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### REDUCING REOFFENDING: THE KYOTO CONGRESS WORKSHOP AND FUTURE DEVELOPMENTS

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#### I. INTRODUCTION

From 7 to 12 March 2021, the 14th United Nations Congress on Crime Prevention and Criminal Justice (hereafter referred to as “the Kyoto Congress”) was held in Kyoto, Japan. The United Nations Congress on Crime Prevention and Criminal Justice (“the Crime Congress”) is held every five years and is the United Nations’ largest meeting in the field of criminal justice. The most up-to-date and important criminal justice issues are discussed at the Crime Congress, and in its recent practice, a political declaration is adopted, which sets the goal to be pursued for the following five years, up until the next Crime Congress. The UN Member States and the international community are expected to follow-up on what had been agreed upon and to take steps to implement the provisions of the political declaration.

The Kyoto Congress’s overall theme was “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of 2030 Agenda”. The Kyoto Congress focused its discussion on four agenda items, as well as four workshop topics, each corresponding to one of the four related agenda items. At the Kyoto Congress, a political declaration entitled the “Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development” (hereafter, referred to as “the Kyoto Declaration”) was adopted.

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) is an international training institute established upon an agreement between the United Nations and the Japanese government. UNAFEI is one of the United Nations Crime Prevention and Criminal Justice Programme Network Institutes (PNIs), and as such, has the role to contribute to the development and implementation of the UN policies in the field of criminal justice. At the Kyoto Congress, as a PNI, UNAFEI was responsible for organizing one of its formal components – Workshop 2 on “Reducing Reoffending: Identifying Risks and Developing Solutions”, which also served the discussion under Agenda Item 4 on “Integrated approaches to challenges facing the criminal justice system”.

Taking the position of the Deputy Director of UNAFEI from October 2017 to March 2021, I had the privilege to be responsible for the preparation and organization of Workshop 2. Based on my experience, I would like to briefly overview the discussions and the outcomes of the Workshop, and also look at its impacts on the future developments of UN criminal justice policies.

Please note that the comments and thoughts below on the Workshop outcomes and the future developments are my personal and professional views and do not necessarily reflect those of UNAFEI, the UN or any other organization.

#### II. WORKSHOP 2 AND ITS OUTCOMES

##### A. Workshop Concept<sup>1</sup> and Panel Compositions

Reducing reoffending will lead to fewer victims, greater community safety and less pressure on, and

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<sup>1</sup> For the detailed Workshop concept, please refer to the Background Paper for the Workshop 2 (A/CONF.234/9) <<https://undocs.org/A/CONF.234/9>>, supplemented by the Working Paper on “Developments regarding crime prevention and criminal justice as a result of the coronavirus disease (Covid-19) pandemic” (Section IV.B refers to Workshop 2) (A/CONF.234/15) <<https://undocs.org/A/CONF.234/15>>. These two documents are the UN’s official papers for the Kyoto Congress prepared by the UNODC Secretariat.

lower costs for, the criminal justice system. The goal of reducing reoffending will not be sufficiently achieved if we only seek to prevent offenders from committing a new crime. Offenders' rehabilitation and reintegration into society should be pursued, so that the offenders will desist from crime and be law-abiding and productive citizens. This will contribute to building peaceful and inclusive societies for sustainable development, as prescribed in Goal 16 of the Sustainable Development Goals (SDGs), ensuring that "no one will be left behind".

It is evident and widely known that an offender cannot be rehabilitated by a penalty or imprisonment alone. Offender rehabilitation and reintegration is naturally a long process that can only be accomplished with continuous, timely and adequate interventions and support, and with the involvement of various players – not only from criminal justice authorities – that can offer necessary assistance to help offenders overcome personal, social and other barriers and to increase offenders' personal strengths and assets.

Based on such perspectives, Workshop 2 on reducing reoffending was composed of three panels guided by a keynote speech by Professor Fergus McNeill of the University of Glasgow, which addressed the overarching concept of rehabilitation and desistance as well as its key aspects and considerations. The three panels were as follows:

- Panel I: Creating Rehabilitative Prison Environments;
- Panel II: Community-Based Approaches that Support Desistance; and
- Panel III: Taking a Multifaceted Approach to Ensure Continuous Support and Services for Rehabilitation and Reintegration of Offenders.

Whereas the first and second panels focused on challenges and good practices at the two major procedural stages for rehabilitation, i.e., prison and the community-based interventions, the third panel looked at various aspects to facilitate offender rehabilitation and good practices responding to offenders' multifaceted needs with the involvement of various public and private stakeholders.

Each panel consisted of presentations from 4-5 panellists/speakers followed by the floor discussion with the Member States representatives and other participants. To ensure practical discussions that are useful to the whole international community, careful consideration was made in the selection of panellists/speakers so as to reflect various types of practices from different parts of the world (Africa, Asia, Europe, North America, Latin America, and the Middle East), representing both developed and developing systems.

## **B. Summary of Workshop Discussions<sup>2</sup>**

Workshop 2 was chaired by Dr. Matti Joutsen,<sup>3</sup> and the panel discussion was moderated by Mr. Seto Takeshi, Director of UNAFEI. Dr. Kittipong Kittiyarak, the former Executive Director of the Thailand Institute of Justice (PNI co-sponsor of Workshop 2) delivered opening remarks.

