long-term strategy or plan for preventing and combating corruption. This means that, Vietnam does not have a strong judiciary and that investigation, prosecution and adjudication face many difficulties and obstacles.

## II. AN ACTUAL CORRUPTION CASE AND PROBLEMS IN VIETNAM

### A. An Actual Corruption Case

Vinaline is Vietnam National Shipping Lines, established in 1995, which is a state-owned company managed by the Vietnam Maritime Administration and the Ministry of Transport and Communication. The case of embezzlement caused serious consequences in Vinaline is as follows:

In January 2012, the Investigation Department of the Ministry of Public Security (C48) confirmed the signs of crime concerning floating dock 83M, which was produced in 1965 but is now badly damaged and no longer active. The Russian Registrar stopped issuing inspection licenses, and it was not eligible to be imported to Vietnam. Earlier, in the process of buying that floating dock, Vinalines had sent 4 officials to Russia to assess the technical status and legal records of floating dock 83M. They set up 2 fake dossiers of contracts of floating dock 83M for 2.9 billion dongs. On February 1, 2012, C48 decided to prosecute the case and arrested those 4 officials above.

On June 6, 2012, when C48 was investigating the case in Vinalines, DCD — Chairman of Vinalines Board — it was decided by the Prime Minister of Vietnam to appoint the Director of Vietnam Maritime Administration.

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On May 17, 2012, C48 issued a decision to arrest DCD but he fled to Cambodia. On May 18, 2012, C48 made a special wanted decision for accused Duong Chi Dung.

On September 5, 2012, Vietnamese police coordinated with the Royal Cambodian police to arrest DCD who was hiding in Phnom Penh, after his failed attempt to escape to the United States. DCD escaped with the help of his brother, Duong Tu Trong (Deputy Director of Hai Phong City's Police Office) who used all tricks to destroy hiding evidence.

On December 16, 2013, the Hanoi People's Court sentenced DCD to the death penalty on charges of "embezzlement". DCD had to return and compensate 10 billion dong.

## **B. Problems in Investigation, Prosecution and Adjudication**

### **1. Difficulties in Identifying Corrupt Acts and Individuals**

Corruption is one of the white-collar crimes along with fraud, bribery, insider trading, cybercrime, copyright infringement, money laundering, identity theft and forgery. However, it does not mean that every police officer, prosecutor or judge can identify them. Most corruption cases are often hidden for a long time before being discovered. Vietnam has been changing from a socialist command economy to a market economy with both private and public ownership of the factors of production. Offenders often abuse this situation to convert state money into their private money. Furthermore, corruption cases often occur in many fields of governance such as education, economics, justice, infrastructure construction and so on. It requires investigators, prosecutors, lawyers, judges and juries to have wide knowledge and skills to handle such cases. Corruption crimes are committed by people who have expert knowledge and skills in their job and wide knowledge of the law as well. So they are able to figure out loopholes that help them perform criminal acts. In Vietnam, we face many difficult problems with investigation of corruption crimes because of the lack of experts and experience.

### **2. Difficulties in Investigation, Prosecution and Adjudication of Corruption Cases**

Firstly, there are many problems in collecting and protecting evidence in corruption cases because most of these cases concern powerful leaders in government who abuse their positions and conceal their crimes. It is a fact that many corruption cases have not been discovered for this reason. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. It is very important to protect evidence because it impacts whether or not corruption crimes will be convicted. Offenders often deny guilt or keep silent in court. If evidence is not strong enough to incriminate offenders, prosecutors will lose the case.

In the case of DCD, he had good relationships with leaders in the government, and his brother was a senior policeman in the city in which his company was located. He committed a crime and escaped easily. He had been engaging in corruption for seven years. According to the investigation agency, the Ministry of Public Security: "this case caused serious damages, very complex and affected [the] reputation of the Vietnamese government". After being detected, he fled to Cambodia with the help of his brother and a senior officer in the Ministry of Public Security. The investigation agency arrested him by an international arrest warrant with the Interpol Notice. The Vietnamese government had lost a lot of time, effort and money to solve this case.

Secondly, another difficulty in investigating and prosecuting corruption cases is international cooperation because many corruption cases are related to foreigners or international organizations. Vietnamese police and prosecutors have to ask other countries for help to gather evidence. Much key evidence can only be collected abroad, but we do not have authority to investigate overseas so we need help from other countries. However, the results of international cooperation were not what we had expected, or it took a long time to get the results and so on. It was easier working with countries that we had entered into treaties with on Mutual Legal Assistance in Criminal Matters and Extradition than it was with countries that we had not entered into treaties with.

Also in the case, there was key evidence that DCD signed an approval decision to buy floating dock 83M from Russia. He bribed intermediary companies to falsify contracts of sale and payment, then doubled the dock's price. This means that he converted state property into his private property. We had to ask for help

from the Internal Affairs Department of Russia to collect this information. After arresting Dung in Cambodia, we had to have him extradited to Vietnam based on the Vietnam-Cambodia Treaty on Mutual Legal Assistance.

Thirdly, the use of expert witnesses suffers from many inadequacies because determining loss of property is the first thing to prove in a corruption case. If we cannot demonstrate damage to property, then no crime has occurred. Investigators must have financial and accounting expertise, technical expertise and quality construction expertise and so on. These are important sources of evidence to prove the crime, and sometimes they are the only source of evidence. However, agencies which are needed for their expertise are often uncooperative, afraid of testifying in open court.

Lastly, corruption cases in Vietnam often involve accomplices, which means that there are at least two people who commit the crime. In some cases, this number can be larger. Offenders often collude closely using sophisticated tricks. The more people that are involved in the crime, the more successful the crime is. This problem is also difficult for investigators and prosecutors in Vietnam. In a corruption case, we have to select investigators and prosecutors who have the experience and knowledge of measures for dealing with this type of crime, but we do not have enough people who meet those requirements. Moreover, anti-corruption in Vietnam is quite sensitive, and it directly attacks powerful people in the government so that investigators and prosecutors deny investigating because they do not want the corrupt conspirators to retaliate against them. Additionally, some judicial officers have been bribed, and they continue to abet corruption crimes.

### 3. Difficulties and Restrictions in Asset Recovery

In Vietnam, in recent years, the results of corruption property recovery are still limited which are caused by the following difficulties:

- Difficulties in verification of assets, verification of judgement execution because in corruption cases, offenders often do not declare assets, or they disperse or hide assets;
- The police and prosecutor's offices have not been aggressive and have not promptly applied preventive measures to avoid the dissipation of corrupt assets;
- Corruption acts are often committed by many offenders so the investigation process often requires assessment to determine the damage, but the assessment of economic losses, land etc. is quite complicated.

## **III. SOLUTIONS TO AND NEW IDEAS FOR ANTI-CORRUPTION IN VIETNAM**

To improve preventing and combating corruption in Vietnam, we suggest the following solutions:

Firstly, it is necessary to promote education, improve awareness and establish a sense of responsibility within the Communist Party and among all citizens, the state and the unions. They should have a comprehensive and deep understanding that corruption is a crime and that it is also an indicator of degenerating morality and personality, degrading lifestyle, and is the internal enemy existing inside each person. The employees and civil servants must be trained in the courses of morality before working. Raising social pressure to severe criticism for corruption and reporting cases of corruption through media is an example.

Secondly, the Government has to strive to improve its legal systems and promote the lives of public servants. We should make changes, adjustments and amend legal provisions which are inaccurate or unclear in order to minimize the abuse of loopholes. Corruption crimes must be considered as crimes; punish the evil to protect the good. Corruption must be punished; the higher positions and powers they have, the heavier punishment they will get when they engage in corruption; there must be no restricted areas, no exceptions. Moreover, the wage regime must be radically reformed. The low or inadequate salaries will distract officials from their jobs or lead to corruption.

Thirdly, Vietnam needs to have policies to protect whistle-blowers and their families from criminal defendants and offenders. At present, legal protection for whistle-blowers is insufficient; whistle-blowers are

afraid of retaliation; thus would-be whistle-blowers do not dare to denounce the criminals. Likewise, it is necessary to impose strict penalties against persons holding positions of power for their corrupt acts. Vietnam should have a “resignation mechanism” for those who do not deserve to stay in office, make mistakes or are guilty of crimes. The result of Vietnam’s anti-corruption efforts has been ineffective; however, no one takes responsibility or resigns as a result.

Furthermore, Vietnam should add provisions about responsibilities of legal offices in verifying assets of judgement execution. It’s necessary to state that at the beginning of corruption investigations, property distraint measures should be applied as soon as possible in order to avoid the dissipation of assets. Besides, Vietnam should supplement the regime for declaration of assets and incomes; supplement regulations on income control for civil servants who have positions and powers.

Finally, Vietnam should reinforce international cooperation in identifying and handling corrupt acts by delegating investigations or requesting foreign agencies to verify, freeze and confiscate corruption proceeds originated in those foreign countries or sent to those countries from Vietnam. Vietnam should reinforce cooperation in preventing money laundering activities, enhance mutual assistance in the investigation, and detect and identify money laundering offences.

Fighting against corruption is a difficult, long-term battle that requires strategic measures. It is hoped that these measures will reverse the increasing trend of corruption in Vietnam, which will improve Vietnam’s ranking in the Corruption Perceptions Index in the near future.

# COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES, INTERNATIONAL COOPERATION AND ENGAGEMENT OF CIVIL SOCIETY: THE ZIMBABWEAN PERSPECTIVE

*Charity Matumbi\**

## I. INTRODUCTION

Zimbabwe is affected by corruption just like any other country in the world over. Corruption has debilitating effects and affects the most vulnerable citizens, the women, the children and the elderly at most. Zimbabwe signed the United Nation Convention against Corruption (UNCAC) on 20 February 2004 and ratified it on 8 March 2007, the Convention entered into force for Zimbabwe on 7 April 2007. Zimbabwe is a signatory to the African Union on Preventing and Combating Corruption (AUCPCC) which was adopted at the Second Ordinary Session of the Assembly of the Union, held in Maputo, Mozambique on 11 July 2003. It entered into force for Zimbabwe on 5 August 2006. To date thirty-four countries are members and State parties to the regional Convention including Zimbabwe.

In 2004, Zimbabwe signed the Southern Africa Development Community Protocol on Corruption (hereinafter the SADC Protocol) in response to a regional call for leaders to pledge their commitment in the fight against corruption. Thereafter, Zimbabwe amended its Constitution<sup>1</sup> and a provision for the establishment of an anti-corruption body was included. The Anti-Corruption Commission Act<sup>2</sup> was enacted in 2004 and the Commission was established in 2005. The Zimbabwe Anti-Corruption Commission (ZACC) is an independent body established by the Constitution and mandated to investigate and expose cases of corruption, combat corruption, theft, abuse of power and other improprieties in the public and private sectors<sup>3</sup>. Since then Zimbabwe has not looked back on the fight against corruption as it continues to make efforts to strengthen its capacity and legal framework on corruption.

For the past two decades the Zimbabwean economy has been on the meltdown and one of the major causes has been corruption. Although the Government showed its political will by ensuring the establishment of a national anti-corruption body there are so many challenges which came about. The Commission is a body that is funded solely by the Consolidated Revenue Fund and since its inception it has budgetary constraints which hamper most of the efforts to capacitate the Commission to enhance the fight against corruption. ZACC requires capacity-building to enhance and strengthen its capacity to investigate corruption at the national level. There are positive developments which have been ushered by the new dispensation led by His Excellency, E. D Mnangagwa which will see the decentralization of the ZACC to all provinces. This is in line with the mantra “zero tolerance to corruption”.

## II. CRIMINAL JUSTICE SYSTEM IN ZIMBABWE

The Zimbabwean legal system is based on the concept of separation of powers. There are three arms which are the executive, the legislature and the judiciary. The legislature is responsible for making the laws in Zimbabwe and these laws are enforced and implemented by institutions that are part of the executive. The judiciary is a separate arm that should ensure the rule of law is upheld and it should remain independent. The law enforcement agents are seized with the powers of investigating crime. The Zimbabwe Anti-Corruption Commission is one of the law enforcement agencies which is seized with investigating all forms of corruption in Zimbabwe. The corruption offences are outlined in the Criminal Law Codification and Reform Act<sup>4</sup> and some of the offences are bribery, criminal abuse of office as a public officer, fraud involving corruption, money

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<sup>1</sup> Amendment No. 18.

<sup>2</sup> Chapter 9:22.

<sup>3</sup> Section 255 (1) of the Constitution of Zimbabwe Amendment (No. 20).

<sup>4</sup> Chapter 9:23.

laundering among other offences. In terms of the Constitution of Zimbabwe<sup>5</sup> the Commission is mandated to investigate corruption cases and recommend the arrest of suspected persons<sup>6</sup>. The interpretation of the law in this instance has been that the Commission can only investigate and not arrest persons suspected of corruption, and it remains a grey area of the law to an extent where there has been a constitutional challenge in the Constitutional Court whether or not the Commission has powers of arrest. This legal lacuna has posed challenges in the execution of the Commission's mandate.

The Commission after completing its investigations recommends the arrest of suspected persons to the Commissioner General of Police. The police should scrutinize the investigation and formulate a reasonable suspicion in order to effect arrest on a person suspected of having committed an offence. Thereafter, that is when the matter can be referred to the National Prosecuting Authority (hereinafter the 'NPA'). The NPA has to prove beyond reasonable doubt in each and every case, that a particular suspect has committed an offence. The NPA is supposed to prosecute its cases before the court which is adjudicated by the judiciary.

#### **A. Structure of the Courts**

There are three main criminal courts in Zimbabwe, namely, the Magistrates Court, the High Court and the Supreme Court. The Magistrate Court is the lowest criminal court in Zimbabwe. Two pieces of legislation govern its operations. These are the Magistrates Court Act<sup>7</sup> and the Criminal Procedure and Evidence Act<sup>8</sup>. This is the court where all cases of corruption are initially prosecuted. A corruption case can be referred to the High Court depending on the threshold of the financial misappropriation or the seriousness of the offence. The High Court is the next court of first instance and appeal in terms of criminal offences and it is governed by the Constitution and the High Court Act<sup>9</sup>. The highest court which can adjudicate criminal cases is the Supreme Court which is governed by the Constitution and Supreme Court Act<sup>10</sup>.

#### **B. Offences Relating to Corruption in Zimbabwe**

The offences relating to corruption in Zimbabwe are stipulated in the Criminal Law Codification and Reform Act<sup>11</sup> from sections 170 to section 174. Bribery is the first offence outlined and involves the receipt or giving of a bribe for any consideration, corruptly using a false document, corruptly concealing a document from a principal, corruptly concealing a transaction from a principal and criminal abuse of duty as a public officer are the principal offences.

### **III. LEGISLATIVE FRAMEWORK ON CORRUPTION**

Zimbabwe boasts of a relatively good legislative framework with regard to corruption. There are a good number of pieces of legislation which relate to corruption. The supreme law of the land which is the Constitution of Zimbabwe has in its Chapter 13 made provisions for institutions which are responsible for combating corruption which are the Zimbabwe Anti-Corruption Commission and the National Prosecuting Authority, respectively. However, these key institutions have been buffered by the enactment of various legislation some of which are the Money-Laundering and Proceeds of Crime Act<sup>12</sup>, Prevention of Corruption Act<sup>13</sup>, Public Entities and Corporate Governance Act<sup>14</sup>, Criminal Procedure and Evidence Act, and this is not an exhaustive list.

The latest response was the enactment of the Money- Laundering and Proceeds of Crime Amendment Act where the legislature addressed shortcomings of the anti-money laundering regime in terms of the requirements of the Financial Action Task-Force<sup>15</sup> recommendations and United Nations Convention against Corruption. The legislature has also enacted the Public Entities Corporate Governance Act after realizing

<sup>5</sup> Amendment No. 20 (2013).

<sup>6</sup> Section 255(3).

<sup>7</sup> Chapter 7:10.

<sup>8</sup> Madhuku L *An Introduction to Zimbabwean Law* page 61.

<sup>9</sup> Chapter 7:06.

<sup>10</sup> Chapter 7:13.

<sup>11</sup> Chapter 9:23.

<sup>12</sup> Chapter 9:24.

<sup>13</sup> Chapter 9:16.

<sup>14</sup> Chapter 10:31.

<sup>15</sup> Hereinafter FATF.

that corruption in the public sector has become rampant and needed to be abated.

#### **IV. STRATEGIC PARTNERSHIPS**

Undoubtedly, corruption remains the most daunting challenge to good governance, sustainable economic growth, peace, stability and development in Zimbabwe. In many corruption perception surveys, Zimbabwe is perceived as one of the countries with high levels of corruption in Africa. Hence, addressing the problem of corruption in a strategic and comprehensive way is of paramount importance as a development priority for Zimbabwe.

Zimbabwe has joined the world in the latest trends on investigating illicit financial flows. The Mbeki report on Illicit Financial Flows highlights how corruption and weak transparency mechanisms allow tax avoidance, trade mis-invoicing, abusive transfer pricing, and many other ways used to deny Africa to reap its resources dividend. The 50 billion dollars Africa loses annually through illicit financial flows are resources that could be used to create jobs for the youth who are now forced into illegal migration seeking greener pastures<sup>16</sup>.

Corruption can be combated more successfully if a multi-stakeholder, comprehensive approach is chosen. This approach will be successful if a mechanism can be provided where the relevant stakeholders, namely the FIUs and the specialized agencies which investigate corruption can exchange relevant data in a trusted way. In Zimbabwe the multi-stakeholder approach has been used to fight corruption. In 2016, the relevant stakeholders in the criminal justice system collaborated and launched a campaign named 'Against Corruption Together' (ACT). This noble initiative was spearheaded by the Judicial Service Commission and the other stakeholders were the Zimbabwe Anti-Corruption Commission, the National Prosecuting Authority, the Ministry of Justice. The ACT campaign was launched to raise awareness on corruption in the justice delivery system. It was necessitated by the public outcry that the level of corruption in justice delivery had risen to alarming levels. The objective of the ACT campaign was to create anti-corruption desks in all relevant stakeholder institutions, where reports would be received. The major targets were corruption related to the judicial system. This campaign strengthened the capacity of institutions in the criminal justice system and it also allowed for more effective dissemination of information when dealing with cases involving corruption.

Civil society organizations play a key role in addressing the scourge of corruption particularly through advocacy and monitoring the efforts of the country and intergovernmental organizations, but there still is a need for a more unified and strategic approach to anti-corruption in Zimbabwe. The integration of information between the public institutions mandated to combat crime and the civic organizations is still a major challenge. There is an element of mistrust which eventually results in some very important corruption cases not receiving due attention. The civil society's role in formulating and implementing anti-corruption policies is important for the success of institutions mandated to curb corruption. Zimbabwe has multiple anti-corruption initiatives which have achieved limited success in alleviating corruption.

#### **V. ZIMBABWE'S EFFORTS TO FIGHT CORRUPTION**

In light of the rampant levels of corruption, the Zimbabwean Government continues to make efforts to curb it. In the wake of 2018, the legislature enacted the Public Entities Corporate Governance Act<sup>17</sup>, whose objective is to provide for the governance of public entities in compliance with Chapter 9 of the Constitution and to provide a uniform mechanism for regulating the conditions of service of members of public entities and their senior employees.

##### **A. Establishment of Anti-Corruption Courts**

Against this backdrop, the Judicial Service Commission established and launched specialized Anti-Corruption courts to tackle cases of corruption and will deal with all forms of corruption. The specialized courts have been buttressed by the enactment of the amended Money Laundering and Proceeds of Crime Act whose provisions place reliance on a combination of civil and criminal procedures to combat financial

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<sup>16</sup> M. Begoto African Union Advisory Board on Corruption Concept Note 2017 "Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation" page 3.

<sup>17</sup> Chapter 10:31.



crimes though targeting the seizure and forfeiture of all tainted and illicit proceeds of crime. The judicial officers and prosecutors are currently undergoing training on corruption matters. The establishment of the specialized courts has seen the prosecution of five former Ministers and two of them have been successfully convicted and are currently serving their terms of imprisonment.

### **B. Repatriation of Externalized Funds**

Since the new dispensation of Government in 2017, the Zimbabwean government made an amnesty call for the repatriation of externalized funds by Zimbabwean citizens and local and foreign companies which were operating in the country. This strategy was part of the initiatives of a massive anti-corruption campaign by the new President, His Excellency E. D Mnangagwa. A list of individuals and companies who are alleged to have ignored the directive to return all externalized funds amounting to billions of dollars has been made public and investigations have been launched in an effort to recover any proceeds which were externalized illegally. This move was to curb rampant corruption, in order to register significant growth in the economy. With the view to advancing the work on strengthening the recovery and return of stolen assets and in order to develop good practices on asset recovery in line with the United Nations Conventions against Corruption, Zimbabwe has implemented the good practice of asset forfeiture/parallel financial investigations through the Money Laundering and Proceeds of Crime Act. This initiative supports international efforts to end “Safe Havens for Corrupt Funds”. The anti-corruption exercise saw the return of \$300 million dollars to the country, and there are 1166 cases of externalization of funds which are under investigation.

### **C. Corporate Governance Framework in Zimbabwe**

Zimbabwe enacted the developed and launched a Corporate Governance Code and which signified a new dawn in the corporate culture of Zimbabwe, given the background of company failures mainly due to corporate governance deficiencies, mechanisms for creating trust between shareholders, boards of directors and management performance measurement standard, accountability, sustainability and ethical conduct of directors. These areas which are extensively covered in the code are expected to result in corporate culture of the highest standard which ensures the sustainability of business and ultimately will benefit Zimbabwe as a whole. In addition, Zimbabwe has introduced the Public Entities Corporate Governance Bill, which will provide for corporate governance of public entities. Zimbabwe is also developing the National Integrity Plan and the National Anti-Corruption Policy for use by public and private institutions as tools of corruption prevention so as to enhance principles of effective public administration and corporate governance.

### **D. Legislation on Unexplained Wealth Orders**

Zimbabwe recently passed legislation on unexplained wealth orders or illicit enrichment. The law now requires that an enforcement authority can make a civil application to the High Court citing that they have reasonable suspicion that any person, natural or juristic, has unexplained wealth. The court if satisfied with the application can grant an unexplained wealth order restraining or freezing the property and requiring the Respondent to provide evidence to the contrary. This piece of legislation has enhanced the fight against corruption where many persons have acquired wealth illicitly and are laundering the funds into the legitimate system.

## **VI. CHALLENGES IN THE FIGHT AGAINST CORRUPTION**

Zimbabwe is faced with the many challenges in fighting the scourge of corruption which are similar to other jurisdictions.

### **A. Gaps in Legislation to Fight Corruption**

Although the Constitution of Zimbabwe, which is the supreme law of the land, had dedicated Chapter 13 to establish institutions to combat corruption, there are pieces of legislation which need to be enacted to strengthen the anti-corruption corruption legislation. Zimbabwe is yet to enact legislation in line with the provisions of Article 32 of the UNCAC which provides for witness protection for witnesses, experts and victims of corruption. The absence of such legislation hampers investigations and prosecution of corruption. In most instances the identity of witnesses is known and eventually they fear to come and testify in court because there is a risk of intimidation, loss of employment and harassment afterwards. The relevant institutions like the Zimbabwe Anti-Corruption Commission and civic organisations continue to lobby and advocate the law-makers to consider the enactment of such important pieces of legislation.

## **B. International Cooperation**

The challenges faced when it comes to cross-border investigations cannot be overemphasized. International cooperation is a major challenge for corruption investigations. Although, information sharing platforms have been established through organizations like the Asset Recovery Inter-Agency of Southern Africa (ARINSA) and International Police (INTERPOL) challenges occur in other jurisdictions where there is delay or no response to enquiries on criminal offenders in extradition matters or enquiries on financial investigations. This problem is not only peculiar to Zimbabwe but the world at large. Proceeds of crime are kept in certain jurisdictions and efforts between countries to repatriate such proceeds are often frustrated by different legal systems across borders. However, Zimbabwe continues to engage its counterparts and equally assists when requests are received across borders for mutual legal assistance and extradition of offenders.

## **C. Strengthening Capacity of Institutions in the Criminal Justice System**

In the 2012 UNODC executive summary of the Zimbabwe report it was observed that the lack of resources to raise awareness and provide adequate training to enhance staff capacity contributed to a perception of mistrust in some criminal justice institutions. Continuous awareness campaigns on corruption are centralized in major cities leaving the populace in small towns and rural areas unaware of the dangers of corruption. There has been intensive technical training for prosecutors which has been facilitated by the UNODC and ARINSA. Prosecutors are posted to South Africa on an exchange programme in order for them to grasp the skills required when prosecuting corruption cases with substantial financial crime. It is, however, important for these skills to be attained by all the officers in the value chain of the criminal justice system.

## **VII. CONCLUSION**

Zimbabwe, being a developing country, is making headway in its anti-corruption efforts, although the challenges faced sometimes outweigh the progress. In its attempt to continue being relevant in the anti-corruption regime, Zimbabwe continues to strengthen its collaborations with national, regional and international partners. Zimbabwe has undergone a National Risk Assessment under the Eastern and Southern Anti-Money Laundering Group, and it is continuously making progress on the deficiencies noted in its anti-money laundering and counter-financing of terrorism (AML/CFT) regime. Currently, Zimbabwe is undergoing review by the UNODC on its compliance with Chapter II of UNCAC on preventive measures.

Ultimately, the Government is desirous of improving the integrity of the country's financial system and reducing the scope of illicit transactions in the economy through an adequate and effective implementation of the AML/CFT system. It is Zimbabwe's hope to continue to have its institutions strengthened through capacity-building and strong partnerships.

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## REPORTS OF THE PROGRAMME

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### GROUP 1

#### EFFECTIVE MEASURES FOR GATHERING INFORMATION TO DETECT AND INVESTIGATE CORRUPTION OFFENCES

**Rapporteur:** Mr. Adrian Bernard Conrad Samuels Esq. (Sierra Leone)

**Co-Rapporteurs:** Mr. Ismail Nadeem (Maldives)

Mr. Christopher Mesa (Philippines)

Mr. Mitsuhiro Sugita (Japan)

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<b>Chairperson</b>	Mr. Oleksii Geiko	(Ukraine)
<b>Co-Chairperson</b>	Mr. Tsiry Razafimandimby	(Madagascar)
<b>Members</b>	Mr. Daniel Lima	(Brazil)
	Mr. Gokul Banstola	(Nepal)
	Mr. Sada Moussa	(Niger)
	Mr. Mahir Shallakey	(Sudan)
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	Mr. Yusuke Nishigaya	(Japan)
<b>Advisers</b>	Prof. Ryo Futagoishi	(UNAFEI)

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### I. INTRODUCTION

Corruption nowadays is sophisticated and is usually done in secret by a group of persons domestically or across borders. Hence, gathering information is very crucial on the part of *Law Enforcement Agencies* (LEA) as the outcome of the prosecution and adjudication of a case is solely based on the quality of investigation conducted and credibility of evidence gathered. For the above-stated reason and after a series of lectures from professors and visiting experts, study tours and individual presentations, our group was formed to discuss and share challenges and best practices in our respective countries on the topic above.

Effective measures to gather information, including facilitating reports from the public and use of publicly available information; special investigative techniques such as undercover operations, electronic surveillance and communications interception; other investigative techniques etc.; protection of whistle-blowers and/or witnesses; and information sharing and cooperation among relevant agencies (domestic and international) were therefore discussed.

### II. CHALLENGES DURING DETECTION AND INVESTIGATION OF CORRUPTION

Owing to the fact that corruption offences are often committed in secret without leaving any trace or evidence, it is quite burdensome proving these offences in court. For the said reason, whistle-blowers play a very important role in the fight against corruption.

Considering the contributions of a majority of the group members, it was noted that in many jurisdictions very little or nothing has been done to protect whistle-blowers and witnesses. They are normally put in such a situation that they fear for their lives, the lives of their family members, their jobs and so on. They therefore shy away from rendering much needed help to the various bodies involved in the fight against graft.

It was also discussed that gathering initial information for further investigative activities normally takes a lot of time. Considering the fact that most corruption-related crimes demand quick response, investigators and prosecutors therefore need access to information from public registries and databases to make their work easier.

Members of the group exchanged their experiences on special investigative techniques that are being used during investigation of corruption-related crimes. During discussion it was concluded that undercover operations are the most important among investigative activities and techniques for obtaining strong,

## 21ST UNAFEI UNCAC TRAINING PROGRAMME REPORTS OF THE PROGRAMME

relevant and admissible evidence during pre-trial investigation.

In most jurisdictions court warrants are necessary for undercover operations. In some countries like Brazil, the time limit for such court warrants is only 15 days, which is not sufficient for investigation.

In some countries, there are laws granting immunity from investigation and prosecution to top-officials such as parliamentarians. They are therefore reluctant to make amendments to the laws granting them such immunity.

Among other challenges, it was also mentioned that obtaining evidence through Mutual Legal Assistance requests and international cooperation is highly important for investigation, but it takes a lot of time before these requests are responded to. Another problem is the refusal by states to conduct criminal procedures requested because of the different provisions in their criminal legislation.

### III. BEST PRACTICES

During active discussions members of the group agreed on some of the best practices of their counterparts that should be used as examples for possible improvement of their domestic criminal justice systems.

The use of a centralized database for investigators could make gathering of necessary information at any stage in a criminal proceedings an easier and faster process. Introducing electronic asset disclosure and e-procurement systems could also help to achieve a high level of transparency.

Amendments must be made to existing laws to cater for anonymous reports and their admissibility in courts. Leniency programmes and plea agreements with offenders could also be introduced to encourage more reports on corrupt activities.

It is recommended that the use of complex undercover activities and techniques for gathering evidence, such as electronic surveillance, undercover audio and video recording of suspects, wiretapping, physical surveillance, communications interception, installation of video recording in offices and houses of suspects, communications interception by installing audio recording devices on the clothes or other items of suspects, and interceptions of e-mail communications should be encouraged.

The use of confidential agents for gathering information and further disclosure of criminal schemes and organizations are also considered.

It is also recommended by most of the countries to adopt special legislation regarding whistle-blowers' protection, which will underline necessary procedures for involving and protecting whistle-blowers and witnesses, especially by limiting the number of parties in the criminal proceedings who have access to the identities of whistle-blowers. Furthermore, holding court sessions in camera, distorting the voices of witnesses when they testify, providing immunity from civil and criminal lawsuits for witnesses, provision of penalties for those who harm whistle-blowers, security of job tenure of witnesses, giving benefits such as housing facilities, free medical treatment and so on while serving as a witness were all considered.

### IV. CONCLUSIONS AND RECOMMENDATIONS

Improving the welfare of citizens is impossible without structural reforms in many areas. Reforms of criminal justice systems should become the key priority for every government. It may increase professional standards for judges, prosecutors and investigators, and improve efficiency of investigation of corruption-related crimes. It is therefore recommended that the following provisions shall be adopted:

1. It is necessary and beneficial to construct a system that promotes whistle-blowing while being cautious of the possibility of receiving false information.
2. It is important to notify the public of the whistle-blower protection unit so as to develop their confidence in reporting corruption and as a means of sensitizing them about the dangers of making a

false or malicious report.

3. Governments should establish central databases for LEA and apply electronic asset disclosure and transparent e-procurement systems.
4. There is a need for amendments to criminal procedural legislation to provide LEA with possibilities of conducting all possible types of undercover activities.
5. It is necessary to exchange experiences and best practices among LEA officers through international seminars, trainings, conferences and workshops.

## GROUP 2

### INTERNATIONAL COOPERATION FOR THE PURPOSE OF CONFISCATING ILLICIT PROFITS AND RECOVERING DAMAGES

**Rapporteur:** Ms. Charity Matumbi (Zimbabwe)

**Co-Rapporteurs:** Ms. Anna Dzhavaha (Ukraine)  
Mr. Kenichi Nakajima (Japan)

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<b>Chairperson</b>	Mr. Abdulhamid F. Low	(Kenya)
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<b>Members</b>	Mr. Mohamed Kassem	(Egypt)
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## I. INTRODUCTION

The world has become a global village, and there is an increase of cases in which the economic activities of society have become international. As a result, the property acquired through corruption crime is concealed in foreign countries. In investigating corruption offences, international cooperation including Mutual Legal Assistance (MLA) is increasingly important to trace, freeze and forfeit proceeds of corruption crimes.

## II. INTERNATIONAL CONVENTIONS

The group noted that all participating countries are State parties and members of the United Nations Convention against Corruption (UNCAC) and other international conventions.

## III. IDENTIFYING AND TRACING FINANCIAL FLOWS

All participating countries have legislation on identifying and tracing financial flows in their domestic legislation, which empowers them to search, trace assets and money trails.

**Good Practice:** All participants agreed that it is good practice to liaise with other jurisdictions to obtain information through informal contacts and affiliate groups. The participants also noted the need to create bi-lateral and multi-lateral agreements or Memorandums of Understanding (MOU) among member countries to enhance the provision of information and requests.

**Challenges:** The following issues were identified as challenges: lack of political will, impunity, lack of prosecution powers in certain countries, lack of trust between agencies in the multi-agency approach, constitutional capacity, determining the location of the funds in the requested state, illegal ways of transferring money to foreign countries such as *hawala* and *undial*, and Financial Intelligence Units (FIU) in many countries cannot share information without the existence of MOUs with the requesting countries.

**Recommendations:** The participants' countries should create a strong network and share information informally to enhance and expedite formal procedures in cases which require international cooperation, efforts should be made by the different jurisdictions to enlighten the judiciary on the importance of MLA and international cooperation in corruption cases, to establish MLA Units within anti-corruption agencies to enhance their knowledge and capacity on the procedures of MLA, make use of informal regional organizations like the Stolen Assets Recovery Group (StAR) and Asset Recovery Inter-Agency Network



Southern Africa (ARINSA), create Joint Investigation Teams (JIT), cooperate with FIUs, and encourage FIUs in different jurisdictions to establish MOUs.

#### IV. FREEZING, SEIZING AND CONFISCATION OF THE PROCEEDS OF CORRUPTION

**Good Practice:** Kenya successfully managed to obtain a freezing order in a case involving a public official who was charged with abuse of office and unexplained wealth. The court ruled that this official had unexplained wealth, and the official was ordered to pay Kenyan Shillings 75 million, an equivalent of US \$ 750 000.<sup>1</sup>

Formal and/or informal communication and exchange of operative information — Japan's Cooperation with South Korea; Ukraine's cooperation with Switzerland, Latvia and Austria; Zimbabwe's cooperation with South Africa and Botswana, Malaysia's cooperation with Hong Kong, Brunei, Indonesia, Thailand, the United States, Switzerland and Singapore; Kenya's cooperation with Japan; Kazakhstan's cooperation with Ukraine, Sri Lanka's cooperation with its neighbouring countries; Malawi's MOU with Japan.

Ukraine had success in an international case between Germany, the United States and Latvia, where requests for freezing orders were facilitated using information from informal contacts which was eventually used as the basis for due court process.

**Challenges:** The Group noted that there are many challenges associated with freezing orders, confiscation and forfeiture orders. There are different legal frameworks for freezing, seizing and confiscation of proceeds of crime from country to country, so we are faced with the conflict of jurisdictions and the absence of legislation on criminalization of illicit enrichment in some jurisdictions. Confiscation orders can be granted by the courts, but assistance and cooperation may be difficult to obtain from the other jurisdictions. Strict legislation on bank information and bank secrecy. The issue of off-shore zones is a challenge when seeking to implement freezing or confiscation orders, especially if there are no treaties or bi-lateral agreements. Lack of political will, political interference, impunity, lack of trust among investigative agencies when using a multi-agency approach, delays or no responses from requested states due to the diplomatic bureaucracy stipulated by the law, lack of prosecuting powers for some anti-corruption agencies (Kenya & Zimbabwe), the issue of non-conviction-based confiscation, admissibility of evidence in foreign court proceedings, translation of MLA documents when countries have different official languages. Determining the location of the funds in other jurisdictions, the need to establish a link between misappropriated and requested funds, non-disclosure of suspect funds detected by the requested State, sluggish asset disclosure proceedings and spelling variations of the names of indicted persons whose assets are to be frozen<sup>2</sup>.

**Recommendations:** Create a strong network between participating countries such as a creation of focal points in their respective countries for providing consultancy on domestic legislation of the requested country. Engage representatives from offshore jurisdictions to participate in training or conferences and seminars on MLA and international cooperation. To strengthen inter-agency cooperation. The Anti-Corruption agencies to lobby for enactment of laws to empower them. Some of the participants encouraged countries to criminalize illicit enrichment.

#### V. ASSET RECOVERY

**Challenges:** Countries' reluctance to cooperate in asset recovery because of the prejudice to their economies. The absence of a common framework of procedures regarding asset recovery among member States of UNCAC to ensure successful forfeiture of the proceeds of corruption offences regardless of where these proceeds are deposited or transferred. Differences in the legal systems of countries, the absence of non-conviction-based forfeiture/confiscation in some jurisdictions.

