DIFFERENT PATHS TO GREATER COMMUNITY INVOLVEMENT IN THE TREATMENT OF OFFENDERS

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I. INTRODUCTION

The International Centre for Criminal Law Reform and Criminal Justice Policy, just like UNAFEI, is a member of the United Nations Crime Prevention and Criminal Justice Programme Network of Institutes (the PNI). As such it is frequently invited to participate in research and technical assistance activities in support of policy reform and capacity building initiatives in various countries. It perhaps gives us at the Centre an interesting perspective on how various countries are approaching the question of the treatment of offenders and the role that they reserve for the community’s involvement as part of that process.

The countries we have had the pleasure to work with do not necessarily all recognize the importance of offering proper treatment programmes to offenders. Some of them are simply satisfied to rely on deterrence, through punishment and hard labour, to produce a change in the behaviour of offenders. For them, the treatment and rehabilitation of offenders are rarely defined as key objectives of the criminal justice system. Other countries recognize the need for treatment and rehabilitation programmes but do not necessarily support much of a role for the community in the treatment of offenders. Even among these countries, there are great variations in how they define and circumscribe the role of the community.

At a broad level, one can identify many factors which affect the likelihood of community involvement in the treatment of offenders. First, the level of community involvement is often a function of the relative openness and transparency of a criminal justice system. A criminal justice system which is committed to high standards of transparency, accountability, integrity and openness is usually much more open to various forms of community involvement. Repressive systems, on the contrary, are far more reluctant to carve a suitable place for community participation or, for that matter, for any kind of meaningful civil society involvement. Secondly, the level of development achieved by a country is also often a factor as it directly impacts the ability of the community to get involved actively. Finally, there are also some cultural and political factors which affect the extent to which the non-governmental and volunteer services sectors are able to develop. In some countries, the non-governmental sector has been actively dissuaded from getting involved by the authorities. In some instances, the authorities may still perceive any form of community mobilization or organization as a potential threat to existing political arrangements.

All these factors must obviously be kept in mind. Above all, one must remember that countries tend to approach both the treatment of offenders and the involvement of the community in that process very differently. As they discover the merits of community involvement in the criminal justice process, they find different paths to progress and different ways to facilitate that involvement. This should encourage us all to be creative in our attempts to involve the community.

In this presentation, I hope to offer several examples of these different approaches so that you may form your own view of what might be applicable in the context in which you work. In doing so, I plan to emphasize how community involvement can help make the criminal justice system more accountable, but also much more effective in preventing recidivism and promoting public safety. I will also try to draw your attention of how community involvement can effectively contribute to the protection of the rights of offenders. I like to think of these points as the three immediate benefits of community involvement in the treatment of offenders.

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Before I get into the crux of the matter, I would like to note that there are some interesting initiatives in different parts of the world exploring how the community can be part of the governance of prisons and correctional programmes. In such initiatives, representatives of the community are typically invited to participate in the work of prison management boards or in various types of advisory committees. Members of the community are sometimes included in civilian oversight mechanisms designed to review complaints or allegations of misconduct and, generally speaking, to hold prisons services and other agencies accountable for their practices. In Canada, for example, it is mandatory for all federal penitentiaries to have an autonomous citizens’ advisory committee (CAC) to reflect the interest of citizens in contributing to the quality of Canada’s federal correctional facilities and programmes. In many countries, legislation encourages the conduct of inspections and visits by community-based human rights agencies. In many ways, these broader interactions between correctional authorities and various elements of the community can be quite transformational. They are incredibly interesting from the point of view of introducing and supporting broad correctional reforms.

However, since this paper’s scope is limited, I will focus my comments more specifically on three very practical but no less crucial aspects of community involvement in offender treatment. These are: (1) community involvement in the treatment, rehabilitation and reintegration of offenders; (2) community involvement in diversion programmes; and, (3) community involvement in community corrections, conditional release, aftercare and offender re-entry programmes. I will select examples from the many technical assistance projects in which we have been involved over the last several years. Some of these examples will relate more specifically to programmes and initiatives designed for juvenile offenders while others will be somewhat more general in character.