### 1. Keynote Speech

Professor Fergus McNeill of the University of Glasgow delivered a keynote speech that applied to all three panels. The keynote speech stressed the importance of reducing reoffending, rehabilitation and reintegration, and addressed key principles and factors required for rehabilitation and desistance. It was pointed out that punitive responses have enhanced social disintegration, leading to more reoffending, and that there is a growing evidence base to suggest that stigmatization and criminal punishment actually slow the rehabilitative process. Professor McNeill introduced three principles crucial for rehabilitative interventions: parsimony (no more intervention than necessary), proportionality and productiveness (the form and focus of the approaches should be on positive efforts to rehabilitate and reintegrate). Some other essential points were delivered, among others, supporting desistance requires respect for diversity, work with social relations, enabling self-determination, providing practical support (housing, employment etc.), and recognizing and celebrating change. Also, he pointed out that public participation and social reintegration programmes are critical to helping offenders along their path to lasting change, and that prisons can be places of change and

<sup>2</sup> It is expected that UNAFEI will publish all the presentations and reports of the Workshop 2 of the Kyoto Congress.

<sup>3</sup> As a Finnish delegate, Dr. Joutsen was elected by the Congress as the Chair of Committee II, which handled plenary meeting sessions for Agenda Items 4 and 6, and Workshops 2 and 4. As the special advisor of the Thailand Institute of Justice, the PNI co-sponsor of Workshop 2, Dr. Joutsen had been involved in all the preparatory stages and took the role of the keynote speaker of Panel II.

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growth for some offenders under rehabilitative environments, established through normalization, bureaucratic legitimacy, humanity, staff professionalism, offering help and assistance, and adequate and transparent organization and consistency.

### 2. Panel I

Panel I focused on rehabilitative prison-based efforts and had four panellists from the United Nations Office on Drugs and Crime (UNODC), Namibia, Argentina and Norway.

Ms. Vera Tkachenko, Crime Prevention and Criminal Justice Officer of the UNODC, presented global challenges in the prison situation, including overcrowding and Covid-19 impacts. She introduced good examples from UNODC technical assistance programmes: one from Kazakhstan on justice reform, which successfully reduced the prison population, and one successful example from Kyrgyzstan, in the capacity-building of prison officers and rehabilitation programmes for violent extremist prisoners, which fostered good relationships between prison staff and prisoners, and resulted in increased prison security.

Ms. Mariana Martin, Deputy Commissioner-General of the Namibian Correctional Service demonstrated a good example of evidence-based (risk-need-responsivity principle-based) prison programmes in Namibia, learning from established Canadian practices and modifying them to adjust to the local context in Namibia.

Mr. Emiliano Blanco, President of the Latin America Chapter of the International Corrections and Prisons Association and the former National Director of the Federal Penitentiary Service of Argentina, explained how and why corruption in prison undermines offender rehabilitation and elaborated on a number of anti-corruption efforts in the Federal Penitentiary Service of Argentina with a view to establishing rehabilitative prison environments.

Ms. Heidi Bottolfs, Deputy Director General of the Directorate of Corrections, Norway, introduced the Norwegian implementation of the “principle of normality”, the idea that life in prison should be as close as possible to life in the community, such as the provision of educational services in prison by the local service provider in the same manner as in the community.

After the presentations, a number of participants introduced their countries' initiatives to foster rehabilitative prison environments during the floor discussion.

### 3. Panel II

Panel II started with the keynote speech by Dr. Matti Joutsen, elaborating the importance of active and adequate use of non-custodial measures and community-based options while avoiding the risk of net widening, referring to the reality of excessive use of imprisonment and its negative impacts, and to the fact that most low- and medium-risk offenders need no support, whereas high-risk offenders and vulnerable groups, including the poor and the marginalized, greatly require support. He further elaborated that treatment in the community “works” in connection with high-quality, well-targeted, well-resourced and well-supported interventions.

The Panel discussion was followed by four panellists from Canada, Croatia, Kenya and the Philippines.

Ms. Jennifer Oades, Chairperson of the Parole Board of Canada, introduced the Canadian practice of parole with a very high success rate and the background behind Canada's success, including evidence-based risk assessment, decisions of highly qualified board members and specialized training. She also introduced the “Judges to Jails” programme which gives opportunities to judges to learn about prisons and parole.

Ms. Jana Špero, Director General of the Directorate for Prison System and Probation, Ministry of Justice and Public Administration of Croatia, explained how Croatia successfully established a new probation service in a few years by taking a step-by-step approach. The Croatian experience demonstrated a successful example of introducing a new community corrections system from scratch while reducing prison population and obtaining support from the public and cooperating agencies.

Lady Justice Teresia Matheka of the High Court of Kenya at Nakuru introduced the Kenyan experience and challenges in juvenile justice to ensure the best interests of children, where all relevant authorities, such as the police department, prison department, children services department, prosecution, judiciary and

probation department, came to engage in continuous collaboration and information-sharing, and how they made use of technical assistance in its development.

Dr. Manuel Co, the former Administrator of Parole and Probation Administration of the Philippines explained how the Philippines made effective use of the *barangay* – the smallest unit of local government – in the restorative justice process, and that the use of such process and the involvement of the community members has positively impacted offender rehabilitation.

During the floor discussion, participants supported the importance of community-based approaches, support in the community and public awareness.

#### 4. Panel III

Panel III dealt with a multifaceted and multi-stakeholder approach, and therefore had panellists representing various public and private bodies. Only one panellist represented a Member State, namely, Japan. The other four panellists were from international or non-governmental organizations, that is, Safer Foundation, an NGO in the United States; Penal Reform International (PRI), an international NGO; Kriminellas Revansch I Samhället (Criminals Return into Society, or KRIS), an NGO located in Sweden; and Hedaya, an international institute located in the United Arab Emirates.

