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# **CUSTODIAL AND NON-CUSTODIAL MEASURES**

## **Alternatives to Incarceration**

**Criminal Justice Assessment Toolkit**



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# 1. INTRODUCTION TO THE ISSUE

Prison populations around the world are increasing, placing enormous financial burdens on governments. In the meantime, there is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful – to offenders, to their families and in the long-term, to the community.

Imprisonment has several objectives. It keeps persons suspected of having committed a crime under secure control before their guilt or innocence is determined by a court. It punishes offenders by depriving them of their liberty after they have been convicted of an offence. It keeps them from committing further crimes while they are in prison and, in theory, allows them to be rehabilitated during their period of imprisonment. The goal of rehabilitation is to address the underlying factors that led to criminal behaviour and by so doing, reducing the likelihood of re-offending. However, it is precisely this objective that is generally not being met by imprisonment. On the contrary, evidence shows that prisons not only rarely rehabilitate, but they tend to further criminalise individuals, leading to re-offending and a cycle of release and imprisonment, which does nothing to reduce overcrowding in prisons or to build safer communities.

The majority of prisoners worldwide come from economically and socially disadvantaged backgrounds. Poverty, unemployment, lack of housing, broken families, histories of psychological problems and mental illness, drug and alcohol abuse, domestic violence are realities that are likely to be found in most offenders' lives. Many are in prison for non-violent or minor offences. By using prison as an answer to all offences committed by such individuals, not only is the issue of safety in the community not addressed in any sustainable manner, the cycle of impoverishment, loss of jobs, weakening of employment chances, damage to relationships, worsening of psychological and mental illnesses and continued or increased drug use is perpetuated. There are also many health risks associated with overcrowded prisons, including the spread of infectious disease, such as tuberculosis and HIV. In many countries violence is a common element of prison life, especially where there is overcrowding.

Overcrowding can be decreased either by building new prisons or by reducing the number of people staying in them. Practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. Indeed, a number of European countries have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, seeking to reduce the number of people being isolated from society for long periods.

In this context it is important to emphasize that alternatives on their own will have relatively little effect on the size of the prison population. In order to meet the objective of reducing the number of prisoners, comprehensive reform of criminal legislation needs to be undertaken and sentencing practices need to be changed. Measures that can be introduced include decriminalizing certain acts, providing shorter terms of imprisonment for selected offences, in addition to introducing a wide range of non-custodial sentences as an alternative to prison and widening possibilities for parole (conditional release).

However, the goal of introducing alternatives to prison is not only to address the problem of overcrowding in prisons. The wider use of alternatives reflects a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long-term better protection for society.

There are also economic arguments in favour of alternatives. In western societies, the supervision of offenders within a probation system is normally much less costly than the upkeep of a prisoner.<sup>1</sup>

On the other hand, western style probation services may not be practical options for many countries, where resources are too scarce to set up and maintain a probation system with adequate staff and finances. In these circumstances, the development of existing structures and the use of existing staff (e.g. staff of magistrate's courts, municipal authorities, social agencies, administration staff of institutions where community service is implemented) and volunteers for the supervision of non-custodial sentences may be more viable and effective options. (Successful examples include Zimbabwe, Latvia and Russia). In Zimbabwe, for example, where a community service scheme was developed on this basis in the early 90s, the monthly cost of supervising an offender on community service was estimated to be about one third of that of keeping a person in prison.<sup>2</sup>

There are certain pitfalls associated with the introduction of alternatives, which need to be borne in mind. In undertaking legislative reforms, care needs to be taken, for example, to ensure that the changes lead to a reduction of imprisonment, with alternatives being used instead of prison sentences, rather than leading to an increase in the overall volume of sanctions. Often when alternatives have been introduced in legislation, they have been used as an alternative to another alternative or alternative sentences are passed, when previously no sentence would have been passed at all.

In order to ensure effective implementation, the role of the judiciary must be well understood. In many countries, the reason alternatives are not used, despite their availability in legislation, is due to the lack of confidence of judges and magistrates in the implementation of community sanctions and measures. Cooperation with senior judges must be ensured from the very early stages of criminal justice reform and their input sought in formulating policy and implementation strategies. The organizational aspects of the implementation of alternatives, such as community service, in particular, must be taken seriously and adequate human and financial resources allocated to the proper management and administration of community sanctions. As the significant feature of alternative sanctions is that they are served in the community, the support of the public must be ensured.

Finally, the human rights of offenders need to be protected. A number of international instruments prescribe the ethical, legal, and executive framework in which non-custodial sanctions can be applied. An underlying principle with sanctions that oblige offenders to perform certain acts is that they require the offender's consent. This is particularly relevant in the case of community service sanctions. (See the **United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)**, 3.4 and the **Council of Europe Committee of Ministers Recommendation**, No. R (92) 16, Rule 35). Since human rights abuses can occur in the implementation of sanctions such as community service that require a person to perform certain acts under supervision, it is vital that offenders have recourse to a formal complaints system, set out clearly in legislation. See **Tokyo Rules**, 3.6 and 3.7.)

In view of the above, an assessment of a system of alternatives to incarceration may seek the answers to all or some of the questions below:<sup>3</sup>

1. Does the system effectively contribute to a reduction of the prison population?
2. Does it enable the offence-related needs of the offender to be met?
3. Is it cost-effective?
4. Does it contribute to the reduction of crime in the community?
5. Are there legal safeguards in place protecting the human rights of the offender?

This tool guides the assessment of systems of alternatives to imprisonment, including their legal basis, management, effectiveness, and opportunities for improvement. In conducting assessments of the role community sanctions and measures play in the reintegration of offenders and ex-offenders, the assessor should use this tool in conjunction with **Custodial and Non-Custodial Measures: Social Reintegration**.



This assessment tool is based primarily on the **UN Standard Minimum Rules for Non-Custodial Measures**, 1990, also known as the **Tokyo Rules**. These Rules ‘provide a set of basic principles to promote the use of non-custodial measures’ (1.1) and are intended to ‘promote greater community involvement in the management of criminal justice’ (1.2), taking into account the socio-economic and political conditions in each country (1.3), balancing the rights of offender and victim (1.4) which will reduce the use of imprisonment (1.5). Reliance is also placed on the **UNODC Manuals on Alternatives to Imprisonment and Restorative Justice**. Sentencing options are not the only alternatives available, however. This tool considers also the role in many countries of non-State justice systems at the village level applying customary or traditional laws. In the formal State justice system, there is increasing recognition of the useful role of alternative dispute resolution and growing acceptance of restorative justice as an alternative to a more punitive approach to criminal justice.

**Probation services** and other systems of supervision of non-custodial sanctions are covered by this tool, with focus on the organizational and administrative aspects. The role probation systems play in the social integration of offenders is discussed in **Custodial and Non-Custodial Measures: Social Reintegration**. Assessors should seek guidance from both tools, as appropriate, with regard to the assessment that they are conducting.

**Parole**, which is considered, when correctly targeted, to be one of the most effective ways in reducing overcrowding is not covered in this tool as an alternative, but can be found in the **Custodial and Non-Custodial Measures Tool: Social Reintegration**, due to its important place in assisting offenders’ gradual return to normal life in society.

**Amnesties**, though effective short-term measures in reducing the prison population, have a number of drawbacks and are not considered to be alternatives. They are therefore not covered specifically by this tool, except where the information may be relevant to the assessment.

Assessors may want to conduct research on models and good practices in the field of alternatives to imprisonment worldwide before going on mission. It is inevitable that they will be asked for such information during meetings and interviews. It is always helpful to be able to provide some guidance on the spot, as this can lead to discussions, testing the openness of authorities to various types of alternatives, as well as helping build trust and good relations.

In addition to developing an understanding of the strengths and weaknesses of a state’s approach to the provision of alternatives to incarceration, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of alternatives to incarceration in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms seeking to introduce and widen the scope of alternatives to imprisonment in the penal statutes;
- Improving organisational design and management processes relating to the implementation of legislation on non-custodial sanctions and measures;
- Developing training curricula for judges, magistrates, probation service staff and others involved in the administration of alternative sanctions and measures;
- Improving allocation of resources through sound budgeting and financial management;
- Enhancing capacity to develop and manage planning, research and information management;
- Enhancing both human and technical resource capacity of probation services or other supervision/monitoring systems of non-custodial sanctions and measures;
- Ensuring good communication and co-operation between all parties involved in the administration of non-custodial sanctions and measures;
- Setting up and testing pilot projects introducing new types of community sanctions and measures;
- Designing special projects seeking to increase and improve the use of alternatives for special categories and vulnerable groups;
- Raising public awareness about alternatives to imprisonment and increasing community participation in the implementation of alternative sanctions and measures.

## 2. OVERVIEW: GENERAL AND STATISTICAL DATA

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on gathering the key criminal justice statistical data that will help provide an overview of the prison population, the number of offenders sentenced to non-custodial sanctions, and overall capacity of the criminal justice system of the country being assessed.

Listed below are additional indicators that are specific to this tool. Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it.

Written sources of statistical information may include, if they exist:

- Ministry of Justice reports
- Penal System reports (including the prison and probation systems)
- Ministry of Interior/National Police Crime reports
- Court Annual reports
- Prosecution Service's Annual reports
- Non-governmental organisation (NGO) reports on the prison system and administration of alternatives.
- Donor reports

The contacts likely to be able to provide the relevant information are:

- Ministry of Justice
- Senior prison service officers
- Senior probation service officers, where a probation service exists
- Senior Prosecutor
- Ministry of Interior
- High Court Judges and other senior judges
- NGOs working on criminal justice matters
- Donor organisations working on the criminal justice sector

Normally statistics relating to the use of imprisonment and alternative measures are not very difficult to obtain, though it may be that the details will not be sufficient for the purposes of the assessment. Information received from central authorities may give an overall picture, but not regional information, while the situation may vary vastly in different parts of the country. So it is important that the assessor tries to gather statistical information both at headquarters and during site visits at different levels in different parts of the country visited.

