



**Promoting fair and  
effective criminal justice**

## **On probation: models of good practice for alternatives to prison**

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## Section 1: Introduction – the purpose of the document

1. Since its establishment in 1989, Penal Reform International (PRI) has worked to reduce the unnecessary use of imprisonment both for pre-trial detainees and convicted offenders. It also recognises the need for sentence-planning, providing pre- and post-release support for prisoners to help them reintegrate successfully into the community after their sentence has ended.
2. In respect of convicted offenders, one of the outcomes in PRI's Strategic Plan for 2015-2020 is a 'fair and proportionate sentencing that takes account of the circumstances of both the offence and offender'<sup>1</sup>. Two of the ways of achieving this are by promoting non-custodial sanctions for minor or non-violent offenders and by implementing practical programmes to establish and develop probation systems and community service sanctions.
3. This resource pack aims to provide guidance about how non-custodial sanctions and probation can be established in countries which do not have them and extended in those countries which do. It draws both on the available academic and other literature available plus PRI's experience of working with partners, most recently in Eastern Europe, Central Asia, East Africa and MENA regions.
4. There are of course limits to the universal applicability of guidance since 'every country has its own language, culture, traditions, institutions and practices'<sup>2</sup>. Moreover, it is well established that 'the trajectory of criminal justice development depends on a wide range of political, economic, social, cultural and emotional influences, interacting with each other in uncertain ways'<sup>3</sup>.
5. For example, PRI has noted that, 'Jordan has a tribal culture which can encourage incidents of retribution and revenge attacks by the victim's family on the perpetrator. At present, it is not clear to what extent the community will accept community service as a fair punishment. Within this context, children and particularly girls are most at risk. Indeed, there are some concerns that alternatives may not work well for juvenile girls: When it comes to sentencing, the use of alternatives needs to be made on a case-by-case basis'<sup>4</sup>.
6. Initially, the Republic of Georgia imported the US practice of offenders paying fees when they are on probation. This has now ceased as the country recognised the exceptional nature of the practice and the disadvantages it may have in terms of rehabilitation.<sup>5</sup>

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<sup>1</sup> PRI, *Strategic Plan 2015-2020*, <https://cdn.penalreform.org/wp-content/uploads/2015/03/PRI-Strategic-Plan-2015-2020.pdf> <accessed 23 November 2016>.

<sup>2</sup> McFarlane, M & Canton R (eds), *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014.

<sup>3</sup> Garland, D, *Punishment and Modern Society: A Study in Social Theory*, 1992.

<sup>4</sup> PRI, *Evaluation - Promoting human rights-based approach towards vulnerable groups in detention in the Middle East and North Africa Region*, 2015 <https://cdn.penalreform.org/wp-content/uploads/2015/08/MENA-SIDA-Evaluation-Final-for-website.pdf> <accessed 23 November 2016>.

<sup>5</sup> Allen R, 'PS from America', 2015 <http://reformingsprisons.blogspot.co.uk/2015/09/ps-from-america.html>, <accessed 23 November 2016>.

7. Cultural differences notwithstanding, over the last twenty years or so, a wide variety of countries have been interested in developing the range of non-custodial penalties available for less serious offenders and building the capacity to supervise such penalties.
8. These countries include former member states of the Soviet Union and Eastern European countries such as Georgia, Kazakhstan, and the Czech Republic; African countries such as Zimbabwe, Kenya, Uganda and Tanzania; and countries in the Middle East and North Africa region, such as Algeria, Lebanon, Tunisia and Jordan
9. PRI has played an important role in encouraging these developments. PRI's experience has contributed to a growing body of evidence about what has become known as 'policy transfer' – efforts to introduce measures which have proved successful in one setting into another. Indeed, the history of punishment is full of examples of how institutions and approaches developed in one country have spread to others, not always with the intended results. Many factors will affect the successful transfer of measures, including political aims, existing legislation, public opinion, resources and uncertainty as to which model of probation services is most appropriate to the circumstances.
10. One study has suggested that a number of questions need to be answered when a new policy based on existing arrangements in other countries is being considered<sup>6</sup>. In the case of the probation system, these would seem to include:
  - What are the objectives of introducing a new or reformed probation system? Answers might include a reduction of imprisonment, greater impact on re-offending, a more cost-effective system, and/or increased compliance with human rights and other international standards.
  - Who is involved? Who are the key stakeholders? Apart from the relevant ministries, stakeholders for probation will include the courts who impose the sentences; the victims of crime and the general public whose support or at least acquiescence with the idea of non-custodial orders is needed; and the variety of agencies, governmental and non-governmental who may be involved, directly or indirectly, in the implementation of such orders.
  - What is being transferred? In the case of probation this includes whether it is primarily a question of court orders and powers and of the infrastructure to supervise them or both. Clarity is also needed about the values which should underpin the supervision of orders.
  - To what degree is the policy being transferred from elsewhere? Is the whole system being copied in detail from arrangements elsewhere or is it rather an emulation or imitation of the main organisational features? Or is it more a type of inspiration in which a basic idea is transferred but the way of delivering it is developed locally?
11. In looking at the potential for alternatives to imprisonment in three Central Asian republics, PRI identified a set of options for the administration of probation services.

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<sup>6</sup> Dolowitz D et al, *Policy Transfer and British Social Policy: Learning from the USA?*, 2000.

- The first would involve the establishment of a probation service as a single, centralised and independent system of social institutions, in effect copying a Western model. The Penal Inspections Service – the existing supervision agency for offenders in the community – would be transferred to the new structure of the probation service.
  - The second approach would see the probation service established but on the basis of existing penal inspections within given legal and operational framework of penal systems of Kazakhstan, Kyrgyzstan and Tajikistan.
  - The third or ‘inspirational’ model would be a phased adoption of individual elements of probation (e.g. social inquiry reports, probation supervision, and various forms of social assistance) at different stages of criminal procedure and law enforcement practice, without the formation of an independent probation service.
12. PRI’s conclusion was that the decision about the best approach would depend on several factors ‘primarily the economic situation of the country and its priorities in the socio-economic and political spheres. Given the difficulties of allocating significant resources to establish a fully-fledged probation service, more realistic prospect [in the three Central Asian countries] may be a phased adoption approach’.<sup>7</sup>
  13. In other settings, a different approach might prove more appropriate. Whatever approach is chosen, in developing probation services careful consideration will be needed not only to changes in the criminal justice institutions, but the need for changes to criminal law and the involvement of the public.
  14. This document is designed to provide information for PRI and for other organisations interested in bringing about those changes in the most effective and sustainable way.
  15. Following this introductory section, the document then provides important background information looking at what we mean by probation, drawing on the main international standards in order to illustrate the wide range of activities which fall under the umbrella of probation and non-custodial sanctions.
  16. Section 3 – Why probation? – summarises the main arguments for establishing a properly resourced system for such sanctions.
  17. It then moves to more specific topics first in Section 4 by describing in more details the particular tasks undertaken by probation systems in different jurisdictions. Section 5 considers the various ways in which probation services are organised and Section 6 looks at what is required in terms of staff and resources.
  18. Section 7 gives a short summary of some of the key developments in probation and community sentences, mainly in Western countries. This is followed by suggestions

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<sup>7</sup> PRI, *Alternatives to imprisonment in the legislation of Kazakhstan, Kyrgyzstan and Tajikistan*, 2014, available at: <https://www.penalreform.org/resource/alternatives-imprisonment-legislation-kazakhstan-kyrgyzstan-tajikistan/> <accessed 23 November 2016>.

about how best to garner support from the public, media and politicians. The final substantive section looks at the kind of research, monitoring and evaluation that is needed in the probation field.