Mr. Imafuku Shoji, Assistant Vice-Minister and Director-General of the Rehabilitation Bureau, Ministry of Justice of Japan, addressed Japan's comprehensive government-wide strategies for reducing reoffending whereby various rehabilitative initiatives are undertaken on the basis of enhanced public-public and public-private partnerships with a view to responding to various areas of offenders' needs. As part of such initiatives, the Japanese probation service's coordination efforts for post-release accommodation support were elaborated, where close cooperation with prisons, volunteer probation officers and other public and private bodies, etc. helps to respond to the specific needs of offenders.

Ms. Sodiqa Williams, General Counsel and Vice President of External Affairs of the Safer Foundation, presented Safer's activities in Chicago and the State of Illinois, providing a full spectrum of services for re-entry of offenders to help them gain employment etc. She explained the vulnerability of offenders in the area where high unemployment rate, low education level, poverty etc. have been observed, and elaborated on Safer's Prison Emergency Early Release Response (PEERR) programme, which addresses the needs of offenders from a holistic perspective in partnership with various service providers, starting from triage to identify the immediate needs of people returning from incarceration.

Ms. Olivia Rope, the Executive Director of PRI, emphasized the importance of evidence-based gender-responsive interventions, and elaborated on PRI's technical assistance project in Georgia for women in prison. In the project, upon identified needs for women prisoners and their children who have experienced violence and discrimination, she elaborated on the focus areas of PRI's project, such as economic empowerment (vocational training, employment and small business management support etc.), offering shelter, and legal and psychological counselling.

Mr. Ali Reunanen, Secretary-General of KRIS, which is operated by former offenders and addicts, started by explaining his personal history of criminal behaviour and drug addiction and how he experienced life change. He explained how KRIS helps offenders to change their criminal lifestyles and gives them a message of hope and support for change to a new lifestyle, and demonstrated the important role of peer support in offender rehabilitation.

Ms. Maria Cristina Mattei, Program Manager of Hedayah, the international centre of excellence for countering violent extremism, presented Hedayah's free online monitoring, measurement and evaluation tool "MASAR" and its applicability to all forms of offender rehabilitation and reintegration programmes. She introduced a case study on a Dutch recidivism reduction programme that used MASAR to track reoffending by terrorism offenders, and demonstrated how MASAR helps practitioners design and identify smarter goals for treatment programmes, select appropriate indicators and analyse the results.

In the floor discussion following the presentations, a number of delegations and participants emphasized the importance of various re-entry support with multi-stakeholder partnerships.

## 5. Other Notable Discussions

### (a) *Discussion on Covid-19 impacts*

During the panel discussion, the impact of Covid-19 was reported by panellists, speakers and participants. The Kyoto Congress was postponed for nearly one year from the original schedule<sup>4</sup> due to the Covid-19 crisis, and its impacts in relation to the Workshop topic were discussed. To summarize, first, it was pointed out that the failure in rehabilitating offenders by punitive responses has been exacerbated by the Covid-19 pandemic, and that prison conditions deteriorated under the spread of Covid-19, especially in overcrowded prisons. Second, with a view to ensuring normalization and rehabilitative prison environments, an example was reported where digital communication and digital training was enhanced to maintain and strengthen contact with the outside world during the Covid-19 pandemic. Similarly, examples of strengthened use of online communications between the released offenders and supporters in the community were reported. Third, in response to the deteriorating situation under the Covid-19 crisis, the increased importance of the use of non-custodial measures and early release was recognized. Further, noting negative impacts of Covid-19, enhanced needs for employment support and aftercare for released offenders were identified.

### (b) *The idea to develop new UN standards and norms*

In the deliberations, outcomes of several related ancillary meetings which took place before Workshop 2 were introduced. The ancillary meetings at the Crime Congress have the role to contribute to the related Workshop discussions, and therefore, their outcomes and key summaries were introduced to enrich the Workshop discussion. In particular, an idea to develop new UN standards and norms on reducing reoffending was proposed as the outcomes of two ancillary meetings: the “World Congress for Community Volunteers Supporting Offender Reintegration” (organized by the Rehabilitation Bureau of the Ministry of Justice of Japan and UNAFEI) and “Five Years of the Nelson Mandela Rules” (organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI)).<sup>5</sup>

## C. Outcomes

### 1. Wrap-up and Report to the Plenary Meeting

At the end of the Workshop, the scientific moderator, Mr. Seto, wrapped up the discussion. Following the Workshop, he was invited to report to the plenary meeting session, which handled the related Agenda Item “Integrated approaches to challenges facing the criminal justice system”, on the outcome of the Workshop 2 discussion. There, he reported the Workshop outcomes as follows:

The Workshop demonstrated that offender rehabilitation and reintegration into society is critical to building inclusive, sustainable societies as envisaged in the 2030 Agenda. *Ensuring rehabilitative processes and environments throughout all stages and pathways leading to successful reintegration* is crucial. In pursuing this, four key points were highlighted by the discussions: (i) first, criminal justice systems should respect proportionality and seek to impose the least restrictive sanctions possible, and should make active use of non-custodial measures in line with the UN standards and norms, while avoiding the risk of mass supervision and net-widening; (ii) second, offenders must receive effective, evidence-based interventions and support responding to each individual’s specific needs, both in prison and in the community; (iii) third, continuity of care and support must be ensured; and (iv) fourth, offender rehabilitation and reintegration practices should be developed and implemented by a multifaceted approach involving all relevant stakeholders. . . . I am very pleased to report that *it was suggested that the good practices addressed during the workshop might serve as a basis for the development of model strategies to reduce reoffending*. As the moderator for the workshop, I wish to express my support for the development of such model strategies and believe they will play a significant role in reducing reoffending in this decade of action as we move toward 2030 and the achievement of the Sustainable Development Goals (emphasis added).