II. THE SOCIAL REINTEGRATION OF OFFENDERS

The concept of “reintegration” generally refers to the social integration measures designed to assist offenders who are being released from an institution, such as a prison, a detention centre or a reform school, and help them face the challenges associated with their return to the community. This assistance involves both addressing the offenders’ needs and managing the risk they may pose to the community. Programmes and measures must be in place to identify and address offenders’ needs and prepare them for their return to the community. A key aspect of effective interventions for the social integration of offenders is an understanding of the factors that place them at risk and make it difficult for them to function normally in society.

The intervention programmes developed in various countries to assist the social integration of offenders vary in efficacy and none are effective for all categories of offenders. The most effective interventions are those that directly address the needs and challenges faced by the offenders, as well as their risk factors. Some of these challenges can be addressed while an offender is in an institution, but others can only be addressed while the offender is in the community. Therefore, institutional programmes must also be followed by community-based initiatives. The two levels of intervention must complement each other.

The primary criminogenic needs that must be addressed by institutional and community-based treatment programmes are those related to education, employment, accommodation, drugs and alcohol, mental health, social networks, cognitive skills, and attitudes. Most communities are able to offer resources that can be mobilized to help offenders address these needs and successfully reintegrate society.

The rehabilitation of offenders and their successful reintegration into the community are among the basic objectives of the criminal justice systems. This is certainly acknowledged in international human rights standards. Principle 10 of The United Nations Basic Principles for the Treatment of Prisoners state that: “With the participation and help of the community and social institutions and with due regard to the interests of victims, favourable conditions shall be created for the integration of the ex-prisoner into society under the best possible conditions”.

Principle 8 refers to the need to enable prisoners to undertake meaningful employment which will facilitate their reintegration into the country’s labour market and permit

them to contribute to their own financial support and that of their families.

With respect to juvenile offenders, the Convention on the Rights of the Child (CRC), requires States Parties to establish special laws, procedures, authorities, and institutions specifically applicable to juveniles in conflict with the law. These special laws and procedures must ensure that juveniles are treated with respect for their sense of dignity and worth and takes into account the juveniles’ age and the need to promote their successful social integration. Article 40 (1) of that Convention stipulates that States Parties should recognize “the desirability of promoting the child’s reintegration and the child’s assuming constructive role in society”.

A. Community Involvement in Prison Programmes

Opening the doors of the prisons and encouraging community involvement, as we all know, can have some immediate and worthwhile effects on the overall management of prisons and correctional programmes. The community also brings a wealth of resources and practical expertise that prisons cannot otherwise access or make available to offenders. As I already mentioned, the process is truly transformational. In Uganda, for example, the Prisons Service adopted a policy document\(^3\) to guide transformation and improve performance within the Service. This was part of a resolute attempt to implement an “open-door policy” that opened prison gates to all stakeholders in order to address the challenges created by a historically closed prisons culture. This is when that Service began to make some progress in providing some effective assistance to offenders and facilitating their reintegration.\(^4\) One of the unanticipated benefits of a closer connection between prisons and the community was the development of an innovative programme which made it possible for pre-trial detainees to enter an early guilty-plea and to be sentenced without further delay to serve a sentence of community services. This was made possible by the close cooperation between the Prisons Service and a community-based non-governmental agency. As a result, the number of cases of individuals held in pre-trial detention and the length of their stay in prison were both considerably reduced.