**Recommendations:** Focal points for UNCAC. Creation of alumni UNAFEI network. State parties to

<sup>1</sup> Article by Phillip Muyanga, Daily Nation of 2017 September 21<sup>st</sup>.

<sup>2</sup> Note Verbal, dated 7 October 2011, from the Permanent Mission of Egypt to the United Nations (Vienna) addressed to the United Nations Office on Drugs and Crime, Corruption and Economics Crime Branch CAC/Cosp/2011/13.

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REPORTS OF THE PROGRAMME

attend Working Group Meetings and the continuous review cycles of UNCAC. Some of the participants encouraged the adoption of non-conviction-based confiscation.

## **VI. CONCLUSION**

Corruption offences and the laundering of criminal proceeds is a global concern so at the international level there should be a sincere and extensive intention to cooperate in the field of freezing, seizure and asset recovery. The need for international cooperation should be emphasized to enable countries to confiscate illicit proceeds of corruption crimes.

## GROUP 3

### PREVENTIVE MEASURES AGAINST CORRUPTION IN COOPERATION WITH CIVIL SOCIETY AND THE PRIVATE SECTOR

**Rapporteur:** Mr. Abid Husain Khamisani (Pakistan)  
**Co-Rapporteurs:** Mr. Parviz Odinamahmadzoda (Tajikistan)  
Mr. Henrique Lopes Soares (Timor-Leste)

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	Mr. Myo Zaw Win	(Myanmar)
	Mr. Pare Kupson Kuiap	(PNG)
	Ms. Yen Hai Hoang	(Viet Nam)
	Mr. Pascoal Fransisco Jussa	(Mozambique)
	Mr. Bono Yoshitaka	(Japan)
<b>Advisers</b>	Prof. Hirano Nozomu	(UNAFEI)

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## I. INTRODUCTION

The problem with corruption is not simple and cannot be focused just on repression. In truth, it must be acknowledged that there is no more effective method of combating corruption than a collective and diversified compromise, encompassing a number of preventive, repressive, and reparatory measures since “prevention is better than cure”.

The discussion of the Group Workshop — inspired by the model developed by professor Roy Godson (“Culture of Lawfulness”), as well as the Hong Kong preventive system — led to the following report.

## II. ISSUES AND CHALLENGES

### A. Preventive Measures Related to the General Public

#### 1. Education Focused on the Specific Public (“Target-Oriented Strategy”)

The main issue is the lack of general awareness of the importance of combating corruption. Without this general awareness, despite all the efforts, the repressive measures alone will not achieve success. In this way, education is one of the most effective tools to raise public awareness and to change culture to fight against corruption. For effective programmes, we need to focus on different targets such as young people (kindergarten, primary, secondary and tertiary school), teachers, community leaders, companies and the general public.

#### 2. Communication

The challenge to engage all society in the fight against corruption requires the development of the general awareness of the importance of public resources. In the rural area, the challenge is bigger, because people do not have access to more developed ways of communication, such as Internet or mobile phones, besides the language limitation.

#### 3. Advisory Activities to the Private Sector (“Partnership Strategy”)

Another challenge to be faced is the lack of knowledge of corruption in the private sector. In this way, the government could help the private sector to review internal procedures and develop best practices to avoid corruption.

### B. Preventive Measures Related to Law Enforcement Agents

#### 1. Codes of Conduct, Compliance and Integrity Programmes

A challenge that must be faced is that some of the nations do not have specific codes of conduct or, at least, general ones. The same problem is observed with the compliance and integrity programmes.

Furthermore, a bigger challenge to be faced is the execution of these codes and integrity programmes.

2. Asset Declaration, Declaration of Gifts Policies and Other Transparency Measures

The lack of transparency is a huge challenge to avoid corruption. The publication of information contributes to social control. Therefore, transparency measures should be encouraged. In the same way, the acceptance of gifts or other favours should be controlled, avoiding external influence in the public matters.

3. Prevention Advice and Assignment Studies

Most of the public agencies focus only on their specific issues, forgetting to review the internal procedures and allowing space for corruption. An external agency responsible for reviewing the internal procedures can help to develop best practices.

4. Education and Training for Relevant Agencies

A huge challenge to executing any anti-corruption policy is the engagement of public officers. In fact, only with the ownership of all public officers is it possible to create a strong net to combat corruption. Therefore, education and training for relevant agencies is indispensable to create this ownership.

### III. BEST PRACTICES

#### A. Preventive Measures Related to the General Public

1. Education Focused on the Specific Public ("Target-Oriented Strategy")

After analysing the Hong Kong experience, the group understood that the best practice is investing in education, especially with a target-oriented strategy that focuses on different segments of the public with different suitable education methods.

There are many ways to develop a target-oriented strategy: spreading knowledge through books, guidelines and cartoons, as well as dramas, series and so on. Ethics classes and law enforcement agencies activities (mock trial, simulation of investigations, etc...) also can be used in this strategy.

2. Communication

For the purpose of engaging the public in combating corruption, all the mass communication media should be used, such as television (soap operas, series, drama, cartoons, etc...), radio, advertisement, social media, Internet campaigns. In rural areas, the communication should also be target oriented, especially to opinion formers such as moral authorities, community leaders, volunteers, among others.

3. Advisory Activities in the Private Sector ("Partnership Strategy")

Another best practice was noticed in Hong Kong's strategy called the "Partnership Strategy", which is a government review based on the internal procedures of private-sector companies to avoid corruption. The corruption agencies can help companies to develop their own compliance or integrity programmes. This is called advisory activities in the private sector ("Partnership Strategy").

#### B. Preventive Measures Related to Law Enforcement Agents

1. Codes of Conduct, Compliance and Integrity Programmes

All nations should create general and specific codes of conduct, as well as compliance and integrity programmes for the public institutions. The observation of these codes and integrity programmes will depend also on the "ownership" by public officers. In Japan, some of the public servants need to take, at least, one lecture per year, in a continuous integrity programme training. In addition, it is suggested that the institutions create specific sectors to follow the application of the integrity programmes.

2. Asset Declaration, Declaration of Gifts Policies and Other Transparency Measures

Transparency measures should be encouraged, as transparency is required to strengthen social control. In this way, asset declaration is a good practice that should be implemented in every country. In the same way, the acceptance of gifts or other favours should be controlled, avoiding external influence in public matters or in the performance of the duties or judgement. In Japan, every officer that receives any gift over ¥5,000 is obligated to report it to the human resources department.

3. Prevention Advice and Assignment Studies

The Hong Kong experience shows the advantages of an external public agency responsible for reviewing the internal procedures of other agencies, which should be replicated.

4. Education and Training for Relevant Agencies

Education and the continuous training are the keys to developing awareness and ownership among all public officers about the importance of combating corruption. These good practices have been adopted in some institutions in Japan.

## **IV. CONCLUSION**

It is unanimously decided that preventive measures elaborated in the instant Report of Group 3, may be applied as tools to guide the efforts against corruption, and every participant within his or her authority will encourage his or her respective government to establish mechanisms to implement the preventive measures against corruption through the general public and law enforcement agencies.

## **V. RECOMMENDATIONS**

1- Preventive measures against corruption by educating the people of society including politicians, students, teachers, and the general public through different ways and means of communication, involvement of religious leaders, community authorities and to establish partnership strategies with the government and private companies.

2- Preventive measures against corruption by the adoption of a code of conduct for public officials to declare the assets and to declare the gifts and to prevent them from the abuse of authority. It is also an important to involve officials in ethical practices, integrity programmes and continuous education programmes for law enforcement agents. External public agencies should review the internal procedures of other agencies.

3- Participants of the group unanimously agreed that ties are well established between corruption and other crime, particularly the organized crime of terrorism and economic crime. Since corruption is crossing national borders and is now affecting all societies, thus, international cooperation, in view of “the International code of conduct for public officials”, is very essential for prevention and control of corruption.

In furtherance of the above, “the International code of conduct for public officials” may be adopted, until, the respective governments initiate their own legislative instrument, to insure the aforesaid preventive measures including the execution of law.

Finally, Group 3 recommends that by taking advantage of the present forum, each country should join hands together by establishing international cooperation through the coordination of UNAFEI and the UNODC, to achieve the basic motive of corruptionless societies.

## APPENDIX

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### *VISITING EXPERTS' PRESENTATIONS & COMMEMORATIVE PHOTOGRAPHS*

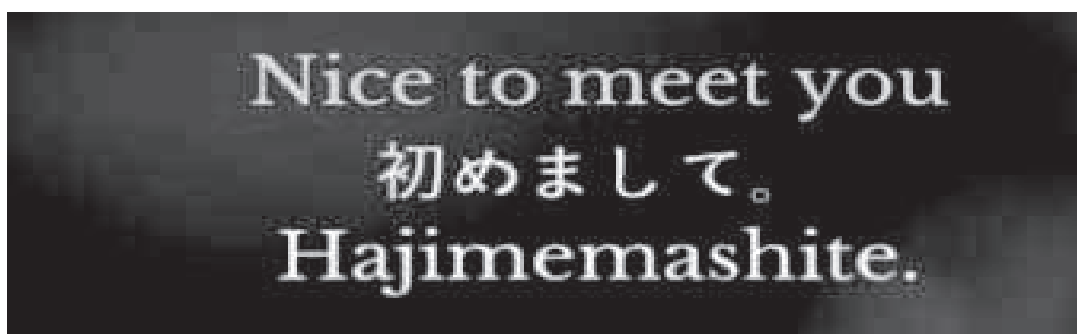
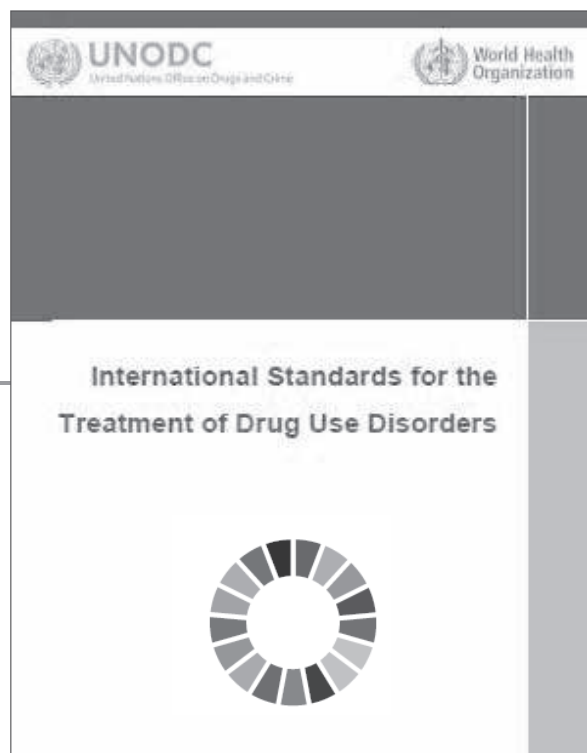
- *170TH INTERNATIONAL TRAINING COURSE*
  - *21ST UNAFEI UNCAC TRAINING PROGRAMME*
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UNAFEI



# International Standards for the Treatment of Drug Use Disorders

Anja Busse  
Prevention, Treatment and  
Rehabilitation Section  
United Nations Office on Drug and  
Crime  
[anja.busse@un.org](mailto:anja.busse@un.org)





## What is UNODC?

A UN programme created to support UN Member States in addressing global challenges such as drugs, crime and terrorism through technical assistance

Part of the UN Secretariat:  
Executive Director, Mr Yury Fedotov, responds to the UN Secretary General Antonio Guterres



## UNODC AT THE VIENNA INTERNATIONAL CENTRE

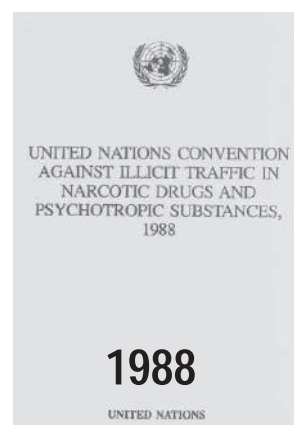
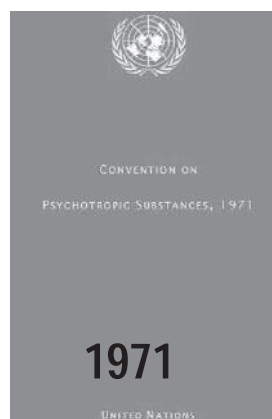
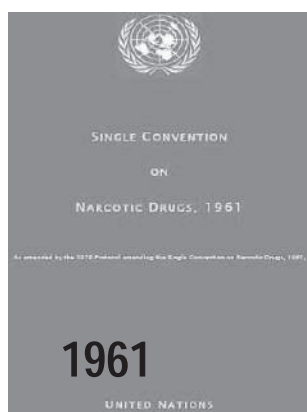


## UNODC Field Office network

- UNODC operates in more than 150 countries around the world through its network of field offices. UNODC works closely with Governments and civil society towards building security and justice for all.

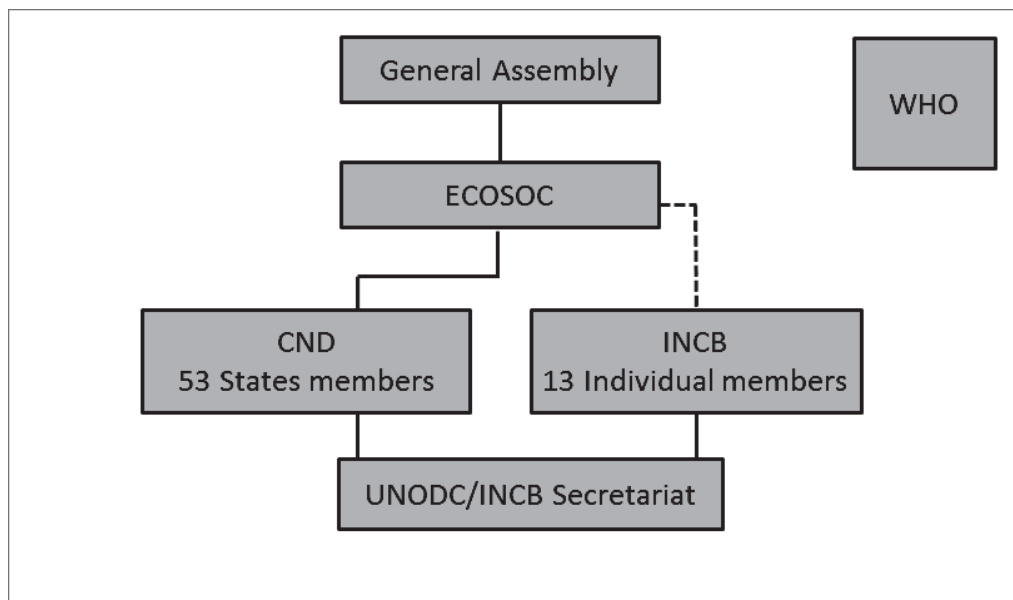


## Mandate from the International Drug Control Conventions

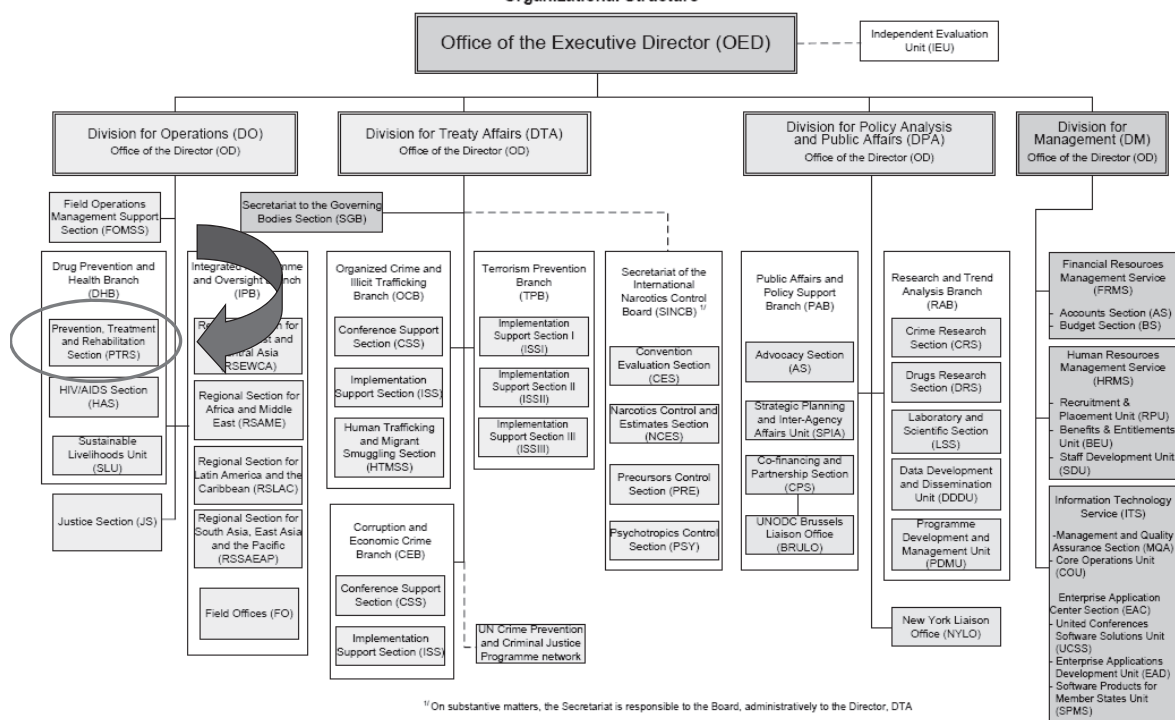


- UNGASS (1998)
- Political declaration and plan of action (2009)
- High level review of Political declaration and plan of action (2014)
- UNGASS (2016)

# International system on drug control

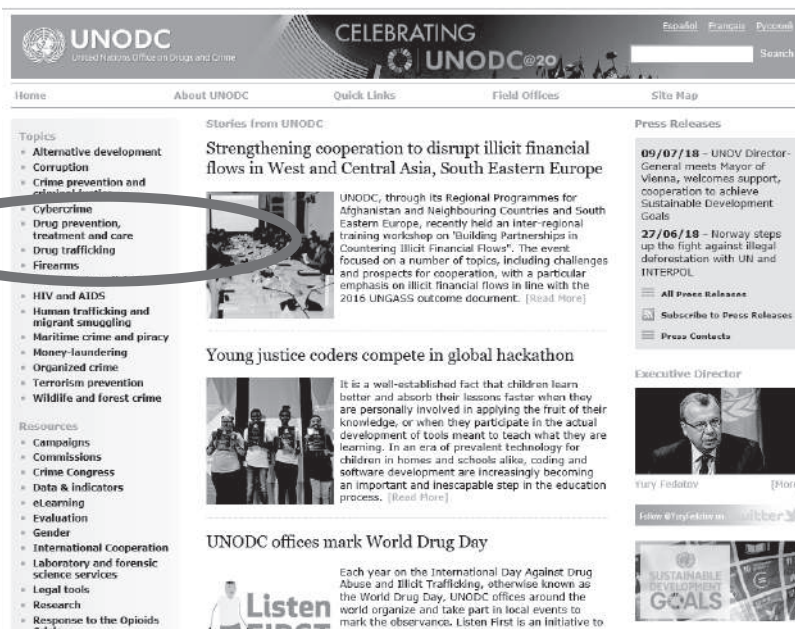


## UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) Organizational Structure



<sup>1/</sup> On substantive matters, the Secretariat is responsible to the Board, administratively to the Director, DTA

**www.unodc.org**



## Treatment of Drug Use Disorders - UNODC

- Technical assistance to UN Member States
- Support of governing bodies (CND, CCPCJ)
- Global projects on treatment of drug use disorders
- Development of technical guidance (with WHO and other partners)





# Outline of presentation



## 1. Global situation with regard to drug use

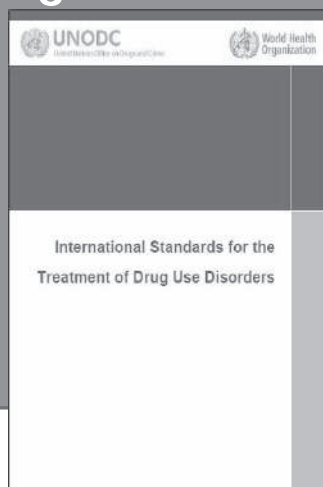
- Why International Standards for Treatment?

## 2. The International Standards for the Treatment of Drug Use Disorders

## 3. International policy context

## 4. Field testing and dissemination of the Standards

## 1. Global situation with regard to drug use and drug use disorders





# The Global Drug Problem

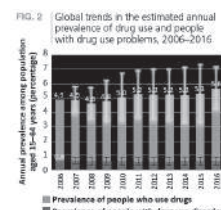
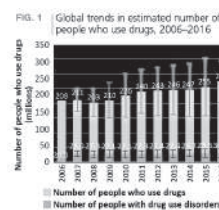
## UNODC World Drug Report 2018



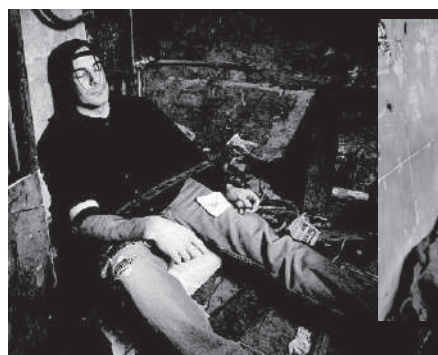
### Drug use and adverse health consequences increased



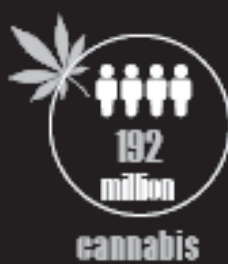
- About 275 million people worldwide (5.6 % of the global population aged 15–64 years) used drugs at least once during 2016. (1:18 persons)
- Some 31 million people who use drugs suffer from drug use disorders (1 out of 9 people who used drugs or 11%)



## The people behind the numbers



### Number of past-year users in 2016



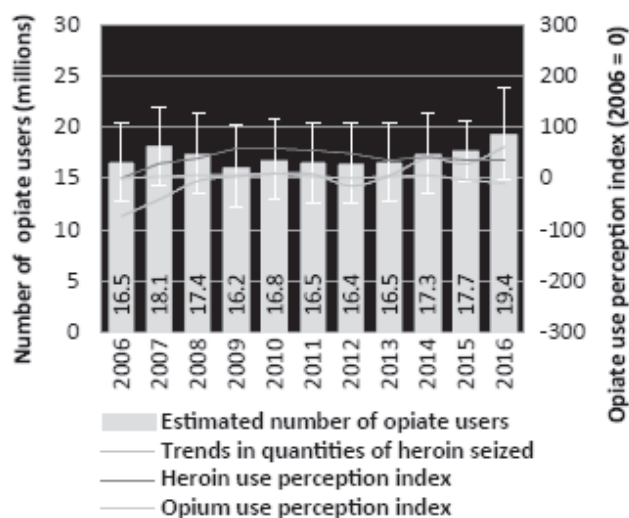


## Drug use – 2016 annual prevalence

- Cannabis most widely consumed (3.9%\*)
  - Opioids responsible for most negative health impact (0.7%\*)
  - Amphetamine use at 0.7% - lack of data for Asia but methamphetamine perceived to be most worrying threat
  - Potential supply-driven expansion of drug markets, with production of opium and manufacture of cocaine at the highest levels ever recorded. – Increased use
- (*\*annual prevalence of global population aged 15-64*)



**FIG. 7** Estimated number of opiate users, trends in quantities of heroin seized and heroin and opium use perception indexes (2006=100)



Source: UNODC, elaboration based on annual report questionnaire data.

**Global  
Opiate use  
trends**

## Injecting drug use

- 11 million inject drugs
- 1 in 8 people with injecting drug use (PWID) is living with HIV
- Every second PWID is infected with HCV



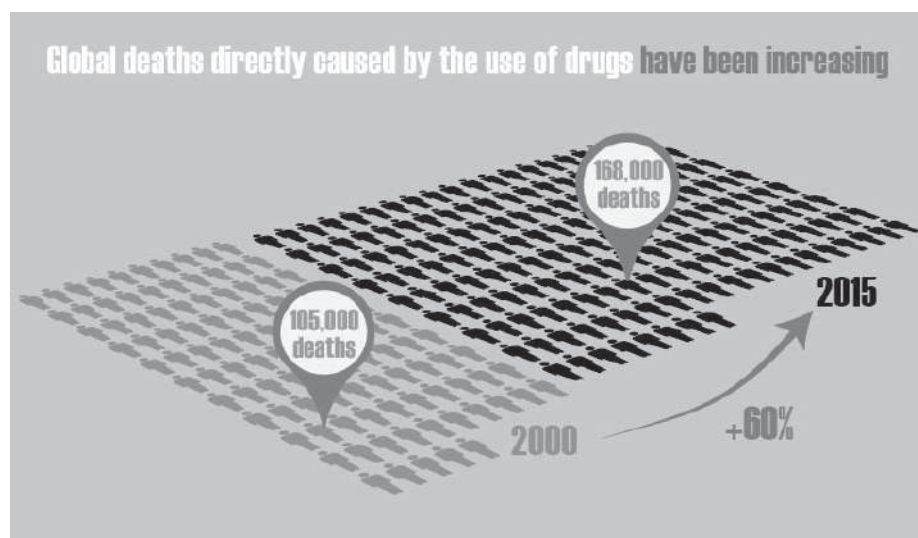
## Number of deaths associated with the use of drugs remains high



- Roughly 450,000 people died as a result of drug use in 2015.
- Of those deaths, 167,750 were directly associated with drug use disorders (mainly overdoses).
- The rest were indirectly attributable to drug use and included deaths related to HIV and hepatitis C acquired through unsafe injecting practices.



## Trends and patterns in drug related deaths: 2000 to 2015

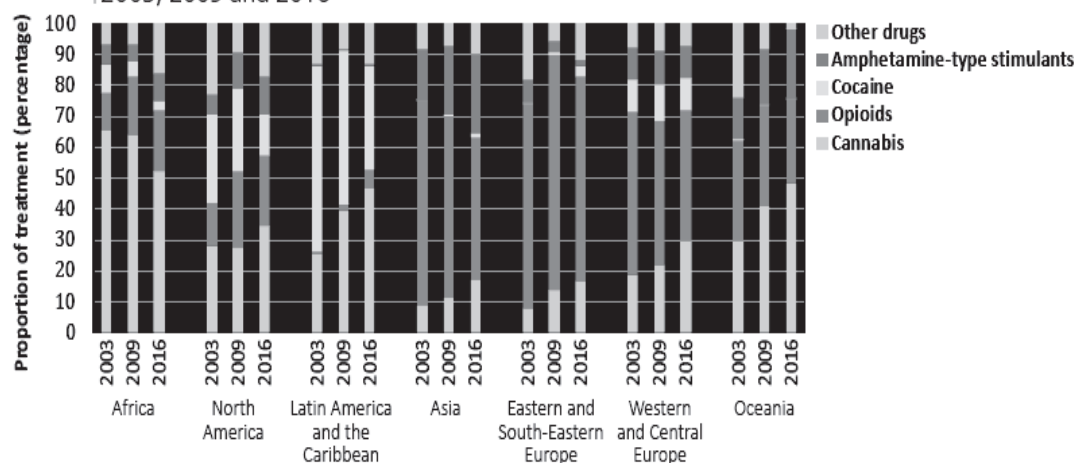


Source: UNODC analysis based on WHO, Disease burden and mortality estimates, Global Health Estimates 2015: deaths by cause, age, sex, by country and by region, 2000–2015.



## Treatment demand by regions

**FIG. 3** Trends in the proportion of primary drug of use in drug treatment admissions, by region, 2003, 2009 and 2016



Source: UNODC, responses to the annual report questionnaire.





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# 1:6



## Globally limited access to any drug dependence treatment (1:6)

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247 million people used drugs in the past year



29 million suffer from drug use disorders  
but only 1 in 6 people with drug use disorders is in treatment



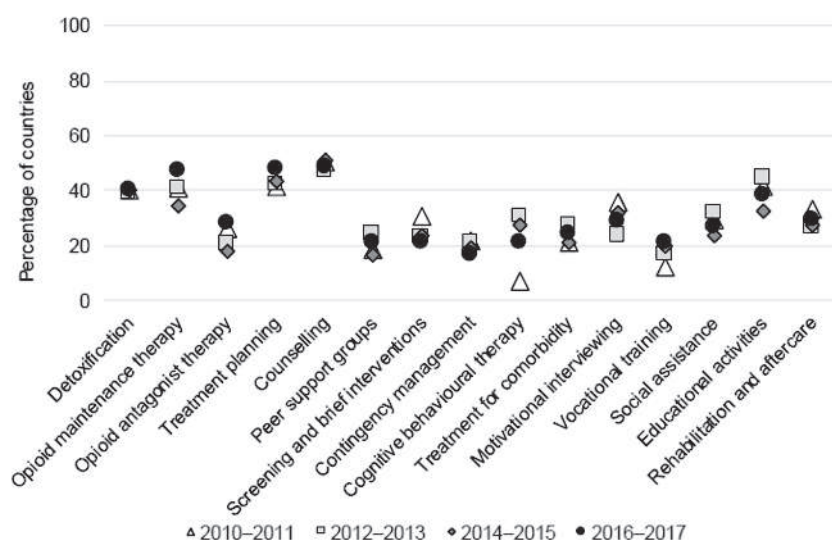
## Gender imbalance in drug treatment and care

Even though one out of three drug users is a woman, only one out of five drug users in treatment is a woman.



## Quality in treatment of drug use disorders?

Percentage of countries reporting a high degree of coverage of treatment services in the community in the bienniums 2010–2011, 2012–2013, 2014–2015 and 2016–2017



High coverage only reported for counselling and treatment planning

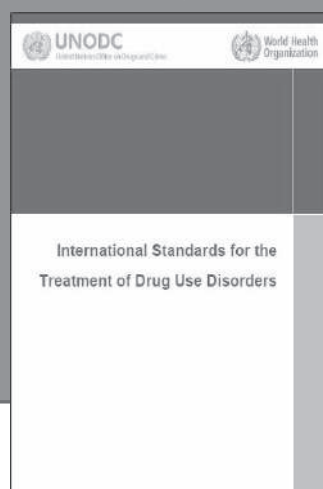


## How about treatment systems?

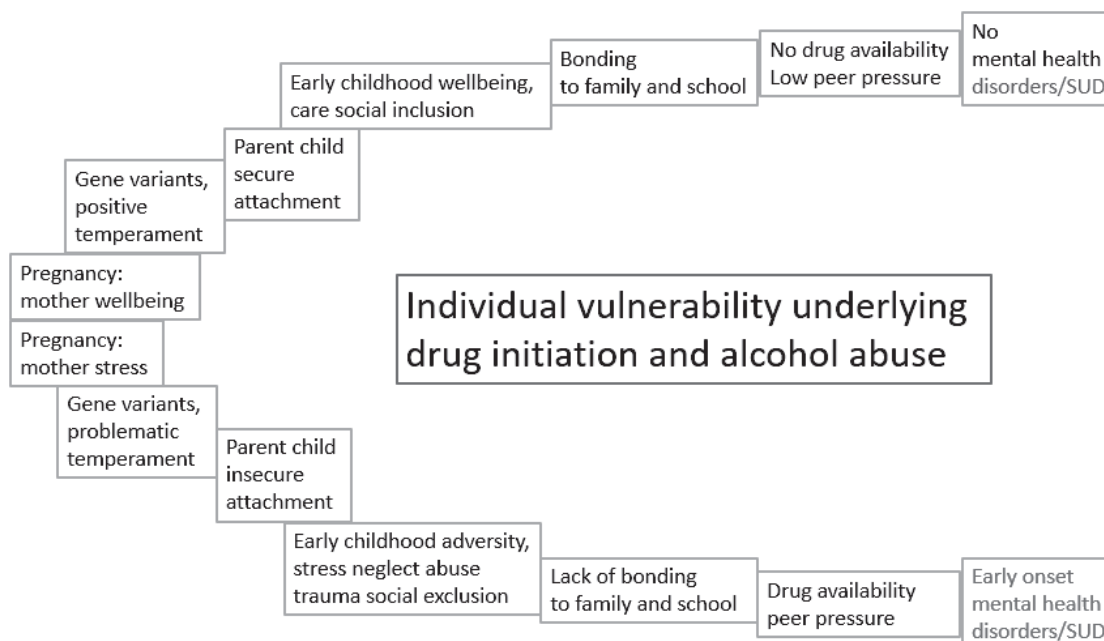
- 90 % of Member States had a written national drug strategy that included a demand reduction component implemented by a central coordination body.
- Over 80 % of reporting countries indicated that NGOs were involved in the work
- 37% of strategies remain unfunded



## Why International Standards for the Treatment of Drug Use Disorders?

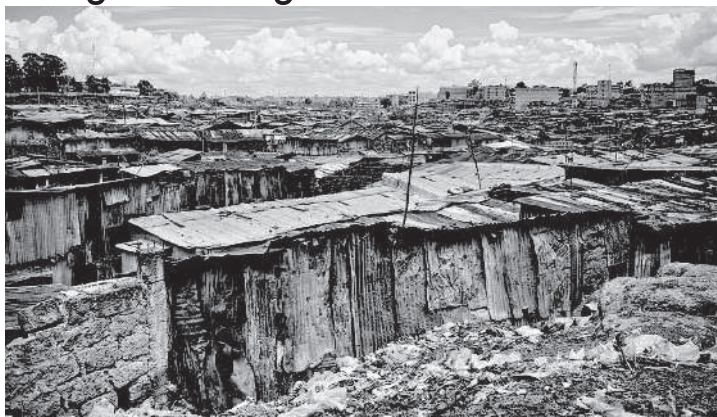


## Risk and protective factors



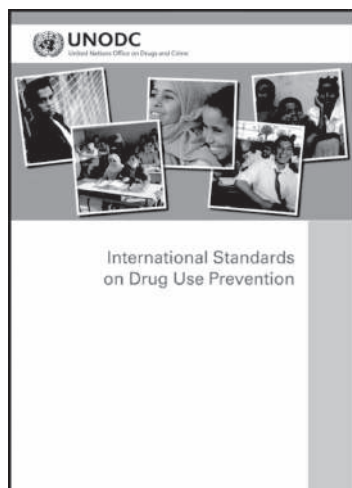
## Social factors recognized by 1961 convention

- "Drug addiction is often the result of an unwholesome social atmosphere in which those who are most exposed to the danger of drug abuse live."