In cases where statistical data is found to be limited due to lack of capacity and resources, technical assistance interventions to develop this capacity may be appropriate, bearing in mind the importance of such data for research, planning, policy formulation and evaluation, which are essential elements of a successful programme of alternatives. (See **Tokyo Rules, Section VIII**).

Answers to the suggested questions below will give the assessor an overall picture of the prison/offender population, sentencing practice and trends, thereby helping to identify areas where alternatives may be introduced or the use of alternatives increased.

### A. Are the following statistics available? On an annual basis?

- Prison population: pre-trial, convicted
- The number of juveniles in prison
- The number of women in prison
- The number of prisoners sentenced for drug related offences.
- The percentages of indigenous, ethnic and racial minority groups and foreign nationals in prisons.
  
- Statistics showing sentencing trends over the last 3-5 years:
  - How many were sentenced to imprisonment?
  - How many were sentenced to non-custodial sanctions?
  - Percentage of re-offending among former prisoners covering last 3-5 years.
  - If a non-State justice system exists, what is the percentage of cases dealt with by the non-State justice system (as a result of diversion by police, prosecutors or the courts) and what is the success rate of reconciliation/arbitration in the non-State justice settings?

B. What is the profile of sentenced people in prison?

This section seeks, primarily, to determine the percentage of prisoners, who may have been eligible for alternatives, if they had existed; if they were being applied or if the rules were less restrictive. Please see also targeting under Section 3.4, Question L.

- What percentage of the prison population is serving less than 1 year?
- What percentage of the prison population is serving less than 2 years?
- What percentage of the prison population is serving a term of imprisonment in lieu of payment of a fine?
- What percentage of the prison population is serving time for a first conviction?
- What is the ratio of violent vs. non-violent offenders?
- What percentage of the prison population is drug dependent or addicted?
- For which offences are juveniles most commonly sentenced to prison?
- For which offences are women most commonly sentenced to prison?
- What percentage of overrepresented groups have been imprisoned for non-violent offences?
- What percentage of these groups are serving less than 1 and 2 years?

C. What is the profile of the unconvicted people in prison?

- What percentage is eligible for bail?
- What percentage is estimated to have been granted bail but cannot meet the terms set by the court?
- What percentage is represented by legal counsel?
- What is the average time that a suspect spends in pre-trial detention before acquittal or conviction? (Exact figures and percentages, where available). Is there a legal time limit and is this limit respected?

D. What is the profile of the offender sentenced to community sanctions and measures / probationer?

- What percentage is a first time offender?
- Percentage of offences by type among offenders serving non-custodial sentences.
- What percentage would have received a prison sentence if an alternative had not been available, and what would the length of that prison sentence have been?

This information can normally be found in the Penal Code, which will give the upper limit of prison sentences or categories of offences, to which alternatives are available. Possible prison terms for each category of offence will be indicated in the Penal Code. The aim of the question is to find out whether alternatives sanctions are being used mainly instead of prison sentences, instead of other alternatives or whether the offender would not have received a sanction at all had alternatives not been introduced into penal legislation.

- Percentage of women, juveniles, ethnic and racial minorities, and foreign nationals.
- What is the percentage of drug or alcohol abusers? Does the community sanction imposed on them include treatment for their addiction?
- What percentage re-offended and of that group, what percentage received a prison sentence as a result of re-offending, over the past 3-5 years?
- What percentage received a prison sentence as a result of breaching the rules of the community sanction over the past 3-5 years?

The distinction between re-offending and technical violation of community sanction rules is very important. If many offenders are being sent to prison because they are breaching the rules, rather than re-offending, then it is evident that the rules need reconsideration. They may be too strict or too complicated for many offenders. See **CUSTODIAL AND NON-CUSTODIAL MEASURES: SOCIAL REINTEGRATION, SECTION 7.1** for further commentary with respect to parole, where similar considerations apply.

- E. Amnesties (information on amnesties may help to understand the prisoner population trends)
- Information on amnesties within the last 3-5 years, the numbers released.
  - Percentage of those who re-offended after release and were re-sentenced.

### 3. LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework for the availability of alternatives to prison at different stages of the criminal justice process.

- The **Criminal/Penal** and **Criminal/Penal Procedure Codes** will provide information about the alternatives available at pre-trial, trial and sentencing stage.
- The **Prison Act, Criminal Executive Code, Penal Enforcement Code** or similar will provide the legal framework for alternative sanctions, important especially if a separate probation act does not exist.
- The **Probation Act** or any other similar act will provide the legal framework for the administration of non-custodial sanctions and measures.
- The **Juvenile Court Act** will outline specific provisions relating to juveniles.

Where semi-formal justice systems exist, there may be particular acts governing their actions.

For other useful documents, please see Annex A. Key Documents and Annex B. Assessor's Guide/Checklist.

Often the main problem with alternative sanctions and measures arises at the implementation stage. When designing technical assistance programmes, sometimes there is no need to make any changes to legislation, but rather, to ensure that the mechanisms and resources for the implementation of existing legislation are put in place.

The questions below seek to establish what legislation is in place and to what extent existing legislation is being implemented and when not, to identify the reasons why it is not being put into practice. They also seek to find out what measures are being taken at central and local levels to improve practice.

In order to get a full picture of what is actually happening, the assessor should gather information about practice both at central level (Ministry of Justice, Ministry of Interior, central police authorities, prison authorities, probation service headquarters, high court judges and other senior judges), and from a variety of sources, at different levels of the system and in different parts of the country. The gathering of information from a wide range of sources is essential to understand the reasons why certain legislation is not being implemented, the geographic variations in practice, the variations of problems encountered in different parts of the country and by different levels of criminal justice authorities, and the level of community involvement in different settings. The sources could include local police stations, local courts, judges and magistrates, local branches of probation services or other bodies responsible for supervising non-custodial sanctions, individual prison administrations, offenders, ex-offenders and their families and NGOs working on criminal justice issues. Numerical data and case examples should be gathered, as relevant.

This information will help the assessor to identify the obstacles to implementation in practice, the geographical differences, including between urban and rural, to identify good practices that may be expanded, and to decide the priority areas upon which technical assistance should focus.

#### 3.1 LAW REFORM

- A. When was penal legislation last reviewed and did the review increase the number of non-custodial sanctions in the Criminal/Penal Code?
- B. Is there a law commission or law review body that is considering the penal statutes with a view to rationalizing sentencing, including introducing alternatives to imprisonment / widening their scope?

C. What laws are currently under review?

## 3.2 DIVERSION FROM PROSECUTION

The number of complaints received by the police and prosecutors would overload the criminal justice system if they were all prosecuted in the courts. The police, prosecutors, and courts have an array of options available to them to divert offenders from prosecution. These are to be found in the penal statutes, and may include:

- Absolute or conditional discharge
- Verbal sanctions
- An arbitrated settlement
- Restitution to the victim or a compensation order
- Community service order
- Victim offender mediation
- Family group conference
- Another restorative process

**Restorative process** means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

**Restorative justice programme** means any programme that uses restorative processes and seeks to achieve restorative outcomes.

**Restorative outcome** means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.<sup>4</sup>

Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law. When used before a case comes to trial or during the trial process, they can lead to the diversion of the case from criminal procedure, provided that an agreement is reached between victim and offender.

Restorative justice processes can be adapted to various cultural contexts and the needs of different communities.

Restorative justice has its roots in **informal dispute resolution** processes that still play an important role in a number of countries in Africa, South Asia and Latin America. Informal dispute resolution takes place in **non-State justice settings/institutions**, ranging from largely visible intra-family negotiations to quasi-state bodies that apply customary norms to resolve disputes. Non-State justice systems are more affordable and accessible to the poor, and allow for conflicts to be resolved without having to go through a long formal criminal justice process. They also have their drawbacks, such as lack of adequate accountability, discrimination based on social status, gender and wealth, as well as lack of human rights safeguards.

For the role of restorative justice in the rehabilitation of offenders, please see **Custodial and Non-Custodial Measures: Social Reintegration**.

A. What discretion do police or prosecutors have to divert cases from the criminal justice system? In practice, are they encouraged to do so?

Please see **ACCESS TO JUSTICE: THE PROSECUTION SERVICE**, SECTIONS 3.3.1, Prosecutorial Discretion, and 3.3.2 Alternatives to Prosecution

B. Is there a set of established criteria to take the decision of discharge **Tokyo Rules 5.1**? What are they?

C. In practice, what diversion measures are used most frequently?

D. What discretion do police or prosecutors have to issue a formal caution or warning to offenders? What authority do they have to grant bail? What are the rules and conditions governing bail at this stage?

E. Can cases be referred to restorative justice programmes by the police and prosecutors with the goal of settlement by mediation between victim and offender? If so, who are the restorative justice programmes run by? How often does this happen in practice?

F. If the above are not being applied, what are the reasons?

### 3.3 PRE-TRIAL DETENTION

The general rule is that a person must be afforded his or her personal liberty and not be held in detention pending trial. Principle 36(2) of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment** forbids any restrictions that are not strictly required for the purpose of the detention or to prevent interference or obstruction of the investigation or the administration of justice. **The Tokyo Rules** state that “[p]re-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.” (Rule 6.1)

According to Principle 39 of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment**, ‘except in special cases provided by law’, a person is entitled to release pending trial subject to conditions that may be imposed in accordance with the law’.