With respect to the provision of education and vocational training programmes for prisoners, it is important to note that the most successful programmes are almost always those which involve partnerships with the education system and community-based organizations. These programmes offer education and training that are relevant to the labour market and consistent with academic and professional standards. Some vocational training can be offered in close collaboration with the private sector, as is the case for example in Singapore. The private sector can offer expertise, equipment, access to technology, and even business opportunities for the institutions involved. In thinking about such programmes, what usually first come to mind are examples of collaboration in manufacturing. However, there are many opportunities for institutions to collaborate with the private sector or with local communities with respect to training in areas such as agriculture, food processing, organic farming, animal husbandry, and other less-technology-dependent areas.

Involving business organizations in the vocational training of offenders can increase the relevance of that training and ensure that it remains aligned with the rapidly evolving needs of the labour market. It can also ensure that training programmes keep pace with new and emerging technologies. Prisons services sometime find creative ways to involve private sector industries and, if necessary, to provide incentives to encourage their involvement. Corrections officials often have assets, such as land, facilities, or location, which can be used as leverage to entice the private sector. For private sector businesses, the motivation is rarely only to provide training or to recruit employees. Instead, their involvement in the provision of vocation training to offenders is more often part of a broader partnership with correctional authorities and a more comprehensive business plan.

There are many ways in which correctional authorities can explore and promote partnerships with the private sector and find viable and affordable ways to involve that sector in the training and hiring of offenders. Some countries have been extremely successful at doing so, particularly when correctional officials were very proactive at initiating such partnerships, recruiting new business partners, removing obstacles to the private sector’s participation, and offering incentives. Once more, Singapore offers a number of examples of promising practices in that respect. In that country, the private sector partners are supported,

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celebrated and rewarded. Simple procedures are in place to make these partnerships possible and new opportunities can be explored promptly and efficiently with potential new private sector partners.

Some correctional institutions sometimes conduct simple surveys of private businesses and potential employers to identify some of the local training needs and labour market openings. In some instances, this sounds the beginning of a much wider collaboration between these businesses and the institutions. A crime prevention and offender reintegration project of the Ministry of Public Security in Vietnam, in collaboration with Plan Vietnam, recently used that approach to redesign and improve the vocational training offered to young offenders serving a term in the national reform schools. The prior survey of prospective employers is credited with much of the current success of the programme. The success of the programme is what allowed the reform schools to move to the next step and work more closely with the private sector to provide job placements for young offenders at the end of their sentence. In some cases, job placement of a recently trained young offender is what made possible the early release of the offender.

In addition to the private business sector, other community resources can also be mobilized to offer better vocational training to offender. For example, community colleges and other educational institutions may be able to offer training either in the community or in the institutions. At the very least they can play a role in the training and supervision of prisons instructors who deliver vocational training to offenders.

The involvement of the private sector in organizing, facilitating or even delivering advanced vocational training to offenders also makes it possible for some of the vocational training to take place in the community, not only for offenders serving a community supervision sentence, but also for prisoners who may qualify from a day-release programme as part of their social reintegration plan.

The community has obviously much more to offer to the treatment of offenders than vocational training and education programmes. NGOs, individual experts and volunteers may have experience and expertise in dealing with certain types of offenders or in offering certain kinds of intervention which does not otherwise exist within the institutions. Institutional programmes should make use of this rich source of resources. Self-help groups, members of distinct ethnic communities, people with different language skills, or even people with a certain religious orientation or some special artistic skills may often find it easier to develop a positive and meaningful relationship with offenders and contribute to their rehabilitation. They may have a stronger impact on offenders. They can often contribute insights, support and advice that will help address some of the offenders’ criminogenic needs, such as an alcohol or drug dependence. Finally, programmes which involve the participation of victims of crime - including victim-offender mediation programmes - can help offenders understand the consequences of their own behaviour and the effect it had on victims and on the community. Such programmes have been shown to have a real impact on the successful rehabilitation of offenders and on the prevention of recidivism. They are obviously not possible without the participation of victims and other members of the community.