# Vulnerabilities can be influenced

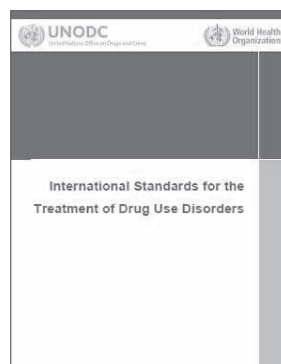
**Resilience**



**Prevention**

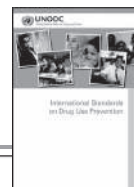
**inequality**

**Vulnerability**



## Guidance on the types of evidence based approaches and their characteristics

	Prenatal & infancy	Early childhood	Middle childhood	Early adolescence	Adolescence	Adulthood
<b>Family</b>	Prenatal infancy & visitation ★★		Parenting skills ★★★★			
	Interventions for pregnant women with substance abuse disorders ★					
<b>School</b>		Early childhood education ★★★★	Personal & social skills ★★★  Classroom management ★★★  Policies to keep children in school ★★	Personal & social skills & social influences education ★★★	Addressing individual vulnerabilities ★★	
<b>Community</b>					School policies & culture ★★  Alcohol & tobacco policies ★★★★★  Community-based multi-component initiatives ★★★	
					Media campaigns ★  Mentoring ★  Entertainment venues ★★	
<b>Workplace</b>					Workplace prevention ★★★	
<b>Health sector</b>					Brief intervention ★★★★	



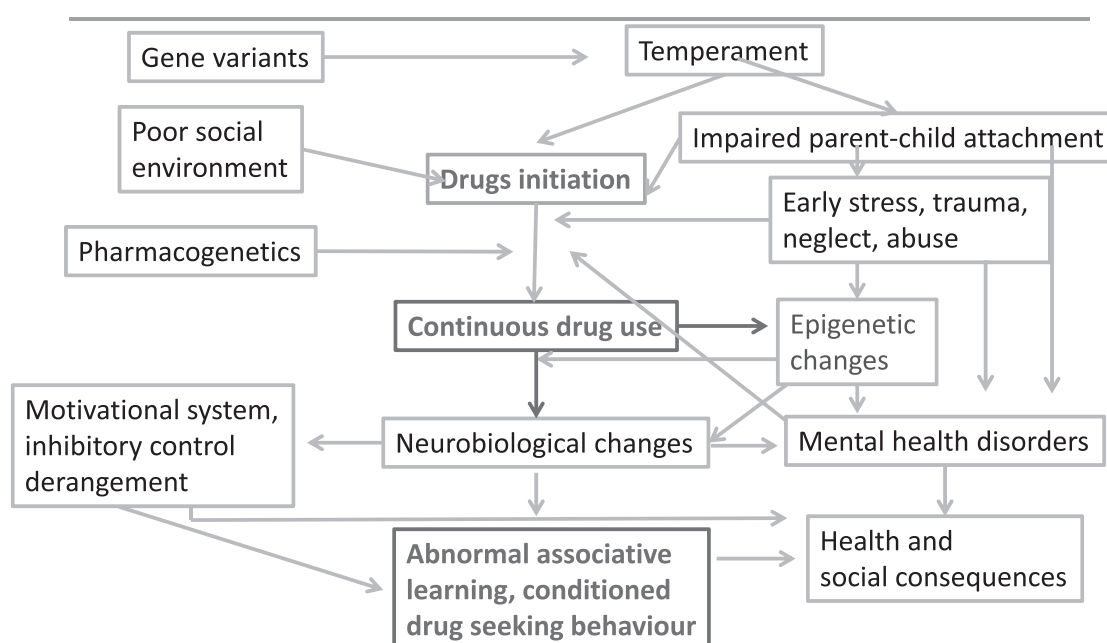
## Drug use disorders are a health issue

"Substance dependence is not a failure of will or of strength of character but a medical disorder that could affect any human being. Dependence is a chronic and relapsing disorder, often co-occurring with other physical and mental conditions"

(WHO, 2004)



## The biopsychosocial complexity of drug use disorders

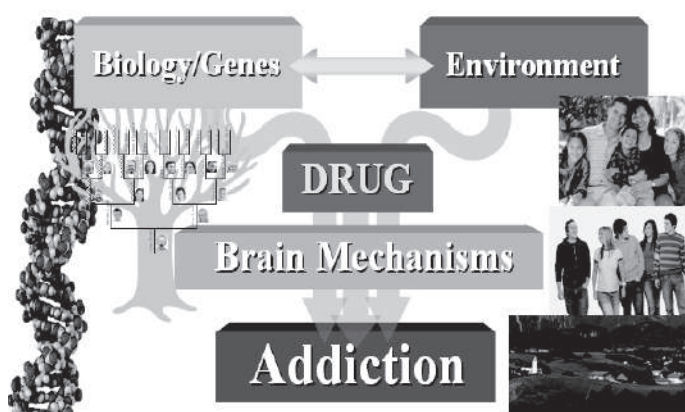




## Drug dependence – complex interaction

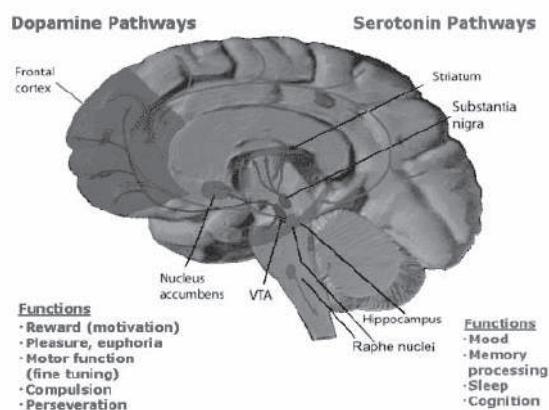
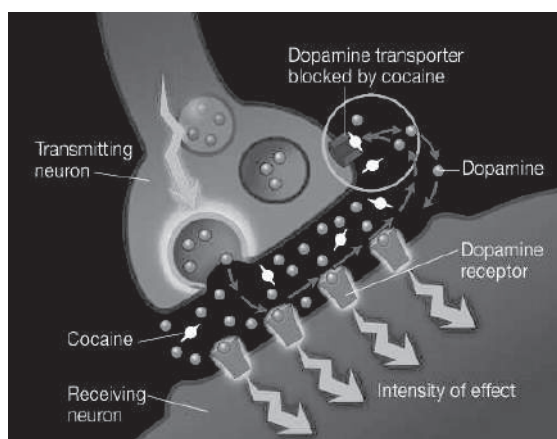
**Drug dependence is not the result of an informed free choice but the result of the influence of many vulnerabilities, risk and protective factors!**

### ADDICTION INVOLVES MULTIPLE FACTORS



## What happens in the brain?

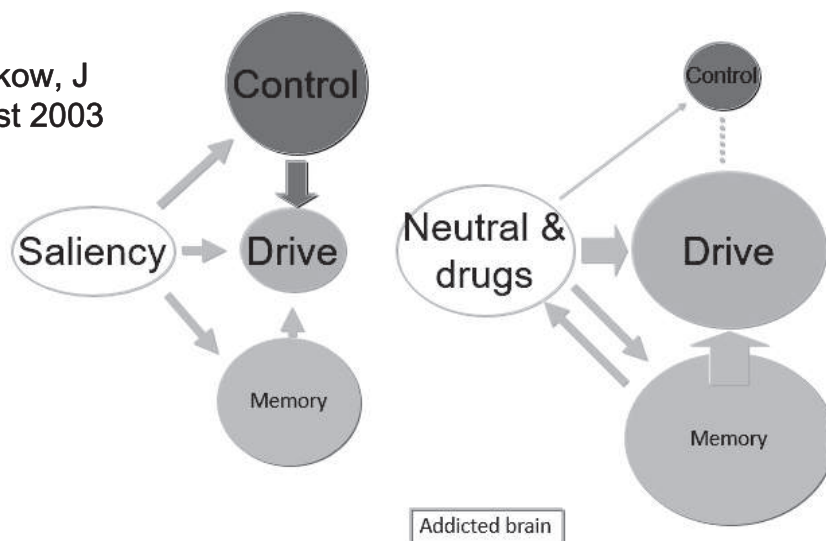
- Disbalance in the neurotransmitter system (dopamine/serotonin/noradrenalin)





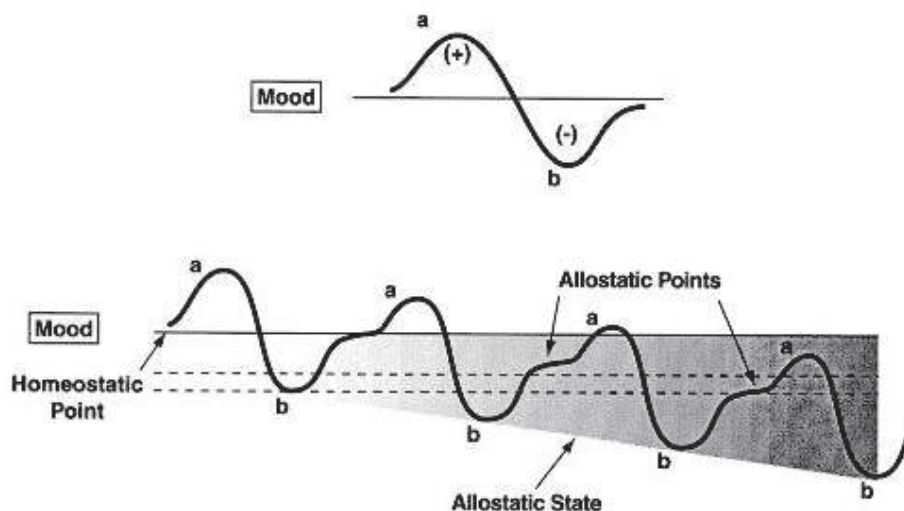
# Why do people not just stop using drugs?

Nora Volkow, J  
Clin Invest 2003



## Allostasis model – drug dependence

(Koob G)



## Stop stigma and ignorance

---

**Drug use disorders are not a free choice or moral failure**



Photo: Nick Danziger 2015 for WHO/UNODC

## Quality of treatment often low

---

- Many commonly used interventions do not follow scientific evidence: They are either ineffective or even harmful.
- Treatment should show evidence of symptom reduction, contribute measurably to physical, psychological and social functioning improvements and decrease the risk for negative health and social consequences from drug use.



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## PEOPLE WITH DRUG USE DISORDER EXCLUDED FROM...

public health system

Specialized health services

municipality  
services

primary care

community

employment

social  
assistance

school  
curricula

mental health  
care

Infectious  
disease  
services

university  
curricula



**Drug users in the street  
the patients who  
nobody wants**

**Stop Social  
exclusion**





**Stop human rights violations  
in the name of drug dependence treatment**



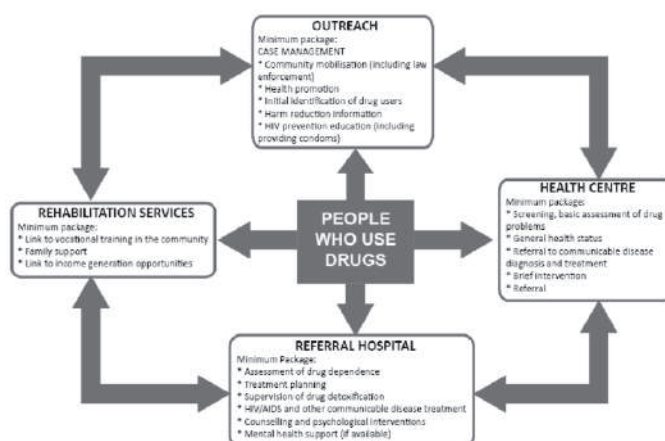
**Prison is  
no  
effective  
response  
to drug  
use  
disorders**



## Effective treatment services

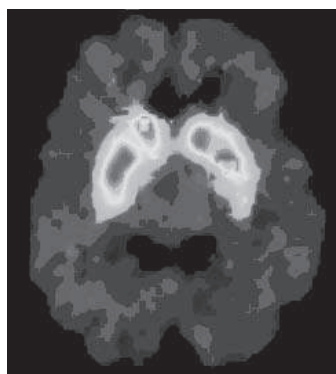
Treatment needs to be:

- Available
- Accessible
- Affordable
- Evidence-based
- Diversified
- *Attractive*

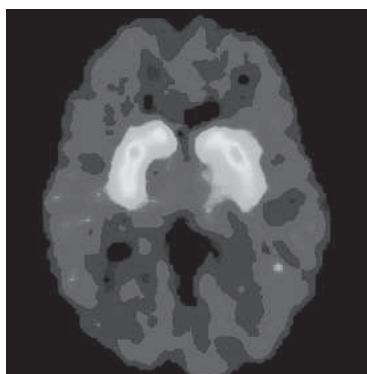


## DRUG DEPENDENCE CAN BE TREATED

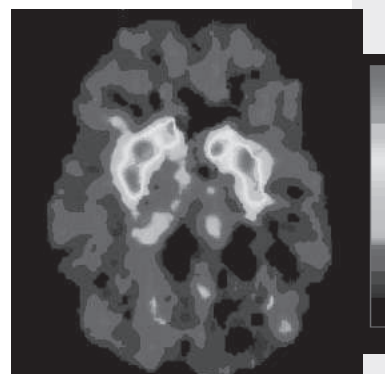
Partial Recovery of Brain Dopamine Transporters  
in Methamphetamine (METH)  
Abuser After Protracted Abstinence



Normal Control



METH Abuser  
(1 month detox)

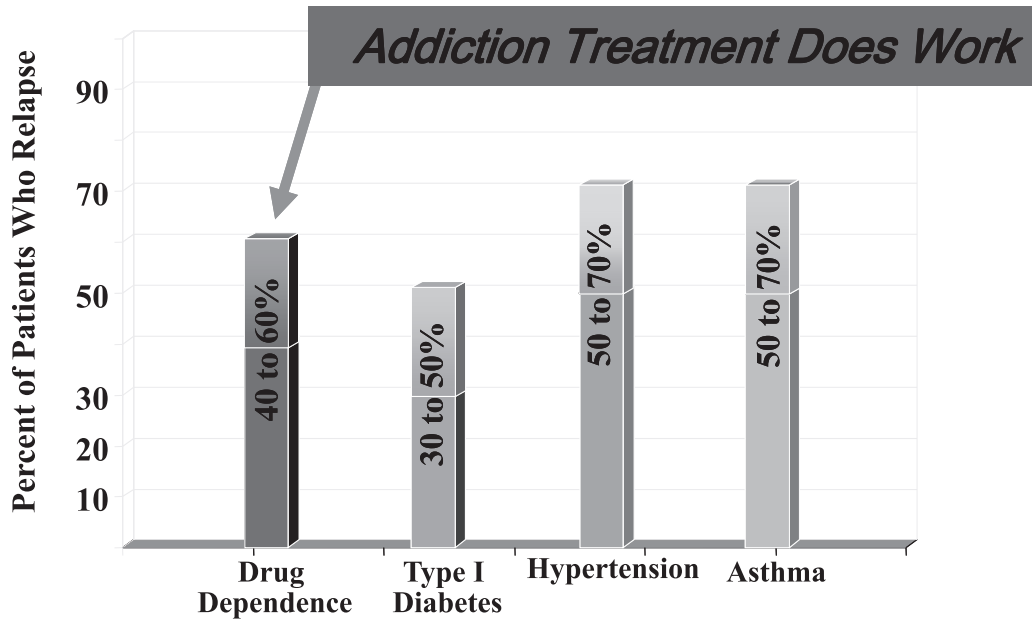


METH Abuser <sup>ml/gm</sup>  
(24 months detox)



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United Nations Office on Drugs and Crime

## Relapse Rates Are Similar for Drug Dependence And Other Chronic Illnesses

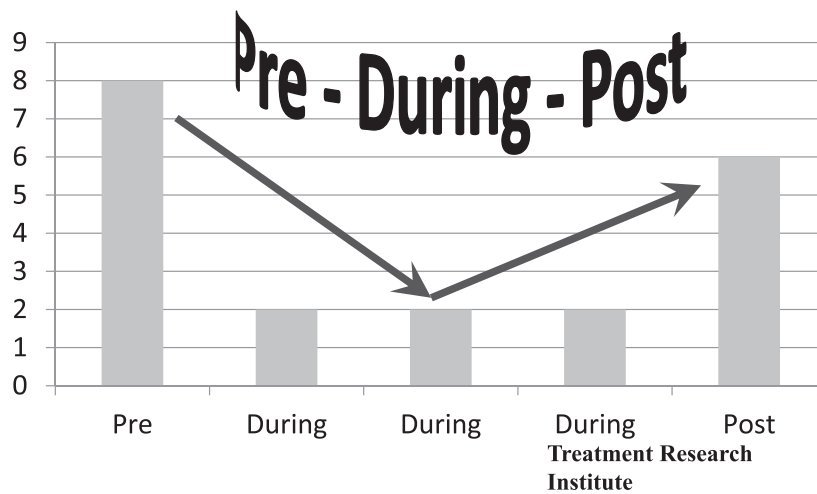


Source: McLellan, A.T. et al., JAMA, Vol 284(13), October 4, 2000.

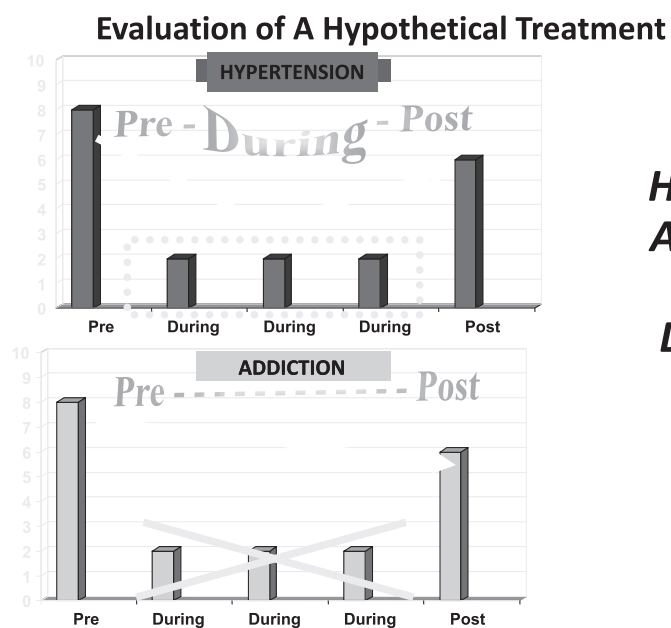
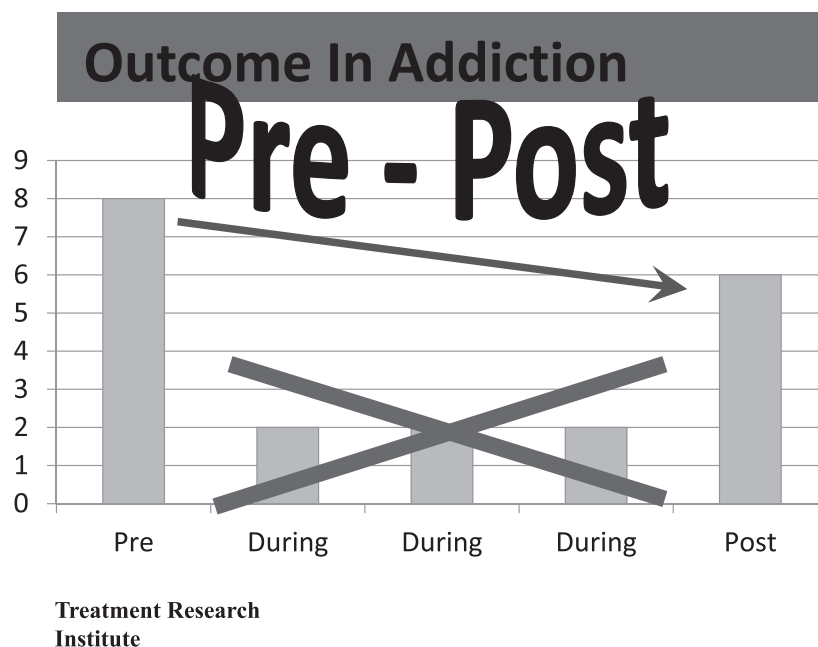


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## Outcome In Hypertension







***Just Like  
Hypertension,  
Addiction Is A  
Chronic  
Disease That  
Requires  
Continued  
Care***

Source: McLellan, AT, *Addiction* 2002.

# UNGASS 2016 Outcome document

- “We recognize drug dependence as a complex, multifactorial health disorder characterized by chronic and relapsing nature with social causes and consequences that can be prevented and treated...”

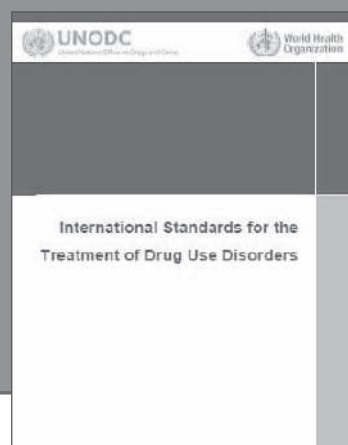


UNGASS  
2016

SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY  
ON THE WORLD DRUG PROBLEM

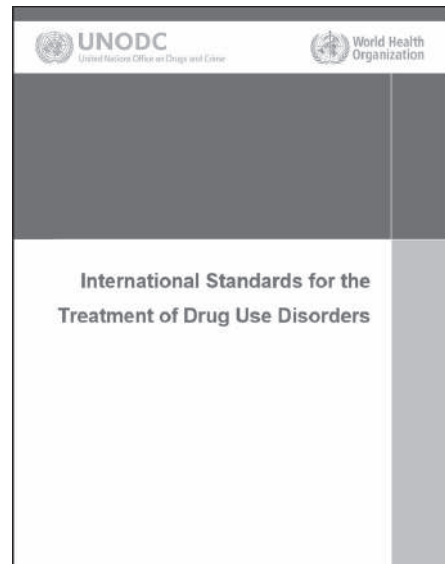
ACHIEVING THE 2019 GOALS - A BETTER TOMORROW FOR THE WORLD'S YOUTH

## 2. International Standards for the Treatment of Drug Use Disorders



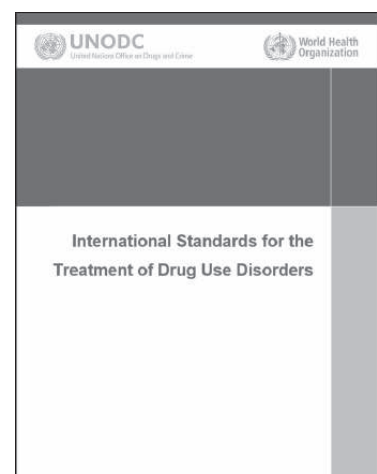
## Designed to support Member-States to develop and expand treatment services that are:

- Ethical
- Humane
- Evidence-based
- Compliant with human rights standards



## The Standards (2016) present ...

- A “walk-through” compendium of treatment settings and effective treatment interventions
- A framework to guide countries in the planning and delivery of services for the treatment of DUD

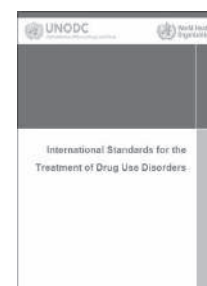


# Based on existing UNODC/WHO guidance

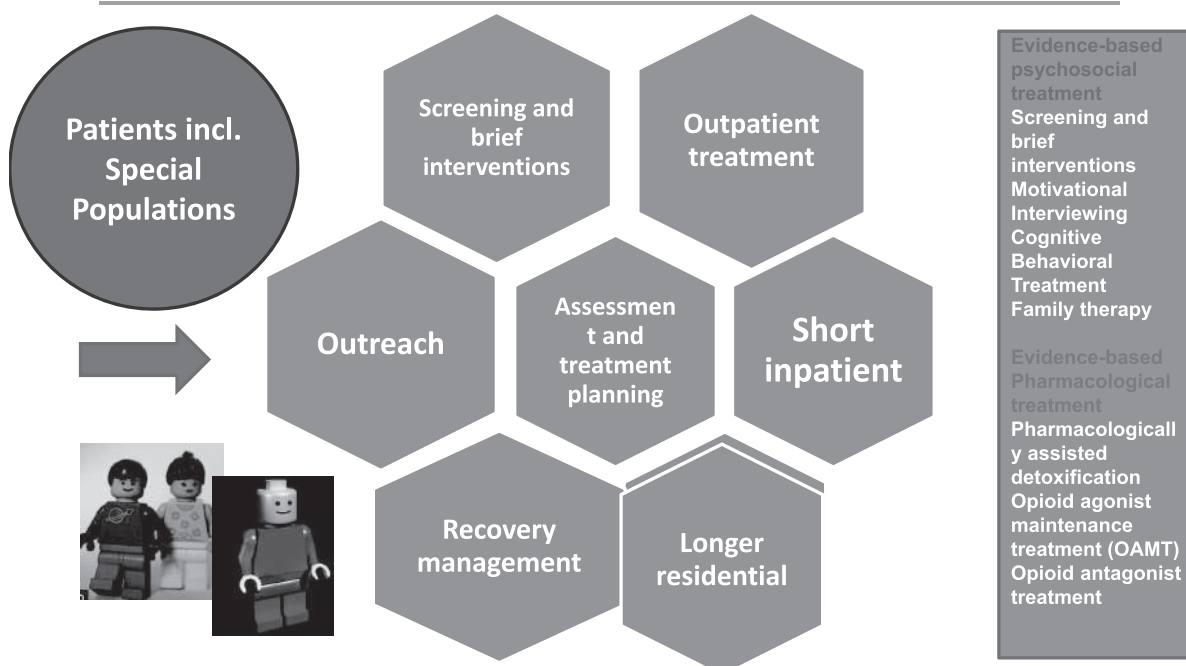


## Content

- 1. Introduction
- 2. Key principles for the Treatment of Drug Use Disorders
- 3. Treatment Modalities/Interventions by setting
  - Community Based Outreach
  - Screening, Brief Intervention and Referral to TX
  - Short term inpatient treatment
  - Longterm residential treatment
  - Recovery Management
- 4. Special Populations
- 5. Characteristics of an Effective Treatment System



## Variety of treatment options by settings



## Each chapter.....

- Setting
- Target Population/Clients
- Objectives/Goals
- Characteristics
- Treatment Models and Methods
- Rating of the strength of evidence
- Recommendations
- Staffing
- Criteria for intervention completion/ effectiveness/ referral



## Principles

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- Treatment must be available, accessible, attractive, and appropriate for needs
- Treatment must be based on scientific evidence and respond to individual needs
- Ethical/human rights standards in treatment services must be ensured

## Principles - continued

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- Treatment must respond to the needs of special subgroups and conditions
- Good clinical governance of treatment services to be ensured
- Effective coordination between the criminal justice system and health and social services is necessary
- Integrated treatment policies, services, procedures, approaches and linkages must be constantly monitored and evaluated

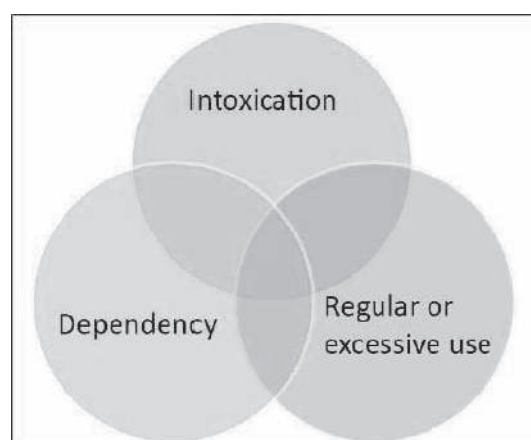


## Principles – some selected key points

- Treatment of drug use disorders belongs primarily in the **health** and social system – like any other biopsychosocial disorder
- Treatment policies and resource allocation should be developed in a **participatory** way based on **effectiveness**, universal health coverage
- Treatment staff needs to be adequately **trained**
- Treatment needs **informed consent** of the patient
- Patient data should be kept strictly **confidential**
- **Complaint mechanisms** are in place and patients have been informed

## Different stages of drug use disorders

- Intoxication
- Harmful use
- Dependence



Different interventions  
adjusted to addiction severity

# Outreach

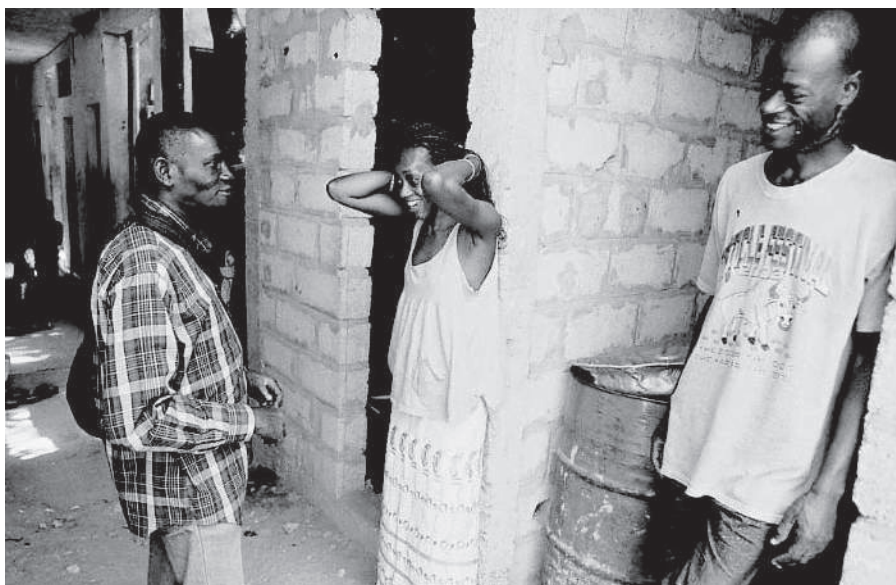


Photo: Nick Danziger 2015 for WHO/UNODC

## Community Based Outreach

- First point of contact with marginalized populations
- Provision of basic support (safety, food, shelter,...)
- First line (mental) health screening
- Overdose and infectious disease prevention
- Overdose management
- Education on drug effects and risks involved
- Referral to health and drug use disorder treatment
- *Evidence from quasi experimental and observational studies.*



## What makes services appealing at the first stage?

A strong outreach component  
volunteers, former drug users

Non judgemental  
Non confrontational

Coordinated with police,  
not to interfere

Low threshold  
counselling

Food, hygienic measures

Basic health care

Education

Harm reduction measures: help to survive

Pharmacological intervention



## Screening, brief interventions & referral



Photo: Nick Danziger 2015 for  
WHO/UNODC

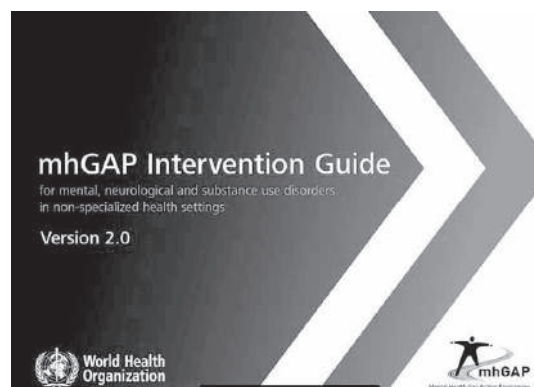
## Screening, Brief Intervention and Referral to Treatment (SBIRT)

- **S:** To identify people with drug use in non-specialized health care settings (primary care, emergency room,...), Standard self-report tools available (e.g. WHO ASSIST)
- **BI:** 5-30 min, enhance motivation to change, individualized feedback, advice, offer of follow up
- **RT:** more severe drug use identified, case managers/patient managers,
- *Evidence from RCTs that SBIRT can reduce drug use in non-dependent people*



## Brief Interventions can reduce drug use

- There is evidence from Randomized Clinical Trials (RCTs) that screening and brief intervention is effective in reducing drug use, in people who are not drug dependent.



## Short term inpatient treatment



## Short-Term Inpatient Treatment

- Mainly for medication-assisted management of withdrawal, pharmacological symptomatic treatment, initiation of maintenance treatment, short separation from environment, stabilization
- More resource intensive than outpatient, more likely to comply: Priority for people with greater severity and related health/social problems (opioid , alcohol, benzodiazepines, barbiturate withdrawal, co-occurring disorders), ca. 1-4 weeks
- 24 hour medical care available, Assessment (e.g. ASI), pharmacological TX, Rest, nutrition, motivational counseling, behavioral strategies (craving control), Referral to outpatient treatment

*RCT supported*



## Remember....

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- Detoxification alone is not effective treatment of drug use disorders

## Outpatient treatment

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Photo: Nick Danziger 2015 for WHO/UNODC





## Outpatient Treatment

- For majority of patients, less interruptive
- From higher to lower intensity (day clinic – weekly groups)
- Assessment, Treatment plan, Evidence-based pharmacological (symptomatic, opioid agonist & antagonist) and psychosocial (MI, CBT, MST,..) interventions
- Integration with other health and social services (HIV, TB, HepC, mental health, housing,...)
- *RCT evidence and WHO recommendations/guidelines*



## Evidence-based pharmacological treatment

- Withdrawal management
- Agonist maintenance TX
- Antagonist TX
- Symptomatic TX
- TX of co-occurring disorders



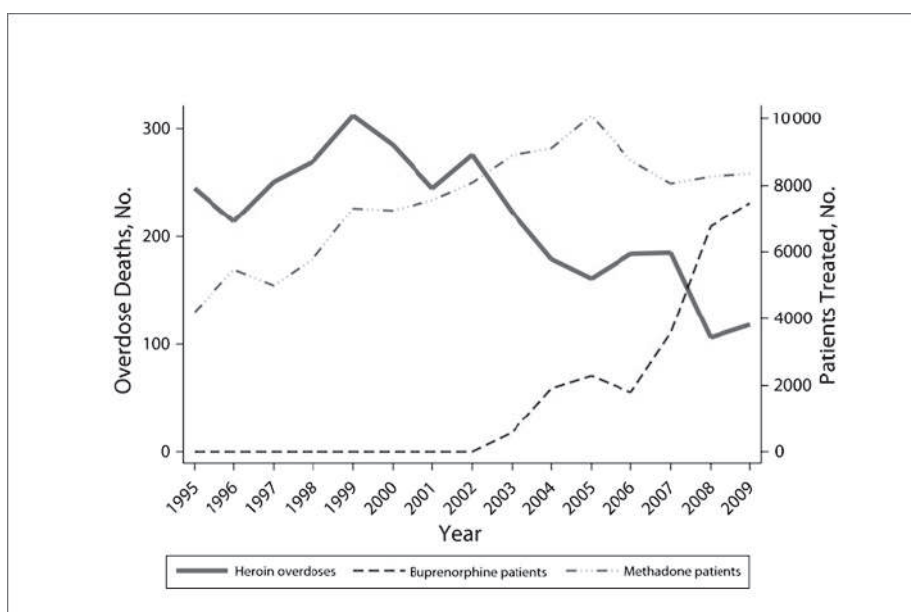
Photo: Nick Danziger 2015 for

## Evidence-based psychosocial treatment

- Counselling
- Motivational Interviewing
- Cognitive behavioral treatment
- Contingency management
- Family therapy



## Pharmacological treatment with opioid agonists decreases overdose rates (US,2013)



Schwartz RP et al. (2013)

## Long-term residential treatment - 1

- 3 months onsite minimum, hospital or TC (hybrid therapy/community living, self-help philosophy), Group/peers as therapeutic agent, professional staff (psychosocial & pharm interventions)
- Goal: break from chaotic/criminal environment, maintain abstinence, break from chaotic/criminal environment, structured activities, continue education/training, skills learning
- for more severe patients with unsuccessful past TXs that can adhere to rules



## Long-term residential treatment - 2

- Admission is VOLUNTARY (written consent of the patient!) - To be avoided: confrontation, shaming, punitive techniques, counter conditioning, shock therapy and any else against safety and dignity!
- Rules for acceptance and non-acceptance (Selection bias on outcomes needs to be considered)
- Plans for transition to community and continuity of care (overdose prevention risk)
- Cochrane (2006): Limited info on TC effectiveness, M&E important, RCTs on professional psychosocial/pharmacol. Treatment,

## Recovery support

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Photo: Nick Danziger 2015 for WHO/UNODC

## Recovery management

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- Social support to be provided throughout
- Recovery management in the community after stabilization to maintain positive outcomes and prevent relapse
- Includes employment, family, housing, mental health, meaningful community involvement, social network, remediation of legal/financial issues, self help, recovery check ups, recovery coaches,...
- Possibly lifelong but at decreasing/varying intensity and costs





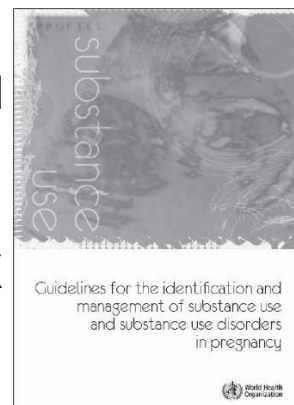
## Family support & community cohesion



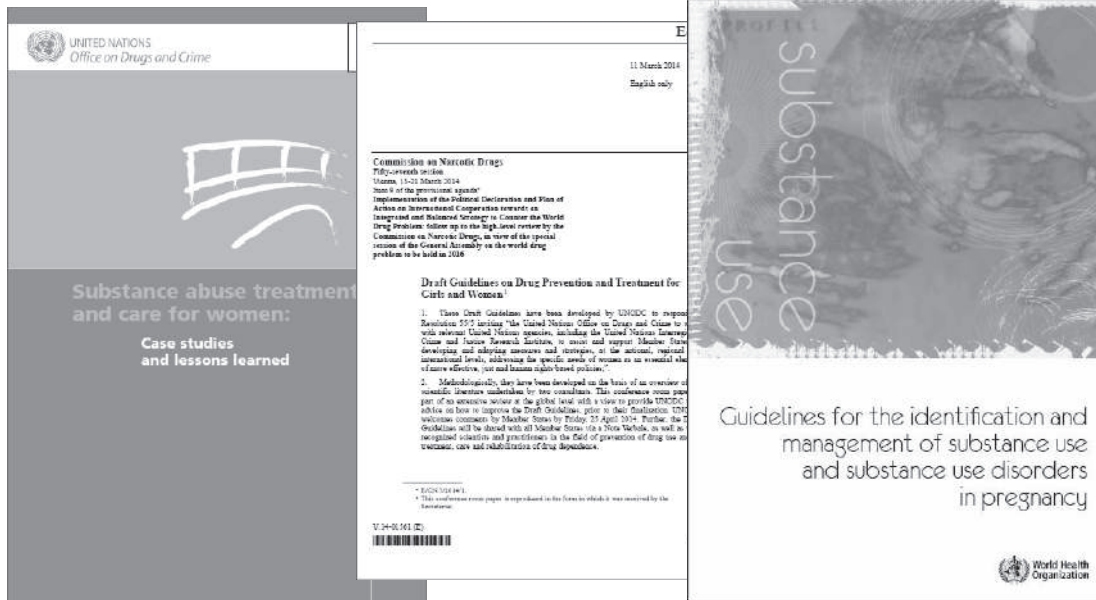
Photo: Nick Danziger 2015 for WHO/UNODC

## Special Populations -1-

- **Treatment of pregnant women:** gender specific services, non-judgmental, address obstacles for TX (childcare, transportation, legal limitations), pharmacological interventions especially for opioid use disorders to avoid withdrawal, parenting skills, breastfeeding case by case
- **Treatment of newborns exposed to opioids:** TX of neonatal abstinence syndrome, pharmacol (morphine/methadone) and non-pharmacol interventions (skin to skin contact, pacifier,..)
- WHO guideline