19. The document concludes with some closing observations and a checklist of questions that need to be addressed during the development of probation services.
20. **This manual is designed to provide information for PRI and for other organisations interested in introducing or developing probation systems in the most appropriate, effective and sustainable way. It draws on the literature relating to probation and PRI's experience of working globally to encourage the development of community-based alternatives to imprisonment for convicted offenders.**

## Section 2: What do we mean by probation?

21. Non-custodial sanctions cover a range of measures. The UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) lists twelve sentencing dispositions which judicial authorities should be able to impose<sup>8</sup>. 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. This may, for example, include electronic monitoring.
22. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) require that gender-specific options for ... 'sentencing alternatives shall be developed within Member States legal systems, taking account of the history of victimization of many women offenders and their caretaking

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<sup>8</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990, <https://www.penalreform.org/priorities/alternatives-to-imprisonment/international-standards/> <accessed 23 November 2016>.

responsibilities'.<sup>9</sup> They also state that 'appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system'.<sup>10</sup>

23. The UN Convention on the Rights of the Child requires that 'a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence'.<sup>11</sup> The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that 'a large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible'<sup>12</sup>. Such measures, some of which may be combined, include:
- a. care, guidance and supervision orders;
  - b. probation;
  - c. community service orders
  - d. financial penalties, compensation and restitution;
  - e. intermediate treatment and other treatment orders;
  - f. orders to participate in group counselling and similar activities;
  - g. orders concerning foster care, living communities or other educational settings.
24. The terminology used to describe this wide range of options for men, women and children in conflict with the law includes community penalties or sentences, community corrections or, the term preferred in a recent review 'community sanctions and measures'.<sup>13</sup>
25. Given the focus of this resource pack on the practical implementation of the measures, we prefer the term probation to cover the range of activities undertaken with offenders in the community. According to the Commentary on the 2010 Council of Europe Rules on probation, 'while probation is not easy to define simply or precisely, it is a familiar term understood widely and internationally to refer to arrangements for the supervision of offenders in the community and to the organisations (probation agencies, probation

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<sup>9</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 57, <https://www.penalreform.org/resource/bangkok-rules-united-nations-rules-treatment-women-prisoners/> <accessed 23 November 2016>.

<sup>10</sup> Rule 60.

<sup>11</sup> Article 40, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> <accessed 23 November 2016>.

<sup>12</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 18.1 <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> <accessed 23 November 2016>.

<sup>13</sup> Robinson G, McNeill F and Maruna S, 'Punishment in Society: The Improbable Persistence of Probation and Other Community Sanctions and Measures' in Simon J and Sparks R (eds), *The SAGE Handbook of Punishment and Society*, 2013.

services) responsible for this work'.<sup>14</sup>

26. A 2008 study of probation in Europe uses the term probation as a 'sensitising concept' – a 'rather broad or open concept which acquires its meaning in the context in which it is used'.<sup>15</sup> Indeed, in some countries, the term probation has been replaced, most commonly in the English-speaking world, but also in China, by the term 'community corrections'. There are one or two other terms which are used: for example, in Scotland probation functions are executed by departments of 'criminal justice social work'. One of the key functions of probation – that of supervising and monitoring offenders on parole – is sometimes undertaken by dedicated *parole officers* (e.g. in the USA), with the term probation limited to the supervision of community-based sentences.
27. The Council of Europe Probation Rules themselves offer a slightly more precise definition of probation as relating to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety. The Rules go on to describe a probation agency as any body designated by law to implement the above tasks and responsibilities<sup>16</sup>.
28. This definition is relatively narrow in delimiting probation to work with convicted offenders in the community but brings with it the twin principles of contributing to community safety and assisting the offender.
29. A UN handbook has added a specific further dimension, defining a probation service as 'the entity of government that provides information to the criminal justice system, particularly on sentencing, and/or monitors whether offenders meet the requirements of community sentences imposed upon them, while assisting them with problems they might face'.<sup>17</sup>
30. Importantly, the Council of Europe Commentary on its 2010 Rules goes on to state that 'depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime'. This wider definition arguably fits better with the requirement of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) that the criminal justice system 'shall provide a wide range of non-custodial measures

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<sup>14</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules <http://cep-probation.org/wp-content/uploads/2015/03/CMRec20101E.pdf> <accessed 23 November 2016>.

<sup>15</sup> Van Kalmthout A and Durnescu I (eds), *Probation in Europe*, Wolf Legal Publishers, 2008.

<sup>16</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, <http://cep-probation.org/wp-content/uploads/2015/03/CMRec20101E.pdf> <accessed 23 November 2016>.

<sup>17</sup> United Nations, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, 2007.

from pre-trial to post-sentencing dispositions', although probation itself is not defined in the Tokyo Rules or even discussed in the official commentary on the Rules.

31. The key element of probation is therefore the formal supervision of convicted offenders in the community. This means that the supervision takes place under a formal order of the court. Supervision means that there are elements of guidance and assistance as well as control. The original aim of the probation service in the UK was to advise, assist and befriend people in conflict with the law, but in most countries, the concern for the well-being of the offender is balanced by a concern for the safety of the community through the reduction of re-offending and the monitoring of an offender's behaviour. The protection of the public has become a much more significant aim of probation services in many countries.
32. The term probation also implies what is known as conditionality or the need for the person on probation to prove themselves (from the Latin 'probare'). Just as new entrants to a job or career can spend a period 'on probation', the term in criminal justice means that failure to comply with required conditions of attendance, behaviour or participation can lead to legal consequences. If people subject to probation supervision fail to comply with specified conditions, they can be brought back before the court and punished. This does not automatically lead to imprisonment in all countries, although gross failures to comply usually mean that the offender is re-sentenced for their original crime.
33. Clearly there is a great deal of difference between the simple monitoring of an offender's whereabouts and compliance with basic requirements (which is akin to a policing function) and the provision of more positive measures designed to assist the rehabilitation of an offender (more akin to a social work task). Modern probation services seek to work in both these ways. The development of programmes to help offenders change their behaviour, improve their skills, find work and improve relationships require a probation service whose ethos is about positive change and which employs skilled, professional staff.
34. In administering community service, the role of probation services is often to arrange the placement of offenders. Strong partnerships are needed with local organisations who can provide these, together with a strong administrative capacity for ensuring good records are kept, and that non-compliance is dealt with effectively.
35. Given the diversity of both the form and substance of probation work, the question of a precise definition is less important than an understanding of the functions undertaken under the banner of probation. But, of course, it is important, particularly when comparing probation activities between jurisdictions that the functions are clearly specified in order to avoid misunderstandings.
36. **Probation covers a variety of arrangements for supervising offenders in the community. The legal basis for the supervision, the agencies involved in its implementation and the terms used to describe the work vary from country to country, but there is a core of activities which are generally understood as probation and which are encouraged in international law and standards.**

### Section 3: Why probation?

37. There are a number of reasons for developing a range of community-based measures to deal with people convicted of offences. One is the risks that imprisonment poses to the rights of offenders. Given the inevitable restriction on rights inherent in imprisonment, the principles of necessity and proportionality require punishments to be available for less serious offences which do not entail deprivation of liberty.
38. A second reason concerns the cost of imprisonment. In the USA, in 2012, the annual cost of placing an offender in a Bureau of Prisons institution was roughly eight times the cost of placing the same offender under post-conviction supervision by a federal probation officer.<sup>18</sup> In Tunisia, statistics have shown that the financial burden of the convicted under probation is six times less than that of a prisoner.<sup>19</sup>
39. A third reason is the fact that probation can be more effective than imprisonment in meeting the objectives of sentencing. In England and Wales, the law prescribes the purposes of sentencing as being to:
  - a. punish the offender by depriving them of liberty, time or resources;
  - b. reduce crime – by preventing the offender from committing more crime and putting others off from committing similar offences;
  - c. reform and rehabilitate offenders – changing an offender’s behaviour to prevent future crime, for example by requiring an offender to have treatment for drug addiction or alcohol abuse;
  - d. protect the public – from the offender and from the risk of more crimes being committed by them;
  - e. make the offender give something back – for example, by the payment of compensation or through restorative justice. Restorative justice gives victims the chance to tell offenders about the impact of their crime and get an apology.
40. Probation can contribute to effective criminal justice in at least four ways. First, if targeted properly, probation can help to take the pressure off the prison system. In Romania, correctional labour under the communist regime was no longer available after the revolution and the custody rate rose by 20% between 1992 and 1998. A Probation Ordinance was adopted in 2000 and the prison population subsequently fell from 48,000 in 2000 to 26,000 in 2008. The prison population was 28,000 in June 2016.<sup>20</sup>

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<sup>18</sup> ‘Supervision Costs Significantly Less than Incarceration in Federal System’, US Courts website, 18 July 2013, <http://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system> <23 November 2016>.