We should discuss together how this is all made possible within a correctional institution setting. There is obviously much more to it than simply “allowing” the community to get involved. Promoting community involvement and making it sustainable involve a number of steps which should not be neglected. Prisons staff must be prepared to facilitate community involvement and to welcome it in spite of any practical inconvenience or additional security, safety and management issues that this strategy always generates. The community involvement process must be carefully managed, keeping in mind that problems and difficulties will predictably occur and will require some careful responses. Information, support, facilities, encouragement and incentives must be provided for the community’s effort to be sustained in the longer term.

B. Community Involvement in Offender Re-entry Programmes

Assisting the social integration of offenders is important from both the point of view of public safety and the point of view of protecting the rights of offenders. Efforts to assist their social integration must consider both the needs of the offenders, as well the risk they present in terms of the safety of the community.  

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The primary objective of social integration and reintegration is to provide offenders with the assistance and supervision that will help them function in society as law-abiding citizens and avoid reoffending. These programmes provide an opportunity for offenders to connect with their families and community and to live a productive and law-abiding life. The community, obviously, must also be responsive.

In designing and implementing interventions to facilitate the offenders’ successful reintegration, there are a number of realities that must be kept in mind. Offenders released from imprisonment are confronted by a myriad of challenges that will predispose them to reoffend upon release. Many offenders have multiple needs and issues that must be addressed in a comprehensive manner, including limited skill sets, substance abuse issues, and an absence of family and community support.

It is imperative for institutions to develop cooperative partnerships with community-based organizations, volunteer groups, and NGOs to offer seamless interventions that mobilize all available resources to assist and, when necessary, supervise the offenders.\(^6\)

When offenders have been placed in an institution, they face additional challenges that are directly associated with the consequences of incarceration and the following difficult transition back to the community.\(^7\) There are therefore several practical challenges that must be faced by offenders at the time of their release, including finding suitable accommodation with very limited means, managing financially with little or no savings until they begin to earn some lawful remuneration, accessing a range of everyday necessities, and accessing services and support for their specific needs.\(^8\)

In most instances, the successful reintegration of offenders hinges upon their ability to secure and maintain gainful employment. However, offenders typically encounter many challenges with respect to securing employment when they are released from an institution. These include challenges due to personal factors such as low self-esteem, poor motivation, various skills or lack of training, and challenges related to a lack of employable skills or a poor employment record.

Among the more important interventions that can be made to assist offenders with respect to employment are job readiness classes, vocational education, certification, job training, job placement, and employment monitoring by a case manager. In all of these areas, community organizations and the private sector are uniquely positioned to offer effective assistance.

In many of the countries we have been working in, there often is very little reintegration assistance available to offenders who have been institutionalized. This is particularly problematic because the rehabilitation assistance these offenders have received during their institutionalization was also very limited. In the last several years, I have had the opportunity to work in Vietnam with the Ministry of Justice and UNICEF on a national survey of social reintegration mechanisms. In that country, the concept is only articulated in general policies with no specific programme or project to implement these activities. It was therefore difficult to fully implement reintegration support policies.

III. COMMUNITY INVOLVEMENT IN DIVERSION PROGRAMMES

*Diversion* refers to an alternative process for dealing with offenders in an informal way, outside of the formal administrative or criminal justice systems. It may involve any process used by various components of the criminal justice or administrative systems to channel offenders away from formal proceedings and adjudication to community-based responses to their behaviour, needs and circumstances. The objective of such a process is to give offenders a chance to take responsibility for their actions and amend their

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behaviour without having a formal dossier or sanction recorded against them. The Tokyo Rules state that consideration must 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” (Rule 2.5).

In the case of juvenile offenders, the Convention on the Rights of the Child (CRC) requires States parties to promote the establishment “wherever appropriate and desirable” of measures for dealing with juveniles in conflict with the law without resorting to formal judicial proceedings, provided that human rights and legal safeguards are fully respected (Article 40(3)(b)).