## Treatment for women



## Special Populations -2-

- **Treatment of children/adolescents**
- **Treatment and the criminal justice setting:**
  - focus on alternatives to criminal justice sanctions in adequate cases - referral to treatment (e.g. drug court, community corrections, halfway houses, supervised community treatment), matching TX intensity with addiction severity, address antisocial behaviors in TX
  - TX in prison: equity of services, continuum of care with community service providers, overdose prevention, TC in prison model supported by Cochrane review

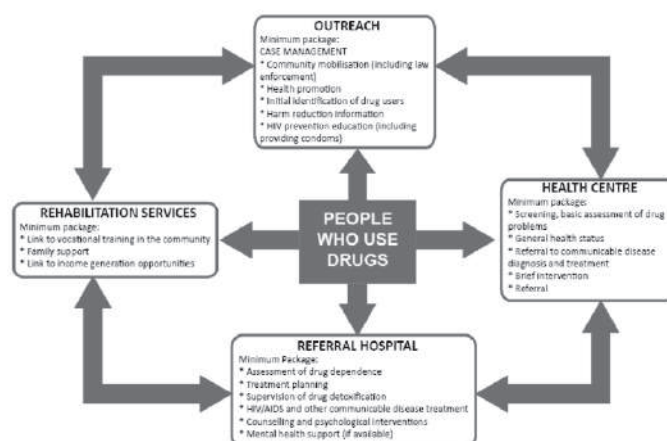




## Effective treatment systems to ensure

Treatment needs to be:

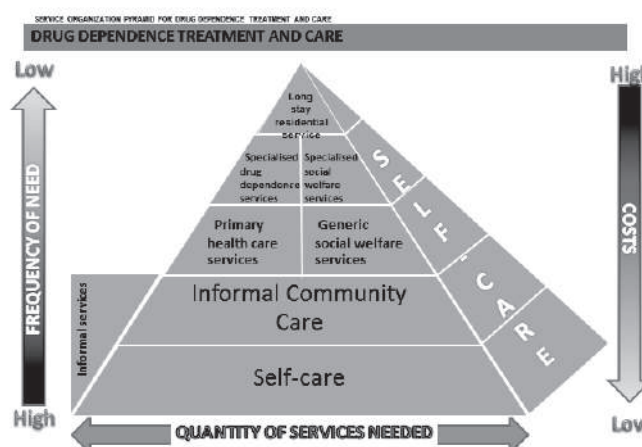
- Available
- Accessible
- Affordable
- Evidence-based
- Diversified
- Attractive



## Effective treatment systems

Public Health principle:

- The least invasive intervention with the highest level of effectiveness and the lowest cost
- Intensity and specialization of services to match patient addiction severity



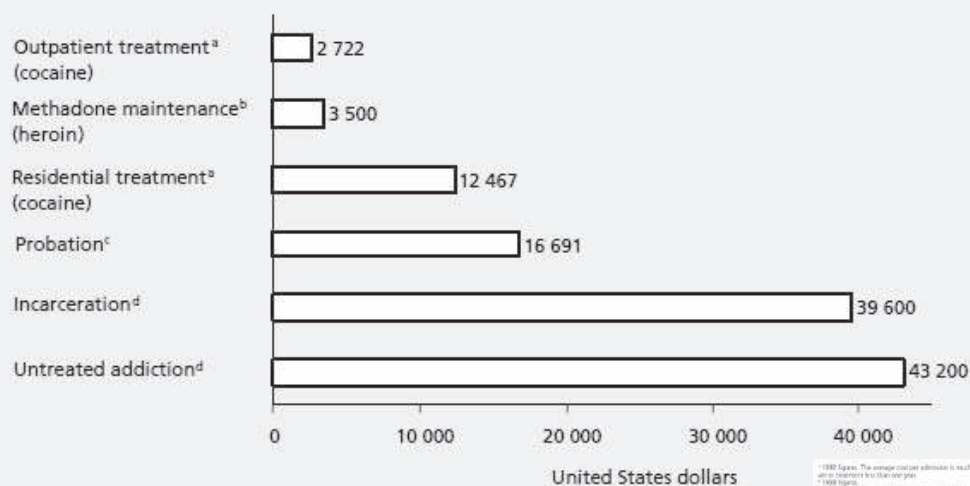


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## Treatment costs by modality

**Figure 1**

**Costs of drug abuse treatment in the USA per person, per year**  
(United States dollars)



**UNODC**  
United Nations Office on Drugs and Crime

## Savings by treatment modality



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Substance Abuse and Mental Health Services Administration  
Center for Substance Abuse Treatment  
[www.samhsa.gov](http://www.samhsa.gov)

April 2009

A comparison of medical expenses of Medicaid clients<sup>6</sup> who received treatment noted these savings:

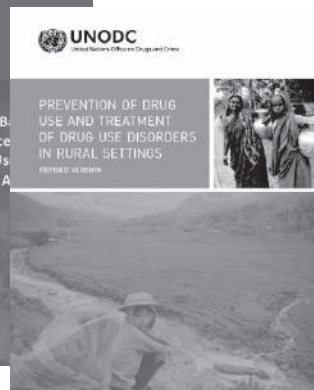
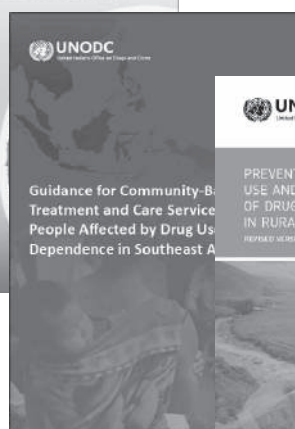
Modality	Savings per Medicaid member per month
Inpatient	\$170
Outpatient	\$215
Methadone	\$230



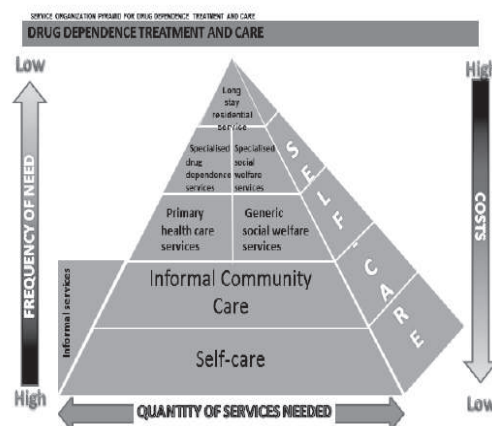
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**UNODC tools**

# Community-based treatment – invest resources where most needed



SPECIAL POPULATIONS SERIES



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United Nations Office on Drugs and Crime

## Service level & interventions -1-

Service level	Possible interventions
<b>Informal community care</b>	Outreach Self-help groups Informal support through friends and family
<b>Primary health care services</b>	Screening, brief interventions, basic health care, referral Continued support to people in treatment/contact with a specialized treatment service Basic health services including first aid, wound management
<b>Generic social welfare</b>	Housing/shelter Food Unconditional social support Ensuring access to more specialized health and social services as needed

## Service level & interventions -2-

<b>Specialized drug dependence treatment</b>	Assessment Case management Treatment planning Detoxification Psychosocial interventions Medication-assisted treatment Relapse prevention Recovery management services
<b>Specialised health care services</b>	Mental health treatment Internal medicine Dental treatment Treatment of HIV and Hep C

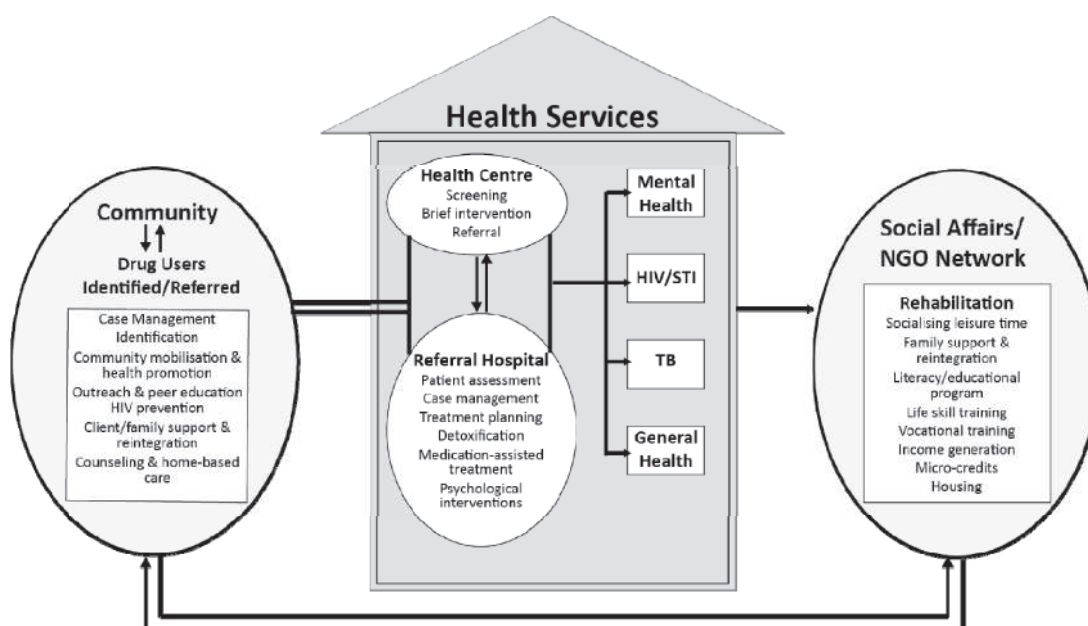
## Service level and interventions -3-

<b>Specialized social welfare services</b>	Family support and reintegration Vocational training/Education programmes Income generation/micro-credits Leisure time planning Recovery management services
<b>Long term residential service</b>	Housing Vocational training Protected environment Life skills training Ongoing therapeutic support Recovery management services

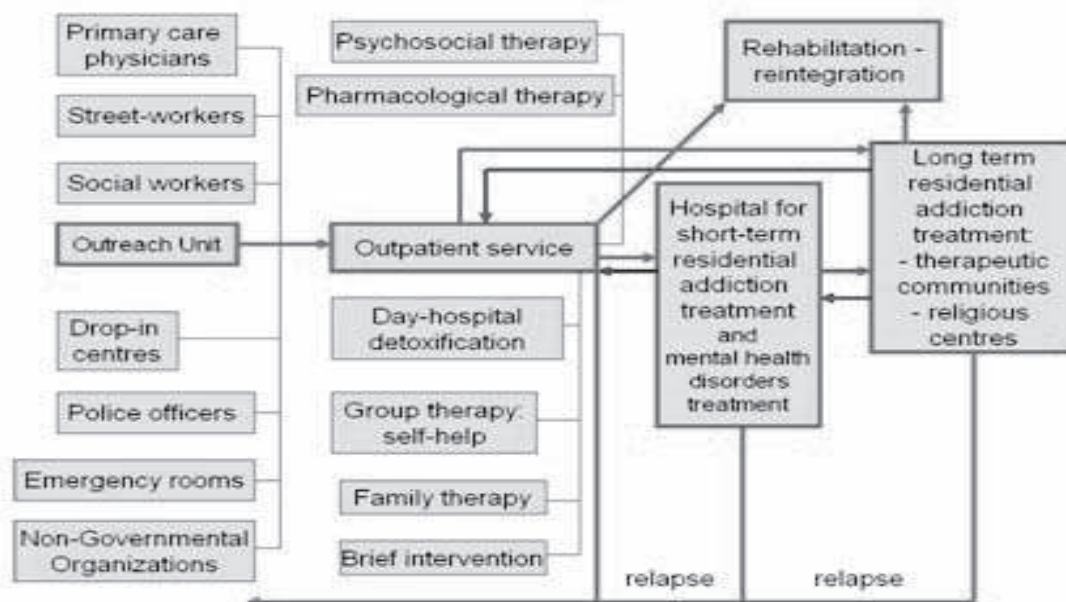
# Whether One Stop Shop ...



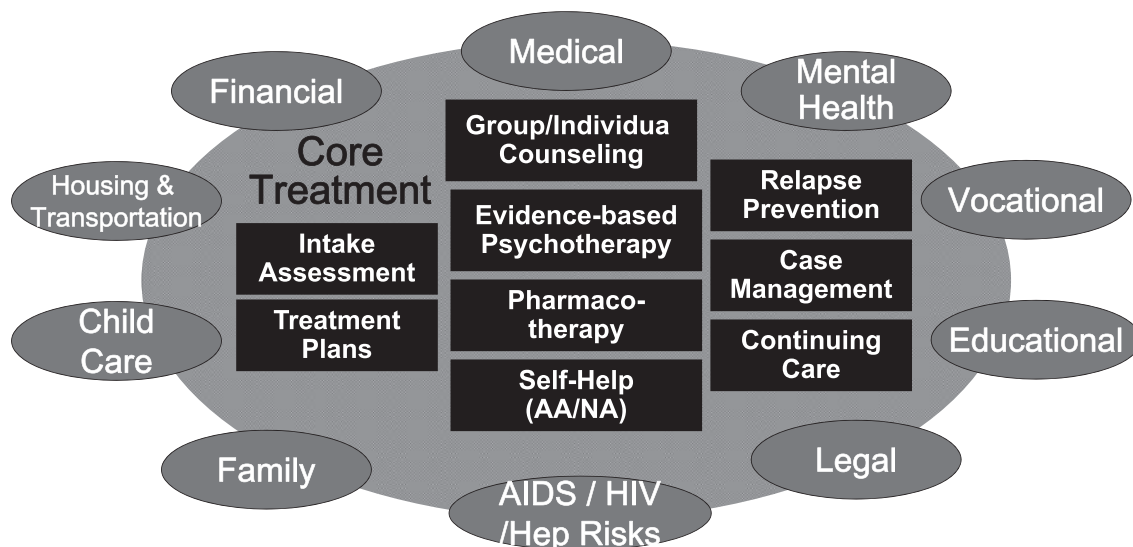
# ...or Community-Based Treatment and Care Network of services



## ...there should be no wrong door



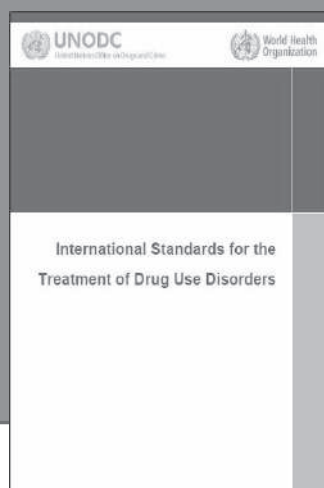
## Drug use disorder treatment: core components and comprehensive services



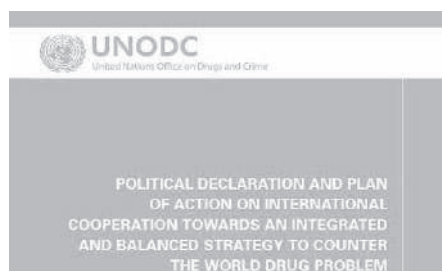
Etheridge, Hubbard, Anderson, Craddock, & Flynn, 1997 (PAB)



### 3. International Drug Policy framework

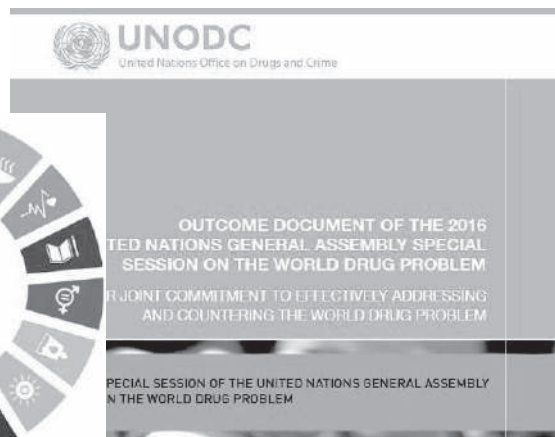
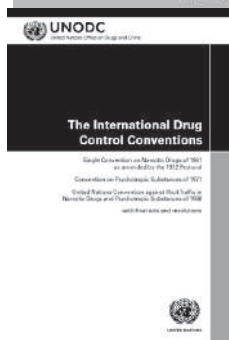


## International Policy Context



**Resolution 59/4**

**Development and dissemination of international standards for the treatment of drug use disorders**



# Post-2015 Development Agenda

## The Sustainable Development Goals



## Drug prevention and treatment on the development agenda



Ensure healthy lives and promote well-being for all at all ages

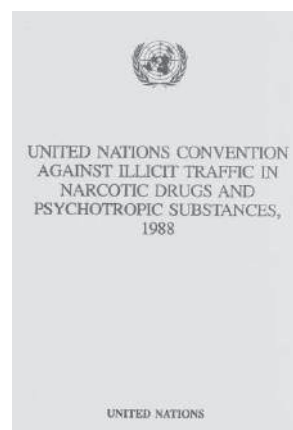
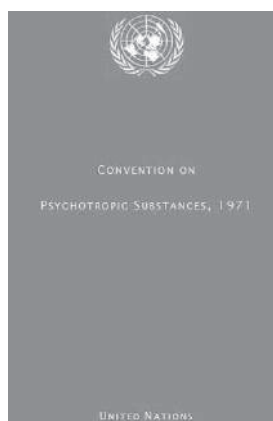
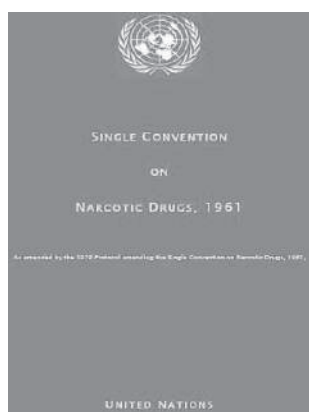
3.5. Strengthen the prevention and treatment of substance abuse including narcotic drug abuse and the harmful use of alcohol

## The right to health

- Enshrined in various (inter)national and regional treaties, conventions and regulations
- The implementation of the right to health is a subject closely related to drug control policies
  - The ultimate objective of drug control policies is to promote and protect public health
  - When the criminal justice comes into play, offenders with drug use disorders are not deprived of their right to access treatment



## International Drug Control Conventions (1961, 1971, 1988)



- UNGASS (1998)
- Political declaration and plan of action (2009 -2019)
- High level review of Political declaration and plan of action (2014)
- UNGASS (2016)

## The need to provide treatment

- “The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, aftercare, rehabilitation and social reintegration of the persons involved and shall coordinate their efforts to these ends.”
- Article 38 of the 1961 Convention and article 20 of the 1971 Convention



## Political Declaration and Plan of Action 2009

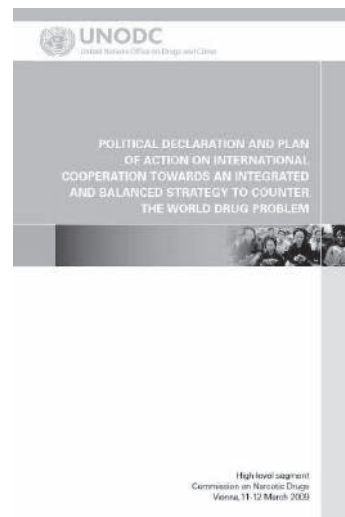
- CND expressed concern regarding the consequences of drug abuse and reaffirmed their commitment to addressing the problem
- CND reinstated its commitment to work towards universal access to comprehensive prevention programmes and treatment & care services
- CND requested UNODC to carry out its mandate in cooperation with relevant UN organisations



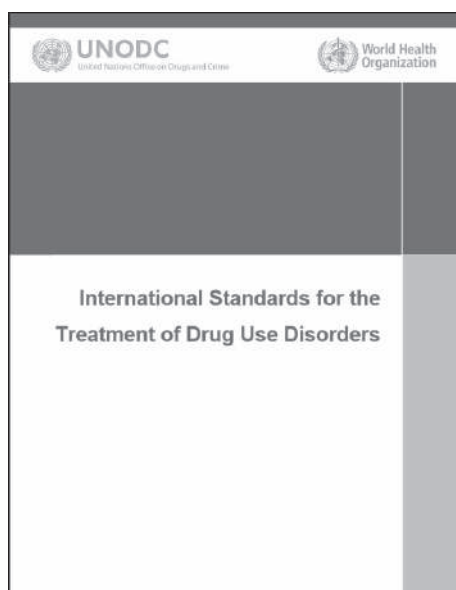
Political Declaration  
and Plan of Action 2009

## Request for health standards for demand reduction

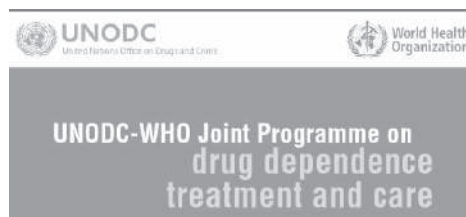
- CND recognized that a lack of quality standards hinder the effective implementation of demand reduction measures based on scientific evidence, therefore requesting the development and adoption of appropriate health-care standards.



## Development of the International Standards (2016)



- UNODC and WHO Standards as a guide for policy development
- Developed by a group of international experts from all regions





## CND Resolution 59/4: Development and dissemination of international standards for the treatment of drug use disorders (2016)

- CND expressed its appreciation for the Standards as a reflection of the best treatment practices for possible use in Member States
- CND encourages Member States to initiate systematic processes to adopt the Standards, and to create national standards for the accreditation of services to ensure a qualified and effective response to DUDs



## UNGASS on the World drug problem (2016)





## UNGASS 2016 recommendations

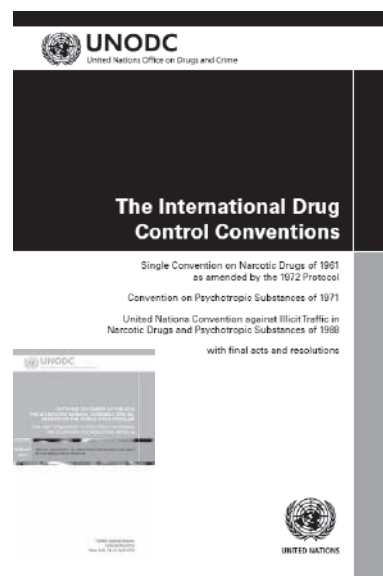
The outcome document of the special session of the General Assembly on the world drug problem held in 2016 contains more than 100 recommendations on promoting evidence-based prevention, care and other measures to address both supply and demand.

THE SPECIAL SESSION	PAGE 2	DRUGS AND HUMAN RIGHTS	PAGE 17
DEMAND REDUCTION, PREVENTION, TREATMENT, HIV/AIDS	PAGE 6	EMERGING AND PERSISTENT CHALLENGES AND THREATS	PAGE 21
AVAILABILITY AND ACCESS	PAGE 9	INTERNATIONAL COOPERATION	PAGE 25
SUPPLY REDUCTION	PAGE 11	ALTERNATIVE DEVELOPMENT	PAGE 29

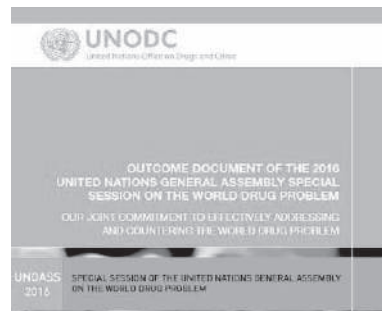


## International Drug Control Conventions and UNGASS 2016

*We underscore that the Single Convention on Narcotic Drugs of 1961 (..) the Convention on Psychotropic Substances of 1971, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and other relevant international instruments constitute the cornerstone of the international drug control system*



# TREATMENT RECOMMENDATIONS



Thirtieth Special Session  
General Assembly  
New York, 19-21 April 2016

- © Nick Danziger 2015

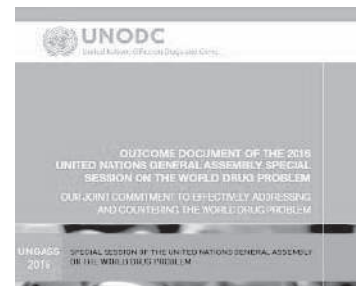
# TREATMENT RECOMMENDATIONS



- Recognize drug dependence as a complex, multifactorial health disorder
- Promote Treatment Quality Standards and supervision
- Develop and strengthen TX capacity
- Develop and implement diversity of treatment interventions
- Ensure (non-discriminatory) access to treatment, health and social services and mainstream gender and age perspective
- Treatment as an alternative to conviction/punishment and treatment in prisons
- Promote prevention and treatment of drug overdose, in particular opioid overdose
- Promote cooperation and partnership

## Recognize drug dependence as a complex, multifactorial health disorder

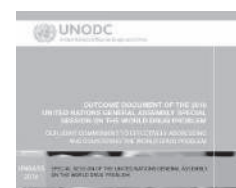
- characterized by a chronic and relapsing nature with social causes and consequences
- Prevented and treated through scientific evidence-based drug treatment, care and rehabilitation



Thirtieth Special Session  
 General Assembly  
 New York, 19-21 April 2016

## Diversity of treatment interventions

- Develop and implement outreach programmes
- prevention, early intervention, treatment (psychosocial, behavioural and medication-assisted treatment) , care, rehabilitation and social reintegration
- Assistance for effective reintegration into the labour market and other support services



Thirtieth Special Session  
 General Assembly  
 New York, 19-21 April 2016

## Ensure access to treatment and gender and age perspective

- Ensure non-discriminatory access to a broad range of interventions, including psychosocial, behavioural and medication-assisted treatment, rehabilitation, social reintegration, recovery support
- Special attention to needs of women, children and youth
- Develop and disseminate gender-sensitive and age-appropriate measures



Third High Level Panel of Experts  
Report on the Global Drug Problem  
New York, 19-21 April 2019

## Develop and strengthen TX capacity

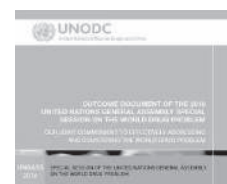
- Take measures to facilitate access to treatment and expand treatment capacity
- of health, social and law enforcement and other criminal justice authorities, within their mandates, to cooperate in the implementation of comprehensive, integrated and balanced responses to drug abuse and drug use disorders
- Strengthen capacity for aftercare and rehabilitation
- Intensify the meaningful participation of and support training for civil society



Third High Level Panel of Experts  
Report on the Global Drug Problem  
New York, 19-21 April 2019

## Overdose prevention and treatment

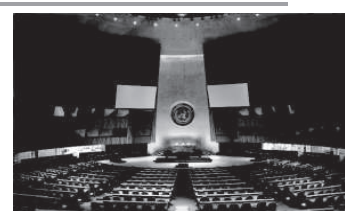
- Promote inclusion in national drug policies of elements of prevention and treatment of drug overdose, in particular opioid overdose, including the use of opioid receptor antagonists such as naloxone to reduce drug-related mortality



Themed Special Session  
General Assembly  
New York, 29-31 April 2016

## Promote Treatment Standards

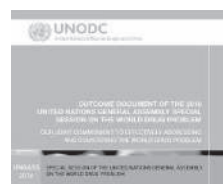
- Promote and implement the standards on the treatment of drug use disorders developed by the United Nations Office on Drugs and Crime and the World Health Organization and other relevant international standards,(...)
- and provide guidance, assistance and training to health professionals on their appropriate use,
- and consider developing standards and accreditation for services at the domestic level to ensure qualified and scientific evidence-based responses



Themed Special Session  
General Assembly  
New York, 29-31 April 2016

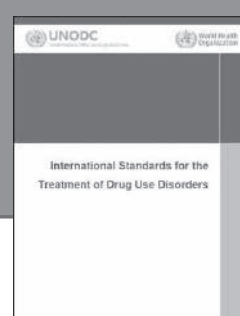
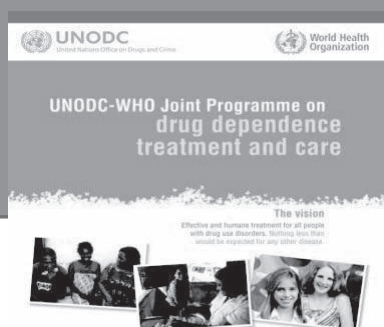
## Promote supervision of treatment

- Promote effective supervision of drug treatment and rehabilitation facilities by competent domestic authorities to ensure adequate quality of drug treatment and rehabilitation services and to prevent any possible acts of cruel, inhuman or degrading treatment or punishment, in accordance with domestic legislation and applicable international law;



Third United Nations  
General Assembly  
New York, 19-21 April 2011

## 4. Field testing and implementation of the treatment standards





## Key objective – Field testing

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Test the

- applicability,
- comprehensiveness,
- clinical and public health utility
- suitability for the development of national clinical guidelines and standards

of the “International Standards for the Treatment of Drug Use Disorders”, and finalize the standards based on the results of field testing.

## Field testing sites:

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- Treatment services and programmes affiliated with WHO Collaborating Centres on Management of Drug Dependence
- Treatment services and programmes affiliated with the *UNODC-WHO Program on Drug Dependence Treatment and Care* and related collaborative activities;
- Treatment services and programs with a mix of drug use patterns (opioid, stimulants, cannabis) and a situated in a range of socioeconomic (low income, middle and high-income) settings from different regions

## Requirements for field testing sites:

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- Capacity to test at least 2 treatment modalities and settings;
- Recognized status of treatment provider for substance use disorders at national level;
- Identified in consultation with WHO governmental focal points for substance abuse and UNODC counterparts at national level

## Field testing steps

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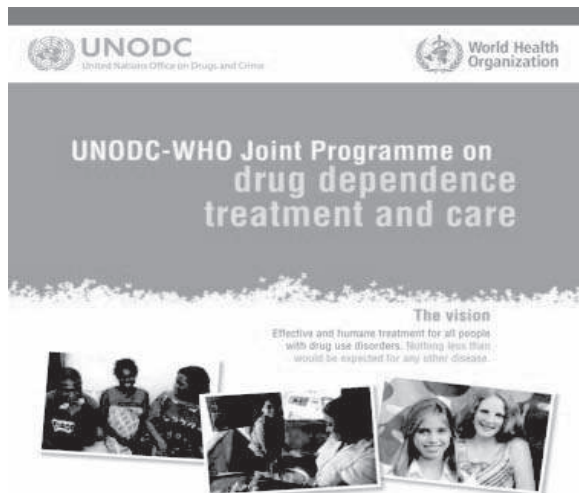
- **Data collection**
  - 4a. Development of assessment instruments (checklists) and procedures for treatment systems and particular treatment modalities as well as reporting forms in line with field testing protocol
  - 4b. Implementation of WHO Datacol-based survey of key professionals from the identified field testing sites (survey instrument to be developed and, whenever necessary, translated).
  - 4c. Focus groups on standards for particular treatment modalities organized with involvement of managers, clinicians and service users. Each field testing site will be required to conduct at least 2 focus groups following the field testing protocol.
  - 4d. Analysis and compilation of national data and development of recommendations from field testing site



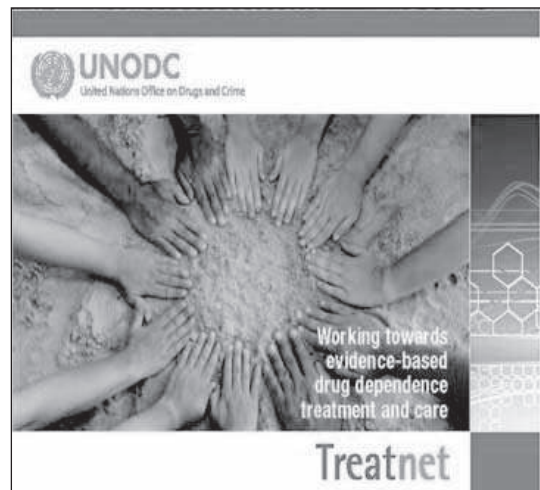
**UNODC**  
United Nations Office on Drugs and Crime

**UNODC tools**

## From science to policy to practice: Implementing the Standards



GLOK32



GLOJ71

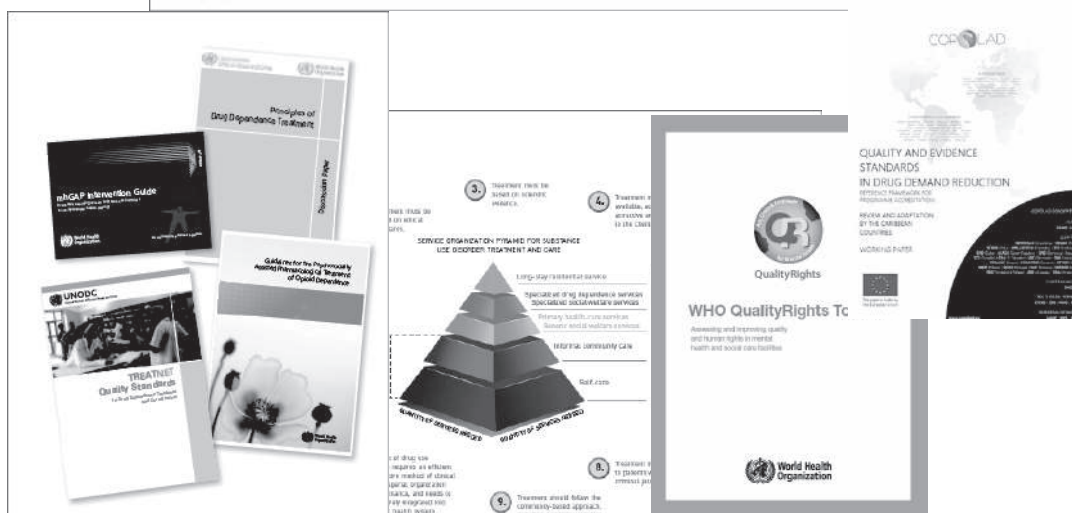
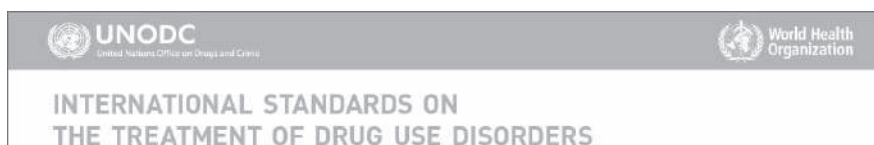


**UNODC**  
United Nations Office on Drugs and Crime

## Working with national governments to review and develop national treatment standards

- Process initiated by the relevant body, usually the MoH, including relevant experts in the country
- Development/review of national standards and checklist
- Assessment of treatment centres in the country based on both the draft international standards and the new national standards

# Quality Standards on the Treatment of Drug Use Disorders



## Development of Quality Assurance tools

### International expert group: Nov 2016

- International expert group convened Vienna Nov 2016
- Group made recommendations to structure and content of quality assurance tools
- Draft Drug treatment system and standard QA tools agreed March 2017




### Afghanistan Pilot of QA tools


- Afghanistan Pilot project began May 2017 with Multi-sectorial task force meeting
- QA tools adapted for Afghanistan pilot June 2017



# Mapping of treatment services



**World Health Organization**



**UNODC**  
United Nations Office on Drugs and Crime

Mapping tool for substance abuse treatment facilities

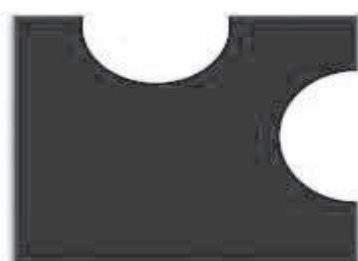
September 2015

C* On-site service availability	Tick if available and specify (multiple responses)
Management of withdrawal	<input type="checkbox"/>
Opioid agonist maintenance treatment (i.e. methadone or buprenorphine)	<input type="checkbox"/>
Short psychosocial support (less than 2 weeks)	<input type="checkbox"/>
Longer duration psychosocial support (more than 2 weeks)	<input type="checkbox"/> If yes, specify the most common form of psychosocial treatment: <ul style="list-style-type: none"> <li>• Cognitive behavioural therapy <input type="checkbox"/></li> <li>• Motivational enhancement therapy <input type="checkbox"/></li> <li>• Contingency management <input type="checkbox"/></li> <li>• Family therapy <input type="checkbox"/></li> <li>• Group counselling <input type="checkbox"/></li> <li>• 12 step facilitation <input type="checkbox"/></li> <li>• Individual counselling <input type="checkbox"/></li> <li>• Other (please specify): <input type="text"/></li> </ul>
Employment/income generation support	<input type="checkbox"/>
Housing/shelter support	<input type="checkbox"/>
Outreach services to street-based substance users	<input type="checkbox"/>
Provision of sterile injecting equipment to injecting drug users	<input type="checkbox"/>
On-site pharmacy (supervised medication dispensing)	<input type="checkbox"/>
On-site testing for HIV	<input type="checkbox"/>
On-site testing for hepatitis C	<input type="checkbox"/>
On-site ART treatment of HIV/AIDS	<input type="checkbox"/>
On-site treatment of hepatitis C	<input type="checkbox"/>
Services specifically for women	<input type="checkbox"/>
Services specifically for adolescents with SUD* (15-18 years)	<input type="checkbox"/>
Services specifically for children with SUD* (4-11 years)	<input type="checkbox"/>
Other services (please specify)	<input type="text"/>