<sup>19</sup> PRI, *The Implementation of Alternative Sanctions in Sousse: An Evaluation Study, 2015* (unpublished).

<sup>20</sup> Durnescu I, Grigoras V, Lazar F and Witec S, ‘Who works in the probation service in Romania’, in McNeill F and Durnescu I (eds), *Understanding Penal Practice*, 2014.

41. There is however evidence that in some circumstances, instead of being alternatives to imprisonment, community sanctions have contributed to widening the net of criminal justice systems. A US study found that 'probation serves both capacities, acting as an alternative and as a net-widener, to varying degrees across time and place'.<sup>21</sup>
42. In Europe, there is wide diversity in the use of community sanctions; in 2010, the ratio between prison inmates and persons serving community sanctions varied in Council of Europe countries from 2:1 to 1:3. 'In a comparative perspective, Finland, Norway and Switzerland seem to have found a reasonable balance between the use of imprisonment and community sanctions'.<sup>22</sup>
43. In East African countries, while community service was designed to replace prison sentences of up to two, or three years, very large numbers of orders are imposed for very trivial cases.<sup>23</sup>
44. Secondly, probation can provide punishment but more constructively than prison. As offenders subject to community sanctions generally remain at home, they are able to retain their links with family and friends and continue working if they have a job. They can continue to support dependants and can pay their debt to society whilst discharging their other social obligations, unlike prisoners who become a burden to the state.
45. Thirdly, probation can provide opportunities for offenders to make a positive contribution most notably through community service, payback or unpaid work schemes in which they are required to undertake labour for public benefit. Probation approaches can also offer the opportunity for restorative approaches such as victim-offender mediation.
46. Finally, probation can include opportunities for rehabilitation through individual counselling or treatment approaches, structured psychological programmes and/or social, educational and vocational training courses. While these can also be organised within a prison setting, they are more likely to prove effective in the community<sup>24</sup>.
47. **Probation offers many benefits in terms of possibilities to reduce the unnecessary use of imprisonment and the risks of re-offending. The strongest case for introducing or developing probation will vary depending on the particular circumstances in a given country. To realise its potential, probation must be carefully organised and monitored, in particular so that it does not inadvertently**

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<sup>21</sup> Phelps M S, 'The Paradox of Probation: Community Supervision in the Age of Mass Incarceration', *Law & Policy*. 35(1-2): 51–80, 2013.

<sup>22</sup> Aebi M, Delgrande N and Marguet Y, 'Have community sanctions and measures widened the net of the European criminal justice systems?', *Punishment & Society*, December 2015 vol. 17 no. 5 575-597.

<sup>23</sup> PRI, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project Mid-term Evaluation*, 2016 <https://cdn.penalreform.org/wp-content/uploads/2016/02/ExTRA-Project-Mid-term-Evaluation-1.pdf> <23 November 2016>.

<sup>24</sup> James N, *Risk and Needs Assessment in the Criminal Justice System*, Congressional Research Service, 2015, see section on Risk-Needs-Responsivity (RNR) Principles, which suggests a preference for community based services, <https://www.fas.org/spp/crs/misc/R44087.pdf> <23 November 2016>.

**add to the prison population but also to maximise its impact on re-offending.**

## **Section 4: The tasks of probation systems**

48. As noted in Section 2, the core probation task is the supervision of convicted offenders but additional roles vary significantly between different countries. Drawing on work undertaken by the CEP and by Von Kalmthout and Durnescu<sup>25</sup>, at least eight functions can be identified.<sup>26</sup> This document concentrates on the three most significant. These are:
- a. the supervision of court orders in the community; that is penalties which do not require deprivation of liberty;
  - b. the supervision of offenders who have been released from a sentence of imprisonment;
  - c. the preparation of social inquiry or pre-sentence reports to assist the court in reaching a decision about the most appropriate disposal of the case.
49. Probation can also have a role in work to assist prisoners inside prisons, in particular to prepare for their release and at the pre-trial stage of criminal proceedings (e.g. to provide or monitor alternatives to pre-trial detention). A number of probation services have a broader remit to prevent crime, work with victims of crime or undertake miscellaneous other services such as enforcing fines.

### **(a) Supervision of court orders**

50. The aim here is to provide a sentence which does not involve the deprivation of liberty for offenders who do not need to be imprisoned, either because of the circumstances of the offence or their personality or situation. As noted in Section 3, serving a sentence in the community can help to reduce overcrowding in prisons, provide opportunities for offenders to make positive reparation for the harm they have done, and receive help for or treatment of the problems which may have led to their conflict with the law. For example, following a five-year baseline study, an EU implemented project highlighted three types of alternative sanctions that are appropriate for Jordan: unpaid work, community supervision and attendance at a programme such as anger management; and drugs and alcohol or driver awareness.<sup>27</sup>
51. There are two basic ways in which a probation service works to supervise court orders. The first is that the execution of a sentence of imprisonment is suspended on condition that the offender complies with requirements which are administered by the probation

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<sup>25</sup> Van Kalmthout A and Durnescu I (eds), *Probation in Europe*, Wolf Legal Publishers, 2008.

<sup>26</sup> Supervision of court orders, the supervision of offenders who have been released from a sentence of imprisonment, the preparation of social inquiry or pre-sentence reports, work in prison, work at the pre-trial stage, crime prevention, work with victims of crime and miscellaneous other services such as fine collection.

<sup>27</sup> PRI, *Evaluation - Promoting human rights-based approach towards vulnerable groups in detention in the Middle East and North Africa Region*, 2015, <https://cdn.penalreform.org/wp-content/uploads/2015/08/MENA-SIDA-Evaluation-Final-for-website.pdf> <accessed 23 November 2016>.

service. This is usually the basis for probation work in former Soviet Union countries. The second is where the courts impose a specific probation or community-based sentence order as a penalty in its own right. This is the practice in common law countries.

52. In some countries (including England and Wales), the law may allow both these options. While the basis of the sentence may be different in each of these two modalities, the implementation on the ground may in fact be similar. The obligations placed on the offender may also be similar, although the consequences of failing to comply with them may differ. Each approach, of course, requires a community based body or organisation to implement it.
53. In former Soviet Union countries, the suspension of punishment is usually the basis for probation work. In the Republic of Georgia, the court must first decide that the person is guilty and that a sanction should be applied. It can then make the implementation of the sanction conditional. This means that the offender will be obliged to keep certain requirements under the supervision of the National Probation Agency. If the court was considering a non-custodial sentence, the period of probation can be up to three years. If the conditional sentence is an alternative to imprisonment, the maximum probation period can be six years (Article 64 of the Georgian Criminal Code).
54. In Estonia, the Penal Code allows courts to suspend a sentence on probation for between 18 months and three years. The sentence will not be enforced as long as the offender does not commit another offence and complies with the supervision requirements. The basic requirements on the offender are to reside in a permanent place of residence, to report regularly to the probation department, to allow the probation officer to visit his place of residence, to report on his sources of income, and to obtain permission before changing employment, residence or place of study or leaving the place of residence for more than 15 days. Additional requirements can be added.
55. In common law countries, probation is usually a specific sentence. In England and Wales, there are 12 requirements which can be imposed as a condition either of what is nowadays called 'a community order' or of a suspended prison sentence. Requirements which typically form components of community-based supervision sentences are alcohol and drug treatment, participation in programmes to change behaviour (sex offender treatment, anger management, thinking skills). Unpaid work (previously known as community service) is the most widely used. This involves the arrangement and supervision of work placements which benefit the public such as improving the local environment, repairing or decorating public buildings or other more tailor-made activities which utilise the skills of the offender.
56. Community service or unpaid work has now been introduced in many countries of the former Soviet Union and in Eastern Europe, as well as in Africa. In Georgia, Community Service can be used as a main sanction or to supplement another sanction. The number of hours that can be ordered range from 40 up to 800. This maximum can be exceeded as a result of plea-bargaining. No more than eight hours can be completed in a single day. If an offender does not comply with the requirements of the community service order, the sanction can be changed to another sanction by court.