### 2. Chair’s Summary

The Workshop outcomes are publicized as part of the Chair’s summary in the UN’s official Crime Congress

<sup>4</sup> Originally, the Kyoto Congress was scheduled in April 2020.

<sup>5</sup> I was a panellist at the RWI ancillary meeting and suggested developing new UN standards and norms on reducing reoffending, which was supported by other panellists and participants.

report (A/CONF.234/16, para. 158).<sup>6</sup> As for Workshop 2, the conclusion and 12 practical recommendations form the heart of the Chair's summary.

The conclusion starts with the sentence saying that reducing reoffending is “*critical to building inclusive, sustainable societies as envisaged in the 2030 Agenda.*” This clarifies the direct link between reducing reoffending and the achievement of the SDGs, emphasizing the importance of reducing reoffending in this regard.

The next sentence highlights the important elements in reducing reoffending stating that “*criminal justice interventions should be in line with the principle of the least restrictive sanction and the principle of proportionality, with the aim of rehabilitating offenders in the community whenever possible, and that programmes to reduce reoffending needed to be multifaceted, involve all relevant stakeholders and ensure the necessary continuity of care within rehabilitative environments.*” This should be understood as the “guiding principle” in reducing reoffending and can be broken down into four essential elements.

To elaborate, first, in deciding sanctions and case dispositions, the principle of the least restrictive sanction and the principle of proportionality should be respected. These two principles are both essential and equally important to accomplish criminal justice and rehabilitative purposes. However, given the reality in many jurisdictions where punitive approaches and excessive use of imprisonment prevail, this conclusion part puts more emphasis on seeking the possibility of community-based options based on the principle of the least restrictive sanction. This principle is basically derived from human rights considerations. Moreover, it serves rehabilitative perspectives, as the application of this principle will lead to active use of non-custodial measures and community-based interventions, which offers increased chances of success for offender rehabilitation. This way of thinking is based on the understanding that incarceration generally entails negative impacts on social reintegration, such as stigmatization and disconnection with community ties (e.g. family, employment), whereas community-based approaches are generally more conducive to rehabilitation and reintegration in that such options enable providing necessary assistance while maintaining the offender's life in the community. Of course, decisions, including for community-based sanctions, should be “proportionate”, considering the gravity of the offence and other factors.

Second, the “programmes” for offender rehabilitation should be multifaceted and thus should involve various stakeholders. Offender rehabilitation and reintegration requires interventions and support tailored to individual's needs. Therefore, “programmes”, in other words, interventions and support, must cover various aspects to strengthen the offender's social environment, such as employment, housing, healthcare, welfare, education, childcare, family relations, etc., and enhance personal aspects, such as self-esteem, self-efficacy, social skills, and so forth. However, it is impossible for the criminal justice authorities alone to provide all the necessary types of support. Thus, a multi-stakeholder approach which requires the involvement of various stakeholders is essential and key to successful reintegration. The Kyoto Declaration has a set of provisions dedicated to “reducing reoffending through rehabilitation and reintegration” (paragraphs 37-42),<sup>7</sup> and paragraph 39 promotes multi-stakeholder partnerships to reduce reoffending, referring to governmental inter-agency coordination, public-private partnerships and involvement of employers and community volunteers.

Third, in offender rehabilitation, continuity of care should be ensured. Rehabilitation and social reintegration is a long process where the offender faces many difficulties at each stage. Therefore, treatment should be followed-up on and support should be provided continuously. Especially, the gaps in the continuity of care/support are often seen at the transition stage when the offenders are released from prison and restart their lives in the community. Adequate interventions and support addressing needs at this stage are of vital importance for successful rehabilitation. This has posed challenges in many developed and developing systems. Bearing in mind that a large portion of offenders go to prison and struggle to rehabilitate in the community after release, continuity of interventions and support, in particular from prison to the community, should be underlined.

Fourth, rehabilitative environments should be ensured throughout all criminal justice processes. This is

<sup>6</sup> <[https://www.unodc.org/documents/commissions/Congress/documents/ACONF234\\_16\\_V2102028.pdf](https://www.unodc.org/documents/commissions/Congress/documents/ACONF234_16_V2102028.pdf)>.

<sup>7</sup> <[https://www.unodc.org/documents/commissions/Congress/21-02815\\_Kyoto\\_Declaration\\_ebook\\_rev\\_cover.pdf](https://www.unodc.org/documents/commissions/Congress/21-02815_Kyoto_Declaration_ebook_rev_cover.pdf)>.

identified as the key guiding concept in pursuing the goal of reducing reoffending. The need for rehabilitative environments and processes applies to all the pathways and stages, including the criminal proceedings, decision-making process for penalty and treatment, the prison-based treatment stage, and life in the community. Paragraphs 37 and 38 of the Kyoto Declaration refer to promoting rehabilitative environments in prison and in the community, and they underscore the importance of this principle.

Following the conclusion, the Chair's summary raises 12 points to be considered, which form the practical recommendations of the Workshop 2.

Hereafter, I would like to elaborate and comment on the recommendations enumerated in subparagraphs (a) to (l) of paragraph 158 of the report, touching upon the links to the Workshop discussions (the recommendations are cited below in *italics*).