SUD\* substance use disorders

# Quality assurance

## System and service standards



**SYSTEM**



**SERVICE**

**UNODC/WHO International Standards for Drug Use Disorders covers system and service level standards**





**UNODC**  
United Nations Office on Drugs and Crime

## System standards to encourage system planning, funding & monitoring in line with WHO/UNODC

**System 1** A local strategic partnership group plans and co-ordinates the local drug treatment system in line with UN/WHO 'International Standards'

**System 2** There is a routine local assessment of need for drug treatment

**System 3:** There is a local 3-5 year strategic plan for a drug treatment system in line with 'International Standards'

**System 4** Drug treatment is planned and funded in line with 'International Standards'

**System 5** Local planners and funders support on-going system quality improvement

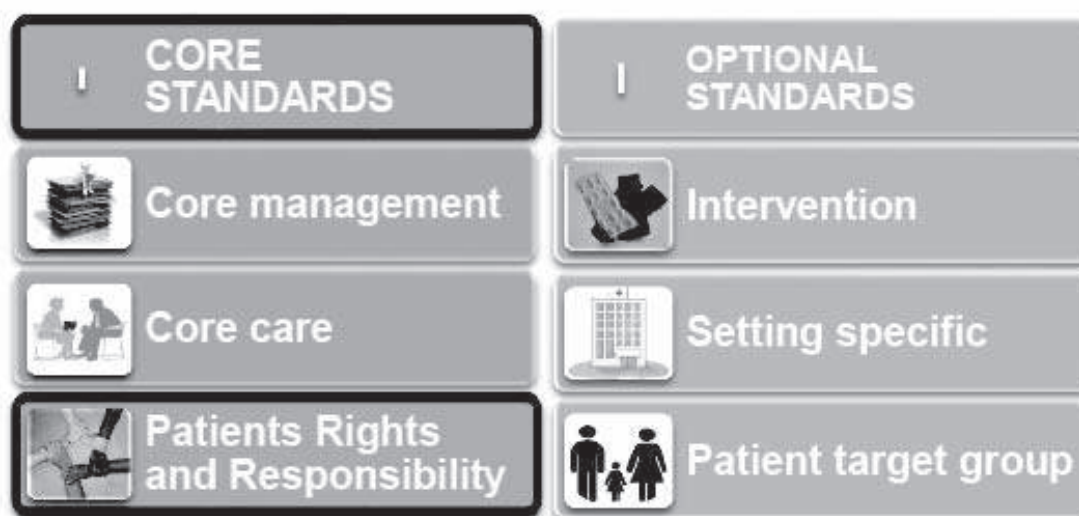


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United Nations Office on Drugs and Crime

## Drug treatment service standards (QA)







## Service level score cards

Standard	Criteria A	Criteria B	Criteria C	Criteria D	Criteria E	Criteria F	Criteria G	Criteria H	Criteria I	Criteria J	Criteria K
<b>Core management</b>											
CM1											
CM2											
CM3											
CM4											
CM5											
CM6											
CM7											
CM8											
CM9											
CM10											
<b>Core Care</b>											
CC1											
CC2											
CC3											
CC4											
CC5											
<b>Patients rights &amp; responsibilities</b>											
PR1											
<b>Interventions</b>											
INT1											
INT2											
INT3											
INT4											
INT5											
INT6											
<b>Setting specific</b>											
SET1											
SET2											
<b>Target specific</b>											
TAR1											
TAR2											
TAR3											
TAR4											

An example  
Drug treatment  
service  
scorecard

8



## Quality assurance cycle

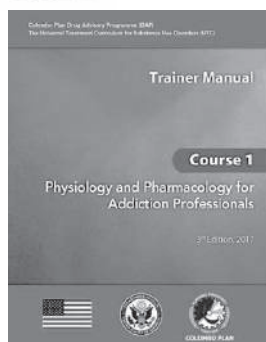


## Complimentary clinical training tools



### mhGAP training manuals

For the mhGAP intervention guide for mental, neurological and substance use disorders in non-specialized health settings – version 2.0 (for field testing)



### Basic Volume



Elements of Drug Dependence Treatment

For participants

For trainers

### Volume A



Basics of Addiction, Screening, Assessment, Treatment Planning and Care Coordination

For participants

For trainers

### Volume B



Elements of Psychological Treatment

For participants

For trainers

### Volume C



Pharmacological Treatment for Drug Use Disorders

Drug Treatment for Special Populations

For participants

For trainers

### Volume D



Management of Drug Dependence Treatment Services

For participants

For trainers

### Volume E



Therapeutic Community: An approach to drug treatment

For participants

For trainers

## Workshops with policy makers on different levels

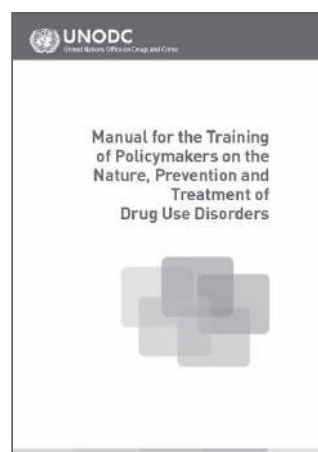
- El sistema internacional de control de drogas
- Naturaleza de los trastornos por consumo de drogas
- Prevención
- Tratamiento
- Epidemiología
- Planificación de sistemas eficaces

### Manual for the Training of Policymakers on the Nature, Prevention and Treatment of Drug Use Disorders

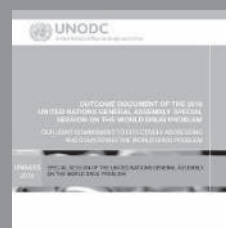


## Science and policy and civil society

- The United Nations Informal Scientific Network on Drug Demand Reduction.
- Training Package for Policy Makers on DDR issues.



# In conclusion....



# Improving access to evidence-based treatment for drug use disorders – for public health (and public safety....)

## UNODC support

UNODC continues to work closely with its partners to assist countries in implementing the recommendations contained in the UNGASS outcome document, in line with the international drug control conventions, human rights instruments and the 2030 Agenda for Sustainable Development.





**Thank you!**

[anja.busse@un.org](mailto:anja.busse@un.org)

[www.unodc.org/treatment](http://www.unodc.org/treatment)

[http://www.unodc.org/unodc/en/drug-  
prevention-and-  
treatment/publications.html](http://www.unodc.org/unodc/en/drug-prevention-and-treatment/publications.html)



# Treatment for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment

Anja Busse  
Prevention, Treatment and  
Rehabilitation Section  
United Nations Office on Drug and  
Crime  
[anja.busse@un.org](mailto:anja.busse@un.org)



## Overview of presentation

1. UNODC-WHO Initiative and publication
  - **Chapter 1.** Scope of the problem and reasons to consider the provision of treatment as an alternative to conviction or punishment
  - **Chapter 2.** Choosing treatment and care in line with the international legal framework
  - **Chapter 3.** Treatment and care for offenders with drug use disorders
  - **Chapter 4.** Diversion options to treatment as an alternative to conviction or punishment



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## UNODC-WHO initiative: Treatment and Care of Persons with Drug Use Disorders in Contact with the Criminal Justice System



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## Alternatives to conviction or punishment

- Compilation of experiences and practices from around the world – **Please share!**
- Expert consultations (October 2016 and 2017)
- Development of handbook



## Preliminary findings (49 countries reported)

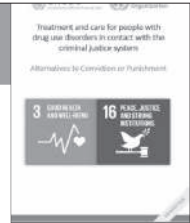
- 63 % of countries: provision of treatment for drug using offenders as alternative to criminal justice sanctions (ARQ data)
- Ca. **40%** of countries (N=49) report such measures **during trial** (usually at sentencing stage)
- Ca. **33%** of countries report measures at **pre-trial stage**, the usually as diversion from prosecution
- Less than **20%** countries indicate treatment as alternative at **post-sentencing** stage (eg early conditional release)
- Some (6) countries reported on drug courts

## Launch at 59<sup>th</sup> session of Commission on Narcotic Drugs 2016

Launched by UNODC and WHO at 59<sup>th</sup> session of Commission on Narcotic Drugs 2016, in response to **CND resolution 58/5** entitled:

*“Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction and punishment for appropriate drug related offences of a minor nature”*





## Purpose

- Enhance potential for alternative measures to conviction or punishment in line with conventions
- Provide knowledge regarding treatment and care alternatives to policy makers for people in contact with justice for substance use.
- Inform criminal justice actors on treatment and care for substance use disorders.
- Encourage coordination of health sector and justice system sectors.

## Outline of document

- **Chapter 1.** Scope of the problem and reasons to consider the provision of treatment as an alternative to conviction or punishment
- **Chapter 2.** Choosing treatment and care in line with the international legal framework
- **Chapter 3.** Treatment and care for offenders with drug use disorders
- **Chapter 4.** Diversion options to treatment as an alternative to conviction or punishment

## CHAPTER 1 Scope of the problem and reasons to consider the provision of treatment as an alternative to conviction or punishment



**Why to consider treatment as an alternative to conviction or punishment for people with drug use disorders in contact with the criminal justice system?**

## 5 rationales suggested



**R1. Many people with drug use disorders are in contact with the criminal justice system and many people in the criminal justice system have a history of drug use and drug use disorders**



## Global prison population

- On any given day, more than **10.2 million people** are held in penal institutions throughout the world  
(WDR, 2015)
- Although women make up less than 10% of the world's prisoners, the **female prison population** is increasing at a much faster rate than that of the male prison population (50% increase since 2000, compared to 18% in men).
- **People who use drugs** often have a history of incarceration (WDR 2015), increasing further their vulnerability to infectious diseases



## Drug use in prison (WDR 2017)



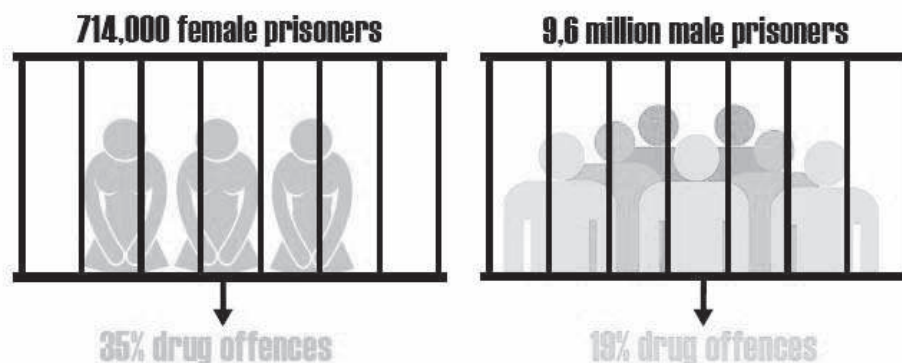
Cannabis, Heroin, IDU



## Drug use – prison -community

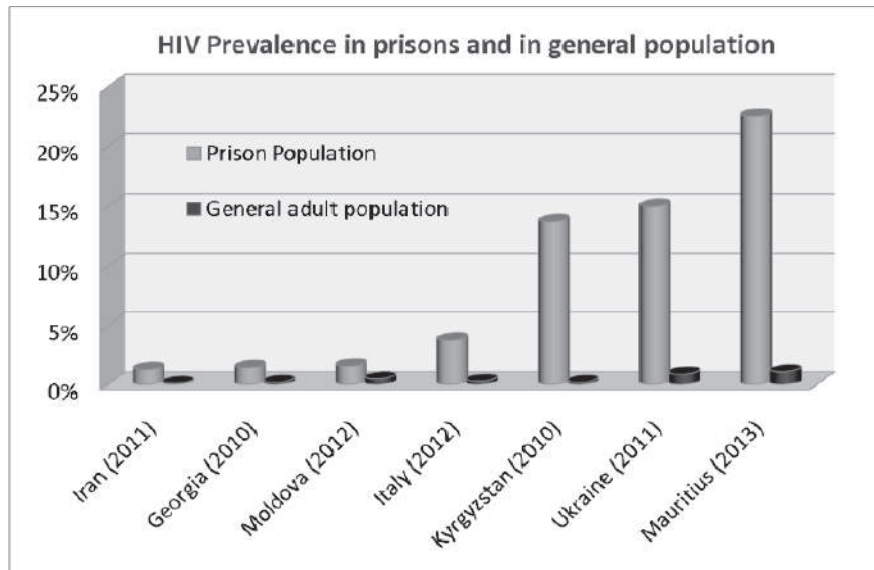
- About half of the people who inject drugs will be incarcerated once or more during their life.
- A significant portion of people going through the criminal justice system worldwide, if not the majority, suffer from drug use disorders

**A higher proportion of women than men are in prison  
for drug-related offences**



Source: Based on Roy Walmsley, "World prison population list", 11th ed. (Institute for Criminal Policy Research, 2016) and Roy Walmsley, "World female imprisonment list", 4th ed. (Institute for Criminal Policy Research, 2017).  
Share of prisoners for drug offences based on 50 Member States (UNODC, Special data collections on persons held in prisons (2010-2014), United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS).

## HIV AND PEOPLE WHO INJECT DRUGS IN PRISONS



## Prison health is community health

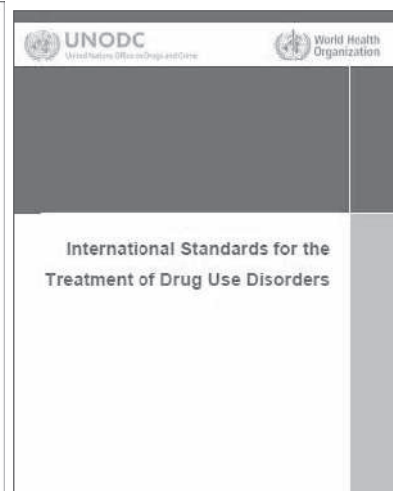
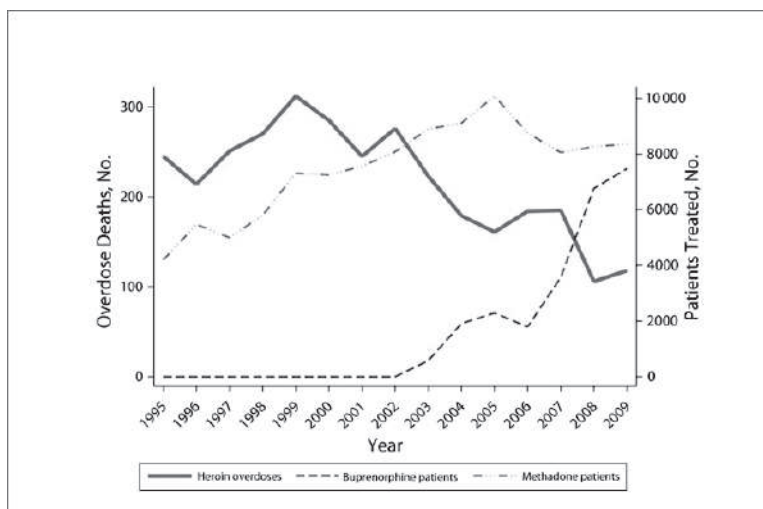
- The rapid turnover of a large number of people between the prison environment and their wider communities outside prison means that prison health merits consideration as an integral part of public health.
- The right to health extends to people in contact with the criminal justice system – no matter the charge.



## R3. It is an effective public health strategy

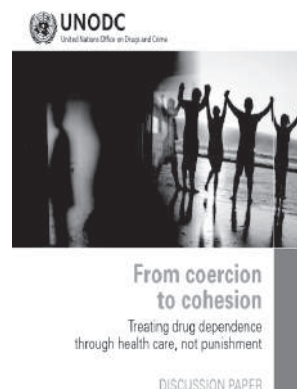


## Remember the TX standards presentation



## From coercion to cohesion - Treating drug dependence through health care, not punishment (2010)

- Consider underlying biopsychosocial susceptibility to drug use and dependence
- Drug use disorders are **multifactorial brain disorders** that often take a chronic and relapsing course – **best approached by health approach**
- Prison can worsen situation, alternative interventions better placed to reduce drug use, recidivism and prevent HIV, Hepatitis and TB
- **No compulsory treatment:** Legal pressure may encourage engagement in treatment, but the decision whether or not to enter treatment should remain with the individual.



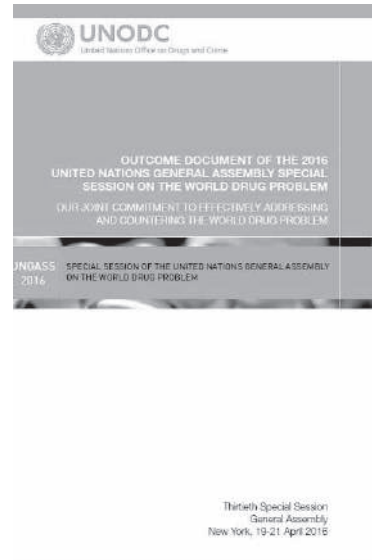
## Compulsory treatment is ineffective

- Drug-addicted repeat offenders involuntarily admitted to a drug addiction treatment centre for a maximum of 2 years.
- The compulsory placement of addicts in the Penal Care Facility for Drug Addicts have been shown to be ineffective for the persons concerned.

Ned Tijdschr Geneesk.  
Treatment of drug-addicted detainees:  
an advisory report by the Health Council of the  
Netherlands. van de Klippe, 2003

## UNGASS 2016 on Drugs

- Encourage the **voluntary participation** of individuals with drug use disorders in treatment programmes, with informed consent



## Compulsory treatment can only be emergency exception

Höppener et al. 2013

- Emergency short term involuntary treatment at acute risk for self or others or coma/psychotic crisis
- Rules: rigorous oversight procedures involving more than 1 institution (primary health care, mental health dept., municipality)
- Duration: few days/2 weeks
- Follow up: autonomy respected and consent given to continue treatment

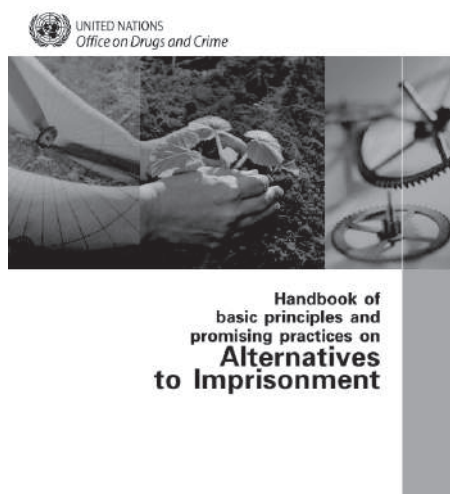


## R3. It is an effective criminal justice strategy



### Handbook of basic principles and promising practices on Alternatives to Imprisonment.

- No evidence that increasing imprisonment rates are improving public safety
- Prison is expensive (direct & indirect costs)
- Alternative strategies can reduce prison overcrowding and associated risk factors & might be more effective (health and safety)
- Human rights (liberty & dignity)

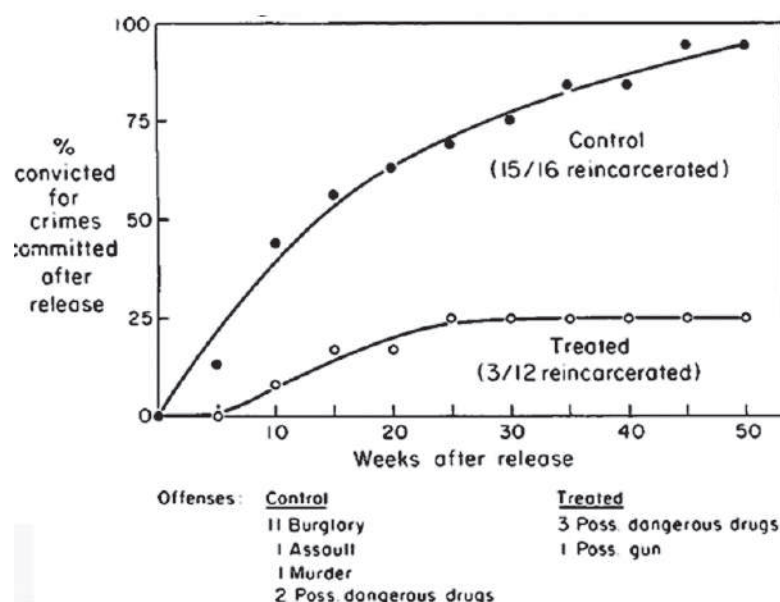






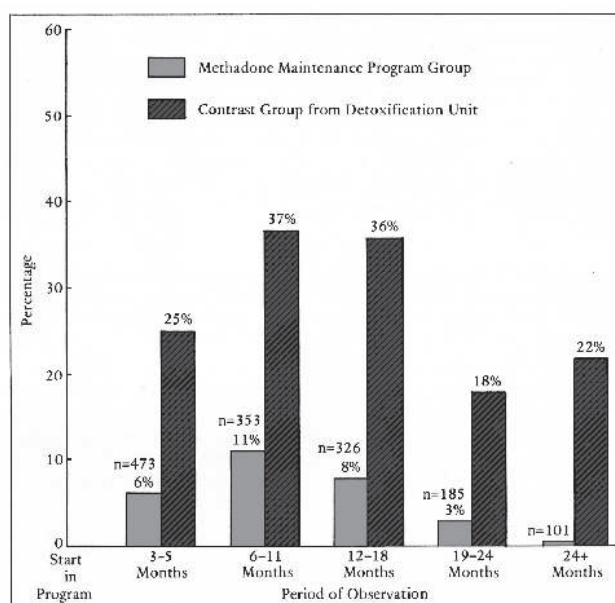
**UNODC**  
United Nations Office on Drugs and Crime

## Pharmacological treatment reduces reincarceration



**UNODC**  
United Nations Office on Drugs and Crime

## Reduction in arrests through evidence-based treatment



N=544



**UNODC**  
United Nations Office on Drugs and Crime

# Community-based treatment reduces crime rate (Zhang, 2017)

## Psychosocial and pharmacological treatment:

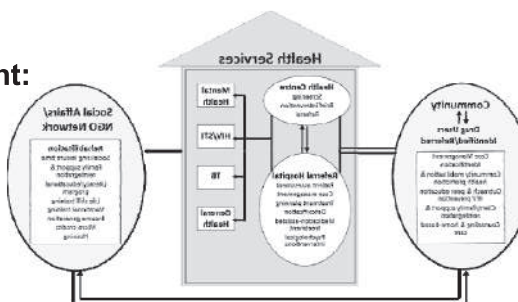
Retention at 12-months: 91.9%, at 24-months: 88.1%

Morphine-positive subjects:  
from 61.4% at baseline to 36.2% and 30.5%

**Crime rate: from 32.4% at baseline to 2.2% and 1.6%**

Employed: from 24.3% at baseline to 37.8% and 50.8%

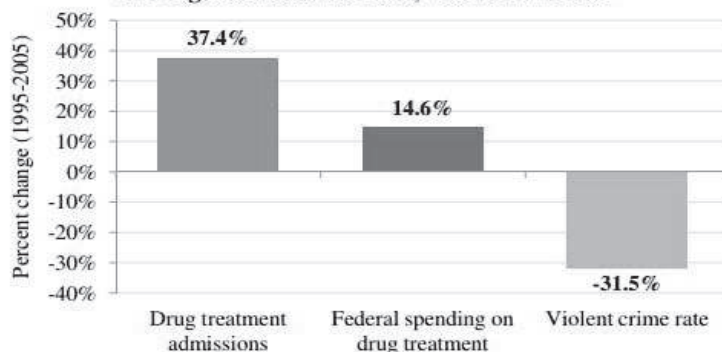
Addiction-related issues and mental health status improved



**UNODC**  
United Nations Office on Drugs and Crime

# Association between investment in treatment and crime reduction

**While drug treatment admissions and federal spending on drug treatment increased, violent crime fell.**



Sources: National Admissions to Substance Abuse Treatment Services, 2005. *Treatment Episode Data Set (TEDS) Highlights-2005*. Drugs include heroin and other opiates, cocaine, marijuana, methamphetamines/amphetamines; Federal Bureau of Investigation, Uniform Crime Report, *Crime in the United States, 1995, 2000, 2005*; Office of National Drug Control Policy, 2005. *National Budget Control Policy: FY 2005 Budget Summary Table 3: Historical Drug Control Funding by Function 1997-2006*.



## R4. It contributes to public health and public safety in an integrated way

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## Treatment in community is cost-effective

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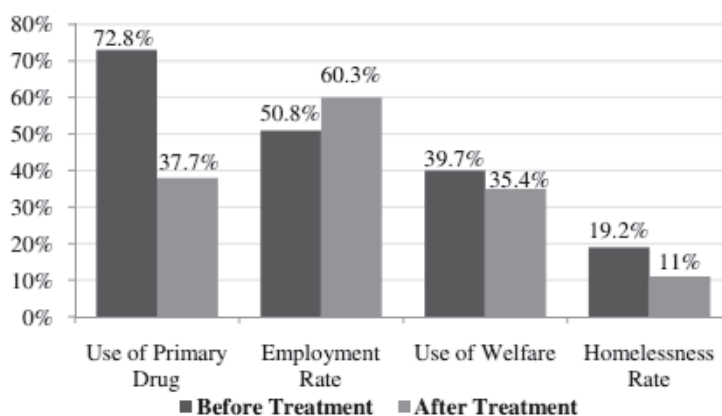
- Every 1\$ spent on drug treatment in the community is estimated to return \$18.52 in benefits to society in terms of reduced incarceration rates and associated crime costs



Washington State Institute for Public Policy (2006).

## Treatment improves quality of life and benefits community

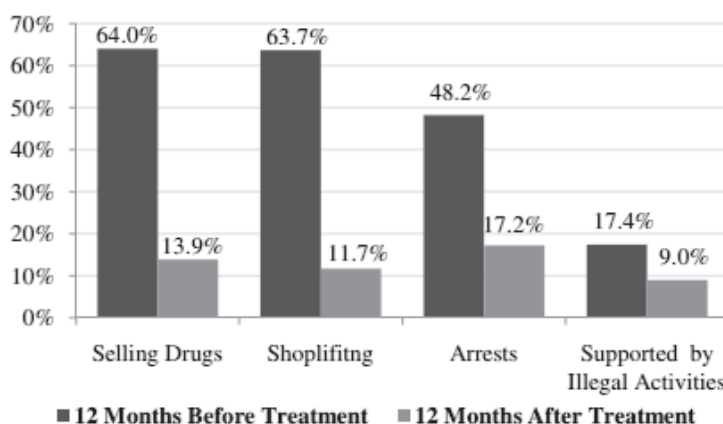
**Treatment can improve quality of life and can benefit the community.**



Sources: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment. 1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*.

## Treatment effects involvement in criminal behaviour

**Treatment can reduce the chance that someone will be involved in criminal activity**



Sources: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment. 1997. *The National Treatment Improvement Evaluation Study: NTIES Highlights*.



## **Treatment as an alternative less costly than incarceration**

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**Drug Treatment Alternative-to-Prison Program: the average cost of assigning an individual in DTAP was \$32,975 compared to an average cost of \$64,338 for incarceration**

Justice Policy Institute US (2007).



## **Health-justice interaction**

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- It is therefore essential that police, prosecutors, judges and other judicial officials are aware of alternatives and use them
- It is equally important that qualified health and social service providers implement comprehensive clinical assessment and evidence-based treatment and have a good understanding of the realities of patients in contact with the criminal justice system



## R5. It is in line with the international policy and legal framework



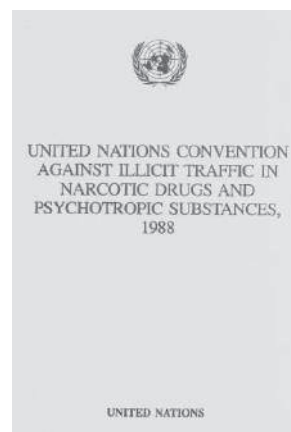
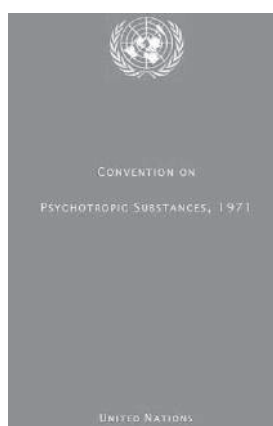
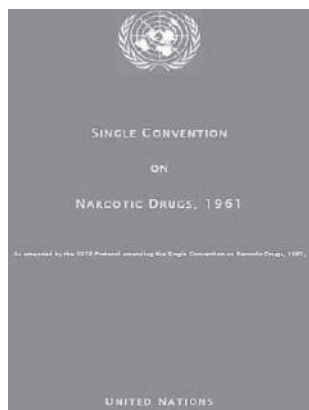
## Sustainable Development Goals

### The Sustainable Development Goals





## International Drug Control Conventions (1961, 1971, 1988)



- UNGASS (1998)
- Political declaration and plan of action (2009 -2019)
- High level review of Political declaration and plan of action (2014)
- UNGASS (2016)

## What do the Conventions say?

- Do the conventions consider drug users as criminals that need to be punished?
- Do the conventions consider the health needs of people with drug use disorders?
- Can treatment, in some cases, be applied as an alternative to criminal justice sanctions?



## What do the Conventions say?

- Conventions to ensure access to internationally controlled substances for medical and scientific purpose
- No illegal/legal drugs as such, it is the non-medical use that needs to be treated as an offence
- For personal use related offences and other eligible minor offences, treatment, education, rehabilitation, can be applied as complete alternatives to conviction or punishment
- Offering treatment is a requirement under the conventions

## International drug control conventions

(1961, 1971, 1988)

- **Community:** Parties shall take all practical measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved
- **Persons in contact with the criminal justice system:** Parties may provide (those measures) either as an alternative to conviction or punishment or in addition to conviction or punishment
- Measures above as alternative in cases of **drug consumption offences** and cases of (drug trafficking) of a minor nature

## UNGASS on World Drug Problem 2016

Encourage the **development, adoption and implementation**, with due regard for national, constitutional, legal and administrative systems, of **alternative or additional measures with regard to conviction or punishment** in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate, relevant United Nations standards and rules, such as the UN Standard Minimum Rules for Noncustodial Measures (the Tokyo Rules)



## Commission on Narcotic Drug (CND) Resolution

- CND Resolution 58/5 **“Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug related offences of a minor nature”**. The Commission on Narcotic Drugs invited UNODC - in consultation with States and, as appropriate, other relevant international and regional organizations - to “provide guidelines or tools on the collaboration of justice and health authorities on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature”. (2015)

## Commission on Crime Prevention and Criminal Justice (CCPCJ) Resolution

- CCPCJ Resolution L.8: Promoting and encouraging the implementation of alternatives to imprisonment as part of comprehensive crime prevention and criminal justice policies: encourages Member States, in implementing holistic and comprehensive crime prevention and criminal justice policies, to promote, as appropriate, alternatives to imprisonment, from the pretrial stage to the post-sentencing stage, taking into account the background, gender, age and other specific circumstances of offenders, including their vulnerability, and the objective of their rehabilitation and reintegration into society. (2017)

## International Narcotics Control Board

- *“The Conventions and the Political Declarations clearly determine that an effective drug control policy must rely on a balanced, comprehensive and integrated approach, where health and welfare are at the core of drug control policy, where human rights are promoted and the principle of proportionality is applied. That means that Governments should make greater use of the flexibility which is given by the Conventions, and provide, as appropriate, for alternatives to conviction and punishment.”* (2016)

## Guidance from international standards and norms

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- International human rights law
  - Provides general rules on due process and treatment of offenders
- Tokyo Rules
  - Elaborate on the types and implementation of non-custodial alternatives
- Bangkok Rules

Based on the principle of non-discrimination: non-custodial measures for women offenders; treatment of women prisoners

## International human rights framework

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- Right to health
- Right to personal liberty
- Right to fair trial
- Right to be free from torture or cruel, inhuman or degrading treatment or punishment, no one shall be subjected without his/her free will to medical or scientific experimentation

# UN standard minimum rules for non-custodial measures (Tokyo, 1990)



- Legal safeguards
- Supervision
- Duration
- Conditions and non-compliance
- Treatment process
- Staff and training
- Public awareness
- Research and evaluation



## Tokyo rules

- Consideration shall be given to develop new non-custodial measures and dealing with offenders in the community
- Within non-custodial measure various schemes, such as case-work, group therapy, residential programmes and specialized treatment of various categories of offenders, should be developed
- Treatment needs professionals who have suitable training/experience
- For treatment: understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the offence.
- The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.





## Tokyo rules -1-

- 2.4 The development of new non-custodial measures should be encouraged
- 2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.
- 2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.
- 13.1 Within the framework of a given non-custodial measure, (...) various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.



## Tokyo rules -2-

- 13.2 Treatment should be conducted by professionals who have suitable training and practical experience.
- 14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.



## Tokyo rules -3-

- 14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative noncustodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.



## Gender-specific alternatives?

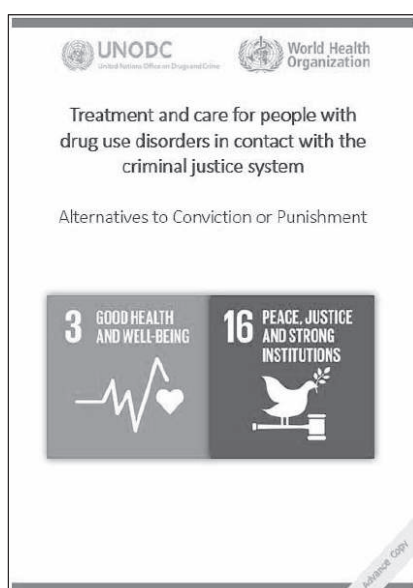
- Most jurisdictions do not have gender-specific alternatives to imprisonment tailored to meet the specific requirements of women offenders.
- Alternatives to imprisonment are well-suited for women offenders as they rarely pose a risk to society and have specific needs (e.g. health care, related to domestic violence and sexual abuse) and responsibilities (e.g. child care)

## UN Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok, 2010)

- Gender-sensitive non-custodial measures (background and family ties of women, best interests of their children)
- Gender-sensitive, trauma-informed risk-assessment and specialized female substance abuse treatment programmes in the community and in prisons



## Reasons suggested – other ideas?



- Many people with DUD are in contact with CJS in their life
- It is an effective public health and public safety strategy
- It is saving costs
- It is in line with international policy obligations

## CHAPTER 2 Choosing treatment and care in line with the international legal framework



- For what kind of offences might there be contact between people with drug use disorders and the criminal justice system?
- Can alternatives be offered?
- Can treatment be offered?

## Offences and possible responses

- a) Possession, purchase or cultivation of controlled drugs for non-medical or non-scientific use & personal consumption (Alt)
- b) Small-scale drug sale to finance a drug habit or international transport of limited quantities of drugs (Alt)
- c) Large-scale drug production and distribution involving violence or organized crime (Add)
- d) Non-violent property offences to finance a drug habit (Alt)
- e) Violent offences under the influence of drugs (Alt/Add)

Treatment and care for people with  
 drug use disorders in contact with the  
 criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- **What principles need to be considered when considering/offering treatment as an alternative to conviction or punishment?**

## 7 Principles: TX of people with DUD in contact with CJS



- 1) Drug use disorders are a public concern requiring responses that are health-centred. Individuals with drug use disorders should not be punished for their drug use disorder but provided with appropriate treatment.
- 2) The use of alternatives to conviction or punishment at all stages of the criminal justice system for offenders with drug use disorders based on an assessment of established criteria should be encouraged

## 7 Principles



- 3) Proportionality is required during all stages of the diversion and supervision process
- 4) A diversion to treatment should be made with the informed consent of the offender
- 5) The implementation of alternatives to conviction or punishment should respect legal and procedural safeguards





## 7 Principles

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- 6) Specific attention to special groups and their access to treatment as an alternative to conviction or punishment is required to avoid discrimination
- 7) Prisoners with drug use disorders may not be deprived of their right to health and are entitled to the same level of treatment as the general population

## How to start?

---

- Increase accessibility of treatment in the community
- Use flexibility in existing laws
- Review existing laws
- Training for legal professionals and institutions
- Public information and debate: community cohesion

## Cooperation and coordination is key

- Close cooperation between Ministry of Justice, Ministry of Health and Ministry of Social affairs
- Shared vision oriented to recovery
- Shared vision for respect for dignity and human rights of people affected
- Interest in effectiveness and cost-effectiveness
- Costs to develop treatment seen as a national investment



## Monitoring & evaluation is key

– **Process/implementation- Outcome evaluation:** still valuable evaluations!