The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) also directly promote the use of diversion: “Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority” (Rule 11.1). The Rules also refer to the type of community programmes that should be in place “In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims. (Rule 11.4)”

Diversion, let us be clear, cannot operate without the existence of strong and credible community-based programmes and resources. In fact, the implementation of diversion programmes often fails for one of three main reasons: the community resources do not exist or are insufficient; the community resources exist but referrals do not take place; or, the programme loses credibility after a publicized controversial failure of an offender who was often referred to a community programme without a proper prior assessment.

Among some of the most successful diversion initiatives, restorative justice programmes often provide an expanded role for community members in the resolution of conflicts and in constructing agreements to be adhered to by offenders. There are many different ways in which community members can be involved in restorative justice programmes. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters notes that these programmes can enable “communities to understand the underlying causes of crime, to promote community well-being and to prevent crime”. However, the community does not always perceive these programmes as an effective response to crime. It is therefore always important to develop materials and create opportunities for the community to better understand the principles, practices and merits of restorative justice programmes.

Let us consider some examples.

IV. INVOLVEMENT IN COMMUNITY CORRECTIONS

The Tokyo Rules were adopted twenty years ago to promote the use of non-custodial measures and alternatives to imprisonment. The rules emphasize that public participation should be regarded as an opportunity for members of the community to contribute to the protection of society and that it “should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community” (Rule 17.1). The rules also stress the importance of the role of volunteers, particularly when they are properly trained and supervised.

Many of the countries we have been working in are seriously lagging behind others in terms of their ability to offer community-based alternatives to imprisonment. It is not uncommon to encounter countries which have laws and regulations that allow for community-based sentences such as probation, either for juvenile offenders or for all offenders, but where no service is yet in place to administer such sentences. The option is therefore never used by the courts. Some countries, like Uganda, once had a service which eventually stopped operating because of lack of funds, like of public support or lack of leadership.

Our assessment of the situation of vulnerable groups in Southern Sudan prisons and the resulting policy development exercise led to the adoption of a national plan of action to implement some alternatives to imprisonment, including the development of a new probation service (with the assistance of the Kenyan

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Probation and Aftercare Service) and the development of community services orders. In a post-conflict situation and in a country where there is no tradition of community involvement in corrections, it was decided to start with the development of a probation service for juvenile offenders, as a unit within the Southern Sudan Prisons Service. I will try to tell more about this particular example.

Alternatives to imprisonment are sometimes promoted as a means to address the problem of prison overcrowding which plagues many criminal justice systems. One of the challenges facing authorities who are seeking to develop the use of alternatives to imprisonment as a way of reducing prison population (or alleviating the ever-present problem of prison overcrowding) is that of coming with effective and sustainable strategies for mobilizing the support of communities.

Communities are not always very responsive to the idea of community-based corrections. The population is often caught in a punitive mood which does not leave much room for operating community-based corrections programmes. Non-governmental organizations can help ensure that this issue is kept on the political agenda and advocate for change. Community-based programmes, such as probation or community services programmes, can often be hugely successful in rehabilitating certain types of offenders. However, they simply cannot operate without the support of the community and they often depend on the active participation of members of the community.

There are many ways in which community members can assist in implementing community-based alternatives to imprisonment without putting the rights of offenders at risk. Involving them has the additional advantage that they get a first-hand experience of the benefits of keeping people out of prison.

In the case of juvenile offenders, international human rights standards established by the Convention on the Rights of the Child and other instruments stipulate that alternatives to imprisonment should be preferred to deprivation of liberty whenever a child is involved; imprisonment is to be used for children and juveniles only as a last resort and for the shortest period of time possible. The Standard Minimum Rules for the Administration of Juvenile Justice expresses a preference for community-based measures and states that “volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit” (Rule 25.1).