*(a) With a view to reducing reoffending, Member States should undertake to collect relevant statistics, identify the root causes of offending and reoffending, including the impact of poverty, unemployment, homelessness, discrimination and health – in particular mental health – issues, evaluate social reintegration approaches and share data, research and evaluation outcomes nationally and internationally;*

. . .

This encourages the collection and use of data for evidence-based strategies and interventions. Statistics and research results have been proved effective in forming adequate strategies and establishing evidence-based interventions which “work”. Also, learning from other jurisdictions' evidence-based practices, and modifying them to adjust to the country's local context, is an efficient and effective way to implement new practices, as demonstrated in the good practice of Namibia introduced in the Panel I discussion.

*(b) Member States are encouraged to develop effective interventions for the rehabilitation and social reintegration of offenders, recognizing that this is crucial to public safety and social inclusiveness, applying a realistic, step-by-step approach that considers the availability of resources and the feasibility of steps to be taken within a certain time frame, refers to experiences in other jurisdictions and explores the cost-effective use of information technology; . . .*

This emphasizes a realistic approach in the implementation of rehabilitative approaches, in light of what is practically effective in developing new measures and practices. The example of Croatia establishing its new probation service with a step-by-step approach (Panel II) serves as a good practice in this regard. Also, this recommendation refers to the use of information technology which enables wide dissemination of cost-effective measures, as shown in the example of MASAR presented by Hedayah in Panel III.

*(c) Member States are also encouraged to apply a multi-stakeholder approach to the social reintegration of offenders, involving the public sector at both the State and local levels, the private sector, faith-based organizations, academia, volunteers and community members. Member States should seek to promote public-public and public-private partnerships, to ensure continuity of support and to help offenders to secure employment and housing and access to legal, social and medical services, as well as educational opportunities and vocational training; . . .*

Further to the reference in the conclusion and the Kyoto Declaration provisions, this recommendation elaborates on the importance of the multi-stakeholder approach to address various needs, which were fully discussed in Panel III and touched upon by a number of other panellists and participants. In addition, this recommendation expressly raises key areas in need of continuous support, such as employment, housing, education, etc. which requires non-criminal-justice players' involvement.

*(d) Acknowledging that public understanding and cooperation are key elements of the reintegration of offenders into society, Member States are invited to undertake awareness-raising activities directed at the general public, the private sector, non-governmental organizations, volunteers, employers and the family members of offenders to increase understanding of the impact of both imprisonment and non-custodial measures on victims, on the social reintegration of offenders and on public safety, and elicit public support for the community reintegration of offenders; . . .*

This refers to awareness-raising, an essential issue to offender rehabilitation, especially where community corrections is concerned. Awareness-raising includes promoting public acceptance, which targets the general public, and a more in-depth awareness-raising, that is, understanding and cooperation by stakeholders who are expected to coordinate with the authorities and provide support to offenders. This usually requires substantial efforts to foster and is particularly crucial in promoting community-based approaches, which require the acceptance of the offenders by the community at large, as well as the provision of support by many players in various aspects. Effective approaches and methodologies will differ depending on the target groups and the required level of awareness – for instance, whether the goal is to accept the idea of the community-based approach or to directly help the offenders and provide them with assistance. In the latter case, face-to-face direct consultation to alleviate the target’s concerns or give incentives can be an effective approach. The Croatian experience in introducing its new probation service (Panel II) can be identified as a good example of effective awareness-raising.

*(e) Member States are invited to recognize the effectiveness of rehabilitative community-based interventions and ensure that a mandated, sufficiently resourced and adequately staffed public entity, such as a dedicated probation service, is in place to manage, supervise and support offenders in the community. Member States are also invited to take inspiration from successful experiences with the involvement of community volunteers who support the reintegration of offenders; . . .*

This emphasizes the necessity and effectiveness of community-based interventions and encourages Member States to establish probation services (or the like) to undertake community supervision and support. Examples of Canada, Croatia, the Philippines (Panel II) and Japan (Panel III) demonstrated effective roles of the probation services in community supervision and support, or in the restorative justice process. In addition, use of community volunteers, such as the participation of volunteer probation officers in Japan etc, is highlighted as a good practice to refer to.

*(f) Member States are encouraged to implement penal responses guided by the principle of proportionality and assessed by their ability to enable the reintegration of offenders; use imprisonment as a last resort, recognizing that the prison environment is generally less conducive to rehabilitation and social reintegration than community-based measures; make use of an adequate and innovative array of non-custodial measures as alternatives to imprisonment and to pretrial detention, building on the Tokyo Rules<sup>8</sup> and the Bangkok Rules<sup>9</sup>; and consider the use of gender-responsive, child-friendly and human rights-compliant restorative justice interventions, in view of their potential benefits for victims, their value for the community affected by crime and their positive impact on the social reintegration of offenders; . . .*

This recommendation elaborates the first part of the “guiding principle” set out in the conclusion, i.e., the principle of least restrictive sanction and the principle of proportionality, and encourages the use of community-based measures. In the use of non-custodial measures, it refers to the relevant UN standards and norms, as well as the value of adequate restorative justice interventions. However, as indicated in Panel II’s keynote speech and the moderator’s wrap-up, it should be noted that community-based options should be adequately used under this guiding principle, and their overuse leading to “mass supervision” and “net widening”<sup>10</sup> should be avoided.

*(g) Member States are invited to establish rehabilitative prison environments, in line with the Nelson Mandela Rules<sup>11</sup> and the Bangkok Rules, by ensuring that prisoners are treated fairly, with the respect due to their inherent dignity as human beings, and supported in their personal, judicial, moral and social rehabilitation; ensuring that prisoners’ lives in prison reflect life in the community; ensuring*

<sup>8</sup> The United Nations Standard Minimum Rules for *Non-custodial Measures* adopted in 1990.