➔ Goes hand in hand with systematic **monitoring** and data collection

– **Outcome domains/indicators:** e.g. drug use (not only prevalence, but also intensity, frequency, method and type of drugs), recidivism (criminal charge/conviction), psychosocial functioning (eg. sustained recovery/quality of life)

## CHAPTER 3 Treatment and care for offenders with drug use disorders



Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

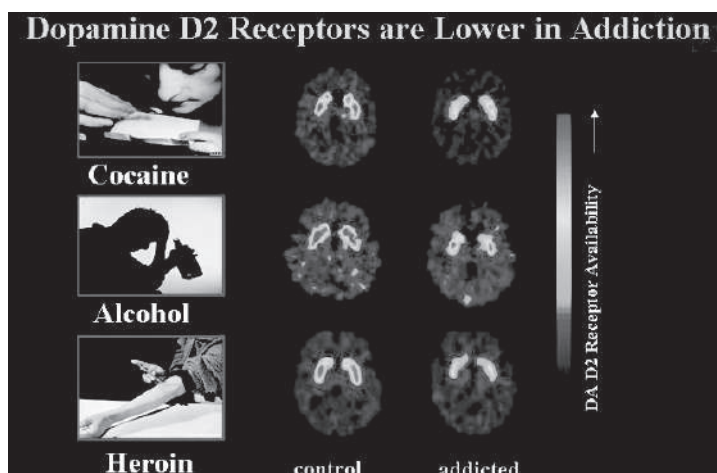
Alternatives to Conviction or Punishment



Advance Copy

- What kind of treatment shall be provided for people with drug use disorders in contact with the criminal justice system?

# Drug dependence is a multifactorial disorder affecting the brain



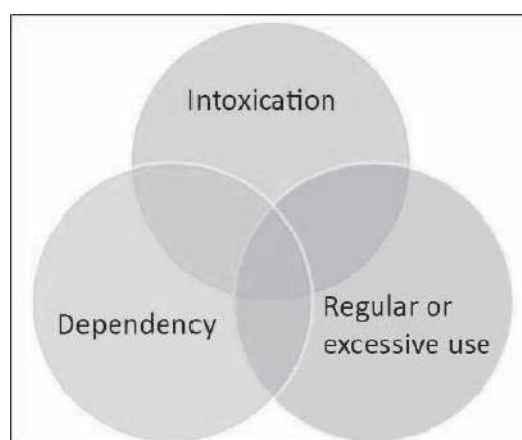
Neuroscience of psychoactive substance use and dependence



World Health Organization

## Different stages of drug use disorders

- Intoxication
- Harmful use
- Dependence

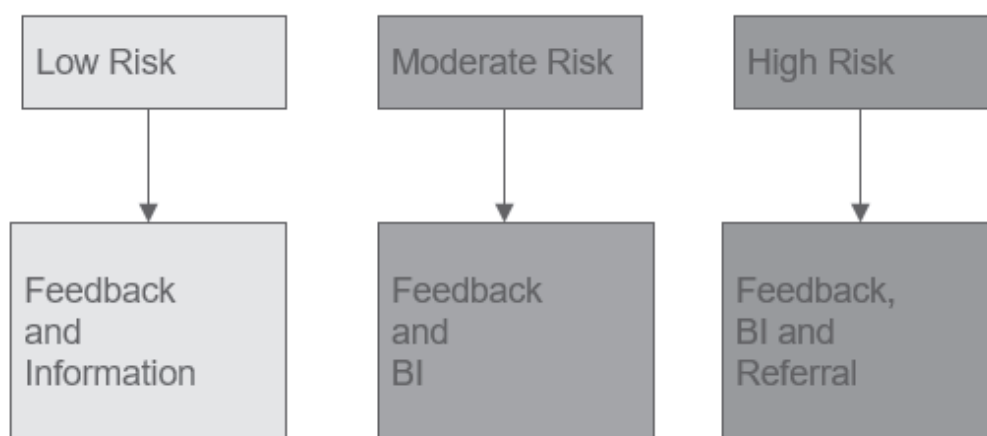


Different interventions  
adjusted to addiction severity

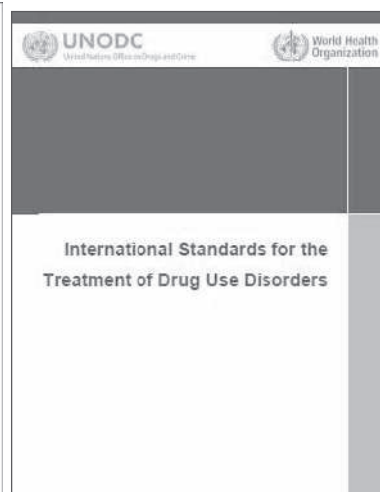
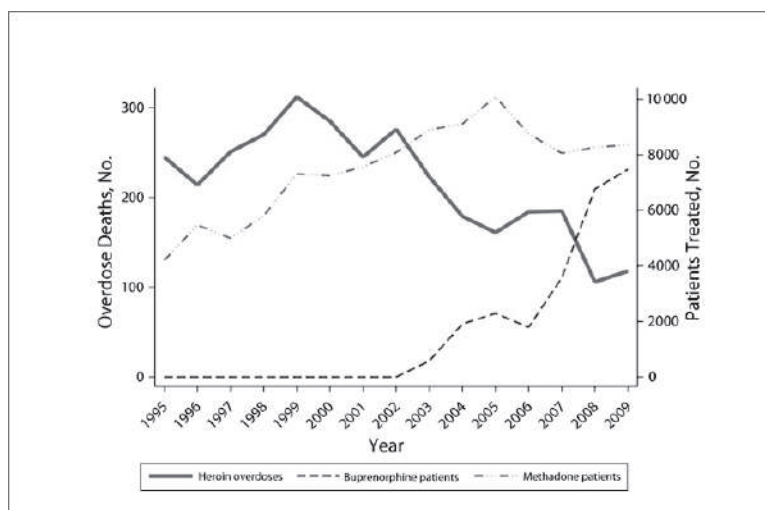
## Health screening and assessment of offenders with drug use disorders I contact with the CJS

- **Interception points** for screening and assessment in the CJS: as early as possible after contact
- **Screening:** by trained professional
- **Clinical Assessment** conducted by trained health professional
- **Treatment intervention** in line with health needs  
Additional care and support to be offered

## Screening and appropriate (brief) interventions



## Remember the TX standards presentation



Health disorders can best  
be addressed by an  
individualized health and  
social response





---

**Prison needs to be a  
measure of last resort**

---

**Alternative strategies  
depend on a network of  
accessible treatment  
services in the  
community**



# Accessible and attractive treatment & care in the community reduces criminal justice contacts §

## CHAPTER 4 Diversion options to treatment as an alternative to conviction or punishment



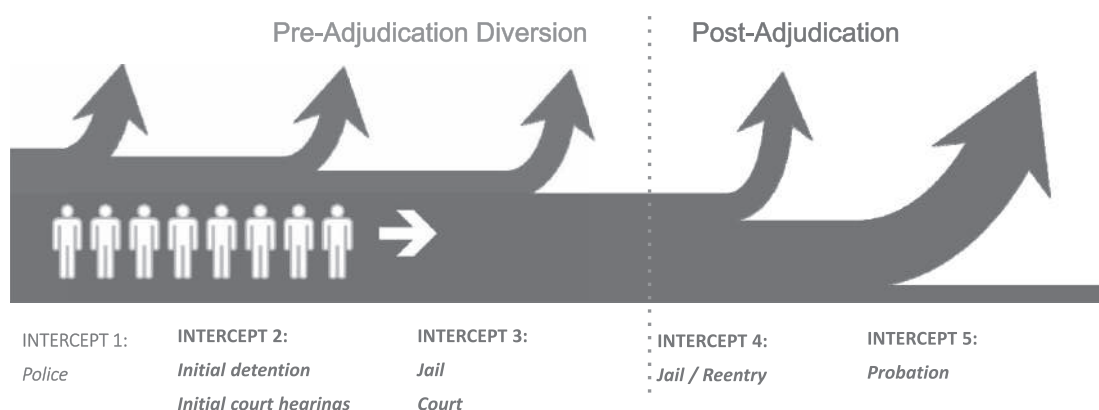
## Developing and Implementing drug treatment alternatives in a legal system

- Every country's individual legal system and tradition particularly the process, timeframe and the role of judicial actors need to be taken into account



## Alternatives can be applied throughout

Community-based services and recovery support




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## Which experiences exist with treatment as an alternative to conviction or punishment?


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United Nations Office on Drugs and Crime

ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
PRE-ARREST	PRE-TRIAL	TRIAL/SENTENCING	POST-SENTENCING
Police	Police, Prosecutor, Defence, Examining magistrate	Judge, Probation officers	Prison Director, Parole Board, Minister of Justice
Administrative response with information referral to treatment	Caution with a diversion to education/treatment	Postponement of the sentence with a treatment element	Early release/parole/pardon with a treatment element
	Conditional dismissal/ Conditional suspension of the prosecution	Deferring the execution of the sentence with a treatment element	
	Conditional bail (alternative to pre-trial detention)	Probation/judicial supervision	
		Special courts/ lock (i.e. the Drug Treatment Court)	

Divert to treatment?

Treatment needs?

# ADMINISTRATIVE RESPONSE




Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- What administrative measures can you think of?
- Do you know any examples?

 <b>UNODC</b> United Nations Office on Drugs and Crime			
ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
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		Special courts/docks (f.e. the Drug Treatment Court)	



## Administrative responses instead of criminal sanctions

- Administrative instead of criminal sanctions often used for minor breaches of the law (e.g. road traffic violations): When such violations are committed by people with drug use disorder, sanction could be diversion to treatment
- Non-criminal justice response to possession of drugs for personal consumption without aggravating circumstances: possession is still unlawful, but response is administrative legal



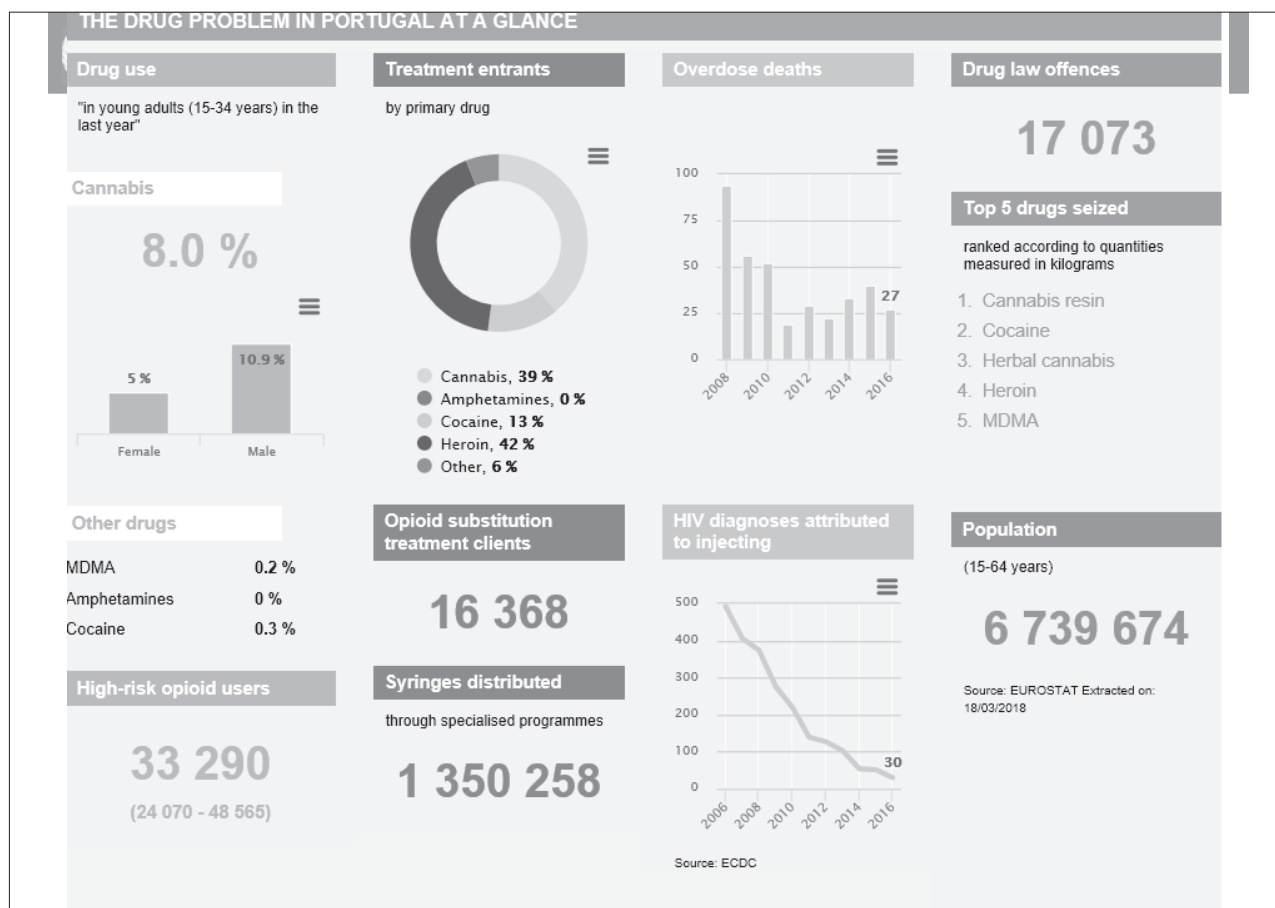
## **Administrative measures as alternative to conviction**

Transforming administrative measures  
into fruitful contacts  
with social / health institutions  
and therapeutic opportunities



## **Example Portugal – administrative sanctions**

- 2001 Portugal eliminated criminal penalties for low-level possession (10 days supply) of all types of controlled drugs
- Personal consumption offences reclassified as administrative violations
- Commissions for the Dissuasion of Drug Abuse (justice/health/social) evaluate possible treatment needs and a) refer to voluntary TX b) pay a fine or impose other administrative sanctions



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# PRE-TRIAL DIVERSION



Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- What pre-trial legal options can you think of?
- Do you know any examples?

ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
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		Special courts/docks (f.e. the Drug Treatment Court)	

## Pre-trial diversion options

- **Caution (with diversion to education/treatment):** A caution is an alternative to arrest or prosecution. A conditional caution is often used in conjunction with a referral to an education session, assessment and/or a brief intervention or treatment instead of being charged with an offence. Generally, the defendant has to admit the offence and agree to be cautioned. When breaching the conditions, the defendant could be prosecuted. In several countries, a conditional caution is often used in cases of possession of cannabis for personal consumption.
- **Suspension of the prosecution, conditional dismissal:** The relevant judicial actor (e.g. the prosecutor) may suspend the proceedings on the condition that the defendant completes treatment and complies with the conditions. In this way, the case does not proceed to the court for trial.
- **Conditional bail:** Conditional bail can be granted on the condition of participation in treatment. They are less intensive forms, such as release on recognizance with obligations attached, and more intensive forms, such as long-term residential treatment as a condition of bail. A pretrial supervision agency or probation officers supervises compliance with the conditions. If the offender fails to comply with the conditions, he or she may be sent to jail prior to trial. Successful completion of the conditions may mitigate the sentence if the offender is convicted.

## Example: Cannabis Caution Schemes (Australia)

~~Diversions scheme for adults found in the possession of cannabis for~~  
 personal consumption

- Under this scheme, police officers who find someone in the possession of cannabis can opt to issue them with a caution rather than a formal charge.
- Caution includes a warning about the legal and health consequences of using cannabis and contains phone numbers for the Alcohol and Drug Information Service (ADIS). On a second caution a person is required to contact ADIS and attend an education session about their cannabis use.

# TRIAL STAGE DIVERSION



Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- What trial stage legal options can you think of?
- Do you know any examples?

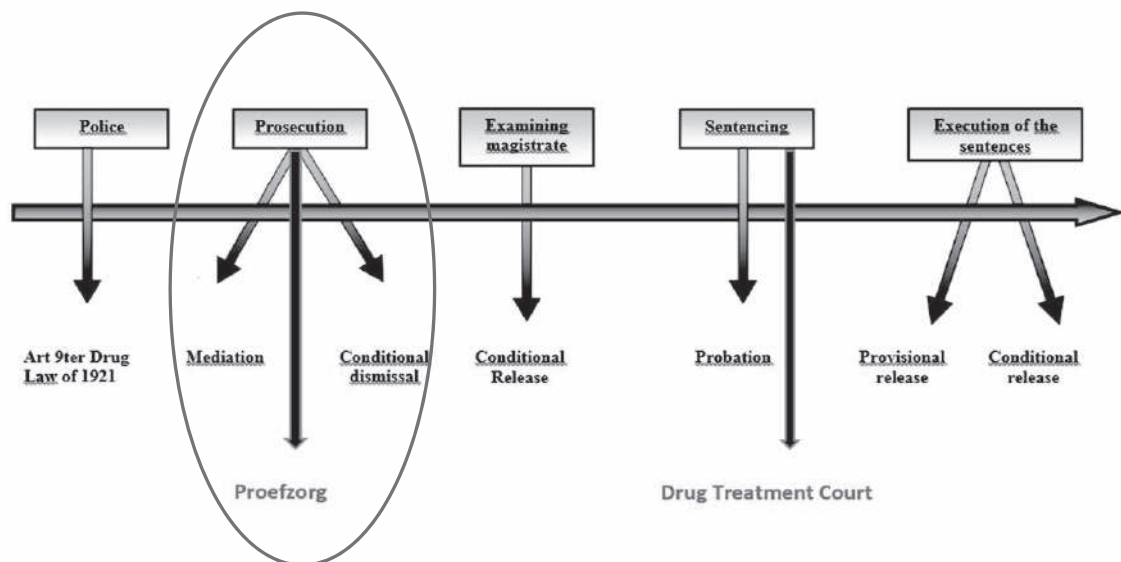
ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
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	Conditional bail (alternative to pre-trial detention)	Probation/judicial supervision	
		Special courts/docks (f.e. the Drug Treatment Court)	

## Sentencing stage

- **Conditionally deferred sentence:** the judge convicts the offender, but does not immediately pronounce a sentence although the facts are considered to be proven. During this period, the offender can be diverted to treatment under judicial supervision. Depending on the result, a (formal) sentence may not be pronounced. If the conditions of deferral are not met, a hearing will determine whether the terms have been violated and a sentence will be determined.
- **Conditionally suspended sentence:** the judge pronounces a sentence, but its implementation is suspended for a specific period of time and on certain conditions the defendant needs to comply with. Depending on the jurisdiction, there is a declaration of guilt and the measure will be mentioned on a criminal record but there is no deprivation of liberty. When a person breaches the conditions, a hearing will determine whether the terms have been violated and he/she will likely have to serve the original sentence.
- **Probation:** the convicted person is placed under the supervision of a probation officer for a specified length of time. There are some common practices such as supervision, guidance and assistance. Probation typically entails more intensive supervision of offenders than would be involved in a suspended sentence alone. This may result in increased control of probation services over offenders, it also provides scope for the provision of necessary psychological, social and material assistance.



## Example: Belgian diversion approaches



## Belgian practice: Profzoerg

- Treatment and care under judicial supervision (“Proefzorg”) started in 2005 now situated under the measure of mediation.
- The public prosecutor can decide to divert people, who have admitted to having committed offences stemming from their drug use disorder, to treatment services for a maximum of 6 months. Participants are placed within a 'short version' or a 'long version' of the programme, depending on their needs and the severity of their drug/criminal career.
- The short version (one assessment interview in a treatment centre) is reserved for users who have no problems in other life spheres.

## Belgian practice: Proefzoerg

- Long version for persons who have problems in other spheres of life and who have previous drug related offences.
- Long version involves a referral to appropriate services (including outpatient treatment or a therapeutic community programme) based on their needs and for a maximum period of 6 months.
- A programme manager facilitates cooperation and communication between the public prosecutor and the treatment sector. The prosecutor has the final decision, with compliance resulting in the case statutory barred and non-compliance resulting prosecution.

## Belgium Evaluation Proefzoerg

- ➔ Effect study (pre- and post-measurement, 2007): **recidivism reduction, progress in life domains**
  - A diversion to treatment at prosecution level (° 2005, Ghent - 'Proefzorg', similar projects in other districts)
- ➔ Process and impact evaluation
- This project has been subject of a process evaluation study that showed promising results. Only 3% of the participants failed (did not comply with the condition) in the short-version and 36% in the long-version. **Cooperation between the criminal justice system and the treatment services was successful**, with a majority of respondents expressing satisfaction with their role and a positive attitude towards the programme.

# SPECIAL COURTS



Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- Do you have any special courts for people with drug use disorders in your country?

ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
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	Conditional bail (alternative to pre-trial detention)	Probation/judicial supervision	
		Special courts/dockets (f.e. the Drug Treatment Court)	

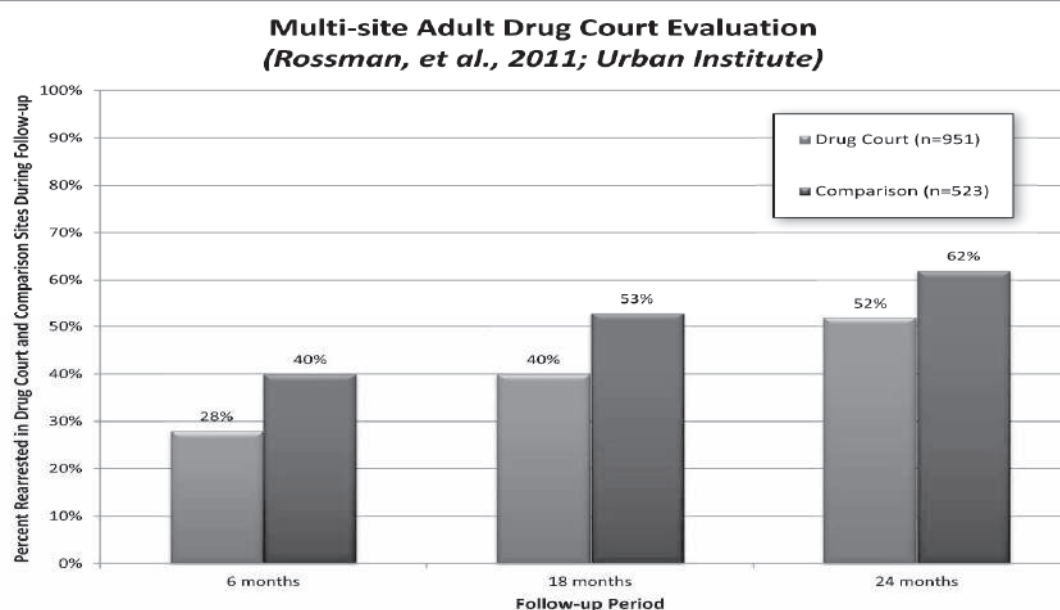
## Special courts/dockets

- **Drug Treatment Courts (DTC):** legal eligibility criteria, drug cases considered, screening and referral, the organisation vary. The preference for rehabilitative goals, the very active role of the judge, and the collaboration between defence and prosecution in non-adversarial systems are elements highly conducive to the importation of the DTC model
- **DTC Type 1:** post-adjudication/sentencing programmes, requiring the defendant to plead guilty. In the US, most DTCs require the defendant to plead guilty and have their sentences deferred or suspended in order to be diverted to treatment. After completing the court proceeding, the sentence could be waived or reduced.
- **DTC Type 2:** People who enter a DTC before being convicted. In these drug courts, a guilty plea is not required and the defendant is only prosecuted if he or she fails to complete the programme. The defendant must however acknowledge having a drug use disorder.

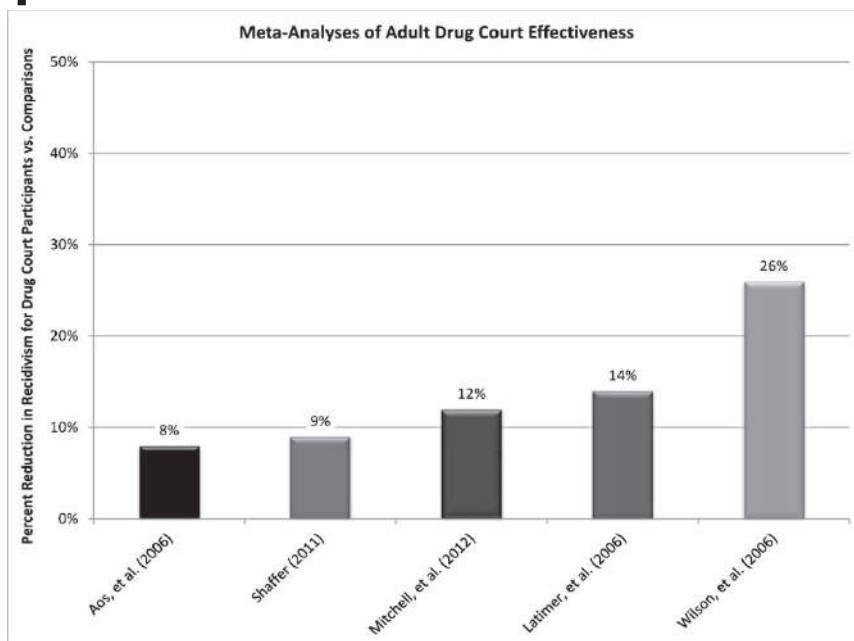
## Drug Treatment Courts

- Specify the frequency, type and intensity of supervision and monitoring & focus beyond treatment also aim to address problems on other drug-related life domains
- More intensive treatment is used during the initial stages of treatment, followed by less intensive involvement later
- **DTCs are most effective when they target higher risk and higher need offenders<sup>210</sup>. DTCs that serve only first-time or low-risk offenders are not likely to be cost-effective.**

## DTC and re-arrest over time



## DTC Percent reduction in recidivism vs. comparison in different studies



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## POST-TRIAL DIVERSION



Grand Bassam, Cote D'Ivoire | 20-22 November 2017



Treatment and care for people with  
drug use disorders in contact with the  
criminal justice system

Alternatives to Conviction or Punishment



Advance Copy

- What post-trial stage legal options can you think of?
- Do you know any examples?

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	Conditional bail (alternative to pre-trial detention)	Probation/judicial supervision	
		Special courts/docks (f.e. the Drug Treatment Court)	

## Post-sentencing stage



- **Early conditional release or parole:** Early release of sentenced prisoners under individualized post-release conditions. A prisoner can be released conditionally after a certain period or when a fixed proportion of the sentence has been served. This conditional release can be mandatory when it takes place automatically, or it can be discretionary when a decision has to be made whether to release a prisoner conditionally. In the case of prisoners with drug use disorders, the condition often entails referral to treatment. Promoting the individual's compliance with the condition often requires sustained supervision and case management to ensure that underlying factors that might deter compliance – lack of housing, lack of transportation, negative peer relationships, for example – are promptly addressed before non-compliance becomes a problem. When breaching the conditions, the early release may be revoked and the person may be brought back to prison.

## Example -Half-way houses

- Post-trial stage, e.g. early release
- Provided when there is a need for intermediate housing during the transition from prison to the community
- Typically provide self-help support groups and, in some cases, provide structured treatment options dedicated to those residing within the halfway house
- Average stay is 12 weeks



## Example - Jail Discharge Programme

- Pre-release care
- Verification of insurance enrollment & medical provider selection
- Unifying medical and behavioral health care plans, & developing individual care plans to address all needs
- Coaching on how to access medication
- Client engagement, education, and motivation
- Post-release care:
- Client contact and support (30 days)
- Linkage to care
- Client and provider follow up
- Guidance, resources, motivation and health literacy information

Anja Busse, Programme Officer,  
 Prevention, Treatment and  
 Rehabilitation Section, UNODC  
[anja.busse@unodc.org](mailto:anja.busse@unodc.org)

## OPTIONS ALONG THE JUSTICE PROCESS - SUMMARY



## Alternatives to conviction or punishment along the justice process

- Pre-trial: discharge the offender in appropriate circumstances or to impose non-custodial measures, including treatment and care services, for minor cases
- Trial: take into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victim
- Post-trial: any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage

Anja Busse, Programme Officer,  
Prevention, Treatment and  
Rehabilitation Section, UNODC  
anja.busse@unodc.org

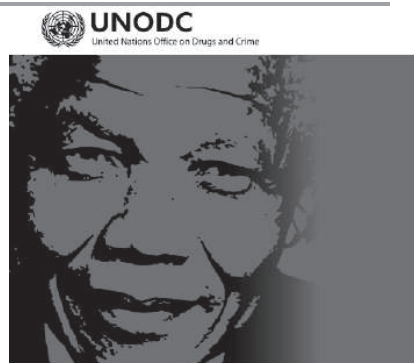
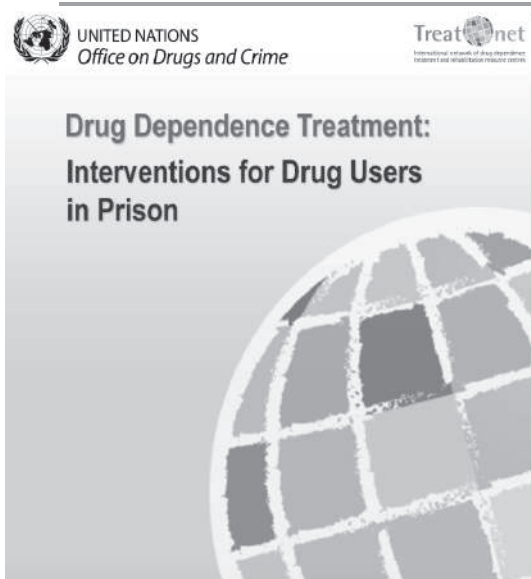
# TREATMENT IN PRISON





- **Why to offer drug use disorder treatment in prisons?**

## Prison as a measure of last resort



The United Nations  
Standard Minimum Rules for  
the Treatment of Prisoners  
(the Nelson Mandela Rules)

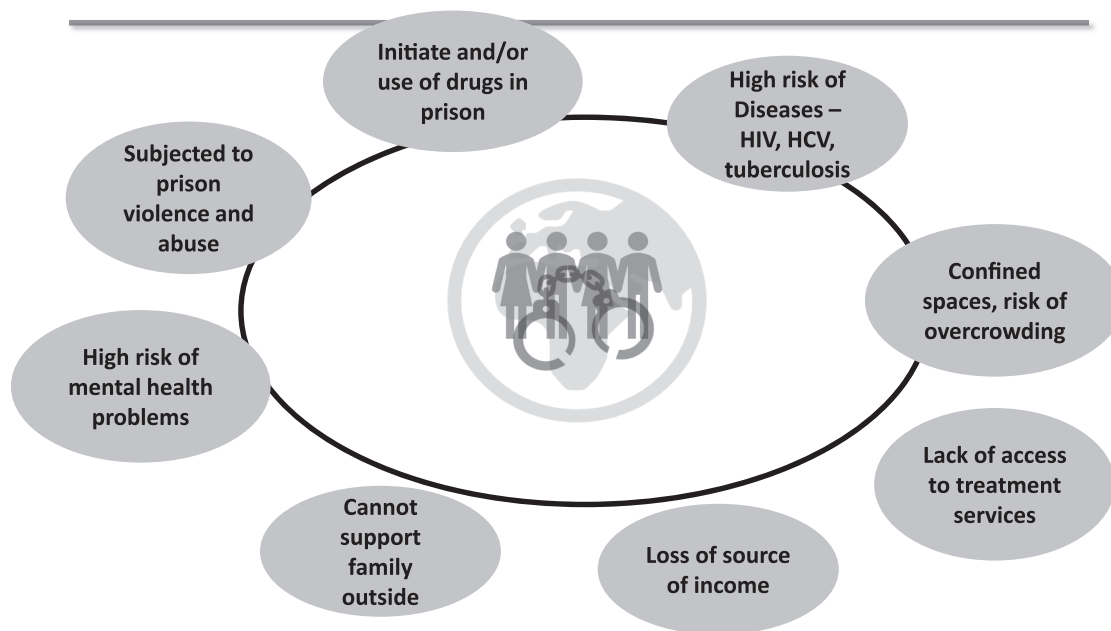




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## Risks associated with incarceration



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## Drug use does not stop in prisons<sup>(WDR 2017)</sup>

- 1:3 prisoners has used an illicit substance at some time while incarcerated.
- Cannabis is by far the most commonly used drug in prison, while heroin ranks second.
- Approximately 10% of prisoners report using heroin at some time while incarcerated, 1/3 of whom report current (past-month) use within prison.



## Principle of equity – Mandela rules

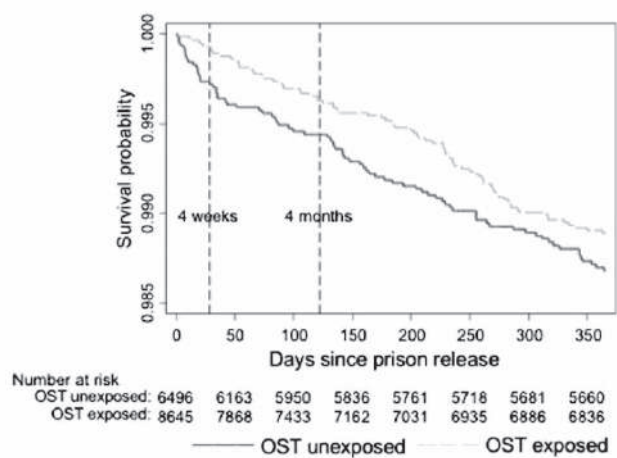
- Ensuring the same standards of health care that are available in the community and providing access to the necessary health-care services to prisoners free of charge without discrimination



The United Nations  
Standard Minimum Rules for  
the Treatment of Prisoners  
(the Nelson Mandela Rules)

## Pharmacological treatment in prisons reduced mortality after release

- In an English national study, prison-based opioid substitution therapy was associated with a 75% reduction in all-cause mortality and an 85% reduction in fatal drug-related poisoning in the first month after release



## Therapeutic communities in prisons reduce re-offending

- Prison TC better than prison on it's own or Mental Health Treatment Programmes to prevent re-offending postrelease for inmates

Therapeutic communities for substance related disorder  
(Review)

Smith LA, Gates S, Foxcroft D



## Planning release to community

- Provide TX in prison and maintain engagement in treatment and care in the community
- Social support (housing, work, family)
- Overdose awareness/prevention/training and information on the range of community services available, including how to access them: active linkage
- Overdose management training and provision of naloxone pre-release



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## Increased overdose risk– shortly after release

- Review: 6 out 10 deaths in the first 12 weeks after release drug-related
- Increased risk of drug-related death during the first two weeks after release from prison (remains elevated up to at least the fourth week)

## Stop - Overdose - Safely

- [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0005/249188/Prisons-and-Health.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf?ua=1)



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## Protective effect of maintenance TX in prison (England)

- Being in methadone/buprenorphine treatment associated with 85% reduction in drug related death mortality (compared to people with opioid use disorder not in treatment).