57. In Tunisia, community service is considered a primary penalty in the Penal Code. It can be imposed on all contraventions and misdemeanours punishable by imprisonment not exceeding one year but not for repeat offenders. The court must inform the defendant of their right to refuse community service, and record the response. In case of refusal, the court pronounces other penalties. Article 33 of Jordan's new juvenile law states that during sentencing an execution judge has the power to replace an imprisonment sentence (if does not exceed one year) with a community service sanction. The juvenile law stipulates that this should be mandatory for first-time offenders.
58. In Kenya, offenders eligible for a community service order are those that have committed an offence carrying a maximum penalty of three years' imprisonment or below, or an offence that can attract more than three years but which, in a particular instance, the court determines would be punishable by three years or less. The order is imposed for a period of months and days and this time period is translated into a number of hours of unpaid work to be undertaken by the offender. The minimum daily period of work is two hours and the maximum is seven hours.
59. **In establishing a system of non-custodial penalties, among the key questions which countries need to address are:**
- a. **what is the most appropriate legal basis for the penalties (suspension/conditional or positive sentence);**
  - b. **what is the maximum period of the order;**
  - c. **what are the requirements that must be included in the order and may be included in the order;**
  - d. **whether the order can be combined with other orders or used to replace a fine;**
  - e. **any eligibility or exclusion criteria relating to the type of offence, type of court, the age of the offender, previous convictions or other characteristics of the offender;**
  - f. **the penalties for non-compliance;**
  - g. **the responsibilities of the supervising agency and where appropriate the court.**

#### (b) Supervision of released prisoners

60. Probation services in many countries are responsible for supervising offenders who have been released on parole, or another form of early release, or in certain cases at the end of the prison sentence. Conditional early release forms an important part of the criminal justice system in almost all jurisdictions, although there are some countries in Africa where the full sentence is generally served (e.g. Uganda).
61. Early release provides a way of regulating the level of the population in prisons and avoid overcrowding; gives prisoners an incentive to behave well in prison; and offers an opportunity for prisoners to make the transition back into the community in a planned

way with support and supervision to aid reintegration.

62. As with the supervision of sentences, there is a combination of a policing and social work role here – indeed in many countries the conditions that apply on release from prison mirror those which can be imposed as part of a suspended sentence.
63. Probation staff may also undertake assessments for the parole board or other organ to assist them to decide whether to release a prisoner and what conditions to attach (e.g. in Bulgaria). Probation services run half-way houses and supervised hostels and monitor the behaviour of the offenders, taking so-called breach or enforcement action in cases when there is a failure to comply with the terms of release.
64. As well as playing a role in the formal execution of the sentence, some probation services provide a more voluntary form of aftercare for ex-prisoners who choose to accept it. In Hungary, probation officers help with housing issues, employment and acquiring official documents, offering financial support in certain cases.
65. In Latvia, Estonia and the Czech Republic, a prisoner can be released conditionally after a certain proportion of the sentence has been served. The probation service is responsible for monitoring the conditions, which are basically the same as those which can be imposed in the case of a suspended sentence. In Estonia, offenders can additionally be made subject to electronic monitoring of a curfew.
66. In common law systems, prisoners, including life sentenced prisoners, can be released on parole after serving a minimum term set by the court. Parole conditions can be imposed which are supervised by the probation service.
67. In Kenya, decongestion schemes identify sentenced prisoners serving less than three years or with a balance of less than three years remaining, with a view to replacing the prison term with community service. During an evaluation visit in 2015, PRI was shown a list of almost 200 women offenders in Meru prison, mostly committed in default of a fine. The majority of these, PRI was informed, would be likely to have their sentences converted to a Community Service Order by the High Court, but the assessment of so many individuals places substantial strain on the probation service<sup>28</sup>.
68. In Tanzania, the vast majority of offenders made subject to Community Service Order have spent time in prison beforehand. While this shows that the sentence is diverting people from prison, it also means that many more people than necessary experience the negative effects of imprisonment. The evaluation team was told too that prisons sometimes prefer to retain eligible offenders in order to provide labour on their farms<sup>29</sup>.

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<sup>28</sup> PRI, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project Mid-term Evaluation*, 2016 <https://cdn.penalreform.org/wp-content/uploads/2016/02/ExTRA-Project-Mid-term-Evaluation-1.pdf> <23 November 2016>.

<sup>29</sup> PRI, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project Mid-term Evaluation*, 2016 <https://cdn.penalreform.org/wp-content/uploads/2016/02/ExTRA-Project-Mid-term-Evaluation-1.pdf> <23 November 2016>.

Some magistrates also felt that it was important for offenders to ‘feel the pinch’ of prison, so that they appreciate community service.

69. In Pakistan, probation and parole officers are mandated by law to visit prisons and assist prison management in identification of offenders who seem eligible for probation or parole and to conduct assessment interviews with them.<sup>30</sup>
70. In 2014, the probation service in Georgia, the National Probation Agency, converted a large industrial building on the edge of Tbilisi into a semi-secure institution. The project is variously known as ‘Halfway House’ or ‘Liberty Restriction Establishment’. Up to 100 offenders can be ordered to live there as a condition of early release. For a period of up to one year, they participate in psychosocial rehabilitation programmes and learn vocational skills. A range of short courses provide an introduction to possible employment in occupations such as electrician, baker, carpenter, building worker, computer operator or hairdresser.
71. In Europe, halfway houses have a somewhat different operating philosophy. They are normally operated by NGOs in smaller buildings within a residential part of a city. About 15 offenders would be required to live there for about six or nine months. The emphasis would be on helping them to learn the skills needed to survive when they leave. Staff would supervise the house but the offenders would be expected to do their own washing, cooking and cleaning; go out to work or to training courses during the day; and to attend responsible social activities during their leisure time.
72. **In setting up a role for probation in supervising offenders on release from prison, it is important to address:**
  - a. **the stage at which prisoners are eligible for release;**
  - b. **how the decision is made to release them (an automatic or discretionary system);**
  - c. **the requirements which can be attached to early release;**
  - d. **the role which the probation service plays in assessing suitability for early release;**
  - e. **the need for community-based accommodation such as half-way houses;**
  - f. **the role of electronic monitoring.**

(c) Preparing reports for court

73. Probation services will often prepare a social inquiry or pre-sentence report for the court, providing background information about an offender’s personality, family situation, education, employment and health history. These reports may include a proposal or

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<sup>30</sup> PRI, *The probation and parole system in Pakistan: Assessment and recommendations for reform*, 2012, <https://www.penalreform.org/resource/probation-parole-system-pakistan-assessment-recommendations-reform/> <accessed 23 November 2016>.

recommendation about the appropriate sentence and assess the suitability of the offender for a sentence which involves supervision in the community. Research studies have been used to develop validated tools for undertaking assessments of the needs of offenders and of the risks that they pose (see Section 7).