It is important that the authority that must decide whether to impose or continue pre-trial detention has a wide range of alternatives at its disposal. Rule 6.2 of the **Tokyo Rules** emphasise the need for alternatives to pre-trial detention to be employed at as early a stage as possible. Such possible alternatives include releasing an accused person and ordering such a person to do one or more of the following:

- to appear in court on a specified day;
- **not to:**
  - engage in particular conduct,
  - leave or enter specified places or districts, or
  - meet specified persons;
- to remain at a specific address;
- to report on a daily or periodic basis to a court, the police or other authority;
- to surrender passports or other identification papers;
- to accept supervision by an agency appointed by the court;
- to submit to electronic monitoring; or

to provide or secure financial or other forms of security as to attendance at trial or conduct pending trial. The alternative that is most commonly used is bail.

**Bail** is typically cash or securities or real property that is temporarily placed in the possession of the court (or other entity granting bail) as a guarantee that the suspect or accused will appear in court as ordered for the duration of a case. The assets are subject to forfeiture if the suspect or accused absconds. Bail is typically posted either by the suspect or accused or a family member, though this is not necessarily a requirement.

The **Model Code of Criminal Procedure (MCCP), (DRAFT, 30 May 2006, Chapter 9, Section 3, Article NUMBER PENDING, page 110)** provides an example of the basis for the setting of bail:

- (a) there is a reasonable suspicion that he or she has committed a criminal offence;
- (b) the only basis for the detention of the person is a fear that the person may flee; and
- (c) the person has promised that he or she will not go into hiding or leave his or her place of current residence without permission.

Possible other alternatives include releasing an accused person, following the imposition of certain restrictive measures by the competent authority (e.g. prosecutor or judge). The measures suggested by the **MCCP, (DRAFT, 30 May 2006), Article 128** include:

- (a) house detention of the suspect or the accused, alone or under the custody of another person;
- (b) the submission of the suspect or he accused to the care or supervision of a person or an institution;
- (c) a regime of periodical visits of the suspect to an agency or authority designated by the competent judge;
- (d) the prohibition of the suspect from leaving a particular area designated by the competent judge;
- (e) the prohibition of the suspect from appearing at identified places or meeting a named individual(s);
- (f) the confiscation of the passport of the suspect or the accused; or
- (g) the prohibition of the suspect from staying in the family home, if the person is suspected of domestic violence under Article 105 of the **Mode Criminal Code (Draft, 31 March 2006)**

A. What types of alternative measures are available in the penal code at pre-trial stage?

B. What provisions govern the granting of bail? Is the exercise of bail from the courts of first instance restricted or presumptive? For what types of crimes? In practice, what are the most common conditions for granting bail by the court?

- C. What is the most common measure in the courts of first instance? Are the accused released on bail? Discharged? Diverted to a restorative justice process?
- D. What steps are being taken to train the lower judiciary on the application of bail?
- E. Are restorative justice strategies recognized by the courts/legal establishment?
- F. Can courts refer or divert cases out of the criminal justice system for settlement other than by adjudication?
- G. What steps are being taken to enable the trial judge to divert the case at any stage of the trial proceedings prior to an adjudication, in favour of:
  - a mediated agreement
  - an arbitrated settlement
  - community service order
  - family group conferencing
  - another restorative process
- H. Can cases be referred from the formal State courts to non-State settings (often in the village) for informal settlement? If so what does the non-State justice system consist of and who runs it? (e.g. customary justice forums, neighbourhood dispute resolution forums, NGO run reconciliation programmes, village courts etc)? Are courts in any way bound to uphold these agreements?
- I. In practice, how often are cases referred to non-State settings for informal settlement?

### 3.4 SENTENCING

**Rule 8.1 of the Tokyo Rules** provides that the judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

The Tokyo Rules (**Rule 8.2**) list a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage and which, if clearly defined and properly implemented, have an acceptable punitive element. These are:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

#### **Alternative Sanctions Defined:**

Fines: Used widely. It has the disadvantage that many people cannot afford the fines prescribed and may therefore be imprisoned.

Compensation. In some countries instead of a fine the court obliges the convicted offender to pay a certain amount of money to the victim as compensation.

Probation or judicial supervision. The arrangement for the convicted offender to continue to live in the community under the supervision of a judicial authority, probation service, or other similar body. It can involve requiring the offender to attend certain courses, therapy or treatment programmes.

Suspended sentences, (with or without supervision): A sentence is passed and recorded, but suspended for a specific length of time, during which the convicted person must not commit any further offences. In many countries a suspended sentence is combined with supervision by a probation service or other similar body.

Deferred sentence: A decision is taken not to pass sentence on condition that the offender undertakes some action, such as undergoing treatment for alcoholism, drug addiction or receiving psychological counsel. Depending on the result, the offender may not receive a sentence.

Removal of certain rights: Restrictions are placed on certain rights, such as the right to take up certain types of employment, to occupy specific positions in government or to travel to certain places.

House Arrest/ Limitation of freedom: The offender is obliged live in a certain place (normally his or her place of residence) under the supervision of a specialized agency. The offender cannot change place of residence, work or education, without permission of the supervising body.

Referral to an attendance centre: The court can direct the offender to spend a set period of hours each day in an attendance centre for a certain period of time. The attendance centre is meant to offer a structured programme for offenders to address their offending behaviour in a group environment.

Community service: Community service is work done without compensation, usually for an agency or organization for the benefit of the community. The judge may order community service in lieu of a term of imprisonment.

A sanction that is widely used in the former Soviet Union but not common elsewhere:

Correctional work: The offender continues to work in his/her existing place of employment, but is obliged to pay a certain percentage of his/her salary to the state, somewhere between 5% and 25%.

- A. What alternative sanctions and measures are available in the penal code at sentencing stage? Are alternative sanctions obligatory for some offences? Which ones? What would have been the length of prison sentence to which they are an alternative? This information can normally be found in the Penal Code.
- B. Are alternative sanctions an option for some offences? Which ones? What is the length of prison sentence to which they could be an alternative?
- C. Does the wording and commentary in legislation encourage the use of alternatives, instead of imprisonment?
- D. What criteria have been established with respect to the nature and gravity of the offence; the personality and background of the offender; the purposes of sentencing; and the rights of the victim in selecting whether a non-custodial measure is appropriate? Tokyo Rules, 3.2.
- E. What supporting evidence/documentation can the sentencing judge rely on in determining a sentence – e.g. social inquiry report? Are social inquiry reports mandatory or are they based on requests from the judge, the prosecutor, or defence counsel?
- F. How else do courts obtain background information on a defendant?
- G. Do probation officers or social services attend court? Do they testify?
- H. In practice, are alternatives to imprisonment used frequently, sometimes, rarely? If, sometimes or rarely, what are the reasons? Which alternatives are used? Why are others not used?
- I. What are the views of judges, prosecutors, and magistrates on alternative sanctions? (Enquire at different levels).
- J. What training do judges and magistrates receive on sentencing principles and practice?



- K. What guidelines are issued to the lower judiciary on sentencing principle and practice? Are judges and magistrates encouraged to impose alternative sentences when these are available as an option? For example, are they required to explain why they have imposed a prison sentence, if an alternative was available for the offence for which the sentence was imposed?
- L. Does the failure of a non-custodial measure automatically lead to the imposition of a custodial measure? Does failure normally consist of non-compliance with community sanction rules or re-offending?
- M. If failure rates are high, has research been conducted on the reasons? What were the findings?

Reasons may include incorrect targeting or excessively strict or complicated rules relating to the supervision and implementation of community sanctions. In the Czech Republic, for example, following an initial success in reducing the prison population in 2002, after the introduction of non-custodial measures, a rise was noted. This was deemed to be the result of incorrect targeting, leading to failures in completing community sanctions or to re-offending. The lack of coordination between judges and the Czech Probation and Mediation Service to ensure correct targeting was identified as the main reason for this situation.<sup>5</sup>

**Targeting** refers to the careful selection of offenders eligible for non-custodial measures. First, an analysis needs to be carried out of those who are currently receiving short prison sentences, together with their offences (please see **Section 2.2**). Based on that information, an assessment can be made as to the profile of the offender who could be eligible for alternatives, though currently is not. The type of offences and upper limit of prison sentences to which alternatives can be introduced must then be determined. (If the upper limit is too high, it may lead to failure, if too low, it may have little impact on the prison population. These considerations will need to be balanced). Other factors should also be taken into account: repeat offenders are not typically suitable, as demonstrated by the experiences in some countries, including the Czech Republic. The alternative imposed on offenders must be selected with care too. For example, community service for a person who has committed a drug related offence may be unsuitable, if the person, in fact, needs treatment for his or her addiction.<sup>6</sup>

## 3.5 SPECIAL CATEGORIES

### 3.5.1 Juveniles

The **United Nations Convention on the Rights of the Child** underlines the urgency for finding alternatives to the imprisonment of children by providing that: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." (Art 37 (b)).

As the Commentary to **Article 76** of the **Model Criminal Code (DRAFT, 31 March 2006)** states:

The need to prioritize the rehabilitation and re-integration of a juvenile convicted person is highlighted in Article 40(1) of the **Convention on the Rights of the Child**. **The African Charter on the Rights and Welfare of the Child** states that "the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation" (Article 17(3)). **The International Covenant on Civil and Political Rights** (Article 14(4)) also emphasizes the desirability of promoting the rehabilitation of juveniles in conflict with the law, as does the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")**. The **Beijing Rules** discuss this issue in the commentary to Principle 17 "Guiding Principles in Adjudication and Disposition". The Rules do not set out a particular purpose of juvenile dispositions given the difficulties inherent in this but the commentary specifies that "strictly punitive approaches are not appropriate". It also states that "whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should be outweighed by the interest of safeguarding the well-being and the future of the young person". It is certainly true that making a juvenile responsible for his or her conduct is also of paramount importance, however, these considerations will apply not in preference to

the rehabilitative aim but in conjunction with it.