It is probably fair to say that, in most countries, the population is generally more willing to support community-based alternatives for youth than for adults. This can provide a good starting point for developing community-based alternatives to imprisonment and providing communities with a first positive experience of community corrections. Initiatives must often start by proposing changes to existing legislation concerning juvenile offenders. In some instances, the law includes some dispositions that can be used to promote greater involvement of the community. This is the case in Vietnam, for example, where the Penal Code, the Penal Procedure Code and the Ordinance on Administrative Sanctions provide the possibility for a young offender to be sentenced to “education at the commune level”. I would like to share with you some ideas about how this can in fact be used to open the door to greater opportunities for meaningful community involvement.

The main problem we often encounter during our technical assistance activities stems from the fact that community involvement in community-based sanctions rarely happens spontaneously. The implementation of most community-based alternatives generally requires an infrastructure in the community. This infrastructure can rely on a specialist bodies or other official structures such as a probation service or the police. The police are often given some responsibility with respect to the supervision of offenders in the community. I remember seeing an example of police involvement in Latvia which certainly could encourage other police forces to become more directly involved. Typically, these official structures have procedures for involving the community, recruiting volunteers, or utilizing other community resources. In other instances, the

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infrastructure is provided in part by community-based organizations and non-governmental organizations which have developed community-based programmes for offenders. In Canada, some of these agencies are in fact funded by government or operate under a contract for services with the government.

V. COMMUNITY INVOLVEMENT IN CONDITIONAL RELEASE AND AFTERCARE PROGRAMMES

Many countries have developed policies and programmes designed to assist offenders who are returning to the community after their release from an institution. These interventions are variously referred to as “aftercare”, “transitional care”, “reentry” or “re-entry support”, “reintegration”, or “resettlement”.

The vast majority of offenders are released at some stage. A planned conditional release (or “early release’) can facilitate their integration into the community and offer better protection to the population. Assistance and supervision at the time of the offenders’ release makes it less likely that they will continue their criminal behaviour. Many countries have conditional release programmes involving the early conditional release of offenders and their supervision in the community. In some countries, every period of detention is followed by a period of supervision in the community, as part of the offender’s sentence. Conditions are normally attached to these arrangements. If an offender breaches one of these conditions while under supervision in the community, that can result in a change in conditions or in the offender being returned to detention.

The successful completion of a period of conditional release by offenders depends on their compliance with the various conditions attached to their conditional release, and whether they manage to refrain from committing another offence – or at the very least manage not to get caught for committing one. Success on conditional release, it is generally assumed, depends in large part on the offenders themselves, but also on the quality of the supervision and assistance they receive.14

There is a lot of speculation on what constitute effective supervision and there is a growing concern in many countries about the apparent frequency with which offenders fail to complete their period of community supervision.15 Yet, this is an area where the available evidence clearly suggests that, with proper training, volunteers and members of community-based agencies can succeed in offering effective supervision and assistance to offenders with enviable crime prevention results.

VI. CONCLUSION

I hope that we can draw together some of the lessons that can be learned from some of the several examples that I have provided. In my own experience, interventions designed to address the dynamic risk factors of juvenile offenders have a higher chance of success. Successful interventions are those which:

- focus on a specific target group of offenders and their specific needs and challenges;
- rely on sound methods for assessing the needs and risk factors of offenders;
- hold the offenders accountable and responsible for their own actions;
- build on the offenders’ strength and resiliency factors;
- strike a balance between surveillance and control, on the one hand, and support and assistance on the other;
- are offered as a coordinated effort of all the agencies involved and supported by strong inter-agency cooperation;
- are supported by sound case management practices and adequate information management systems;
- reflect the public safety priorities of the community in which they are developed;
- engage the community in both the planning and the delivery of the intervention and foster strong community ownership; and

• have an adequate evaluation component that allows the programme to evolve, self-improve, and remain accountable to the community for crime reduction results.

Lastly, while on the subject of evaluation, which unfortunately I will not have a chance to write much about, I should at least mention how little research there really is on community involvement in offender treatment and on its effectiveness. Some promising practices have been identified, but we are still far away from an evidence-based approach to this kind of programming.