74. Assessments undertaken for the court or parole board often include consultations with the victim of the crime.
75. Writing reports for courts gives the probation service the opportunity to make the case for suitable candidates to be given non-custodial orders and to bring to the courts attention some of the background factors which may lie behind the offending behaviour.
76. A high level of education and training as well as personal integrity is required to prepare reports which have validity and are useful to the courts. In Georgia, probation staff have only recently taken on this role, initially with juveniles. In Bulgaria, there were problems fitting the role into a detailed legal system.
77. In some jurisdictions, courts like to question the probation staff who write reports. Some probation systems therefore have specialist court report-writing teams allocated to particular courts. These specialists are responsible for the assessment work and do not usually play a role in supervising offenders. In other systems, probation officers have a caseload which involves both writing reports and supervising offenders. There is no clear evidence about whether one model is better than another, as there are benefits both from specialisation and flexibility in staff deployment.
78. In Kenya and Tanzania, social enquiry reports are prepared by the probation service but in Uganda, court reports, assessing the suitability of offenders for community service, are prepared by the police. The reliance on the police to provide information about offenders and make a recommendation to the court is a weakness. In Tanzania, a guarantor is required before a community service order is imposed. They agree to forfeit a sum of money in the event of the offender absconding.
79. Undertaking reports can require a delay in court proceedings, so it is important that this does not extend pre-trial detention unnecessarily. In England and Wales, concerns to reduce delays has led to the introduction of fast delivery and oral reports which can be prepared on the day the defendant appears in court. This reduces the chance of obtaining detailed information about an offender's circumstances.
80. **In introducing or extending the role of the probation service in producing reports, it is important to address:**
  - a. **the circumstances in which a report will generally be required (e.g. where a custodial sentence is being considered) and the legal basis for providing one;**
  - b. **the timescale within which it will normally be prepared;**
  - c. **the sources of information which will normally be sought and how which they will be verified;**

- d. whether the court will accept a recommendation or proposal for a sentence and how to ensure this is consistent with the seriousness of the offence and the risk of re-offending, particularly re-offending likely to cause serious harm;**
- e. how the report is presented in clear and accessible language and style;**
- f. whether information contained in the report is shared with the offender (or their representative) to ensure he/she understands the content and any proposal.**

## **Section 5: The organisation of probation services**

- 81. While an effective implementing agency is a pre-requisite for probation, they are organised and administered in a wide variety of ways. This section addresses questions of how probation is organised within the machinery of government, which government department is responsible for probation, and whether the probation service is free standing or combined with the prison system. Either way, there is often tension between prison and probation services over the allocation of responsibilities (and resources).
- 82. In most countries in Europe, the probation service falls under the Ministry of Justice along with the prison system. In countries where the prison system is under another ministry, the probation system is usually also there. This the case in Georgia, where both the probation and penitentiary systems fall under the Ministry of Corrections. Outside Europe, there is a more varied picture. In Kenya, the Probation and Aftercare Service sits within the Ministry of Interior and Coordination. In Uganda, the Probation Service, which deals only with juveniles, falls under the Ministry of Gender, Labour and Social Development. The Community Service Directorate is part of the Ministry of Internal Affairs.
- 83. In federal countries, probation services are usually the responsibility of the province (e.g. Canada) or state (e.g. Australia, Germany) or at an even lower level of government (e.g. counties in some US States). In these countries, therefore, ministerial responsibility and organisation can vary.
- 84. In Canada, probation work falls under state ministries of Public Security, the Solicitor General's department, or in the case of Ontario, the Ministry of Community Safety and Correctional Services.
- 85. In Germany, the federal law regulates the legal tasks and functions of all probation staff across the entire country. However, the rules concerning organisation, the local and regional authority and operating standards fall within the responsibilities of the individual federal states. In some states responsibility is separated, with the function of writing reports coming under the remit of the Public Prosecutor while the supervision of convicted offenders is the responsibility of the courts. In other states, both these functions are managed by the regional courts, while in a third arrangement it is the state's Ministry of Justice which takes responsibility directly. A recent study summarises the position as being that 'Bewahrungshelfer' (Probation Officers) deal with suspended

sentences or conditional release, while 'Gerichtshelfer' (social workers) write reports, alongside the training of prisoners. The 'structure and execution leads to a bewildering variety of structures and practices'.<sup>31</sup>

86. There is a similar mixture of responsibility in Romania where each probation office is administratively subordinated to the president of each of the 41 county courts. The courts are responsible for logistical matters such as salaries, offices and equipment, but in terms of policy and management, probation staff fall under the competence of a national probation department in the Ministry of Justice.
87. This dual accountability appears to work satisfactorily in Romania, but a recent analysis of developments in France found confusion and conflicting loyalties resulting from probation officers receiving orders from their own hierarchy (in the prison system), from the Penal Execution or Sentence Enforcement Judge, and from Prosecutors.<sup>32</sup>
88. The role of a sentence enforcement judge is significant in a number of legal systems. In Tunisia, they decide on the work undertaken by offenders subject to a community service order, subject to the approval of the prosecutor. The judge also monitors the work. Probation law in Turkey requires a periodic report on progress on each case to an overseeing judge.
89. In Kenya, Tanzania and Uganda, a senior judge chairs a national Community Service Order Steering Committee, with regional counterparts chairing local committees. In Kenya, a seconded magistrate acts as the Community Service Coordinator within the Probation and Aftercare service.
90. In China, community-based supervision is undertaken by a network of judicial offices which deal with offenders returning from prison and re-education through labour, and supervise community corrections which can be an alternative to prison. The author visited, a judicial office, Zhongnan Street in Wuhan (Hubei province), which covers a population of 200,000. There are two social workers, one teacher and nine mediators, as well as administrative staff who have access to a multi- agency database.
91. In a number of countries, probation is included in a broader organisation, usually alongside the prison service, as in France. This is also the model in Sweden and recently the Probation Service in England and Wales has been absorbed into a National Offender Management Service, an agency of the Ministry of Justice, whose aim is 'to protect the public and reduce reoffending by delivering the punishment and orders of the courts and by helping offenders to reform their lives'. A newly developed probation service in Turkey has been taken forward by the Directorate General of the Prisons and Detention Houses, which is under the jurisdiction of the Ministry of Justice. However technical experts from the UK have described the service as 'a loose federation of branches with managers

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<sup>31</sup> Decarpes P, 'Probation Practices and Übergangsmanagement in Germany: State of Play and Challenges' in McNeill F and Durnescu I (eds), *Understanding Penal Practice*, 2014.

<sup>32</sup> Herzog Evans M, 'Explaining French probation: social work in a prison administration' in McNeill F and Durnescu I (eds), *Understanding Penal Practice*, 2014.

supervised by the local Chief Prosecutor and answerable to them rather than to central structures'.<sup>33</sup> A Community Sanctions Service is planned for Jordan.