Commentary to **Article 78** of the **Model Criminal Code (DRAFT, 31 March 2006)** adds:

Principle 18 of the Beijing Rules provides that a large variety of dispositions should be available to courts when dealing with juvenile convicted persons. It gives a variety of examples, many of which have been integrated into the **Model Criminal Code (MCC)**. The focus on the Rules is on avoiding institutional measures, which in Principle 19 are said to be "a disposition of last resort". The MCC and international standards on the rights of juveniles aim to keep juveniles as far away as possible from any kind of institutionalization as possible.

A list of non-institutional dispositions suitable for juveniles is set out in Rule 18.1 of the **Beijing Rules**. Please see also **Article 78** of the **MCC**, which lists the applicable juvenile dispositions, including institutional measures and **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for children under the age of 18.

- A. Is appropriate scope for discretion allowed at all stages of criminal proceedings and at the different levels of juvenile justice administration, to direct juveniles away from the criminal justice process when it would be in their interest to do so? **Beijing Rules, 6.1**. How is this worded in legislation?
- B. If so, are those who have the authority to exercise discretion specially qualified or trained? **Beijing Rules, 6.3**. Who has this authority and what training do they receive? Are there police specially assigned to investigate juvenile offences? Are there juvenile courts? Prosecutors specially assigned to handle cases in the juvenile court?
- C. Are criteria established in legislation that empower the police, prosecution or other agencies dealing with juvenile cases to dispose of such cases at their discretion, without having to resort to formal hearings? **Beijing Rules, 11.2**. What are the criteria? In practice how often do the police and prosecuting authorities use their discretion to divert juvenile offenders?
- D. Is the consent of the juvenile offender, his/her parents or guardian required for any diversion involving referral to community or other services? **Beijing Rules, 11.3**.
- E. Are there sufficient and special alternatives to pre-trial detention for children provided for in legislation, such as close supervision, placement with a family, in an educational setting or a home? **Beijing Rules, 13.2**. What are they? How often are they used in practice?
- F. Are social inquiry reports available to the courts about the child before a sentence is passed? Who is responsible for preparing the reports? Social services? Probation officers? **Beijing Rules, 16.1**. Are the reports timely? Is this a source of delay? Accurate? Complete?
- G. Are suitable, social welfare-oriented alternatives to imprisonment available for children, in penal legislation, in addition to those that are available for adults? What are they? These could include, for example, care, guidance and supervision orders, foster care, living communities or other educational settings, as set out in the **Beijing Rules, 18.1**. How often are they used in practice?
- H. In practice what alternative options are applied most frequently in the case of juveniles, at pre-trial and sentencing stage? Is imprisonment used 'strictly' as a sentence of last resort?
- I. If alternatives are not being utilized, what are the reasons? What steps are being taken to ensure that alternative options are more widely utilized in the case of juveniles, both at pre-trial and at sentencing stage?

### 3.5.2 Women

The disproportionately severe effects of women's imprisonment, both on themselves and on their children and other family members, require additional efforts to be made to find alternatives to imprisonment for them at all stages of the criminal justice process. In most cases alternatives can be applied more easily to women, as a high percentage are detained for non-violent offences.

- A. Does the law grant the police, prosecution or other agencies dealing with the cases of women have discretion to dispose of certain types of cases, without having to resort to formal hearings? What are the criteria?
- B. Does penal legislation make special provisions for women, pregnant women or women with young children, expanding the possibilities of alternative sentences? What are these provisions?
- C. Does the commentary of the legislation encourage the use of alternatives measures and sanctions in the cases of women charged with non-violent offences and to take into account the particular circumstances of the woman, e.g. victim of domestic violence, sexual abuse or other forms of gender based intimidation? Is this applied in practice? This may be discerned from the examples given in the commentary to explain the provisions of certain articles which reduce sentences, thereby rendering the offender eligible for an alternative measure or sanction.
- D. If not, what steps are being taken to encourage/enable the use of alternatives in the cases of women charged with non-violent and minor offences?
- E. Where non-State justice institutions recognised by the formal courts exist, what safeguards, if any, have been put in place to prevent discrimination against women in dispute resolution processes?

### 3.5.3 The Mentally Ill

In general, mentally ill persons are better treated outside prison. Ideally they should be in the community in which they live, a principle recognised by the **United Nations Principles for the Protection of Persons with Mental Illness**.<sup>7</sup> If they need to be treated in a mental health facility, then the facility should be close to home as possible. However, prisons are not acceptable substitutes for mental health facilities.<sup>8</sup> Mentally ill persons do sometimes commit criminal acts. If no legal procedures exist to commit mentally ill offenders who continue to pose a threat to others to secure mental health facilities, such persons end up in prisons, which are not designed to care for them.

- A. Is the definition of insanity broad enough in the penal legislation to ensure that those who are not criminally responsible for their actions are not subjected to criminal law?
- B. Do the police and prosecuting authorities have the authority to divert persons who are mentally ill from the criminal justice system, provided that they do not pose a threat to society? What criteria apply? How often does this happen in practice?
- C. Does legislation allow courts to intervene on behalf of pre-trial or sentenced prisoners suspected of having a mental illness, and acting on the basis of independent medical advice, to order that such persons be admitted to a mental health facility? Please see **Principle 20.3 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care**. How often does this happen in practice? Must defence counsel raise the issue?
- D. Does legislation provide for special consideration to be given to the imposition of non-custodial measures and sanctions on mentally ill offenders, both at pre-trial and at

sentencing stage? For example, are community sentences with a treatment element for the offender's mental illness provided for? How often does this happen in practice? Do community treatment options exist that the court may access?

- E. If the above are not taking place, are there any steps being taken to introduce or widen the capacity for the mentally ill to be diverted from the criminal justice system in order to receive appropriate treatment or otherwise increase the alternative sanctions options that may be imposed on mentally ill offenders?

### 3.5.4 Drug and Related Offences

In most countries offenders who are imprisoned for drug-related offences make up a large proportion of the prison population. In part this is a result of national and international efforts to combat the trafficking in illicit drugs. However, not all these offenders are major players in the drugs trade. Their criminal offences are often an outgrowth of their own addiction. Often their crimes are committed because of their own addiction to drugs. Many such offenders could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem. The major international instruments, including the 1988 **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** and the **Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations** recognise this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives,<sup>9</sup> of which alternatives to imprisonment are a key part. In some countries, diversion from the criminal justice system for illicit drug users is formalised through drug education and treatment programs for first time offenders.

For those offenders whose addiction and record of criminal behaviour are more entrenched, drug treatment courts, in use in United States and Australia, offer an intensive therapeutic approach to addressing addiction and associated criminal activity as an alternative to imprisonment. Drug treatment courts provide close monitoring by the judge and drug treatment court multidisciplinary team, a treatment plan, and provides reinforcement and reward, including reduction of time in the program for compliance, and sanctions including short jail stays for non-compliance. Successful completion usually requires a specific term in which the participant remains drug free and completion of the goals set in of the treatment plan.

- A. What sentences apply to illicit drug use in the penal code? Is there a differentiation between the use of different types of drugs, with lesser sentences being provided for drugs such as cannabis?
- B. Is the difference between illicit drug use and drug trafficking clearly defined, with differentiated possible sentences? If not, do sentencing guidelines or other criteria exist to guide the imposition of consistent and proportional sentences for drug offences?
- C. Have there been any recent initiatives to decriminalise the use of certain drugs, such as cannabis, or to decrease the length of prison sentences for its use? What was the outcome?
- D. Can, and do, police and prosecutors use their discretion not to charge suspected drug users, for example, on condition that they enter or complete a drug educational or therapy programme? What criteria apply? How often does this occur? Are records kept of how many drug users actually complete the programs? What happens to those who do not?
- E. Are alternatives to criminal prosecution provided in legislation for the use of illicit drugs? What are they? Do the alternatives seek to address the drug addiction problem of the offender? How often are they used?
- F. Are there drug treatment courts available? Which offenders are targeted? Obtain statistics relating to the drug treatment courts, with information on how many offenders are screened for diversion to drug treatment court, how many are accepted, how many complete the program successfully and how many are returned for

traditional sentencing after being terminated from the drug treatment court for committing new offences or chronic non-compliance.

- G. If the above are not being applied, are there any steps being taken to introduce or increase the options of alternatives measures and sanctions available for drug dependent offenders, with appropriate treatment for their addiction?

### 3.5.5 Overrepresented Groups

The overrepresentation of certain groups in prisons raises the question about whether special emphasis should be paid to provide access to alternatives for them. Examples of such groups, which are overrepresented in some systems, are indigenous minorities, ethnic, religious, or racial minorities and foreign nationals.

The right to non-discrimination is found in the **Universal Declaration of Human Rights (Article 10)**, the **International Covenant on Civil and Political Rights, (Article 26)**, the **American Convention on Human Rights (Articles 1 and 24)**, the **Arab Charter on Human Rights, (Article 2)**, and the **Universal Islamic Declaration of Human Rights, Article III**. There are also a number of treaties dedicated to the treatment of non-discrimination, such as the Convention on the Elimination of All Forms of Racial Discrimination and the Convention. **The Human Rights Committee in General Comment No. 18** on Non-Discrimination has termed the right to non-discrimination as 'a basic and general principle relating to the protection of human rights' (Paragraph 1). The **Human Rights Committee** recognizes that distinctions can be made among people, however, so long as the distinction is 'based on reasonable and objective criteria' and its goal is to achieve a purpose that is legitimate under the Covenant (Paragraph 18).