**ADDICTION**  
RESEARCH REPORT

**SSA**  
SPECIAL ISSUE  
ISSN 0963-8237

**Does exposure to opioid substitution treatment in prison reduce the risk of death after release? A national prospective observational study in England**

John Marsden<sup>1</sup>, Garry Stillewell<sup>1</sup>, Hayley Jones<sup>2</sup>, Alisha Cooper<sup>3</sup>, Brian Eastwood<sup>3</sup>, Michael Farrell<sup>4</sup>, Tim Lawder<sup>5</sup>, Nino Maddalena<sup>6</sup>, Chris Metcalfe<sup>6</sup>, Jenny Shaw<sup>6</sup> & Matthew Hickman<sup>2</sup>

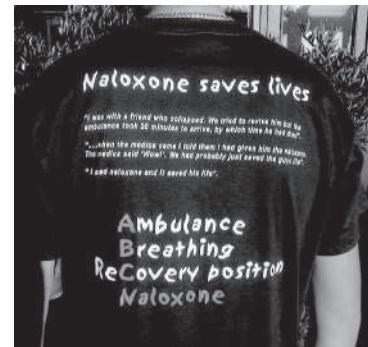
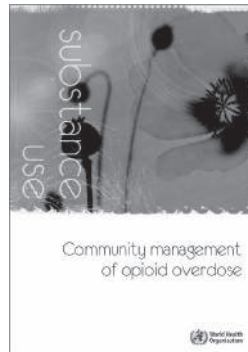
Addiction Department, Institute of Psychiatry, Psychology and Neuroscience, King's College London, London, UK; <sup>2</sup>School of Social and Community Medicine, Faculty of Health Sciences, University of Bristol, Bristol, UK; <sup>3</sup>Health, Drug and Alcohol Unit, Health and Wellbeing Directorate, Public Health England, London, UK; <sup>4</sup>National Drug and Alcohol Research Centre, University of New South Wales, New South Wales, Australia; and Institute of Brain, Behaviour and Mental Health, University of Manchester, Manchester, UK

### ABSTRACT

**Background and Aims** People with opioid use disorder (OUD) in prison face an acute risk of death after release. We estimated whether prison-based opioid substitution treatment (OST) reduces this risk. **Design** Prospective observational cohort study using prison health care, national community drug misuse treatment and deaths registers. **Setting** Recruitment at 39 adult prisons in England (32 male; seven female) accounting for 95% of OST treatment in England during study planning. **Participants** Adult prisoners diagnosed with OUD (recruited: September 2010–August 2013; first release: September 2013; last release: October 2014; follow-up to February 2016;  $n = 15\,141$  in the risk set). **Intervention and Comparator** At release, participants were classified as OST exposed ( $n = 3645$ ) or OST unexposed ( $n = 6496$ ). The OST unexposed group did not receive OST, or had been withdrawn, or had a low dose. **Measurements** Primary outcome: all-cause mortality (ACM) in the first 4 weeks. Secondary outcomes: drug-related poisoning (DRP) deaths in the first 4 weeks; ACM and DRP mortality after 4 weeks to 1 year; admission to community drug misuse treatment in the first 4 weeks. Unadjusted and adjusted Cox regression models (covariates: sex, age, drug injecting, problem alcohol use, use of benzodiazepines, cocaine, prison transfer and admission to community treatment), tested difference in mortality rates and community treatment uptake. **Findings** During the first 4 weeks after prison release there were 24 ACM deaths in the OST exposed group and 18 in the OST unexposed group [mortality rate 0.93 per 100 person-years (py) versus 3.67 per 100 py; hazard ratio (HR) = 0.25; 95% confidence interval (CI) = 0.10–0.64]. There were 11 DRP deaths: OST exposed group mortality rate 0.47 per 100 py versus 3.06 per 100 py in the OST

## Possibility of pre-release training on OD

- How to recognise overdose
- How to manage situation
- How to give naloxone
- Provide naloxone



## Example - Jail Discharge Programme

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• <u>Pre-release care</u></li> <li>• Verification of insurance enrollment &amp; medical provider selection</li> <li>• Unifying medical and behavioral health care plans, &amp; developing individual care plans to address all needs</li> <li>• Coaching on how to access medication</li> <li>• Client engagement, education, and motivation</li> </ul> | <ul style="list-style-type: none"> <li>• <u>Post-release care:</u></li> <li>• Client contact and support (30 days)</li> <li>• Linkage to care</li> <li>• Client and provider follow up</li> <li>• Guidance, resources, motivation and health literacy information</li> </ul> |
|--|--|

## Example –Supportive Release Center (SRC)

- Screening survey at the jail, transport eligible and interested participants from the jail to the nearby SRC for full needs assessments
- Facilitate linkages to services in the community, including substance use treatment, mental health services, supportive housing, job training programs, and legal aid resources



## CHAPTER 5 - CONCLUSIONS





- **What would be your conclusions?**

## Conclusions –1-

---

- Adopt a health paradigm: Drug use disorders can be treated in a health-oriented framework
- Use the criminal justice system as a gateway to treatment: the criminal justice system is an important setting for drug-related interventions
- Accept that recovery from drug use disorders is a process: drug use disorders are relapsing conditions



## Conclusions -2-

---

- Diversify treatment: not every offender with drug use disorders requires (the same intensity) of treatment
- Alternatives to conviction or punishment are in line with the international legal framework
- Focus on diversion opportunities – it is an international obligation

## Conclusions -3-

---

- Create partnerships: the treatment system and treatment services could and should work together, taking into account a proper role definition and respect for each other's principles
- Provide a stimulating environment for the provision of alternative, non-custodial measures



## The Turning Point: Lana Sandas

- <https://www.youtube.com/watch?v=IHluo6ArJCc>



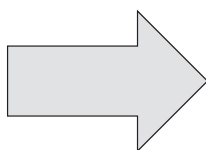
What is the response we want to give and why?

## From coercion to cohesion

---



**From a sanction-oriented  
approach**



**To an effective health-  
centred focus**

## From coercion to cohesion

---

**Contact with the Criminal  
Justice System can be  
turned into an opportunity  
for screening and referral  
to adequate health and  
social services for people  
with drug use disorders:  
Good for public health and  
public safety!**





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# Improving access to prevention and treatment – for public health and public safety



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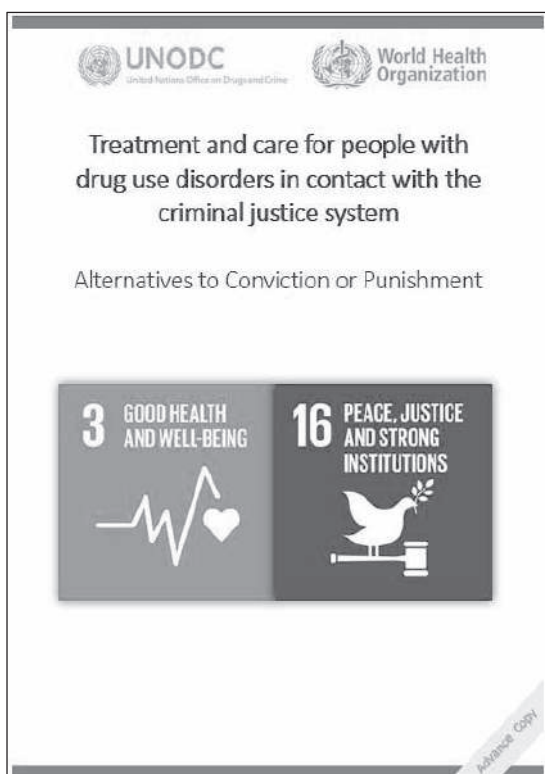
## UNODC Justice and Health Sections

- Improving legal safeguards for prisoners;
- Introducing and widening the scope of alternatives to conviction or punishment
- Supporting offenders and ex-offenders to address their social reintegration needs



In collaboration with  
**WHO:**

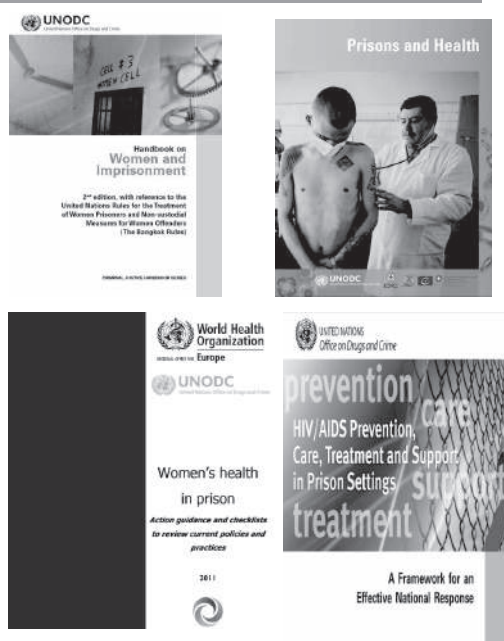
- Support improvement of treatment services and quality assurance
- Provide training for treatment providers
- Provide policy and technical guidance
- Support assessment and data collection



- In your country – are there any options on treatment as an alternative to conviction and punishment?
- How does it work?
- At what stage of the criminal justice continuum are alternatives possible?
- What are challenges?
- What benefits do you see?
- What barriers are there?

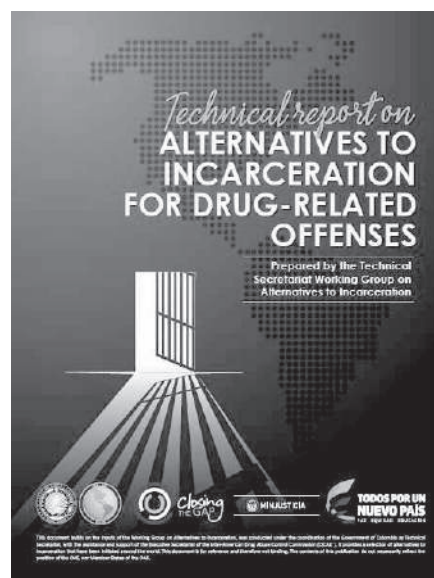
## Some additional resources – health and justice

- **UNODC Handbook on Women and Imprisonment** (UNODC, 2014)
- **Prisons and Health** (WHO, 2014)
- **Prevention, Care, Treatment and Support in Prison Settings** (UNODC, 2006)
- **Women's health in prison – Checklist** (WHO, UNODC, 2011)



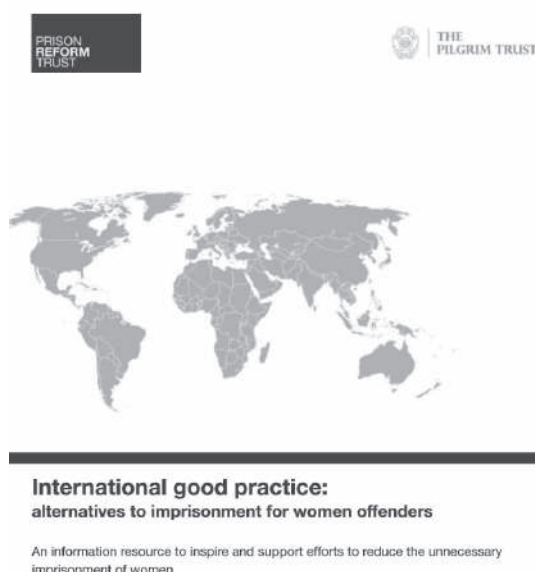


## Further readings



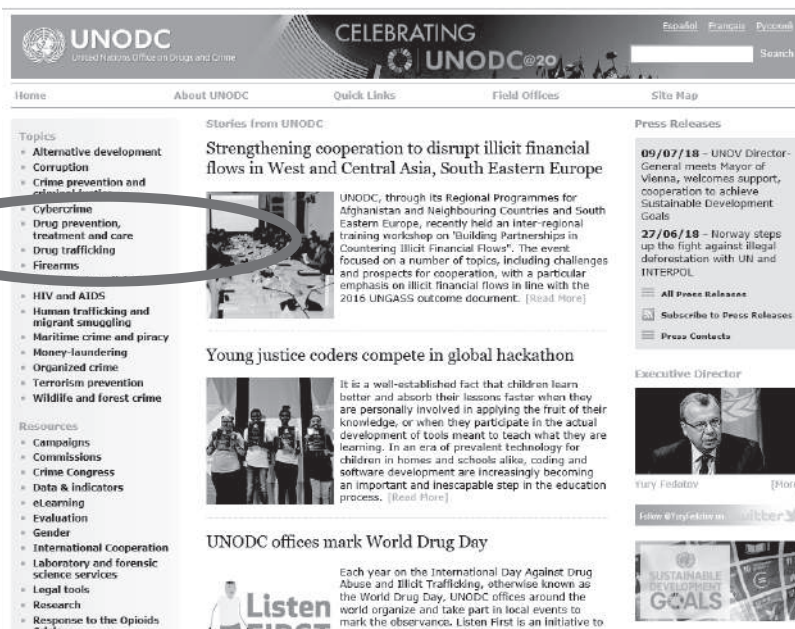
## Penal Reform Trust and The Pilgrim Trust, International good practice: alternatives to imprisonment for women offenders.

- International examples of alternatives to custody for nonviolent women offenders.
- From early intervention strategies to resettlement programmes
- Women's centres and one-stop-shop
- Community residential alternatives, and small units designed to accommodate women offenders.





# www.unodc.org



## Thank you for your attention!

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UNAFEI 170th International Training Course  
VE2-1 (31-Aug, AM)  
Dr. Alexander David Wodak

# *Prisons, drug use, treatment & drug policy*

UNAFEI, Tokyo  
31 August 2018  
Dr Alex Wodak AM  
alex.wodak@gmail.com

1

## **Tasks:**

**Current status of drug use and drug-related offences:**

- main types of drugs that are in use
- types of drug-related offences committed by drug users
- legal frameworks available for (i) drug users (where use is illegal) and (ii) offenders who commit offences connected with drug use (i.e., property crimes, drug trafficking and so on). Examples include criminal procedures providing alternatives to conviction or punishment, diversion from criminal proceedings, etc.
- risk/needs factors of drug users

2

## **Why does drug treatment in prisons matter?**

3

## **Why does drug treatment in prisons matter?**

- **Many people who use drugs (PWUD) spend lot of time in prison**
- **High rate of re-imprisonment**
- **Prison experience often quite damaging**
- **Can also have some benefits**
- **Cost to taxpayers**
- **Evidence that prison changes drug use?**

4

## **Why does drug treatment in prisons matter? 2**

- **High concentration PWUD in prison so efficient place to provide treatment**
- **Risk of drug use in prison vs. in community?**
- **Drug treatment in community so should also be available in prison**

5

## **Main types of drugs that are in use:**

6

## Main types of drugs that are in use:

- Sedatives – eg alcohol, opioids, benzodiazepines
- Stimulants - cocaine, amphetamine
- Hallucinogens (psychedelics) – LSD, psilocybin, mescaline
- Combinations – nicotine, cannabis, MDMA
- Note: pharmacology or public health does not explain why some drugs legal, others illegal

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## Main types of drugs that are in use:2

- Tobacco
- Alcohol
- Prescription
- Illicit

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## **Types of drug-related offences committed by drug users:**

9

## **Types of drug-related offences committed by drug users:**

- **Drug trafficking offences**
  - Cultivation, production, transport, sale, purchase, possession, use, financial transactions
- **Income generating offences**
  - Break and enter, robbery, theft, fraud
- **Violence between gangs**

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## Legal frameworks available: use

- Increasing trend to reduce punishment for personal possession
  - Expensive
  - Little benefit
  - Great harm to PWUD
- > 30 countries now removed penalties personal possession
- 2001 Portugal introduced new system – persons found possession personal quantities drugs referred for assessment
- Treated as health & social issue
- Very successful

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## Legal frameworks available: use

- Many countries still impose severe penalties for personal possession
- All countries impose severe penalties for trafficking large quantities
- Now countries starting to regulate recreational cannabis partly to undermine black market
- Can also undermine black market by implementing drug treatment to scale

12

## **Alternatives to conviction or punishment, diversion from criminal proceedings:**

- **Murky area**
- **Evolving**
- **Range of diversion options**
- **LEAD in USA**

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## **Tasks:2**

- **Coordination and cooperation between criminal justice agencies and health care or social welfare agencies; in particular, effective coordination and cooperation during incarceration, release from prison and diversion from criminal procedure to health care/social welfare focused procedures or treatment, etc.**

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## Improving collaboration:

- Important
- Difficult
- Requires specific staff

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## Tasks: 3

- Are convicted offenders sent to prison AS or FOR punishment?
- As history of or current drug use much higher in prisoners than community, should high quality drug treatment be provided in prisons?
- Does providing effective & attractive treatment in prisons reduce recidivism and thus reduce incarceration rate?
- What is the role of compulsory drug treatment in prisons?
- Is there a role for work treatment for drug use in prisons?

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## Tasks: 4

- Why is there growing international interest in drug law reform?
- What is known about effects of drug law reform on prisons?
- What should correctional staff know?
- How should they be trained?
- What factors should influence corrections policy & drug treatment in prisons?
- How should correctional & community drug treatment relate?

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## Conclusions:

- International drug control system increasingly questioned
- Growing interest in moving people who use drugs from criminal justice system to health & social interventions
- So more interest in law reform & varieties of diversion
- International experience compulsory drug treatment very concerning
- Effective drug treatment very important to improve outcomes

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## *Drug policy and harm reduction*

UNAFEI, Tokyo  
3 September 2018  
Dr Alex Wodak AM  
alex.wodak@gmail.com

19

## **My background:**

- Physician
- Interest in alcohol & drugs
- Research on genetic susceptibility to alcoholic liver disease in London
- Director, Alcohol and Drug Service, St Vincent's Hospital, Sydney 1982-2012
- Interest in drug treatment, prisons, drug policy
- Worked few weeks as doctor in women's prisons

20

## My background:2

- Research on drug treatment, smoking cessation in prisons
- Approach to drugs strongly influenced by my efforts to control HIV among/from people who inject drugs (PWID)

21

## International experience:

- |                    |     |
|--------------------|-----|
| • Brazil           | Yes |
| • Lao PDR          | Yes |
| • Malaysia         | Yes |
| • Maldives         | No  |
| • Mauritius        | No  |
| • Myanmar          | Yes |
| • Namibia          | No  |
| • Pakistan         | Yes |
| • Papua New Guinea | Yes |
| • Samoa            | No  |
| • Sri Lanka        | Yes |
| • Thailand         | Yes |
| • Uzbekistan       | Yes |

22



## Tasks:

- Initiatives for facilitating desistance from drug use in institutional and community settings:
  - effective treatment approaches for desistance from drug use
  - staff training for implementation of treatment
  - methods for reducing harm to health/social life caused by drug use
- Coordination and cooperation between criminal justice agencies and health care or social welfare agencies; in particular, effective coordination and cooperation during incarceration, release from prison and diversion from criminal procedure to health care/social welfare focused procedures or treatment, etc.

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## My framework:

- ‘Use reduction’ or harm reduction?
- Arguments for ‘use reduction’
  - International drug treaties 1961, 1971, 1988
  - UN system for policy development, implementation & monitoring
  - Almost all countries have signed & ratified
- But growing debate about international drug control system
- Should reduction drug use be an end or a means to an end?

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## Harm reduction:

- Existed for many years in public health & policy eg road safety
- Stimulated by threat of HIV among/from PWIDs from 1980s
- Emphasise reduction of harm rather than reduction of use
- 'Never let the best be the enemy of the good'

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## Harm reduction:2

- Definition: 'Reducing health, social & economic costs of legal and illegal drug without necessarily reducing drug consumption'
- <https://www.hri.global/what-is-harm-reduction>
- 日本語翻訳
- Increasing concern that drug prohibition had failed & could not be made effective
- Consequentialism or non-consequentialism?

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## Reducing drug use:

- ‘Initiatives for facilitating desistance from drug use in institutional and community settings’
- All drugs or just illegal drugs?
- Treaties only about illegal drugs
  - But legal drugs cause many more deaths, much more cost to economy
  - More prisoners have problems legal than illegal drugs
  - Many have problems with both
  - Many people with problems illegal drugs die from tobacco related illness

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## Reducing drug use:2

- If smoke in prison inmates cannot save money
- Smoking increases chance of relapse to drugs
- Prison smoking bans or assist quit & allow prison e-cigarettes?

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## **Reducing illegal drug use through treatment:**

### **Psychosocial interventions:**

- **12 step methods**
  - Self help groups, alcohol & 'narcotics'
  - In prison & in community
  - Prescribed program
  - Religious/spiritual
  - Debate about evaluation
  - Effective?
  - Lay not a clinical intervention

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## **Reducing illegal drug use through treatment:2**

- **Cognitive Behavioural treatment**
  - Based on learning theory
  - Identify triggers
  - Provide range of practical interventions
  - Well evaluated across range of problems
  - More individuals than groups
- **Many other psychosocial interventions**
  - Motivational interviewing

30

## Reducing illegal drug use through treatment:3

- **Self Management and Recovery Training (SMART)**
  - Based on CBT
  - Individual or group
  - Evaluated
  - Not as black and white as 12 step
  - Not spiritual
  - More flexible

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## Reducing illegal drug use through treatment:4

- **Opioid Substitution Treatment**
- **Agents:**

– Methadone	agonist
– Buprenorphine	partial agonist
– Diacetylmorphine	agonist
– Hydrocodone	agonist
- **Principles:**
- **Replace: short-acting, injectable, illegal, street drug with long-acting, oral, legal, prescribed drug**

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## **Reducing illegal drug use through treatment:5**

- **Methadone most frequently evaluated treatment in medicine!**
- **Now compelling evidence that OST is:**
  - Effective
  - Safe
  - Cost effective (\$4-7: \$1)
  - In community AND in prisons
  - Reduces: deaths, HIV, crime, drug use, improves social functioning
- **Endorsed many major medical organisations, UN bodies**

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## **Reducing illegal drug use through treatment:6**

- **Diacetylmorphine trials 7 countries, >1500 subjects, similar findings, only for small minority**
- **OST in community about 85 countries**
- **OST in prisons about ½ these countries**
- **OST in prison important:**
  - Reduce recidivism
  - Reduce HIV infection
  - Continue on into community prevent overdose deaths
- **In almost all countries, demand for OST>> supply – even worse in prisons**

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## Does saturation drug treatment work?

- Incidence of heroin use in Zurich, Switzerland: a treatment case register analysis. Nordt, Stohler Lancet 2006
- <https://www.ncbi.nlm.nih.gov/pubmed/16753485>
- 850/1990 to 150/2002; HIV, overdose, crime, quantity drugs seized

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## Reducing illegal drug use through treatment:7

### Psychostimulants

- No agreed substitution treatment
- But now active research
- Have to rely on psychosocial treatments
- But more effective than often thought

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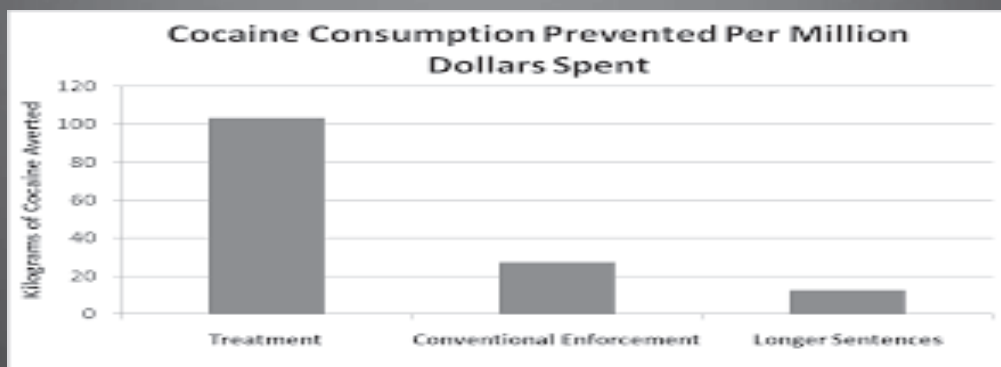
## Are treatments for cocaine worthwhile?

- **RAND: Controlling Cocaine Supply Versus Demand Programs**, Peter Rydell, Susan Everingham
- [https://www.rand.org/pubs/monograph\\_reports/MR331.html](https://www.rand.org/pubs/monograph_reports/MR331.html)
- **Return on \$US 1:00 investment**
  - Crop eradication 15c
  - Interdiction 32c
  - US customs & police 52c
  - Drug treatment \$7.46
- **Yet USG allocated 93% funds to LE, 7% to drug Rx**

37

## Drug treatment or prison?

- **RAND 1997 Mandatory Minimum Drug Sentences. Throwing Away the Key or the Taxpayers' Money?** Caulkins, Rydell et al



38

## **Staff training for implementation of treatment:**

- **Defining drug problems as primarily criminal justice makes drug treatment much less effective**
- **Stigma, discrimination, underfunding, ignore human rights, ignore evidence**
- **Redefine as primarily health & social issue**
- **Give staff practical experience as part of training**

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## **Methods for reducing harm to health/social life caused by drug use:**

- **Hard to distinguish whether harm caused by drug use or drug policy eg heroin - robbing banks**
- **Social integration critical – eg encourage PWUD to get jobs – education, training v important**
- **Practical harm reduction: needle syringe programs, condom promotion + housing, legal assistance etc**

40

## Conclusions:

- Difficult area
- Polarised views
- But becoming clearer that drug prohibition has not reduced:
  - Drug production
  - Drug consumption
  - Number of new drugs
  - Drug prices down
  - Availability high

41

## Conclusions: 2

- Drug markets bigger, more dangerous
- Increase in: deaths, disease, crime, corruption, violence
- Prisons critical in reducing problems from drugs & drug policy
- But low priority in many countries
- Bad policy has been good politics
- Minimise prison population

42

## Conclusions: 3

- Drug law reform take some time, differ in different countries, so what to do now?
- Saturation drug treatment in community, prisons, as similar as possible
- Harm reduction in community & prisons also similar as possible
- Focus on harm not use
- Be serious about harm from smoking

UNAFEI 170th International Training Course  
VE2-2 (3-Sep, PM)  
Dr. Alexander David Wodak

## *Drug policy and harm reduction*

UNAFEI, Tokyo  
3 September 2018  
Dr Alex Wodak PM  
alex.wodak@gmail.com

1

## My background:

- Physician
- Interest in alcohol & drugs
- Research on genetic susceptibility to alcoholic liver disease in London
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- Interest in drug treatment, prisons, drug policy

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| • Namibia          | No  |
| • Pakistan         | Yes |
| • Papua New Guinea | Yes |
| • Samoa            | No  |
| • Sri Lanka        | Yes |
| • Thailand         | Yes |
| • Uzbekistan       | Yes |

4

## Tasks:

- Initiatives for facilitating desistance from drug use in institutional and community settings:
  - effective treatment approaches for desistance from drug use
  - staff training for implementation of treatment
  - methods for reducing harm to health/social life caused by drug use
- Coordination and cooperation between criminal justice agencies and health care or social welfare agencies; in particular, effective coordination and cooperation during incarceration, release from prison and diversion from criminal procedure to health care/social welfare focused procedures or treatment, etc.

5

## My framework:

- 'Use reduction' or harm reduction?
- Arguments for 'use reduction'
  - International drug treaties 1961, 1971, 1988
  - UN system for policy development, implementation & monitoring
  - Almost all countries have signed & ratified
- But growing debate about international drug control system
- Should reduction drug use be an end or a means to an end?

6

## Harm reduction:

- Existed for many years in public health & policy
- Stimulated by threat of HIV among/from PWIDs from 1980s
- Emphasise reduction of harm rather than reduction of use
- ‘Never let the best be the enemy of the good’

7

## Harm reduction:2

- Definition: ‘Reducing health, social & economic costs of legal and illegal drug without necessarily reducing drug consumption’
- Increasing concern that drug prohibition had failed & could not be made effective
- Consequentialism or non-consequentialism?
- ‘What is harm reduction?’ Harm Reduction International website

8

## Reducing drug use:

- ‘Initiatives for facilitating desistance from drug use in institutional and community settings’
- All drugs or just illegal drugs?
- Treaties only about illegal drugs
  - But legal drugs cause many more deaths, much more cost to economy
  - More prisoners have problems legal than illegal drugs
  - Many have problems with both
  - Many people with problems illegal drugs die from tobacco related illness

9

## Reducing drug use:2

- If smoke in prison inmates cannot save money
- Smoking increases chance of relapse to illegal drugs
- Prison smoking bans or allow prison e-cigarettes?

10

## **Reducing illegal drug use through treatment:**

### **Psychosocial interventions:**

- **12 step methods**
  - Self help groups, alcohol & 'narcotics'
  - In prison & in community
  - Prescribed program
  - Religious/spiritual
  - Debate about evaluation
  - Lay not a clinical intervention

11

## **Reducing illegal drug use through treatment:2**

- **Cognitive Behavioural treatment**
  - Based on learning theory
  - Identify triggers
  - Provide range of practical interventions
  - Well evaluated across range of problems
  - More individuals than groups
- **Many other psychosocial interventions**

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## Reducing illegal drug use through treatment:3

- **Self Management and Recovery Training (SMART)**
  - Based on CBT
  - Individual or group
  - Evaluated
  - Not as black and white as 12 step
  - Not spiritual
  - More flexible

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## Reducing illegal drug use through treatment:4

- **Opioid Substitution Treatment**
- **Agents:**
  - Methadone                      agonist
  - Buprenorphine                partial agonist
  - Diacetylmorphine            agonist
  - Hydrocodone                 agonist
- **Principles:**
- **Replace: short-acting, injectable, illegal, street drug with long-acting, oral, legal, prescribed drug**

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## Reducing illegal drug use through treatment:5

- **Methadone most frequently evaluated treatment in medicine!**
- **Now compelling evidence that OST is:**
  - Effective
  - Safe
  - Cost effective (\$4-7: \$1)
  - In community AND in prisons
  - Reduces: deaths, HIV, crime, drug use, improves social functioning
- **Endorsed many major medical organisations, UN bodies**

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## Reducing illegal drug use through treatment:6

- **Diacetylmorphine trials 7 countries, >1500 subjects, similar findings, only for small minority**
- **OST in community about 85 countries**
- **OST in prisons about ½ these countries**
- **OST in prison important:**
  - Reduce recidivism
  - Reduce HIV infection
  - Continue on into community prevent overdose deaths
- **In almost all countries, demand for OST>> supply – even worse in prisons**

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## Reducing illegal drug use through treatment:7

- No agreed substitution treatment
- But now active research
- Have to rely on psychosocial treatments
- But more effective than often thought

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## Are treatments for cocaine worthwhile?

- RAND: Controlling Cocaine Supply Versus Demand Programs, Peter Rydell, Susan Everingham
- [https://www.rand.org/pubs/monograph\\_reports/MR331.html](https://www.rand.org/pubs/monograph_reports/MR331.html)
- Return on \$US 1:00 investment
  - Crop eradication 15c
  - Interdiction 32c
  - US customs & police 52c
  - Drug treatment \$7.46
- Yet USG allocated 93% funds to LE, 7% to drug Rx

18

## **Staff training for implementation of treatment:**

- **Defining drug problems as primarily criminal justice makes drug treatment much less effective**
- **Stigma, discrimination, underfunding, ignore human rights, ignore evidence**
- **Redefine as primarily health & social issue**
- **Give staff practical experience as part of training**

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## **Methods for reducing harm to health/social life caused by drug use:**

- **Hard to distinguish whether harm caused by drug use or drug policy eg heroin - robbing banks**
- **Social integration critical – eg encourage PWUD to get jobs – education, training v important**
- **Practical harm reduction: needle syringe programs, condom promotion + housing, legal assistance etc**

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## Conclusions:

- Difficult area
- Polarised views
- But becoming clearer that drug prohibition has not reduced:
  - Drug production
  - Drug consumption
  - Number of new drugs
  - Drug prices down
  - Availability high

21

## Conclusions: 2

- Drug markets bigger, more dangerous
- Increase in: deaths, disease, crime, corruption, violence
- Prisons critical in reducing problems from drugs & drug policy
- But low priority in many countries
- Bad policy has been good politics

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# IN-PRISON SUBSTANCE MISUSE TREATMENT PRINCIPLES AND MODALITIES

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1

## Terminologies on Substance Misuse

- Recreational use, social use, experimental use, risky use, misuse, abuse, excessive use, dependence, and addiction.
- How to define the threshold of substance misuse/abuse/addiction?
  - Results in adverse social and professional consequences
  - Failure to meet one's obligations, legal problems, or conflicts with others
  - Unable to carry out normal daily routine
  - Continue to use in face of mounting social/personal dysfunctions.

2

## Difficulty in Defining Substance Misuse: Recreational, Abuse, and Addiction

- Recreational or social use
  - Still functional and cause no problems to oneself or people around him/her.
- Abuse
  - Chronic use despite harmful consequences
- Addiction
  - physiologic and behavioral symptoms such as cravings for the substance, withdrawal symptoms if stop using; need increased amounts to calm down, and structure one's daily life around acquiring/using substance.

3

## Medical Definition by DSM

- *The Diagnostic and Statistical Manual of Mental Disorders (DSM-5, by American Psychiatric Association) defines substance abuse by at least 1 of the following symptoms occurs during a 1-year period:*
  - Repeated failure to fulfill obligations, which might result in missing work or school, suspension or dismissal from school or work, or child neglect.
  - Using substances under dangerous conditions (e.g., driving or operating machinery).
  - Arrests or other legal problems connected to substance use.
  - Ongoing substance use regardless of negative consequences.

4



## Substance Misuse Is a Global Problem

- Widespread in US and Western countries
- Spreading in developing countries
  - Particularly growing economies
  - Opium poppy production countries despite poverty
- Understand the causes, appreciate the complexity
  - inequality, social tensions, conflicts
  - growing tolerance towards deviant behavior? Dealing with deviance in a pluralistic society-punk culture, rebellion...

5

## No Easy Solutions

- Don't look to US or Western world for easy solutions
- We are all trying to find good solutions
- Current US crisis in opioid overdose

6

## Criminal Justice as a Solution

- The Control Regime
  - Led by US, Russia, China
  - UNGASS 2016 and departure of the control regime
  - Conflicting message inside US
- Harm Reduction Regime

7

## Drawbacks of Justice System as a Solution

- Substance misuse is a complex problem
  - multitude of problems—physiological, psychological, and social—none of which have easy solutions.
  - Complex problems require complex and flexible response
  - Prison system is rigid and inflexible
  - Unfair to ask criminal justice system --primary role is to enforce the law and penalize the law breakers.
  - Treating substance misuse disorder requires a different mindset and response setup, one that sometimes does not sync well with the justice system.

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## Benefits of Prison as a Treatment Solution

- Many substance misusers wind up in prison
- Coercive nature of prison environment –making treatment services delivery effectively and efficiently, often with little or no resistance
- Quite different in the community
- Addiction assessment and treatment should begin during incarceration, and prison-based treatment is most effective when aftercare services are planned and delivered upon release.

9

## Prison as Public Health Frontline

- Prison environment is excellent for screening and treating substance abusers for infectious diseases : HIV/AIDS, hepatitis B and C, and tuberculosis because:
  - poor hygiene due to living conditions
  - Limited access to public health services
  - Risky if not careful in a prison environment because of crowded environment

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## GUIDING PRINCIPLES FOR IN-PRISON TREATMENT

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### 1. Prison Enables Effective Delivery of Treatment Services

- Structured and restrictive environment
- Most substance misusers open to treatment services while incarcerated
- Compulsory or coerced treatment just as effective as voluntary treatment
- Forced introduction to recovery

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## 2. Chronic Drug Use Causes Brain Damage

- Disruption of nutrients needed by brain tissue; Direct damage, injury, and death of brain cells, including neurotransmitter receptors ; Alterations to brain chemical concentrations, including neurotransmitters and hormones; Deprivation of oxygen to brain tissue
- Permanent or Transient Damage. Some damage may be possible to reverse—supplying missing nutrients that promote reestablishment of chemical pathways in the brain. Early-stage damage can be repaired; but damages due to extensive use is difficult to recover.
- Stimulants act on dopamine and its receptors in the brain, causing anhedonia (diminished ability to feel pleasure; marijuana—psychosis; hallucinogens—persistent perception disorder (Snow, Flashbacks, Echoes, Visual distortion); opioid suppresses breathing decreasing blood oxygen to the brain, may cause death or coma. Long-term use of opioid leads to hypoxia—slow developing brain damage due to brain oxygen deprivation.

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## 3. No Silver Bullets or Simple Solutions, So Expect Relapses, Many Times

- The idea of “curing” addiction through one or two spells of treatment is simply unrealistic
- Addiction has no cure and brain damages are hard to recover.
- Consider multiple relapses and modest goals for long-term reduction in use.
- To make things worse, substance abusers often have multiple other problems, or comorbidities, such as medical, psychological, social, vocational troubles.
- Early intervention can reduce lasting damage to the brain and improve chances of recovery.

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## 4. Risk/Needs Assessment and Adjust Treatment Accordingly

- Many substance misusers have criminal records, thus at risk of reoffending
- Prior to treatment, risk assessment is important to identify (1) risk of conduct disorder and reoffending, and (2) treatment needs and criminogenic needs. *More on risk/needs assessment later*
- Treatment plans may require a combination of treatment options, for instance, medication plus counseling or psychotherapy. Other services inside the prison may also be added to the treatment plan, such as drug education, peer support groups, or self-help groups.

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## 5. Aftercare Is Critical for In-Prison Treatment Activities

- Secession and abstinence easy to achieve inside prison, but difficult to maintain treatment effects once released.
- Research has consistently shown that the length of stay in treatment programs is directly related to the overall success.
- Furthermore, taking the long-term perspective also means that relapses will occur to many of these inmates, and multiple episodes of treatment thus become a normal part of their recovery process.
- Many justice-involved substance misusers will return to prison and start in-prison treatment program again, and again. Important to recognize substance misuse as a form of chronic illness that requires not only in-prison treatment but also aftercare programs after release.
- Retention in aftercare is key to treatment success. Without the prison structure, alternative strategies or incentives need to be developed to keep these substance misusers in the treatment program.