92. In Bulgaria, the National Probation Service works closely with Probation Councils (public bodies that also involve civil society representatives) and with municipalities particularly in the implementation of community service. This is a good example of community engagement and involvement. In Poland, a National Board of Probation Officers consisting of chosen delegates from all the districts, establishes the officers' codes of ethics, gives opinions of the legal acts concerning the probation officers, and initiates research regarding the Probation Service. In Moldova, alongside the Directorate of Probation, a private body the Institute for Penal Reform (IPR) is involved in the assistance and counselling of probation clients, preparation of pre-sentence reports on minors and giving assistance to persons released from penitentiary institutions.
93. In some countries, private organisations play a still greater part in the provision of probation services. In Austria and in the German state of Baden-Württemberg, a private organisation called 'Neustart' provides services under contract to the government. In England and Wales, after a highly controversial reform, most probation work is now undertaken by 21 regionally based private Community Rehabilitation Companies, although the supervision of high-risk offenders and the preparation of court and parole reports has remained the responsibility of a national probation service.
94. In Scotland, there is no probation service; equivalent roles are carried out by criminal justice social workers, who are part of local authority social work departments. In Slovenia too, there is no a single organised probation service. Certain probation activities and measures are carried out by public prosecutors, centres for social work and prisons. The social work centres, which are supervised by the Ministry of Labour, Family and Social Affairs, carry out most probation activities but mediators are managed by the Public Prosecutor's Office.
95. The Council of Europe's Probation Rules make it clear that 'irrespective of whether probation services are delivered by public or private organisations, agencies shall work in accordance with formal policy instructions and rules provided by the competent authorities'; and that 'any private agency providing probation services to offenders shall be approved by the competent authorities in accordance with national law'<sup>34</sup>.
96. **In determining how best to organise probation services, consideration needs to be given to:**
  - a. **the most appropriate ministry under which it should be placed;**
  - b. **whether it should be an independent agency or linked with the prison system;**

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<sup>33</sup> Whitford J et al, 'Developing management skills in the Turkish probation service' in McFarlane, M & Canton R, *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014.

<sup>34</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, <http://cep-probation.org/wp-content/uploads/2015/03/CMRec20101E.pdf> <accessed 23 November 2016>.

**c. the best way of ensuring close links with the judiciary.**

## **Section 6: Resources, staff and training**

97. However it is organised, a properly functioning probation system clearly requires sufficient staff and resources to provide reliable supervision and monitoring of offenders. Without this, probation will lack credibility with the courts and the wider public and risks falling into disuse. PRI has noted that in the MENA region, where alternative sanctions are a new concept, where there is a legal basis for their use (e.g. Jordan and Tunisia), ‘judges are reluctant to use them because there is generally no established implementation agency to oversee their implementation’.<sup>35</sup>
98. Efforts to increase the use of alternative sentences also require resources. PRI’s recent Excellence in Training in Rehabilitation in Africa (ExTRA) project found that ‘there are clear limits to what Probation and Community Service departments are able to do to increase the effectiveness of CSOs [Community Service Orders], even with additional capacity. In Kenya, the best resourced of the three departments, there were indications that probation cannot keep up with the pace of demand for suitable assessments’.<sup>36</sup> The evaluation report noted that ‘innovative solutions have been developed, e.g. the use of volunteers and partnerships with other government bodies at the local level, some of which had been strengthened by the ExTRA activities’.
99. It is also important that sufficient female probation/community service officers are employed to ensure all female offenders on community service are supervised by women.
100. There is, of course, a need for additional resources beyond staff. PRI’s assessment of probation in Pakistan found that ‘no transportation facilities are provided to probation and parole staff to carry out their field work. The probationers as part of their probation order attend the offices of their assigned officers. Limited money is allocated for transportation purposes and when a community visit is deemed necessary, the probation officers use public transport which in cases of remote areas from district headquarters often results in demotivation of the probation officers’.<sup>37</sup> Lack of transport is often mentioned as a problem in East Africa.
101. By contrast, in Georgia, ‘each probation bureau has a service car and the majority of offices in rural areas are equipped with computers and access to the Probation Database. The Probation Database has been operating since 2009. It has an integrated fingerprint recognition system, which ensures that the correct person is attending for

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<sup>35</sup> PRI, *Evaluation - Promoting human rights-based approach towards vulnerable groups in detention in the Middle East and North Africa Region*, <https://cdn.penalreform.org/wp-content/uploads/2015/08/MENA-SIDA-Evaluation-Final-for-website.pdf>, 2015.

<sup>36</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

<sup>37</sup> PRI, *Probation and parole system in Pakistan: assessment and recommendations for reform*, 2013, <https://www.penalreform.org/resource/probation-parole-system-pakistan-assessment-recommendations-reform/> <accessed 23 November 2016>.

registration at the Probation Bureau’.

102. Probation services around the world have large variations in the numbers and types of personnel which they employ. The Council of Europe Probation Rules say that ‘the structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities they are entrusted with and shall reflect the importance of the public service they implement’<sup>38</sup>, and variations will partly reflect differences in the tasks undertaken.
103. Council of Europe statistics show a large variation in the numbers of probation staff.<sup>39</sup> Italy reports that it had 2,048 probation staff in 2014, compared to some 17,000 in England and Wales. In Italy, the probation service plays a role only after the final sentence has been passed, whereas in England and Wales the role is much broader including the preparation of about 140,000 reports each year.
104. In Austria, the law specifies a maximum caseload of 35. In Estonia, in 2008 there were 210 probation staff supervising 8,000 offenders. The average caseload was 45-50 and the budget about 5 million US dollars. A PRI study found that after caseloads in Georgia were reduced to ‘a more manageable maximum of 80 per officer, it has been possible to commence the supervision of all new cases by making an assessment of risks and needs ... further improvements to the quality of rehabilitation programmes – both individual and group work – are resulting from the appointment of an additional 33 social worker positions and 11 psychologists that started to come on stream during 2014’.<sup>40</sup>
105. In 2013, Armenia’s Alternative Sanctions Enforcement Division employed around 80 officers who supervised 1,676 offenders who had been released early from prison and offenders who had been given conditional release from court. In addition, the same officers also monitored compliance with alternative sanctions (for instance the payment of fines) in relation to a further 1,975 offenders.
106. In several countries, the work of paid staff is supplemented by volunteers. Council of Europe statistics suggest volunteers are used in Austria, Finland, Georgia, Italy, Romania, and Switzerland.<sup>41</sup> They also play a role in Poland and Latvia (where they lead the mediation work). The European Probation Rules as well as containing requirements for adequate recruitment, training and remuneration of professional staff also say that volunteers who play a part in probation work should be adequately selected, supported and resourced.

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<sup>38</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, <http://cep-probation.org/wp-content/uploads/2015/03/CMRec20101E.pdf> <accessed 23 November 2016>.

<sup>39</sup> Council of Europe, Annual Penal Statistics SPACE II Survey 2014, ‘Persons Serving Non-Custodial Sanctions and Measures in 2014’.

<sup>40</sup> PRI, *Promoting the Use of Non-custodial Sanctions in Armenia, Azerbaijan and Georgia – Synthesis Research Report*, 2015, [https://cdn.penalreform.org/wp-content/uploads/2016/05/Synthesis-research\\_non-custodial-sanctions-in-the-South-Caucasus\\_Eng.pdf](https://cdn.penalreform.org/wp-content/uploads/2016/05/Synthesis-research_non-custodial-sanctions-in-the-South-Caucasus_Eng.pdf) <accessed 23 November 2016>.

<sup>41</sup> Council of Europe, Annual Penal Statistics SPACE II Survey 2014, ‘Persons Serving Non-Custodial Sanctions and Measures in 2014’.