In some countries minority group are significantly overrepresented in the criminal statistics and also in the prisons. This situation may be due to a biased perception that members of such groups represent a greater risk to public safety, and therefore alternatives may not be considered appropriate. However, legislation in most countries makes discrimination illegal. Even where law enforcement policy and practices may not have been developed to be deliberately discriminatory or biased, the impact of those policies and practices upon minority groups may be disproportionate. This may be due, for example, to increased police presence in urban areas with higher crime rates where minority groups may be concentrated, creating a greater likelihood of detection. In other cases, the criteria for eligibility for alternatives to imprisonment may not reflect factors that would allow participation by members of an overrepresented minority group. The concept of equal protection under the law requires the ongoing examination of policy and practices to determine whether the same public safety goals can be achieved with different strategies that have a less detrimental impact upon minority communities and the implementation of such strategies.

Foreign nationals make up a large percentage of the prison population of several countries. For various reasons it is sometimes erroneously presumed that alternatives to imprisonment are not applicable to them. For example, there may be an assumption that all foreign prisoners present an escape risk and therefore that none of them can ever be granted conditional release. In other cases the criteria for eligibility for alternatives to imprisonment may not reflect factors that would allow participation by members of an overrepresented minority group.

Technical assistance in this area may include: public awareness campaigns to reduce bias in the community; the inclusion of issues associated with the overrepresentation of minority groups in the criminal justice system and particularly prisons in the basic training curricula of the police, judges and prosecutors; and the development of a criminal justice system-wide initiative to develop strategies that reduce overrepresentation.

- A. Does criminal legislation relating to alternative measures make it clear that all provisions should be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin property, birth or other status? [Tokyo Rules 2.2.](#)
- B. Is there recognition by key officials that particular minority group may be overrepresented? Are any initiatives being undertaken by key stakeholders to reduce this problem? Is it unilateral or collaborative? Are diversion or alternatives to imprisonment part of the initiative? Has it been successful? If not, what are the impediments?
- C. Are there legal provisions related to consideration of particular alternative measures for certain minority groups that make use of traditional punishments in these communities? If so, have legal safeguards been put in place? How often is this alternative used? Is it effective?

- D. Is training included in the curricula of police, prosecutors and judges specifically relating to non-discrimination against ethnic, racial, indigenous minorities and foreign nationals? On other factors relating to overrepresentation issues? For guidance on providing equal consideration for alternative measures and sanctions?

### 3.6 LEGAL SAFEGUARDS

- A. Does the law require offender consent for non-custodial measures imposed prior to or in lieu of formal proceedings or trial that place an obligation upon the offender? **Tokyo Rules 3.4.** In practice how often is such consent obtained? Is it verbal? Written? Documented?
- B. Are the decisions on the imposition of non-custodial measures subject to review by a judicial or other competent independent authority, upon application by the offender? **Tokyo Rules 3.5.** What rules and procedures apply? How often has this happened in practice? How many non-custodial sentences nationwide were appealed by the offender over the past 1-2 years? What were the outcomes?
- C. Is the offender entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures? **Tokyo Rules 3.6.** What rules and procedures apply? How often does this happen in practice? What were the outcomes?
- D. Can the prosecution appeal a sentence? Are there examples? What were the outcomes? How many non-custodial sentences were appealed by prosecutors nationwide over the past 1-2 years?
- E. Are there legal safeguards to ensure that the offender's rights are not restricted further than what was authorized by the competent authority that rendered the original decision? **Tokyo Rules 3.10.** What are they?
- F. Are the appropriate procedures set down by law for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights standards? What are they? Have they been used?
- G. Is the offender's (and his or her family's) right to privacy respected in the application of non-custodial measures? **Tokyo Rules 3.11.** How is confidentiality ensured? Are the offender's personal records kept strictly confidential and closed to third parties? Is access to such records limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons? **Tokyo Rules 3.12.**
- H. If a non-State justice system recognized by the formal courts exists, do human rights safeguards apply, and how are they monitored? Is the exercise of street or mob justice part of the informal justice system? If so, what steps are being taken to address this problem?

Human rights concerns in non-State justice settings have arisen in the areas of gender-based discrimination, particularly in family relations; and in the types of punishments meted out to suspects by vigilante-style security networks. Due to these concerns, in East Africa, for example, many in the legal profession have called for the scrapping of quasi-judicial tribunals, criminalization of 'vigilante' activities, and 'benign neglect' of low-profile community-based forums.<sup>10</sup>

Where human rights or gender based concerns exist, it may be possible to address the problem with training. On Panay Island in the Philippines, for example, an NGO has undertaken training of local people about the law to increase the efficiency and legitimacy of the Baranguay justice system (local government linked dispute resolution tribunals based on traditional justice).<sup>11</sup>

## 4. MANAGEMENT AND BUDGET

Clear strategy and management procedures, effective organisational and administrative arrangements, an adequate budget and supervision of expenditure are essential elements of ensuring the successful implementation of non-custodial measures. Although the Tokyo Rules make no explicit mention of management and financial resources, their importance is implicit in a number of rules set forth, such as those relating to staffing, public participation and ensuring cooperation with other agencies. **Rule 42 of the Council of Europe, Committee of Ministers Recommendation No. R (92) 16** on the European Rules on community sanctions and measures states that “the implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities should never be dependent on them”. (See also **Rule 43**). The proper supervision of how finances are dispersed is essential to avoid corruption.

### 4.1 MANAGEMENT AUTHORITY

- A. Which ministry is responsible for the management of the probation or similar supervision/monitoring system – at national and local levels? Is this a separate ministry from the one that is responsible for managing the prison system?
- B. Is there a probation service? If a probation service exists, does it have a clear mission statement? What does the statement consist of?
- C. Is there any other national body, e.g. National Committee, National Working Group responsible for policy formulation, planning, implementation, research and evaluation relating to alternatives to imprisonment? When was it formed? Who is represented? What are its duties and responsibilities?
- D. Is there a strategic plan for the management of the system of community sanctions and measures/probation system? When was it last formulated, who participated in its formulation? What period does the strategic plan cover? It would be helpful to obtain a copy, if possible.
- E. Have there been any recent management changes/restructuring?
- F. If none of the above exist or exist at very basic level – what structures are in place that could form the basis of a system to administer the implementation and supervision of community sanctions and measures?

For example, in many states of the former Soviet Union, a system of “criminal executive inspections” exists, which has a limited supervising role, but no rehabilitative responsibility. This system has been built upon to develop a probation-like service in countries such as Russia and Kazakhstan, with the assistance of international and national NGOs.<sup>12</sup>

- G. If no structure or system exists, could the courts, local authorities, or institutions where community sanctions may be carried out undertake the administration and supervision of probationers?

For example, under a model developed by Soros Foundation Latvia, the local municipalities were made responsible for the supervision of offenders sentenced to non-custodial sanctions and measures, where community service units were set up.<sup>13</sup> In Zimbabwe, the community service scheme set up in the early 90s was initially administered by magistrates’ courts, using their existing staff and implemented by agencies in the community.<sup>14</sup>

## 4.2 STRUCTURE

- A. How is the implementation of community sanctions and measures supervised? Is the system centralised or decentralised?
- B. Obtain organisational chart of probation or other service responsible for the supervision of non-custodial sanctions and measures.
- C. Describe the levels of the probation or other supervising system.
- D. What is the make up of the teams operating at each level?

If there is no system or structure, please see **Section 4.1, Questions F and G.**

## 4.3 BUDGET

- A. How is the probation or other supervisory system funded? What is the budgetary process under the law? Does the probation system have a specified budget? Who is involved in planning the initial budget? Who prepares and submits the operating budget? Under the law, who manages the budget? Who oversees its spending? Is the budget sufficient?
- B. Does the probation service actually receive the funds allocated in its budget? Are there delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- C. Who oversees the receiving and paying out of money? Are proper records kept? Is there an internal audit process? Who performs that function? Is there an independent audit process? By whom?
- D. Have there been any recent incidents of theft or fraud relating to such money? If so, how were they dealt with?
- E. If there is no probation system or any other similar system, what possibilities are there for the allocation of resources to developing a system for the management of alternatives sentences? Are authorities committed to allocating resources? What amount of funds could be available? From which ministry? Could cuts be made, for example, in other programmes (such as prison construction) to reallocate to alternatives? Which other agencies / donor organisations could support this initiative?

Cost effectiveness must be taken into account – i.e. rather than planning for a western style probation system, existing structures, systems, institutions and staff should be used, maximizing coordination with community agencies planned.

## 4.4 RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT

The **Tokyo Rules** place importance on research and planning, with the involvement of public and private bodies, as an essential element of implementing successful programmes of alternatives sanctions (**Rules 20, 21**). They encourage the systematic planning of programmes for non-custodial measures as an integral part of the criminal justice system within the national development process. They recommend that regular evaluations be carried out with a view to implementing non-custodial measures more effectively.

Achievements should be documented. The availability of research and evaluation data is important at times of crises, for example, when individual failures result in public reaction against non-custodial sanctions. In such situations, authorities will need to be able to demonstrate to the public of the overall benefit of alternatives to imprisonment in such situations.



- A. Has research been carried out on the problems that confront offenders, practitioners, the community and policy makers? If so, what were the outcomes, and what steps were taken to address these problems?
- B. Has research been conducted into the reasons for overrepresentation of certain groups in prisons? What are the results? Have any steps been taken based on these results? What are they?
- C. Have mechanisms been built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial sanctions and measures? If not, what would it take for such data to be captured and analysed?
- D. Are regular evaluations carried out, with a view to improving the implementation of non-custodial sanctions and measures? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?
- E. Are any pilot projects in place to test the implementation of community sanctions, such as community service schemes?