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## Pharmacological Treatment Approaches

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## FDA Approved Medications for Treating Addictions

- Tobacco: nicotine replacement, bupropion, varenicline (reduces cravings/decreases pleasurable effects)
- Alcohol: Chlordiazepoxide (Librium—benzodiazepine class sedative), diazepam, oxazepam, disulfiram, acamprosate, naltrexone
- Opioids – agonists: methadone, buprenorphine; antagonists: naltrexone
- Stimulants (methamphetamine/cocaine): none
- Barbiturates (benzodiazepine, carisoprodol (soma): none
- Marijuana: none
- Other Addictions (gambling, pornography, shopping): none

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## Limited Pharmacotherapies for Substance Misuse Treatment

- Only established protocols for opioid use
- Why (compared to other common diseases)?
  - Complex problem?
  - Limited funding affecting certain social class?

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## Opioid Agonists

- Methadone and buprenorphine are the only two drugs approved by the FDA for clinical use.
- Methadone, a synthetic opioid agonist for the purpose of substitution, has been around for decades.
  - provide euphoria similar to heroin; reduce withdrawal symptoms and reduce craving for illicit opioid drugs.
  - Also act to block the effects of illicit opioids.
  - Taken orally on a daily basis; tightly controlled.
- Buprenorphine, also a synthetic opioid but only a partial agonist
  - Helps reduce cravings and withdrawal symptoms, but does not produce the euphoria and sedation similar to heroin
  - Less risk of respiratory depression or overdose than methadone; taken orally, can be at doctor's office
  - Oftentimes buprenorphine is combined with the antagonist naltrexone, a formulation called Suboxone. An implant version in the form of small rods are available, effective for four to six months.

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## Opioid Antagonists

- Two common opioid antagonists: naltrexone and naloxone.
- Naloxone (or Narcan) is a fast acting but short-term opioid blocker, and used primarily as an antidote for overdose.
- Effective immediately but also wears off fast.
- Naltrexone is a long-lasting opioid blocker.
  - It binds and blocks opioid receptors so that the drug user will not feel high
  - has been around for three decades
  - taken orally as pills and injected. The pill delivery form has a poor record of compliance. The injection formulation, called Vivitrol, can deliver the effect for up to one month. However, compared to agonists such as buprenorphine, naltrexone has a hard time to be accepted by active drug users.
- Naltrexone is most effective when the substance misusers have completed detoxification, which is ideal for use in prison and in preparation for release.
  - Research has shown that the initiation of extended release (slow release) injectable naltrexone prior to prison release can significantly reduce relapse among opioid-dependent inmates.

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## Psychosocial Treatment Approaches

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## Promising Psychosocial Treatment Approaches

- Unlike pharmacotherapies, psychosocial approaches are different versions of “talk” therapies
  - Through techniques of persuasion or convincing to change people’s attitudes and behaviors so that they will remain abstinent.
  - They teach people to acquire new ways of thinking and skills to handle stressful situations that may trigger substance abuse.
- Research has shown that overall, psychosocial treatment strategies are effective, particularly when used in combination with pharmacological interventions.
- Most of these psychosocial interventions are available online in public and academic websites should anyone be interested in obtaining free materials.

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## Risk & Needs Assessment for In-Prison Treatment

- Criminal offenders with substance misuse problems present more challenges than their non-criminal peers:
  - Legal problems
  - Complex social/personal problems
  - Co-morbidities
- Therefore in-prison treatment needs to incorporate two key ingredients: (1) *risk of reoffending*, and (2) *criminogenic needs*.

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## Risk Assessment

- Two aspects to the *risk* factor in every criminal offender with substance misuse problems
  - (1) the risk of re-offending; and
  - (2) the risk of relapse.
- “Risk” is often construed as the likelihood to re-offend; but also compounded by the offender’s likelihood of relapse into substance misuse.
- The greater the substance misuse problem the more likely the person is to re-offend regardless of other criminogenic factors.
- In the U.S. most criminal offenders are assessed to identify not only their criminal propensity but also the severity of their substance misuse.
- Treatment plans should take both factors into consideration and match the service needs of the offender. Depending on inmates’ drug use history and types of drugs abused, some may receive a combination of pharmacological interventions and psychosocial services, while others are only assigned to psychosocial programs such as education and training programs to acquire coping skills, behavioral modification, counseling, and self-help.

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## Needs Assessment

- *Needs* assessment is an extension of risk assessment.
- To achieve optimal allocation of resources to those in greatest needs.
- Treatment needs often associated with criminal offenders: criminal thinking, criminal associates, impulsivity, risk taking, limited self-control, poor problem-solving skills, poor educational and employment skills, and drug and alcohol dependence.
- Most US prisons use instruments developed in house or purchased commercially. Because of the high demand, risk/needs assessment has become an industry. Similar to other established psychometric tests, correctional agencies are typically charged license fees and/or per-use fee.
- There are free options. Most of the measures in these risk/needs assessment tools are similar to one another. There are no secrets to what these items are.

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## Cognitive Behavioral Therapy

- Most common. Emphasizing cognitive changes in how people perceive events or situations and what alternative activities one may use to resolve their predicaments.
- Received the most attention in evaluation. In general produced more consistent positive findings than any other psychosocial approaches such as psychodynamic therapy, psychoeducation, physical exercise and supportive interventions. There are numerous variants of CBT.
- Two main components: identify and understand events and situations that provoke negative emotive states; and learn alternative coping skills and apply these newly acquired skills to wider situations.

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## Attitude Adjustment

- CBT starts with “attitude adjustment”
- Change the way criminal offenders think or perceive things.
- The philosophy behind CBT assumes that people who abuse drugs usually are aware of their predicaments but unable to navigate through life’s challenges (i.e., triggers or drug use cues) without resorting to drug-induced solutions.
  - Internal trigger events: negative physical or mental states such as not feeling well or depressed
  - Interpersonal: peer pressure or negative social encounters
  - Situational: social settings that induce stress or pressure

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## Acquire New Coping Skills

- CBT-oriented activities help patients recognize these stress-inducing or high-risk situations
- Acquire thinking strategies and coping skills through **modeling** and **practicing**.
- A CBT practitioner:
  - Presents multiple scenarios (in addition to eliciting specific situations from participants) that trigger substance-using behavior, identifies problematic thoughts and response strategies in the past that led to drug use
  - Introduces different ways of thinking and problem solving strategies, frequently through role-playing and modeling.
  - CBT participants rehearse and practice these newly acquired thinking skills and<sup>29</sup> behavioral techniques.

## Contingency Management

- Contingency management (CM) focuses on exploiting the principle of operant conditioning--behavior is shaped by its consequences.
- If positive behaviors are quickly reinforced through incentives, such behaviors will likely repeat themselves.
- By offering alternatives to drug use, people are believed to be able to accept non-drug incentives and avoid relapse.
- CM seeks alternatives or behavioral substitutions, mostly through incentives, to encourage or maintain desired behavioral changes and prevent relapse.
- Numerous studies have been conducted to examine the efficacy of contingency management and findings are supportive in general.

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## Voucher-Based Reinforcement Therapy (VBRT)

- A treatment participant is rewarded with an incentive following a clean drug test, typically through urinalysis.
- A substance misuser receives a voucher worthy of a monetary value each time he/she is tested clean. Consecutive clean tests can increase the value of the voucher.
- For instance, the first time a clean urinalysis is worth \$1.00. The second test, the voucher will be worth \$1.50, and the third consecutive clean test will be worth \$2.00. After three clean tests, the program participant will earn a total \$4.50.
- However if the fourth test turns dirty, the voucher will be worth \$1.00, reset to its starting value. The idea is that as the voucher becomes more valuable with each successive clean test, the participant will be incentivized to stay clean,<sup>31</sup> hoping to cash in for a sizable cash award at the end.

## Prize-Based Procedure

- Each clean urinalysis is rewarded with a chance to win something from a bowl filled with paper tickets or slips for various prizes.
- After a negative drug test, he/she will get to draw a prize from the prize bowl. Oftentimes the ticket or slip contains nothing more than a few encouraging statements, such as "good job". The majority of the slips in the bowl contain low value prizes.
- As the participant turns in consecutive clean urine samples, he/she is afforded additional chances to draw prizes, thus increasing his/her chances of winning "big" prizes, e.g., a \$100 gift card.
- But a dirty test will reset to only one draw from the bowl.

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## Motivational Interviewing (MI)

- A counseling style whereby the therapist seeks to help program participants to explore and resolve their own ambivalence towards treatment and rehabilitation.
- MI-type counseling is non-judgmental and non-confrontational.
- The counseling style places the participant at the center to take charge of his/her own life.
- The client is encouraged to set goals and explore ways to avoid their destructive lifestyle. So inmates find self-motivation to change behaviors. Typically the therapist uses open-ended questions to encourage participants to realize their agency.

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## Doing MI

- MI procedures are typically brief and used in conjunction with other behaviorally oriented treatment activities.
- MI starts with an assessment of the program participant, then the therapist uses the information to stimulate discussion and self-motivation. The treatment consists of brief sessions, during which participants make a plan for change and devise strategies to maintain abstinence.
- Because MI is brief and manualized, it can be applied in settings where there are few other treatment resources. Free materials available online at the U.S. government agency (such as NIDA) websites.

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## Other Common Psychosocial Interventions

- A large number of treatment modalities are variants of CBT, such as dialectical behavior therapy (DBT) and moral reconnection therapy (MRT).
- DBT focuses on learning about one's triggers that lead to negative state of mind and learning to apply different coping skills to break the sequence of events, thoughts, feelings, and behaviors that cause relapse. DBT assumes that the identification of triggers and effective coping skills can produce and reinforce desired behavior and prevent relapse.
- MRT is intended to help criminal offenders deal with anti-social thinking, helping offenders through several phases to identify and process events and environments that cause criminogenic stress, acquire and practice alternative behavioral solutions, and apply their new skills to a wide range of stressors.

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## Self-Help Programs

- Widely practiced in the U.S. among substance misuse community
- Originally as Alcoholics Anonymous (AA)—a self-help style of support groups for alcoholics.
- There are AA groups practically in all corners of the U.S., where mentors are helping mentees abstain from drinking.
- There are also 12 traditions to go along with the 12 steps of changes that govern behavior of AA members. The 12-step program first emerged in the 1930s and, although there have been changes over the decades, the essential elements remain.

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## The Essentials in A 12-Step Program

- admitting that one cannot control one's alcoholism, substance misuse or compulsion;
- recognizing a higher power that can give strength;
- examining past errors with the help of a sponsor (experienced member);
- making amends for these errors;
- learning to live a new life with a new code of behavior;
- helping others who suffer from the same alcoholism, substance misuses or compulsions.

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- 1. We admitted we were powerless— that our lives had become unmanageable. HONESTY
- 2. Came to believe that a Power greater than ourselves could restore us to sanity. HOPE
- 3. Made a decision to turn our will and our lives over to the care of God as we understood Him. FAITH
- 4. Made a searching and fearless moral inventory of ourselves. COURAGE
- 5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs. INTEGRITY
- 6. Were entirely ready to have God remove **all** these defects of character. WILLINGNESS
- 7. Humbly asked Him to remove our shortcomings. HUMILITY
- 8. Made a list of **all** persons we had harmed and became willing to make amends to them **all**. SELFDISCIPLINE
- 9. Made direct amends to such people wherever possible, except when to do so would injure them or others. LOVE FOR OTHERS
- 10. Continued to take personal inventory and when we were wrong, promptly admitted it. PERSEVERANCE
- 11. Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out. SPIRITUAL AWARENESS
- 12. Having had a spiritual awakening as the result of these Steps, we tried to carry this message to compulsive overeaters and to practice these principles in **all** our affairs. SERVICE

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## CONCLUSION

- Research has shown that treatment for substance misuse disorder is effective, but there is no singular approach that works the wonder.
- Most treatment professionals advocate for a comprehensive approach that starts with risk and needs assessment, and then match treatment services with identified needs.
- Post release monitoring and surveillance are important for the treatment planning.
- Effective treatment programs for prison inmates tend to have the following characteristics:
  - (1) intensive and behavioral that aim at taking up most if not all offenders' daily schedule and providing positive reinforcement for pro-social behavior;
  - (2) focused on high risk offenders;
  - (3) matching treatment modalities and services with identified needs; and
  - (4) providing pro-social contexts to bridge offenders released from prison to outside law-<sup>39</sup> abiding lifestyles.

## Take Home Point 1: *Avoid Reinventing the Wheel*

- Psychosocial interventions do not contain proprietary ingredients that, if packaged together, can somehow deliver guaranteed results. So no need to purchase any commercial training manuals or packages. Be very suspicious if someone advocates a commercial product or encourage one's agency to purchase a so-called name brand in substance misuse treatment field.
- No shortage of companies, many of them in the U.S., that are eager to sell or promote packaged programs for a fee. Many companies also try to get listed on government agency websites as a way to increase their "legitimacy".
- Free manualized treatment protocols (and assessments) can be obtained so that well-established psychosocial interventions can be implemented with little or no cost. Check U.S. government websites, such as National Institute for Drug Abuse.
- It is important to develop culturally-sensitive programs, but the theories underlying the above-mentioned treatment modalities are common across all societies, and have been tested and standardized through numerous clinical studies with different social and ethnic groups.
- More importantly, these psychosocial principles are simple enough for ordinary people to master, thus providing cost-effective treatment to peer support groups in places where there are few mental health professionals.



## Take Home Point 2: Use Rigorous but Inexpensive Evaluation Strategies to Improve Treatment Programs Over Time

- Evaluation research should be a standard component in all agencies that provide substance misuse treatment services.
- Psychosocial interventions that are often culturally responsive tend to vary somewhat from place to place. Once a psychosocial intervention takes on a local flavor, it should be evaluated so that incremental improvements can be made.
- By rigorous, we do not mean expensive. RCTs are the most basic design to prove the efficacy of a treatment protocol.
- The key objective of a randomized controlled trial is to create a condition for “objective” or “non-judgmental” comparison, and prevent cherry picking.

Questions?

UNAFEI 170th International Training Course  
VE3-2(14-Sep, AM)  
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# ASSESSMENT OF IN-PRISON DRUG TREATMENT

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1

## Evaluation Research

- Evaluation research in a nutshell is any systematic assessment to determine if something is of value or worthwhile.
- Just like what the word—"evaluation"—means, it seeks to attach a value to something, be it an object, program, person, service, activity, need, policy, or piece of technology.
- Its goal is to produce knowledge that can be used immediately, or useful feedback. Evaluation research is not meant to discover generalizable knowledge, but to improve or make better use of something in existence.
- The word "research" means systematic endeavors to examine or study, not judgment based on anecdotal stories or some haphazard personal observations or subjective assessment.

2

## The Fundamental Question

- Nothing mysterious about evaluation research because it uses all the standard research methods in social science. A booming business and employs many people in the West.
- The most fundamental question: does it work?

3

## Why Bother to Evaluate Your Treatment Program?

- IF you are believer in what you do, you don't need evaluation. Many social service providers and treatment programs that share such this belief.
- If you can appreciate the complexity of human behavior, or have to answer to someone higher up who demands accountability. Then you have to provide effectiveness and/or cost-effectiveness.
- Evaluation research can also be threatening, often mistaken for auditing. Most people do not like to have their work inspected. That's just human nature.
- In general, it is important to bring in the stakeholders early, preferably at the planning stage of any new initiatives or treatment programs.

4

## How Much Does Evaluation Usually Cost?

- 10% of the total program budget.
- If a new program, a separate evaluation is needed.
- Substance misuse is more than just an addiction disorder. It is supported and enabled by a host of complex social and personal factors, making treatment particularly difficult.
- For instance, naltrexone is an effective blocker to opioid receptors and has been around for three decades. How come such an effective opioid antagonist has not made much dent to the heroin addiction problem in the US or anywhere else in the world?
- The same goes to methadone and buprenorphine. Without psychosocial interventions and other support (familial and peer), pharmacotherapies are not that effective.

5

## Do You Need Trained Researchers?

- No.
- Evaluation research can be done by trained government staff or prison management.
- The key is to establish an assessment oriented data system to enable on-going feedback for the performance of a treatment program.
- The best approach is to team up with others of similar sizes and pool together resources to enable evaluation of treatment programs.

6

## Prison Settings Have Unique Advantages for Evaluation Research

- One of the main challenges for evaluation research on substance misusers is the attrition problem—study participants drop out at high rates from the program making the remaining sample biased towards motivated subjects. No in prison.
- Inside the prison, inmates' movements are monitored and any disciplinary problems are recorded. If any contraband drugs are suspected being smuggled into the prison, urine sample can be collected with little resistance.
- What is often cited is the tension between service provider/evaluator and prison management. Because of different occupational mandate, prison officials are most concerned about safety and order of the inmates. Lockdowns due to riots, inmate disruptive behaviors, searches for contrabands or removal of inmates to different cells can all cause disruptions to treatment service delivery and evaluation activities.
- Assessment of in-prison treatment programs inevitably needs to extend beyond the prison walls. Ultimately it is the behavior outside the prison that demonstrates the treatment effects inside the prison. Don't believe the effects you see in prison.

## EVALUATION DESIGNS

## Basics in Evaluation Research

- **Process evaluation** focuses on the implementation and operation of a treatment program.
- **Outcome evaluation** focuses on the impact of a treatment program.
- **Cost-benefit** analysis looks at the impact of a treatment protocol but also whether it is cost effective.
- **Evaluability** assessment refers to the state of a program that has completed (or nearly completed) its intended design and is ready to produce the intended outcomes.

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## Key Performance Indicators--Recidivism

- **Recidivism:** probably the most important outcome indicator that most.
- Recidivism can be defined in different, methodologically valid, ways:
  - re-arrests (irrespective of convictions);
  - severity of new arrests;
  - Convictions (and severity of convicted offenses)
  - Prison movement history/technical violations, etc.
- Sources: official records and self reports
- Self-report data can provide richer information on the spread and frequency of criminal behavior among the offender population. Self-report methods have been shown to be reliable with a remarkable degree of uniformity between self-reported answers and official data. A more recent study of drug dealers that traced self-reports of arrests from interviews through criminal records found about a 80% match between the two data sources. But the remaining 20%?



## Relapse and Other Outcome Indicators

- **Relapse:** most important outcome indicator; easy to understand but not always easy to measure. The best way and probably the most valid way is to obtain biological samples such as urine at predetermined intervals or random schedules.
- To use biological samples to ascertain one's drug use, a program administrator needs to have access to qualified laboratory facilities and the money to pay for the analysis of bio-samples (urine, hair, saliva, etc.). These bio-samples also need to be collected frequently over the observation period as some illicit substance passes through the body quickly.
- Self-reports are inexpensive to collect but not very accurate. There are many factors that can influence one's recall accuracy.
- **Other outcome indicators:** prosocial activities, such as job training, gainful employment, school attendance, stable residence, reunification with family and children, and participation in other prosocial activities. These indicators can foretell the prognosis of an offender in his reintegration effort. Relapse and recidivism are indicators of particular events while these prosocial activities can reflect a more stable personal growth and improvement in recovery.
- Program "effectiveness" means a lot of things to different people. Therefore, need to work with stakeholders, treatment participants, and service providers to agree on a set of measures.

## Data Collection

- Advantages of prison data management information system:
  - Personal backgrounds
  - Prior criminal records
  - Ongoing in-prison behavioral records
- In-prison service provider service records: In the US and many Western countries, substance misuse treatment services are contracted out to particular agencies specialized in treating substance abuse disorder among the criminal population.
- These treatment providers always maintain records of service utilization, about the numbers of inmates who have used the treatment services, the specific services used, and the outcomes of these service contacts.
- **Observation period:** as a rule of thumb, 6 months following the exit of a treatment episode is the minimum required for outcome evaluation purposes; typically, one year is needed to examine recidivism rate for prison populations.

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## Common Designs: Pre-and-Post Test

- A baseline assessment of a cohort of prison inmates at the entry of their treatment program. Then at the end of the treatment or a few months following the completion of the treatment, another assessment is conducted to detect any differences on the main outcome indicators.
- A pre-and-post evaluation design using official and/or self-report methods is an easy way to enter the evaluation research business. Within the prison environment official records are easy to utilize for evaluation purpose, although self-report data may face challenges in validity and reliability.
- While easy to understand and implement, pre-and-post test as an evaluation design has many limitations:
  - Selection bias is very difficult to overcome because one cannot tell if the improvement in the end can be attributed to the motivation factor or the treatment effect itself or some other factors.<sup>13</sup>
  - Without a comparison, there is no way to tell if the treatment protocol has produced anything better than the status quo (or existing) treatment services or no treatment at all.

## Randomized Controlled Trial (RCT)

- The most rigorous evaluation design is the use of randomized controlled trial (RCT).
- Its strength lies in the ability of researchers to infer cause – the program caused differences in outcomes rather than preexisting differences. One can infer that groups that are truly equivalent in all aspects going into the interventions have different outcomes only if the interventions have different impacts on the participants.
- Randomized experiments are highly valued because they allow for such causal inferences, but they are not infallible.

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## Best Ways to Implement an RCT

- Avoid differential consent: Consent must be obtained **before** random assignment. Those refusing consent will be eliminated from both groups. The comparison groups will be formed from exactly the same pool of consenting inmates. There will be no possibility of differential consent.
- Avoid resentful demoralization of controls: Consent to be assigned to alternative treatment programs can be accomplished without provoking "resentful demoralization of controls" that occurs in some studies. It is important not to suggest in any way that one treatment approach is superior to another, or one treatment protocol is more current than the other. Such value-loaded descriptions of any treatment protocols will unwittingly influence inmates' preference to one treatment program over the other.
- Avoid instrumentation differences: Probably the most common threat to validity in a true RCT design is from instrumentation differences that correspond with group assignment. For example, a prison guard's judgement of an inmate's substance misuse severity may be very different from that rendered by a professional treatment staff.
- Avoid contamination between treatment and control groups: Preventing the re-assignment of inmates from one condition to another or interaction between the two groups.
- Strengthen random equivalence by assigning within key strata. For example, if marital status has a strong influence on outcomes and we know that married inmates are less common than unmarried inmates, it would be desirable to have roughly equal numbers of married inmates receive each treatment without tainting random assignment.

## Comparison Group and Case Matching

- When an RCT design is not possible, researchers often fall back on a quasi-experimental design of using other inmates for comparison purposes.
- Case-matching was often done manually.
- Propensity score matching offers the most robust alternative to a true randomized controlled trial because of the sophisticated statistical procedures. In a non-randomized, comparative study, the estimated treatment effect is likely to be biased due to confounding variables.
- One major shortcoming of the case matching method (or propensity score indexing) is that it can only provide some control over descriptive variables (e.g., race, gender, age, and prior incarcerations), known to be related to recidivism or relapse in substance misuse.

## CONCLUSION

- Evaluation research is important for developing and improving substance misuse treatment in prison and community. Through evaluation, we continue to see many limitations of existing treatment protocols.
- Two major problems in our assessment of substance misuse treatment inside prison or out in the community.
  - Design weaknesses in most evaluation research have hampered building knowledge on the effective treatment. Most of what we know about treatment comes from meta-analysis.
  - Second, aside from the lack of rigorous designs, many evaluation studies are also plagued by small samples or highly localized populations to assess program effectiveness, making generalization to the larger population difficult.

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## Design Matters

--Here Is an Example

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## Why Doing RCTs

- Complexity in assessing program effectiveness
  - Multiple individual characteristics may account for outcomes but difficult to control
  - Motivation—the most difficult confounding factor to measure and control
- RCT is “gold standard”
  - Standard protocol in all medical treatments (large or small)
  - Random assignment evens out individual differences through the odds of probability—achieving equivalence between treatment and control subjects.
- Evaluation research field is changing—higher standards of admitting evidence

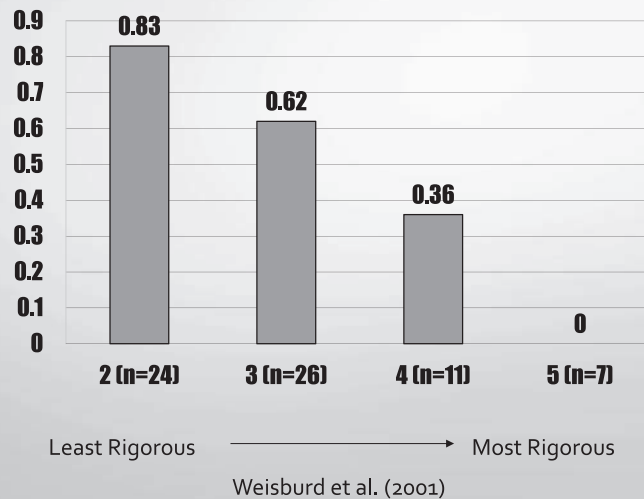
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## Obstacles to Doing RCTs

- A priori assumption of effectiveness
- Control subjects mean lost revenue
- “Intent-to-treat design” creates resistance to counting dropouts/no-shows as treatment subjects—cherry-picking subjects
- Expenses in following up on subjects
- Increased rigor → smaller effects

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## Study Quality & Effectiveness of Offender Programs (N=68)



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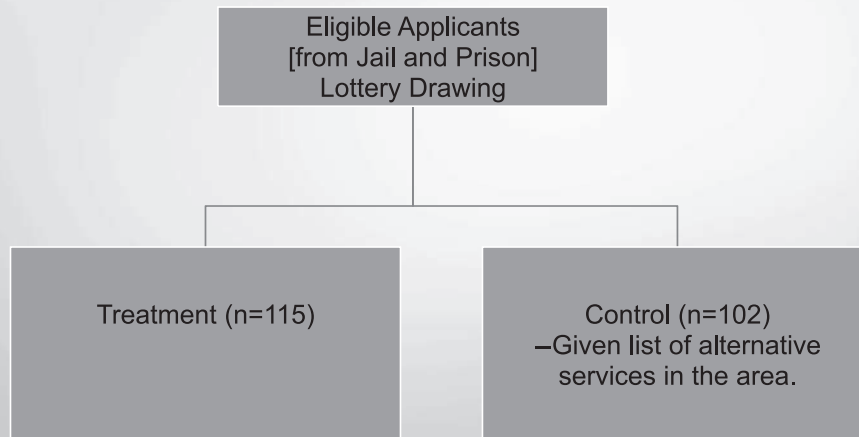
## An Recent Example of An RCT Study

- Combines job readiness training, transitional sober living, mental health services, and case management, directly from the gate of jail or prison for a two-year period.
- Preliminary data and findings show impressive decreases in recidivism (up to 75% reduction) and increases in stable employment among participants.
- The U.S. Senate Committee on Appropriations specifically recommended that the program be expanded and replicated nationally (July 20, 2006; Calendar No. 526, p. 10, par. 2)

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## Basic Design



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## The “Lottery” Process

- 2 chips--1 red/1 white. Subject makes selection.
  - Replacement (i.e., p of selection always .50)
  - Transparency
  - Involvement (vs. staff drawing, random # table, etc.)

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## Chip drawing...



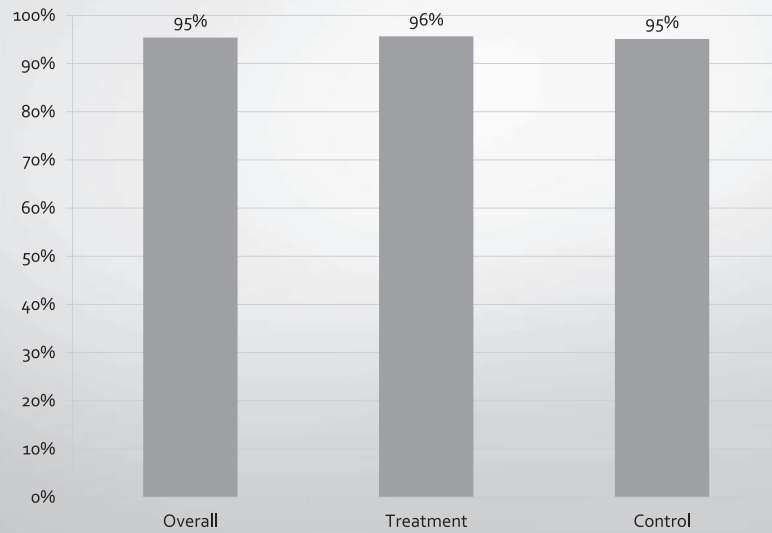
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## Sample Demographics (condensed)

	Control (N=102)		Treatment (N=115)	
	Frequency	Percent	Frequency	Percent
Male	89	87.3	90	78.3
Female	13	12.7	25	21.7
Race				
African Am.	20	19.7	28	24.3
Hispanic	35	34.3	40	34.8
White	34	33.3	34	29.6
Other	13	12.7	13	11.3
Age (Mean, SD)	35.0 (SD=10.1)		35.8 (SD=10.8)	
Never Married	64	62.7	76	66.1
Married/Cohabiting	11	10.8	16	13.9
Divorced/Separated	27	26.5	23	20.0
Education				
Less than H.S.	50	49.0	55	48.4
High Sch.	32	31.4	36	31.3
More than H.S.	20	19.6	24	20.3

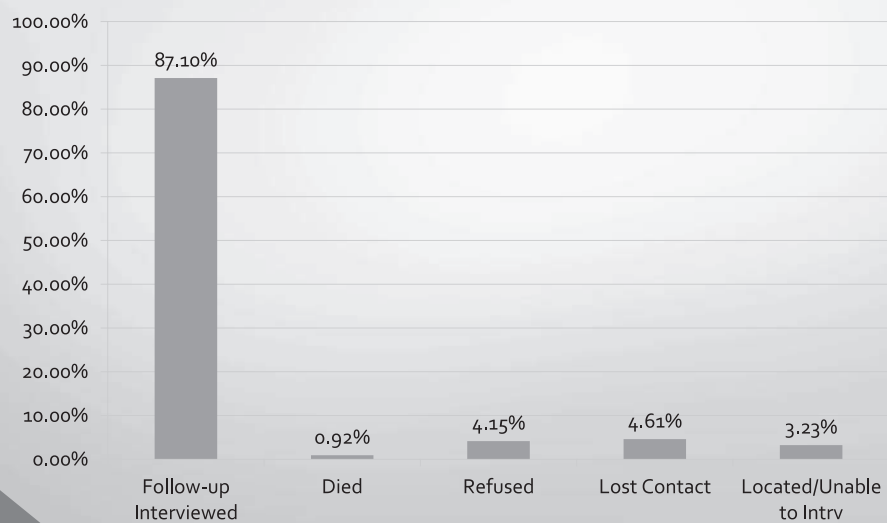
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## 12-Month Successful Locating Rate



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## Follow-up Interview Rate



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## Employment Status

	Control		Treatment	
<u><i>In Past 30 Days</i></u>				
1. Full/Part-time Employed	28	32.9	40	38.5
2. Unemployed or Other	57	67.1	64	61.6
<u><i>Since Last Interview (12 months)</i></u>				
1. Full/Part-time Employment	31	36.5	44	42.3
3. Unemployed or Other	54	63.5	60	57.7
<i>Total</i>	85	100.0	104	100.0

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## Arrest/Incarceration

	Control		Treatment	
<u><i>Arrests in Past 12 Months*</i></u>				
1. No Arrest	43	50.6	57	54.8
2. Arrested	42	49.4	47	45.2
<u><i>Incarceration in Past 12 Months</i></u>				
1. No incarceration	44	51.8	55	52.9
2. Jailed/Incarcerated	41	48.2	49	47.1
<i>Total</i>	85	100.0	104	100.0

\*12 months since baseline interview.

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## Residential Stability

	Control		Treatment	
1. Shelter/Institution	22	25.9	32	30.8
2. Homeless/Street	5	5.9	4	3.8
3. Apartment/House	58	68.2	68	65.4
<i>Total</i>	<i>85</i>	<i>100.0</i>	<i>104</i>	<i>100.0</i>

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## Illicit Drug Use

	Control		Treatment	
1. No Illicit Drug Use	45	68.2	58	69.9
2. Used Illicit Drugs	21	31.8	25	30.1
<i>Total*</i>	<i>66</i>	<i>100.0</i>	<i>83</i>	<i>100.0</i>

\*Effective sample size. Participants incarcerated were not asked this question.

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Questions?

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# The 170th International Training Course



The 170th International Training Course (UNAFEI, 22 August - 21 September 2018)

## Left to Right:

### Above

Dr. Sheldon Zhang (United States), Ms. Ampo (Philippines), Mr. Lindayag (Philippines)

### 4th Row

Ms. Kuan Pou Kei (Intern), Mr. Sato (Intern), Ms. Taniguchi (Japan), Mr. Hapuarachchi (Sri Lanka), Mr. Ando (Japan), Mr. Takata (Brazil), Mr. Mangere (Papua New Guinea), Mr. Abd. Mutalib (Malaysia), Mr. Nagai (Japan), Ms. Hisa (JICA), Ms. Odagiri (Chef), Ms. Iwakata (Staff), Ms. Nagahama (Staff)

### 3rd Row

Ms. Kamada (Staff), Ms. Nokchan (Thailand), Ms. Figaro Jolicoeur (Mauritius), Mr. Ab. Wahab (Malaysia), Mr. Ullah (Pakistan), Mr. Gunno (Mauritius), Mr. Abdul Hameed (Maldives), Mr. Yamane (Japan), Mr. Thet Paing Soe (Myanmar), Mr. Manichanh (Laos), Mr. Lam (Hong Kong), Mr. Hirose (Staff), Ms. Iinuma (Staff), Mr. Saito (Staff)

### 2nd Row

Ms. Oyo (Intern), Ms. Komino (Japan), Mr. Smith (Samoa), Ms. Limbo (Namibia), Mr. Suzuki (Japan), Ms. Wada (Japan), Mr. Kondo (Japan), Mr. Yamashita (Japan), Mr. Ueno (Japan), Mr. Kabe (Japan), Mr. Na (Korea), Mr. Tone (Japan), Prof. Yamada, Prof. Futagoishi

### 1st Row

Mr. Toyoda (Staff), Prof. Kitagawa, Prof. Hirano, Prof. Otani, Deputy Director Ishihara, Dr. Wodak (Australia), Director Seto, Ms. Busse (UNODC), Prof. Yamamoto, Prof. Ohinata, Prof. Watanabe, Mr. Fujita (Staff), Mr. Schmid (LA)

# The 21st UNAFEI UNCAC Training Programme



The 21st UNAFEI UNCAC Training Programme (UNAFEI, 11 October - 16 November 2018)

## Left to Right:

### Above

Mr. Ahmad Khusairi Bin Yahaya (Malaysia), Mr. Ruslen Bin Shamsudin (Malaysia)

### 4th Row

Mr. Saito (Staff), Ms. Nagahama (Staff), Mr. Sugita (Japan), Mr. Odinamahmadzoda (Tajikistan), Mr. Nagano (Japan), Mr. Shallakey (Sudan), Mr. Ajom (Malaysia), Mr. Razafimandimby (Madagascar), Mr. Matchanov (Uzbekistan), Mr. Khunga (Malawi), Mr. Banstola (Nepal), Mr. Jussa (Mozambique), Mr. Nishigaya (Japan), Prof. Furuhashi

### 3rd Row

Ms. Odagiri (Chef), Ms. Iinuma (Staff), Ms. Oda (Staff), Ms. Kamada (Staff), Ms. Kuroda (Japan), Mr. Nogami (Brazil), Mr. Murakami (Japan), Mr. Myo Zaw Win (Myanmar), Mr. Phimmasone (Laos), Mr. de Lima (Brazil), Mr. Low (Kenya), Mr. Nakajima (Japan), Ms. Hoang (Viet Nam), Ms. Dzhevaha (Ukraine), Mr. Soares (Timor-Leste), Prof. Kitagawa, Ms. Yamamoto (JICA)

### 2nd Row

Ms. Iwakata (Staff), Ms. Yamada (Staff), Mr. Hirose (Staff), Prof. Ohinata, Mr. Bono (Japan), Mr. Mesa (Philippines), Mr. Kassem (Egypt), Mr. Moussa (Niger), Mr. Omar (Kazakhstan), Mr. Khamisani (Pakistan), Mr. Geiko (Ukraine), Mr. Samuels (Sierra Leone), Ms. Siriwardhana (Sri Lanka), Mr. Nadeem (Maldives), Ms. Matumbi (Zimbabwe), Mr. Kuiap (Papua New Guinea), Ms. Saut (Cambodia)

### 1st Row

Mr. Schmid (LA), Mr. Toyoda (Staff), Prof. Futagoishi, Prof. Yamada, Prof. Hirano, Ms. So (Hong Kong), Ms. Wong (Hong Kong), Director Seto, Mr. Lamesic (Eurojust), Deputy Director Ishihara, Prof. Otani, Prof. Watanabe, Mr. Fujita (Staff), Ms. Kikuchi (Staff)

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81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening "Community Reintegration Factors"	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011
85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014

94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corruption	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015
99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investigation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017
	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017
105	Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms	168	Jan-Feb 2018
106	Criminal Justice Practices against Illicit Drug Trafficking	169	May-Jun 2018
107	Treatment of Illicit Drug Users	170	Aug-Sep 2018
	Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society	21st UNCAC	Oct-Nov 2018