107. In Asian countries, where the volunteer probation officer is a strong tradition, it is rather the other way around. In Japan, about 50,000 people from nearly every area of Japanese society serve as volunteer probation officers (VPOs), alongside fewer than 800 paid probation officers working with approximately 60,000 people on probation or parole. Half of all VPOs have been involved for more than 10 years and their average age is 62. In the Philippines, the law provides that 'to assist the Probation (and Parole) Officers in the supervision of probationers, the Probation Administrator may appoint citizens of good repute and probity to act as probation aides'. In Thailand, candidates must be at least 20 years of age; live in a permanent residence; be literate; be a person of integrity and honesty; have suitable income; maintain law-abiding behaviour; have completed required training courses as provided by the Ministry of Justice; and have no criminal record except for petty offences or negligence.
108. In East Africa, volunteer probation officers were pioneered in Kenya. Uganda has also started to make use of volunteers using a different model. Uganda has also looked to make use of ex-offenders as Peer Support Persons, who can provide guidance to people serving community service orders.<sup>42</sup>
109. Positive partnerships with other agencies can help to secure additional resources. In Tunisia, the judiciary have provided an office for the probation team at the court of first instance in Sousse 2, which was equipped by the International Committee of the Red Cross (ICRC) who provided all necessary supplies.
110. Probation staff are generally civil servants and normal eligibility criteria apply to the selection and recruitment of staff. In Latvia, probation officers must now have a higher education degree in social work, social pedagogy or psychology but the requirements were lower when the service was first set up in 2003.
111. In Georgia, salary levels for probation officers have improved significantly over the years but they still may not be high enough to attract the best kind of candidates. The courses provided at the Penitentiary and Probation Training Centre (PPTC) of the Ministry of Corrections cover the necessary range of topics. Staff with additional social work training have been appointed to concentrate on supervising the juvenile offenders. There are now a higher proportion of qualified psychologists working in the Probation Agency than in most European services.
112. Among the problems found by technical experts working to establish Turkey's probation service were an absence of good governance principles: accountability, transparency, openness, integrity clarity of purpose and effectiveness. Officials saw their foremost duty as being to protect the interest of the state. The experts also found that initially, probation managers were often generalists or those with a financial or organisational background. They were often seen as less qualified than those they supervised.<sup>43</sup> Public sector

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<sup>42</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

<sup>43</sup> Whitford J et al, 'Developing management skills in the Turkish probation service', n26, in McFarlane, M & Canton R, *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014,

culture can in some countries be risk averse and open to improper influence and corruption.

113. In some cultures, the absence of a competence-based culture can mean that training is seen simply as a way of gaining an additional certificate or degree. Research has in fact shown that well trained and motivated staff make a real difference in terms of outcomes for offenders but in many low-income countries continuous professional development may be lacking. PRI found that in Pakistan the Reclamation and Probation Departments lack a systemic training programme for their staff. On initial induction staff usually receive short term training at the National Institute for Prison Administration (NAPA) in Lahore that is primarily responsible for training prison personnel. Capacity building of the staff is the most important area that needs immediate attention.
114. In Kenya, PRI has organised a series of training for Community Service Supervisors. Using international standards and good practice, the training has helped the Supervisors to: (a) better understand their role and mandate; (b) improve their interpersonal and problem solving skills; (c) better understand the needs of vulnerable offenders, including children and women; and (d) share their experience with other supervisors. PRI can use this experience to effectively develop capacity in other countries (e.g with Jordan's Community Sanctions Service). Training requires a combination of technical and capacity development support, sometimes including management and leadership skills.
115. **When establishing probation services, countries need to:**
  - a. **provide sufficient budget for adequate numbers of staff and additional costs such as transport;**
  - b. **determine the qualifications and skills required by probation staff and the appropriate remuneration;**
  - c. **look to make use of volunteers;**
  - d. **develop partnerships with other agencies;**
  - e. **track the capacity of the probation and community service departments by monitoring the average number of cases per probation officer and the time spent on particular tasks;**
  - f. **ensure that appropriate induction training and continuous professional development is provided to staff.**

## Section 7: Models and approaches for practitioners

116. When introducing or expanding probation services, consideration needs to be given to what exactly front-line practitioners are expected to do. For most of its history, probation staff have relied solely upon subjective, professional judgement in deciding how best to carry out their duties. Over the last 25 years there has been a growing body of research which has enabled a more structured approach based on actuarial models which can predict reoffending and identify the problems faced by offenders which need to be tackled if they are to be given the best chance of stopping offending.
117. In Western countries, the leading approach has been called the Risk, Needs Responsivity Model (RNR) which has three main dimensions: assessing risk, addressing offending related needs, and providing treatment that is responsive to the offender's abilities and learning style.<sup>44</sup> The most important principles are that:
- Resources should follow risk. High-risk offenders need a more intensive response while low-risk offenders should receive little or no intervention. Over-intervention when the risk level does not justify it can have a negative impact.
  - Effective treatment should focus on addressing offending related needs – so-called dynamic risk factors that are associated with criminal behaviour.
  - Rehabilitative programmes should be delivered by trained, enthusiastic staff in ways most appropriate for the individual offender taking account of their age and character.
118. An early evaluation of two assessment models in the UK concluded that 'risk/need assessment is a reliable and feasible method for use in probation services. The instruments studied can be of significant value in assessing risk of reconviction, in assessing needs and in evaluating the impact of rehabilitative work undertaken by probation services'. The research also found it important to note that the models 'are products of substantial periods of development and refinement, and this appears to be an essential part of the process of producing assessment instruments which are capable of being used effectively.'<sup>45</sup>
119. This suggests that where possible countries should look to develop evidence-based models based on their own research and analysis, or at least look to adapt models devised elsewhere so that they properly meet their own needs and problems.
120. Within England and Wales, the assessment and planning tool used with adult offenders is the Offender Assessment System (OASys). A separate tool is used for young offenders aged 10–17 known as Asset, while other tools are used for specific types of offending, e.g. Risk Matrix 2000 for sexual offending and the Spousal Assault Risk

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<sup>44</sup> The RNR model was developed by Canadian researchers, James Bonta, Don Andrews, and Paul Gendreau see: James N, Risk and Needs Assessment in the Criminal Justice System, Congressional Research Service, 2015, <https://www.fas.org/sqp/crs/misc/R44087.pdf> <23 November 2016>.

<sup>45</sup> UK Home Office Research Study 211, *Risk and need assessment in probation services: an evaluation*, 2000, <http://library.college.police.uk/docs/hors/hors211.pdf> <23 November 2016>.

Assessment Guide (SARA) for domestic violence.

121. A 2015 report prepared for the US Congress has listed seven commonly used Risk and Needs Assessment Instruments. While there are a variety of tools, they share key features. In particular, they emphasise four major factors strongly associated with criminal conduct: anti-social history, personality, thinking and peer group and four more moderately associated factors: poor-quality family relationships, poor performance at school or work, lack of involvement in non-criminal pursuits and substance abuse.
122. Where these factors are identified, they can be targeted by efforts to build and practise new ways of thinking and skills – such as controlling anger or problem solving – and by encouraging involvement in non-delinquent activities with non-criminal associates.
123. A number of treatment programmes based on cognitive behavioural principles have been established and used by probation services in Western countries. Among the best known are:<sup>46</sup>
- ART (Aggression Replacement Training) – a group work programme for people convicted of violent offences or who have problems controlling their temper. It challenges offenders to accept responsibility for their behaviour. Its aims are to reduce the incidence of assault, public order offences and criminal damage, increase public protection and challenge offenders to accept responsibility for their crime and its consequences.
  - SOTP (Sex Offenders Treatment Programme) – this helps offenders develop an understanding of how and why they have committed sexual offences. The programme also increases awareness of victim harm. The main focus is to help the offender develop meaningful life goals and practise new thinking and behavioural skills that will lead him away from offending.
  - TSP (Thinking Skills Programme) – a cognitive skills programme which addresses the way offenders think and their behaviour associated with offending. The programme aims to reduce reoffending by engaging and motivating, coaching and responding to individual need and building on continuity. It supports offenders to develop skills in setting goals and making plans to achieve these without offending.
  - OSAP (Substance Abuse Programme) – this programme addresses drugs or alcohol misuse, using cognitive methods to change attitudes and behaviour to prevent relapse and reduce offending.
124. An EU funded programme ‘Strengthening transnational approaches to reducing offending’ looked at how Aggression Replacement Training was used in different countries and concluded that such programmes need to be owned by the country where they are delivered.<sup>47</sup>

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<sup>46</sup> ‘Offender Behaviour Programmes (OBPs)’, *UK Ministry of Justice website*, 9 July 2014 <https://www.justice.gov.uk/offenders/before-after-release/obp> <23 November 2016>.