## 4.5 PERSONNEL

Standard Minimum Rules relating to staff involved in the supervision of non-custodial sentences are set out in Sections VI of the Tokyo Rules. See also Chapter 5 of Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Prison Rules on Community Sanctions and Measures.

- A. Does the probation service have an organizational chart that describes the lines of authority and staffing scheme? How are functions coordinated?
- B. Are the duties, rights and responsibilities of each member of staff clearly defined in their contract and relevant regulations?
- C. What is the number of staff? How many probationers/offenders is one probation officer responsible for in the country and how does this vary from location to location?
 

The ratio of probation officer to offender/probationer varies vastly from country to country. A caseload of 35-45 is considered to be a manageable number. But even in some European Union countries this ratio is exceeded, while in countries with less adequate resources a probation officer may be responsible for the supervision of over 100 offenders.
- D. If there is no probation service, who is responsible for the supervision of non-custodial sentences?
- E. What is the recruitment and selection procedure for probation service staff/ other staff responsible for supervision of non-custodial sanctions?
- F. Are positions advertised? Posted? Where?
  - Are there minimum qualifications for positions?
  - Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.
  - Is there a policy of equal opportunity/non-discrimination? Is it posted?
  - Does the probation service have an employee manual that explains policies, procedures and responsibilities?
  - How are employees evaluated? Promoted? Disciplined? Demoted? Terminated? Is there a written procedure for each?

- G. Do probation service staff have civil service status or other such protections?
- H. Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? Do they receive benefits other than salary as part of their compensation?
- I. What, if any, initial training do probation service employees receive? What topics are covered? Are training programs geared towards addressing the specific social and psychological needs of offenders, including instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures? Are staff given an understanding of the need to coordinate activities with other agencies concerned?
- J. What ongoing training is available for probation service employees in the area of skills, policy, professionalism, changes in the law, procedure? Is there a training budget and, if so, what percentage of the probation service budget does it comprise?
- K. Probation service teams: Are they multidisciplinary? Do they include complementary professions?
- L. Do the probation service staff reflect the population? Is any group over- or under-represented? Is the probation service making efforts to recruit candidates to make the staff more representative? Are bilingual or multilingual staff who speak ethnic minority languages recruited? If not, why not?

#### 4.6 VOLUNTEERS AND NGOS

Please see **Section VII of the Tokyo Rules. Rule 17.1** of the Tokyo Rules: “[P]ublic participation should be encouraged as it is a major resource and one of the most important ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration”.

Volunteer contribution to the administration and supervision of community sanctions and measures is of additional value where resources are insufficient to employ adequate numbers of paid staff. NGOs also have a lot to offer in developing alternatives to the formal criminal justice process, e.g. informal dispute resolution, or in improving existing alternatives, by increasing civil society involvement.

- A. Are volunteers involved? How are they selected and what training do they receive? What percentage of the supervisory staff is made up of volunteers?
- B. Do volunteers have access to support and counselling from and the opportunity to consult with the competent authority (e.g. the probation service)?
- C. Are NGOs involved in the implementation of community sanctions and measures? What is their role? Do they, for example, provide training for probation officers or others responsible for supervising non-custodial sanctions and measures? Do they help provide useful work for community service schemes? Do they assist with reintegration programmes for offenders? **More on this aspect of NGO cooperation is covered in Custodial and Non-Custodial Measures: Social Reintegration.**
- D. Are NGOs involved in other forms of alternative criminal justice processes, such as running informal dispute resolution/mediation services recognized by the formal courts? What are they and what is their success rate?

In Bangladesh, for example, community based informal dispute resolution services run by NGOs are considered to be the most reliable, consistent and impartial form among existing informal dispute resolution (shalish) forums, which also include traditional tribunals and government administered village courts.<sup>15</sup>

## 4.7 PROBATION SERVICE: FACILITIES / EQUIPMENT / INFORMATION MANAGEMENT

Adequate office space and technical equipment are essential for the efficient work of probation officers, who are often overloaded with cases and require computers to write reports, internet access for gathering information, photocopies, telephones and faxes to communicate and coordinate with a wide range of actors involved in the administration of community sanctions and measures, resource and reference books to assist them with their daily work. The reality is that, in many countries financial resources are utterly insufficient to ensure adequate working conditions for probation staff. If probation services have their own offices, these may be located in police stations (which may confuse offenders as to their function), in court buildings or other offices of local authorities, with very inadequate shared facilities. Many do not have access to computers, photocopyers, transport for home visits and so on. The lack of such resources to support basic duties places a great burden on probation staff. (For example, in Kazakhstan, this was one of the main obstacles stated by probation officers in 2005, to carrying out their work efficiently).

- A. What kind of office facilities does the probation service use, at headquarters, regional and local levels? Where are their offices located?
- B. Do offices have adequate space and technical equipment, e.g. computers, telephones, faxes, photocopyers? Is there adequate space to interview and consult probationers?
- C. Do staff have adequate means of transport for home visits, especially in cases where their responsibility may cover a large geographical area? Do they have adequate transport facilities and budget, to visit courts, pre-trial detention centres, prisons, social welfare agencies, treatment centres and others?
- D. Do staff have adequate technical facilities for information retrieval and management? Do they have access to the Internet? Is there a network system linking probation offices with headquarters and with each other?
- E. Are there files for each offender/probationer sentenced to community sanction or measure? Where are these files held? Is there an effective filing system? Are files kept up-to-date? Are files computerised?
- F. Are files kept confidential, with access being limited to persons directly concerned with the offender's case or other duly authorised persons? [Tokyo Rules 3.12.](#)

## 4.8 PUBLIC ACCOUNTABILITY

Successful community service schemes have all involved gaining maximum possible public support and community participation. Raising public awareness and keeping the public informed and involved are aspects of community sanctions and measures that are often overlooked, which can lead to failure.

- A. Does the Ministry responsible for the management of alternative sentences have a declared public relations policy?
- B. Are conferences, seminars and other activities organised regularly to stimulate awareness of the need for public participation in the application of on-custodial measures? (e.g. by government authorities and NGOs).
- C. Is the mass media utilised to help create a constructive public attitude?
- D. What public surveys have been conducted? What are the findings? Are there indications that the public is open alternative sanctions? How does the public feel

about having offenders carry out their sentences in the community? Do they understand the objective and do they support such measures?

- E. How does the public regard probation service staff? How do offenders and their families regard probation service staff? Do they see their role as helpful and supportive or purely supervisory, as agents of the state?
- F. Have public awareness campaigns been undertaken to change prejudicial perceptions about overrepresented groups, in order for them to be able to serve their sentences in the community without fear and with adequate support?

## 5. PARTNERSHIPS AND COORDINATION

Coordination between criminal justice agencies at all levels is an essential condition for the successful and effective implementation of alternative sanctions.

Successful programmes of alternatives have included the setting up of a national body, where all levels of the criminal justice system and non-governmental organisations were represented, with responsibility for strategic planning and coordination in the field of alternatives, e.g. Zimbabwe, Kazakhstan.

The involvement of the judiciary in reforming legislation and in the development of policies and systems relating to the supervision of non-custodial sanctions has been key in the success of alternatives programmes. Taking this consideration into account, **Rule 7 of the Council of Europe, Committee of Ministers Recommendation Rec. (2000) 22** on improving the implementation of the European Rules on community sanctions and measures, states "judicial authorities should be involved in the process of devising and revising policies on the use of community sanctions and measures, and should be informed about their results, with a view to ensuring widespread understanding in the judicial community of their nature.

This tool covers only briefly the key area of coordination between criminal justice agencies and the community, including civil healthcare providers, social assistance and employment agencies, non-governmental organisations providing services to offenders and ex-offenders and other community groups. Coordination with these agencies of civil society is covered in detail in **Custodial and Non-Custodial Measures: Social Reintegration**. Assessors should refer to that tool as necessary.

### 5.1 SYSTEM COORDINATION

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take (i.e. monthly meetings or otherwise)?
- B. What involvement do judges have in the process of law reform and policy formulation relating to the implementation of community sanctions and measures?
- C. Are there any or are there plans for coordinated approaches to alternative sanctions like drug treatment courts or expedited review/settlement programs? Who are the key players driving these initiatives? The collaboration of which key players is still needed for such initiatives?
- D. What are the mechanisms for coordination among the police, the probation service and the courts? Is the probation service responsible for providing social inquiry reports to the courts before trial? It would be helpful to request statistics, including social inquiry reports requested by/provided to courts and results.
- E. If a probation service does not exist, are there others, such as social services responsible for providing social inquiry reports to courts, especially in the cases of juvenile offenders?

- F. Can the probation service provide information to institutions other than the courts? In some jurisdictions, the probation service is attached only to the courts and cannot provide service to the police and prosecutors.
- G. What are the mechanisms for coordination among the police, the probation service and the prison service?
- H. What is the procedure for transferring records from one criminal justice agency to another? From prisons to the probation service? Between probation services at different levels or locations? Is case information computerised? How is confidentiality protected?
- I. Are there any partnerships with the community to implement/ monitor/ supervise non-custodial measures – for instance community service orders? Between whom? What are the coordination mechanisms?
- J. Does the probation service or other service responsible for the supervision of offenders sentenced to non-custodial sanctions coordinate its activities with healthcare, social welfare and employment agencies as relevant?
- K. If a non-State justice system exists, what coordination and cooperation, if any, takes place between it and the formal justice system? What steps are being taken to ensure better coordination between the formal justice institutions and those of the non-State justice system?
- L. What is being done to encourage the establishment and recognition by the state of community dispute resolution structures, to provide training for those involved in the non-State justice system and to improve accountability and safeguards against discrimination and human rights violations in the non-State Justice system?