<sup>9</sup> The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offender adopted in 2010.

<sup>10</sup> See paragraph 4(e) of the Background Paper (A/CONF.234/9) which states “The overuse of non-custodial measures, as well as their use without appropriate community support, can lead to ‘mass supervision’ and ‘net widening’, whereby the number of persons controlled by the criminal justice system increases. The excessive use of supervision for low-risk offenders may increase the reoffending risk, owing to unnecessary interventions.”

<sup>11</sup> The revised United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 2015.



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*proper prison administration and case management and addressing overcrowding, poor prison conditions, violence in prisons and corruption; providing interventions, treatment programmes, education, vocational training and work that are responsive to each individual's specific risks and needs; enabling offenders to maintain their community and family ties; and ensuring the recruitment of prison staff who display an attitude supportive of the rehabilitation of offenders and investing in multidisciplinary training for staff; . . .*

If not treated properly, incarceration entails serious negative impacts on social reintegration stemming from institutionalization and stigmatization, whereas under rehabilitative environments it could offer a “hook for change”, a substantive step towards rehabilitation. Having this in mind, establishing rehabilitative prison environments, which this recommendation focuses on, is the big issue for many jurisdictions where imprisonment is the prevailing option, and in particular, where certain deteriorating situations, such as overcrowding, corruption and violence exist. The recommendation addresses the issue multifacetedly: i) treating the prisoners fairly respecting their dignity, ii) supporting the prisoner from various aspects, iii) “normalization” in prison life, iv) addressing challenges such as overcrowding, poor prison conditions, violence and corruption and maintaining proper prison administration and case management, v) interventions tailored to individual's needs, vi) maintaining community ties while in prison, and vii) recruiting prison staff displaying a supportive attitude for offender rehabilitation and providing them with multidisciplinary training. As indicated in these points, rehabilitative “environments” refer to, but are not restricted to, interventions and treatment provided to offenders. They also include every factor surrounding their individual prison life, such as housing settings, legitimacy and adequacy in prison administration, prison staff professionalism, the prisoner's willingness and participation in the rehabilitative treatments etc., and contacts with the outside world. To elaborate further, for example, items i) and vii) will improve the relationship between prison staff and the prisoners as in the example of Kyrgyzstan presented by the UNODC expert in Panel I. The Norwegian experience discussed in Panel I is a good example of implementing item iii), supported by the efforts in line with item vii). The Argentine example demonstrates the importance of item iv), and items i), ii), v) and vi) are indicated as important factors in the keynote speech. The Namibian practices in Panel I and Georgia's women prison project introduced by PRI in Panel III are examples of good practices addressing items ii) and v). Further, as referred to in the recommendation, these items are more or less addressed in the relevant UN standards and norms, in particular, the Nelson Mandela Rules and the Bangkok Rules<sup>12</sup>.

*(h) Member States are encouraged to tailor interventions and treatment to the needs of each offender, in particular those with specific needs, such as young people, the elderly, persons with disabilities, the poor and marginalized groups, and eliminate barriers to social reintegration;*

*(i) Member States are also encouraged to develop and implement specific gender-responsive rehabilitation and reintegration policies and programmes in line with the Bangkok Rules, based on research on specific barriers faced by women in their rehabilitation, such as stigmatization, and on existing good practices;*

*(j) In dealing with alleged offenders who are children, Member States are further encouraged to widen the use of diversion from judicial proceedings and non-custodial measures and to ensure that deprivation of liberty is used as a measure of last resort and that any action taken promotes the rehabilitation and social reintegration of the child. Multisectoral cooperation was identified as a key requirement for achieving those objectives; . . .*

These three recommendations address interventions etc. tailored to each individual's needs, particularly focusing on vulnerable groups with specific needs. Whereas (h) refers to a number of vulnerable groups, (i) and (j) focus on women and children, respectively. As for the need to respond to these people's specific needs, the Japanese practice introduced in Panel III of coordinating a prisoner's accommodation after release taking account of his/her specific needs constitutes a good example. Also, PRI's presentation elaborating specific needs for women (Panel III) and Kenyan multi-agency practices to ensure the “best interest of children” are good examples that support (i) and (j), respectively.

<sup>12</sup> See especially rules 1, 2, 4-6, 8, 58-63, 74-82, 89, 91-94, 98, 106, 107 of the Nelson Mandela Rules, and rules 4, 12, 19-21, 26-52 of the Bangkok Rules.

*(k) Member States are encouraged to share information on promising practices and consider the development, under the auspices of the Commission on Crime Prevention and Criminal Justice and with the support of UNODC, of model strategies to reduce reoffending that reflect, among others, the good practices discussed during the workshop; . . .*

Unlike other recommendations which refer to measures to improve rehabilitative systems and practices, this recommendation suggests developing new UN standards and norms on reducing reoffending, in the form of “model strategies”. This constitutes a cornerstone for the future development of the UN criminal justice policy, as I elaborate later. This idea was provoked during the floor discussion which introduced the outcomes of the two related ancillary meetings.