## 5.2 DONOR COORDINATION

Understanding what donor efforts are underway, what have previously been implemented (successfully and unsuccessfully) and what is planned is critical to developing recommendations for future technical assistance interventions.

- A. Which donor/development partners are active in the justice sector?
- B. Are there donor strategy papers for the justice sector? How much money set aside in support of developing the criminal justice system?
- C. Where direct budget support is supplied, is part of it earmarked for the justice sector? If so, how much?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is set aside for justice in general and the development of alternative sanctions and measures in particular?
- E. What projects relating to the development of alternatives sanctions and measures have donors supported in the past? What projects are now underway? What lessons can be derived from those projects? What further coordination is required?
- F. Does the ministry responsible for the management of alternative sanctions and measures have a strategy for coordination and cooperation with donors? Is there a strategy paper?

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<sup>1</sup> For example, the daily average cost per prisoner in Sweden in 2003, was EUR 200 (closed prison), compared to the cost of a probationer at EUR 17. In Finland the cost of a probationer in 2004 was EUR 2,800 per year, compared to the cost of a prisoner at EUR 44,600. (Lindholm, Margareta, Sweden, "Legal Basis and Organisation of Probation Services", Paper presented at the Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p.5) In Estonia the cost of supervising each probationer is about ten times less than the cost of maintaining a prisoner and in Romania about eleven times less. (Kalmthouht, A.M. Van, Netherlands, "Interventions under the Four Working Sessions", Paper presented at the Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p. 11)

2 Stern, V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College London and Penal Reform International, London 1999, p. 42.

3 See Rule 90, Council of Europe Committee of Ministers Recommendation No R (92) 16

4 Definitions as in "UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters", E/2002/INF/2/Add.2.

5 Stern, Pavel, Czech Republic "Recruitment, Selection and Training of Probation Staff" Paper presented at the Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p.4.

6 For a very useful discussion on targeting and an example of how it was done in Finland, see Stern, V., Developing Alternatives to Prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College, University of London, May 2002, pp. 23-24 (electronic version).

7 Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.

8 Ibid. Principle 7.2.

9 See Neil Boister, Penal Aspects of the UN Drug Conventions, Kluwer, The Hague 2001.

10 Nyamu-Musembi, C, Review of Experience in Engaging with 'non-State' Justice Systems in East Africa, Commissioned by Governance Division, DFID (UK), February 2003, p. 4

11 Scharf, W., The Challenges Facing Non-State Justice Systems in Southern Africa: How do, and How Should Governments Respond, Paper presented at the conference "Criminal Justice: A New Decade", 7-8 February 2005, p. 6

12 See Penal Reform International website ([www.penalreform.org](http://www.penalreform.org) and annual reports).

13 Stern, V., Developing Alternatives to prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College London (electronic version), p. 32

14 Stern, V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College, London, p. 30

15 Scharf, W., The Challenges Facing Non-State Justice Systems in Southern Africa: How do, and How Should Governments Respond, Paper presented at the conference "Criminal Justice: A New Decade", 7-8 February 2005, p. 6

## ANNEX A. KEY DOCUMENTS

### United Nations

- Universal Declaration of Human Rights 1948
- International Covenant on Civil and Political Rights 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention on the Rights of the Child 1989
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standards Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998
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- A Manual on Alternatives to Imprisonment, UNODC, 2006
- A Manual on Restorative Justice, UNODC, 2006

### Draft

- Model Code of Criminal Procedure
- Model Criminal Code

*PLEASE NOTE: The Model Code of Criminal Procedure (MCCP) and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MCCP and MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MCCP and MCC with accuracy should check the following websites to determine whether the finalised Codes have been issued and to obtain the finalised text, as referenced Articles or their numbers may have been added, deleted, moved or changed:*

<http://www.usip.org/ruleoflaw/index.html>

or [http://www.nuigalway.ie/human\\_rights/Projects/model\\_codes.html](http://www.nuigalway.ie/human_rights/Projects/model_codes.html).

*The electronic version of the Criminal Justice Assessment Toolkit will be updated upon the issuance of the finalized codes.*

### Regional

- African Charter on Human and Peoples' Rights 1986
- African Charter on the Rights and Welfare of the Child 1990
- Bangkok Declaration 2005
- Kampala Declaration on Prisons in Africa 1996
- Kadoma Declaration on Community Service Orders in Africa 1997
- Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures, 1992
- Council of Europe Committee of Ministers Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 2000
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999

### Other Useful Sources

- Stern V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College London and Penal Reform International, London 1999

- Stern V., Developing Alternatives to prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College, University of London, May 2002
- Nyamu-Musembi, C, Review of Experience in Engaging with 'non-State' Justice Systems in East Africa, Commissioned by Governance Division, DFID (UK), February 2003
- Faundez, J., Non-State Justice Systems In Latin America, Case Studies: Peru and Colombia, University Of Warwick, January 2003
- Golub, S., Non-State Justice Systems in Bangladesh and the Philippines, Draft Paper prepared for the UK Department for International Development, University of California at Berkeley, January 2003
- Penal Reform International (PRI) website ([www.penalreform.org](http://www.penalreform.org)) and publications available from PRI, London office:
- Abuja Declaration on Alternatives to Imprisonment: The Abuja declaration results from a national conference on alternatives to imprisonment held in Abuja between 8 and 10 February 2000.
- Alternatives to Imprisonment in the Republic of Kazakhstan: Features the resolution and recommendations from the international conference on alternatives to imprisonment held in Almaty, Kazakhstan between 27 and 30 October 1999.
- A Guide on Community Service in Practice, 1998: The guide outlines the steps required for the introduction of community service as an alternative to custody. It stems from the experiences in Zimbabwe and Uganda.
- Access to Justice in Sub-Saharan Africa – the role of traditional and informal justice systems: The study is drawn from African experiences but another perspective is given through examples of good practice from South Asia.

**National:**

- Constitution
- Criminal/Penal statutes
- Strategic plans for the criminal justice system, the judiciary, and the penal system
- Research and evaluation reports by independent bodies, NGOs, academicians



## ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

The following are designed to assist the assessor in keeping track of what topics have been covered, with what sources, and with whom.

|     | TOPIC  | SOURCES  | CONTACTS   | COMPLETED |
|-----|--|--|--|-----------|
| 2.0 | OVERVIEW: GENERAL STATISTICAL AND DATA           | <ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Penal System Reports (Prison and Probation Services)</li> <li>▪ Ministry of Interior reports</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ NGO reports: penal system and administration of alternatives</li> <li>▪ Donor reports</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Senior Probation Service Officers</li> <li>▪ Ministry of Interior</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Donor organisations working on the criminal justice sector</li> </ul>  |           |
| 3.0 | LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE | <ul style="list-style-type: none"> <li>▪ The Constitution</li> <li>▪ Penal Code</li> <li>▪ Penal Procedure Code</li> <li>▪ Penal Enforcement Code</li> <li>▪ Probation Act and any other relevant acts of parliament</li> <li>▪ Regulations to these codes and acts</li> <li>▪ Acts governing semi-formal/informal justice systems</li> <li>▪ Judicial Sentencing Policy Document</li> <li>▪ Judicial Practice Directions, Circulars and Sentencing Guidelines</li> <li>▪ Government policy documents/ National Reform Programmes</li> <li>▪ Independent reports made by non-governmental organisations.</li> <li>▪ Legal textbooks or academic research papers.</li> <li>▪ SITE VISITS:</li> <li>▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor)</li> <li>▪ Case examples</li> </ul> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice/Ministry of Interior</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Senior Prison Service Staff</li> <li>▪ Legislative offices</li> <li>▪ High Court Judge</li> <li>▪ Senior Court personnel</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Bar Associations</li> <li>▪ Leaders of ethnic, tribal or religious communities</li> <li>▪ Donor organisations working on the criminal justice sector</li> <li>▪ Senior and local police staff</li> <li>▪ Local courts</li> <li>▪ Judges and magistrates</li> <li>▪ Local probation service offices or other bodies responsible for supervising non-custodial sanctions</li> <li>▪ Individual prison administrations</li> <li>▪ Offenders, ex-offenders and their families,</li> <li>▪ Treatment and attendance centres for offenders</li> <li>▪ Institutions where community service schemes are carried out</li> </ul> |           |
| 3.1 | LAW REFORM                                       | See SECTIONS 2.0 and 3.0 ABOVE   | See SECTIONS 2.0 and 3.0 ABOVE   |           |
| 3.2 | DIVERSION FROM PROSECUTION                       | See SECTIONS 2.0 and 3.0 ABOVE<br>Plus:<br><ul style="list-style-type: none"> <li>▪ Probation Service or NGO reports on diversion from prosecution and restorative justice programmes;</li> </ul>  | See SECTIONS 2.0 and 3.0 ABOVE<br>Plus:<br><ul style="list-style-type: none"> <li>▪ NGOs running restorative justice programmes</li> </ul>   |           |
| 3.3 | PRE-TRIAL DETENTION                              | See SECTIONS 2.0 and 3.0 ABOVE   | See SECTIONS 2.0 and 3.0 ABOVE   |           |
| 3.4 | SENTENCING                                       | See SECTIONS 2.0 and 3.0 ABOVE   | See SECTIONS 2.0 and 3.0 ABOVE   |           |