*(l) Member States are also encouraged to support capacity-building efforts for criminal justice practitioners aimed at reducing reoffending and are invited to consider seeking technical assistance from UNODC, the United Nations crime prevention and criminal justice programme network, other international and regional organizations and relevant non-governmental stakeholders.*

This recommendation refers to capacity-building and technical assistance by the UNODC, PNIs such as UNAFEI and other relevant stakeholders. Good examples of technical assistance were introduced by the UNODC (Panel I), Kenya (Panel II), PRI and Hedaya (Panel III) at the Workshop 2 discussion. Based on this recommendation and the relevant provisions of the Kyoto Declaration etc., UNAFEI will develop training programmes on reducing reoffending to follow-up on the Kyoto Congress and the Kyoto Declaration, bearing in mind the guiding principle and elements highlighted in other recommendations.

### III. FUTURE DEVELOPMENTS

#### A. Impact of Workshop 2 and the Kyoto Congress

As discussed above, Workshop 2 was concluded with a set of recommendations including one suggesting the development of new UN model strategies on reducing reoffending, under the auspices of the Commission on Crime Prevention and Criminal Justice (CCPCJ), the UN’s policymaking organ in the field of criminal justice.

Also, at the plenary meeting following the Workshop, the same idea to develop new standards and norms was proposed by Japan, the host country of the Kyoto Congress, which obtained support from the floor. Further, the Kyoto Declaration has a series of provisions on the issue of reducing reoffending, meaning that this issue is one of the focus areas for intensive follow-up.

Given all this background, at the thirtieth session of the CCPCJ in May 2021 (two months after the Kyoto Congress), a “draft resolution” entitled “Reducing reoffending through rehabilitation and reintegration” was adopted, which is expected to be adopted by the General Assembly as a “resolution” later this year.<sup>13</sup> (“Draft resolutions” of the CCPCJ are sent to the Economic and Social Council, which in turn requests adoption by the General Assembly.) This draft resolution, proposed by the Japanese government as the host country of the Kyoto Congress, has a set of provisions which, among others, encourages the Member States to develop comprehensive strategies or action plans to reduce reoffending through effective interventions, to promote a rehabilitative environments in prison and in the community, and to promote multi-stakeholder partnerships to reduce reoffending. Moreover, most importantly, paragraph 5 requests:

*the United Nations Office on Drugs and Crime, ... to convene an expert group meeting to share information on promising practices to reduce reoffending, with a view to developing model strategies on reducing reoffending, which can serve as useful tools for Member States, taking into account relevant provisions in the existing standards and norms in crime prevention and criminal justice, current developments, research, tools and the outcome of the deliberations of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (emphasis added).*

<sup>13</sup> The CCPCJ approved the Kyoto Declaration and adopted another draft resolution to be sent to the General Assembly upon the ECOSOC’s approval which endorses the Kyoto Declaration. Therefore, the Kyoto Declaration will be a part of the General Assembly resolution upon its adoption.

Upon its adoption by the General Assembly, this provision will be the basis for the UNODC and the international community to take steps to develop new UN model strategies on reducing reoffending, starting with an expert group meeting.

From this (draft) resolution and given all other background, it is evident that, in addition to the relevant provisions of the Kyoto Declaration (paragraphs 37-42), the outcome of Workshop 2 as summarized in the Chair's summary and good practices introduced at the Workshop will form the basis of the new model strategies. In addition, the content of the Background Paper for Workshop 2 (A/CONF.234/9), supplemented by Section IV.B of the Working Paper on "Developments regarding crime prevention and criminal justice as a result of the coronavirus disease (Covid-19) pandemic" (A/CONF.234/15),<sup>14</sup> the UN's two official documents for Workshop 2, should also constitute the basis. This is because they elaborate in detail on what was discussed in Workshop 2, including points and other relevant practices that were not expressly referred in the Workshop deliberations due to time constraints.

## **B. Thoughts for the New Model Strategies**

The draft resolution adopted at the thirtieth CCPCJ says that the new model strategies should take into account the provisions of the existing standards and norms in addition to the Kyoto Congress deliberations, etc. There are a number of UN standards and norms dealing with the treatment of offenders. The new model strategies should, of course, harmonize with these existing instruments. Therefore, I would like to analyse what is covered and missing in the existing UN standards and norms *vis-à-vis* the Workshop outcomes, in order to explore how and under what approach the new model strategies should be developed.

The most basic and important existing instruments are the Nelson Mandela Rules and the Tokyo Rules. The Nelson Mandela Rules deal with prison issues. Concluded recently in 2015 as the revision of the 1955 UN Standard Minimum Rules for the Treatment of Prisoners, the content is quite comprehensive, addressing all major current challenges and key notions. In fact, as stated above, the Rules basically refer to the issues raised in the Workshop recommendation provision on rehabilitative prison environments (para. 158(g)). Moreover, in the 2015 revision, reducing reoffending and facilitating offender reintegration is clarified as part of the "purpose of imprisonment"<sup>15</sup> and thereby added value from a rehabilitative perspective. However, since the Rules are basically derived from human rights requirements and ensuring humane treatment, their focus is not primarily on achieving the goal of social reintegration and desistance, although humane and human-rights-compliant treatment promote rehabilitative environments.

The Tokyo Rules deal with a broad spectrum of non-custodial measures and refer to "implementation" of non-custodial measures such as supervision and treatment processes, and to the use of volunteers and other community resources. However, the Tokyo Rules focus more on having and applying non-custodial options, and the reference to community-based treatment is restricted and very brief. As such, the Tokyo Rules are not sufficient as norms for community corrections.

In addition to these two basic "Rules", there are several instruments which deal with treatment of specific types of offenders or specific procedures and interventions. To name the major ones, the Bangkok Rules provide gender-responsive norms for women to supplement the Nelson Mandela Rules and the Tokyo Rules. Also, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) cover considerations for juvenile offenders and delinquents. "Basic principles on the use of restorative justice programmes in criminal matters" deal with principles for the adequate use of restorative justice programmes. These instruments cover certain parts of the Workshop outcomes, but likewise, do not necessarily focus on

<sup>14</sup> See note 1.

<sup>15</sup> For instance, compare Rule 4.1 of the Nelson Mandela Rules with Rule 58 of the previous Standard Minimum Rules for the Treatment of Prisoners (the 1955 Rules). Rule 4.1 of the Mandela Rules states, "The purposes of a sentence of imprisonment ...are *primarily* to protect society against crime and *to reduce recidivism*. Those purposes can be achieved only if the period of imprisonment is used to ensure,... *the reintegration of such persons into society upon release* so that they can lead a law-abiding and self-supporting life", whereas Rule 58 of the 1955 Rules states "The purpose and justification of a sentence of imprisonment...is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure,...that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life."

offender rehabilitation and reintegration.

Therefore, community corrections guidelines and practices, provisions for specific types of offenders other than women and children, and guiding principles governing rehabilitation and rehabilitative processes can be identified as the major gaps in the existing standards and norms.

Having said that, here I would like to pose a question which is, should the new model strategies simply focus on these gaps? My answer is definitely *no*. Now, I would like to again call attention to two of the fundamental elements of the guiding principles for reducing reoffending – ensuring continuity of care and ensuring rehabilitative environments throughout the process (the third and fourth elements discussed in I.C.2). Absent these elements, the model strategies will not function as useful guiding tools for reducing reoffending. In order to ensure continuity of care, just having provisions relevant to the “gap areas”, or only on the “transition phases” do not suffice. An overarching approach looking at the whole process, starting from the contact with criminal justice or other relevant authorities through the social reintegration and desistance phase, allows effective continuity of care. Also, as the most essential key principle, rehabilitative environments and processes should be ensured *throughout all stages*. This requires that the standards and norms embrace a holistic approach covering the whole process from rehabilitative perspectives. In addition, a multi-stakeholder approach (another crucial element of the guiding principles), which constitutes a means to enable effective rehabilitation, applies to all stages and increases its importance to achieve rehabilitative goals. And thus, rehabilitative purposes should expressly come up front. Therefore, in order to develop clauses focused on a good rehabilitative multi-stakeholder approach, an approach that just fills the gaps will lack many important parts. Therefore, the new model strategies should take an overarching, or holistic, approach, shedding light on rehabilitative purposes, which establishes a new and independent concept from the existing instruments.

On the other hand, we have to be mindful of the fact that many provisions of the existing standards and norms *do* cover the areas which should be addressed and *are* effective for rehabilitative goals, whether or not they are derived from rehabilitative or other purposes. In that case, duplication should not occur if it has the effect of simply repeating in the new instrument that which is already provided in the existing standards and norms. Rather, for instance, reference to the existing provisions in the new model strategies indicating their rehabilitative effects (thereby adding value to the existing provisions) would be an appropriate approach. In pursuing this, a more in-depth analysis on the existing standards and norms, including on their rehabilitative impacts, will be important and should take place.

Also, detailed key notions, principles and examples pertaining to the major identified “gaps”, especially on community corrections rules, should be developed and elaborated. Although we already have discussed and developed initial key principles and identified many good examples through the preparation for, and deliberations at, the Workshop, it is obvious that the examples and practices discussed are not enough to be useful for every Member State and the whole international community. In addition, on top of what has been already discussed, there will be a lot of room to explore effective approaches and examples of a multifaceted and multi-stakeholder approach, as they are diverse in nature, affected by various social, cultural, political, economic and other backgrounds and differences in existing community resources.

#### IV. CONCLUSION

During the discussions at the Kyoto Congress, it was reaffirmed that the goal of reducing reoffending through offender reintegration is crucial for the achievement of the 2030 Agenda. As mentioned, establishing rehabilitative environments and processes throughout all stages is essential for this goal. Other key principles and factors, as well as many good practices and commendable efforts, have been identified and introduced. On the other hand, the international community faces many challenges to implement and put into practice what “works”.

The new UN model strategies, once provided, will be a cornerstone for enhancing rehabilitative environments in many parts of the world. They will constitute good guidance for States and organizations to take adequate steps in policymaking and practice, and will give grounds to facilitate public participation and acceptance. Therefore, I am proud that UNAFEI’s efforts in activating discussion on this issue through the preparation and organization of the Workshop 2 largely contributed to the international community’s

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decision to develop this important instrument, and I expect that UNAFEI will participate and substantially contribute to its future development.

Further, having in mind that the international community's purpose should not be the development of the instrument itself but its effective implementation in practice, technical assistance will play a very important role. I expect UNAFEI, as a technical assistance provider, as well as the PNI which led the discussion at the Kyoto Congress (and which will presumably lead the discussion as it moves forward), will continue efforts to explore best ways to establish rehabilitative environments and processes, and will continue to take a leading role in providing technical assistance on reducing reoffending, maintaining and strengthening partnerships with the UNODC, the Japan International Cooperation Agency (JICA),<sup>16</sup> the PNIs, relevant NGOs<sup>17</sup> and Member States, for the better future.

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<sup>16</sup> JICA is Japan's official development assistance (ODA) provider agency, and a large majority of UNAFEI's technical assistance programmes are funded and co-sponsored by JICA.

<sup>17</sup> For instance, the Asian Crime Prevention Foundation (ACPF), an international NGO that, among other purposes, supports UNAFEI's activities, can be identified as a partner NGO.