|       | TOPIC                  | SOURCES   | CONTACTS   | COMPLETED |
|-------|------------------------|---|--|-----------|
| 3.5.1 | JUVENILES              | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Juvenile Court Act</li> <li>▪ Regulations to this act</li> </ul>  | See SECTIONS 2.0 and 3.0 ABOVE<br>Plus<br><ul style="list-style-type: none"> <li>▪ Juvenile courts / Juvenile police</li> <li>▪ Juvenile probation staff</li> <li>▪ Juvenile offenders on whom alternative measures or sanctions were imposed</li> <li>▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for juvenile offenders</li> </ul> |           |
| 3.5.2 | WOMEN                  | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br>SITE VISITS  | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Female offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for female offenders</li> </ul>  |           |
| 3.5.3 | THE MENTALLY ILL       | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Health Act</li> <li>▪ Regulations to this act</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> <li>▪ Psychiatrists' Association Reports</li> </ul> | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Mentally ill offenders and their families</li> <li>▪ Health services providing treatment for mentally ill offenders</li> <li>▪ Medical Association</li> <li>▪ Psychiatrists' Association</li> </ul>  |           |
| 3.5.4 | DRUG RELATED OFFENCES  | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Health Act</li> <li>▪ Act governing drug courts</li> <li>▪ Regulations to these acts</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> </ul>   | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ Drug courts</li> <li>▪ Health services providing treatment for drug addicted offenders</li> <li>▪ Offenders on treatment for drug addiction and their families</li> </ul>  |           |
| 3.5.5 | OVERREPRESENTED GROUPS | See SECTIONS 2.0 and 3.0 ABOVE<br><br>Plus:<br><ul style="list-style-type: none"> <li>▪ UNHCR reports on the country assessed;</li> <li>▪ Reports on minority groups by NGOs and others working on minority rights</li> </ul>   | Ministry of Justice<br><br>See SECTIONS 2.0 and 3.0 ABOVE<br>Plus:<br><ul style="list-style-type: none"> <li>▪ UNHCR staff;</li> <li>▪ Consular representatives and/or families of foreign offenders</li> <li>▪ Foreign and minority group offenders on probation/serving alternative sanctions</li> <li>▪ Families of minority group offenders</li> <li>▪ NGOs working on minority rights</li> </ul>                            |           |

|     | TOPIC                | SOURCES   | CONTACTS   | COMPLETED |
|-----|----------------------|---|--|-----------|
| 3.6 | LEGAL SAFEGUARDS     | <p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Juvenile Court Act</li> <li>▪ Regulations to this act</li> <li>▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor)</li> <li>▪ Case examples</li> <li>▪ Health Act</li> <li>▪ Regulations to Health Acts</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> <li>▪ Psychiatrists' Association Reports</li> <li>▪ Act governing drug courts/Regulations</li> <li>▪ UNHCR reports on the country assessed;</li> <li>▪ Reports on minority groups by NGOs and others working on minority rights</li> </ul> | <p>SEE above</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Juvenile courts / Juvenile police</li> <li>▪ Juvenile probation staff</li> <li>▪ Juvenile offenders on whom alternative measures or sanctions were imposed</li> <li>▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for juvenile offenders</li> <li>▪ Female offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for female offenders</li> <li>▪ Mentally ill offenders and their families</li> <li>▪ Health services providing treatment for mentally ill offenders</li> <li>▪ Medical Association</li> <li>▪ Psychiatrists' Association</li> <li>▪ Drug courts</li> <li>▪ Health services providing treatment for drug addicted offenders</li> <li>▪ Offenders on treatment for drug addiction and their families UNHCR staff;</li> <li>▪ Consular representatives and/or families of foreign offenders</li> <li>▪ Foreign and minority group offenders on probation/serving alternative sanctions</li> <li>▪ Families of minority group offenders</li> <li>▪ NGOs working on minority rights</li> </ul> |           |
| 4.1 | MANAGEMENT AUTHORITY | See SECTIONS 2.0 and 3.0 ABOVE  | See SECTIONS 2.0 and 3.0 ABOVE   |           |
| 4.2 | STRUCTURE            | See SECTIONS 2.0 and 3.0 ABOVE  | See SECTIONS 2.0 and 3.0 ABOVE   |           |
| 4.3 | BUDGET               | <p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Budget documents and reports</li> <li>▪ (SITE VISITS to be used to gather information on the disbursement of funds in practice)</li> </ul>  | <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Probation Service staff responsible for budget/financial control</li> </ul>  |           |

|     | TOPIC  | SOURCES  | CONTACTS   | COMPLETED |
|-----|--|--|--|-----------|
| 4.4 | RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT          | <ul style="list-style-type: none"> <li>▪ Strategic plan for the administration of non-custodial sanctions and measures</li> <li>▪ Government policy documents</li> <li>▪ Penal system reports</li> <li>▪ Probation service reports</li> <li>▪ Reports/interviews: Judicial authorities</li> <li>▪ Evaluations of probation and prison system</li> <li>▪ Research reports</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice / Ministry of Interior</li> <li>▪ High court judges and other senior level judicial staff</li> <li>▪ Prison Service Headquarters; Probation Service Headquarters;</li> <li>▪ NGOs working on criminal justice matters</li> </ul>  |           |
| 4.5 | PERSONNEL  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Penal System Reports (Prison and Probation Services)</li> <li>▪ Ministry of Interior reports</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ NGO reports: penal system and administration of alternatives</li> <li>▪ Donor reports</li> </ul> <p>Plus</p> <ul style="list-style-type: none"> <li>▪ Samples of Recruitment/ Human resources/interview questions</li> <li>▪ Training materials</li> <li>▪ Staff terms of reference, contracts</li> <li>▪ Staff ethics code</li> <li>▪ Disciplinary board Policy/Procedures</li> </ul> <p>SITE VISITS</p> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice/ Ministry of Interior</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Senior Probation Service Officers</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Donor organisations working on the criminal justice sector</li> </ul> <p>Plus</p> <ul style="list-style-type: none"> <li>▪ Local probation service offices</li> <li>▪ Other local bodies responsible for the supervision of non-custodial sanctions and measures</li> <li>▪ Training centres for probation system staff</li> <li>▪ Offenders (probationers)</li> <li>▪ NGOs</li> </ul> |           |
| 4.6 | VOLUNTEERS AND NGOs  | <p>See above, plus:<br/>Reports by NGOs working in the criminal justice system/running mediation/information dispute resolution programmes</p>   | <ul style="list-style-type: none"> <li>▪ Volunteers and NGOs involved in supervising the implementation of non-custodial sanctions or assisting in other ways (e.g. administrative)</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Local probation service staff</li> <li>▪ Local police, courts, social agencies, prison administrations</li> <li>▪ Offenders (probationers)</li> <li>▪ NGOs working in the criminal justice system</li> </ul>  |           |
| 4.7 | PROBATION SERVICE: FACILITIES/ EQUIPMENT/ INFORMATION MANAGEMENT | <p>Penal System reports<br/>Probation service reports<br/>SITE VISITS</p>  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice/Ministry of Interior</li> <li>▪ Senior Penal system staff</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Local probation service staff</li> </ul>   |           |
| 4.8 | PUBLIC ACCOUNTABILITY  | <p>Ministry of Justice/Ministry of Interior reports<br/>Penal System Reports and policy documents<br/>Press reports<br/>Reports by NGOs working on criminal justice issues<br/>Public surveys and research reports</p>   | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Senior Prison and Probation System officials</li> <li>▪ Media representatives</li> <li>▪ NGOs working on criminal justice issues</li> <li>▪ Offenders, ex-offenders and their families</li> </ul>  |           |

|     | TOPIC               | SOURCES   | CONTACTS   | COMPLETED |
|-----|---------------------|---|--|-----------|
| 5.1 | SYSTEM COORDINATION | <p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Juvenile Court Act</li> <li>▪ Regulations to this act</li> <li>▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor)</li> <li>▪ Case examples</li> <li>▪ Health Act</li> <li>▪ Regulations to Health Acts</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> <li>▪ Psychiatrists' Association Reports</li> <li>▪ Act governing drug courts/Regulations</li> <li>▪ UNHCR reports on the country assessed;</li> <li>▪ Reports on minority groups by NGOs and others working on minority rights</li> <li>▪ Reports/Minutes of coordinating meetings</li> <li>▪ Reports/Minutes of community group meetings</li> <li>▪ Reports on special joint initiatives</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> <li>▪ Reports/interviews: social welfare agencies, employment agencies, housing agencies, civil healthcare authorities, attendance and treatment centres</li> </ul> | <p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ J Juvenile courts / Juvenile police</li> <li>▪ Juvenile probation staff</li> <li>▪ Juvenile offenders on whom alternative measures or sanctions were imposed</li> <li>▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for juvenile offenders</li> <li>▪ Female offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for female offenders</li> <li>▪ Mentally ill offenders and their families</li> <li>▪ Health services providing treatment for mentally ill offenders</li> <li>▪ Medical Association</li> <li>▪ Psychiatrists' Association</li> <li>▪ Drug courts</li> <li>▪ Health services providing treatment for drug addicted offenders</li> <li>▪ Offenders on treatment for drug addiction and their families UNHCR staff;</li> <li>▪ Consular representatives and/or families of foreign offenders</li> <li>▪ Foreign and minority group offenders on probation/serving alternative sanctions</li> <li>▪ Families of minority group offenders</li> <li>▪ NGOs working on minority rights</li> </ul> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Donor organisations</li> </ul> |           |
| 5.2 | DONOR COORDINATION  | <ul style="list-style-type: none"> <li>▪ Donor Strategy papers</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> <li>▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Donor organisations</li> <li>▪ Ministry of Justice</li> <li>▪ Directors of Penal System and Probation System</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs, universities</li> </ul>  |           |





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