<sup>47</sup> UK Ministry of Justice and others, *STARR: Strengthening Transnational Approaches to Reducing Re-offending: Young Offenders and the ART Programme*, undated

125. It has been suggested that appropriate models of work need to take account of, among other things, differences in the probation population, their risk of re-offending and the needs of the target population before developing an effective programme. The principles of diversity and equality should be taken into account in designing programmes. They also need to attend to differences in staff background, training and learning styles.<sup>48</sup>
126. At a cultural level, while certain elements are common to almost all offending behaviour programmes – problem solving, impulse control and social skills for example – other cultures may value different concepts: being a good citizen, a good family member or, in the author’s experience of work in Abu Dhabi, a strong Emirati man.
127. There may be particular problems with drug programmes in cultures where there is a zero-tolerance approach. In Turkey, this led to a ‘pragmatic blind eye turning by the authorities’.<sup>49</sup>
128. UK experts have concluded that ‘it is certainly naive to assume that Offending Behaviour Programmes can be lifted lock stock and barrel from one country and neatly fitted into another. There will always be the need for thoughtful adaptation, while maintaining programme integrity’.<sup>50</sup>
129. While structured programmes may well be necessary to help offenders stop offending, there is a question about whether they are sufficient. There has been a recognition that ‘people typically come to stop offending in the context of living good and meaningful lives with new purposes and significance and often marked by a sense of personal achievement and fulfilment’.<sup>51</sup> The importance of maintaining and strengthening relationships with family, friends and the wider community cannot be overestimated.
130. There is disagreement about whether or not the so-called Good Lives Model (GLM), which emphasises this broader approach, adds a great deal to the RNR model<sup>52</sup>. Yet GLM, and the so-called desistance approach, of which it is an example, is of value to probation services by suggesting four elements:

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[http://www.starrprobation.org/uploaded\\_files/Rep%20STARR%20ART%20YO.pdf](http://www.starrprobation.org/uploaded_files/Rep%20STARR%20ART%20YO.pdf) <accessed 23 November 2016>.

<sup>48</sup> Clarke D et al, ‘Offending Behaviour Programmes for Juveniles’ in McFarlane, M & Canton, R (eds), *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014.

<sup>49</sup> Spragg M, ‘Substance Misuse and Alcohol Programmes for Juveniles’ in McFarlane, M & Canton, R (eds), *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014.

<sup>50</sup> Clarke D et al, ‘Offending Behaviour Programmes for Juveniles’ in McFarlane, M & Canton, R (eds), *Policy Transfer in Criminal Justice Crossing Cultures, Breaking Barriers*, 2014.

<sup>51</sup> Ward T and Maruna S, quoted in Canton R, *Why do People Commit Crimes?*, in McNeill F, Durnescu I and Butter R (eds), *Probation: 12 Essential Questions*, 2016.

<sup>52</sup> See Ward T, Melser J and Yates P, ‘Reconstructing the Risk–Need–Responsivity model: A theoretical elaboration and evaluation’, *Aggression and Violent Behavior*, 12 (2007) pp208–228.

<https://ccoso.org/sites/default/files/import/Ward-Melser---Yates-2007.pdf>; Andrews D A, Bonta J and Wormith J S, ‘The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?’, *Criminal Justice and Behavior*, July 2011 vol. 38 no. 7 pp735-755; and Ward T, Yates P and Willis G, ‘The Good Lives Model and the Risk Need Responsivity Model’, *Criminal Justice and Behavior*, January 2012 vol. 39, no. 1, pp94-110.

- a. the importance of the context in which offenders live their lives. If offenders are homeless and have no money, they may struggle to work on their more underlying problems;
  - b. the significance of listening carefully to offenders' own accounts of their lives, how they arrived at the point they are at, and how they see themselves now and in the future;
  - c. the need to build on the strengths that offenders may have rather than simply diagnosing and treating weaknesses and;
  - d. the importance of a consistent and purposeful relationship between the probation officer and offender, and their ability to inspire hope.<sup>53</sup>
131. New probation services have started to take on board the lessons of Western countries. In Georgia, initial assessments of the offenders are based on a method that was first piloted in 2014. This categorises offenders into low-, medium- or high-risk groups according to their likelihood of reoffending or causing serious harm. A probation officer supervises low risk offenders. Medium risk offenders are supervised by a probation officer with assistance from a social worker. If high risk is identified, a psychologist will oversee development of the supervision plan. For all levels of risk, the probation officer remains the case manager. The Rehabilitation Programmes Unit has developed rehabilitative interventions, some mandatory others optional programmes which look to address offending related needs.
132. In implementing community service orders, supervision is generally provided by the agency providing the placement, although in respect of higher risk offenders supervision may be provided directly by the probation agency. A challenge facing many systems is finding a wide range of positive placements which not only act as a punishment but will also provide an opportunity to make use of the existing skills of the offender, teach new skills and are also gender sensitive. In low-income countries, the provision of tools and equipment can be a barrier.
133. In Kenya, some former offenders who performed well during their community service and who showed remorse for their crimes and a desire not to reoffend, have been given the opportunity to attend entrepreneurial training and received a small investment to allow them to open a basic business. Of the 54 empowerment grants awarded as part of the PRI's ExTRA (Excellence in Training and Rehabilitation in Africa) project, 42 (78%) were deemed successful as their business were still running at the end of the project, with a further 2 on course. These are a tiny number of offenders overall; the ExTRA project recommended a limit on placements involving grass slashing and cleaning and promotion of local initiatives that build the skills of offenders.<sup>54</sup>

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<sup>53</sup> McNeill F and Weaver B, *Changing Lives? Desistance Research and offender management*, 2010, <http://www.sccjr.ac.uk/publications/changing-lives-desistance-research-and-offender-management/> <23 November 2016>.

<sup>54</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

134. A much more robust form of alternative sentencing has been developed in Rwanda. In the aftermath of the 1994 genocide, conventional legal responses were simply impractical given the scale and gravity of the problems to resolve. Alongside the creation of *Gacaca* community courts, an innovative form of *Travail d'Interet General* (TIG) was introduced – an intensive community service order undertaken as part of a prison sentence. Rather than stay at home and do unpaid work for a few hours a day, which is the model of community service in place in the rest of East Africa, the *genocidaires* – so-called *tigistes* – were based in camps doing a full working day six days a week. This enabled substantial infrastructure projects to be completed, including construction of roads, homes for vulnerable people (including genocide survivors) and school dormitories. The Rwandan government has claimed that up to 2013 more than USD\$50 million worth of work had been done, prisoners have been released much earlier than they would have been and have learned skills to help them resettle. The prison population in Rwanda has been stable for the last six years. There has, however, been criticism of the conditions in which the *tigistes* are accommodated and concern that the experience is more akin to an open prison than to probation.
135. In Georgia, offenders serve meals in a day centre for elderly people and those with disabilities. These offenders receive considerable appreciation for their efforts, which improves their self-esteem and shows them the satisfaction that can be achieved from helping others.
136. There has been growing interest in restorative justice. In the Czech Republic, the probation service has been called the Probation and Mediation Service since 2001, reflecting its provision of services for both the victim and the accused which are directed at settling conflicts arising from a criminal offence. Slovakia has followed suit and probation services in Hungary and Romania also offer mediation services. In Thailand, the Department of Probation, under the Ministry of Justice, has been the key organisation in the implementation of the 'July 10 Resolution', which has introduced a range of restorative and community-based options at the pre-trial and post-sentencing stage. In South Africa, the work of the probation service was amended in 2002 through the introduction of assessment, support, and mediation services in respect of victims of crime. Restorative justice was also the subject of an experiment in Russia but despite promising results, it was discontinued.<sup>55</sup>
137. Mediation and restorative justice is a growing area of work for probation services. In July 2002, the United Nations Economic and Social Council adopted the 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters', which says that 'restorative justice programmes should be generally available at all stages of the criminal justice process'.<sup>56</sup> Particular skills and training are required to undertake mediation and restorative justice.

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<sup>55</sup> Maksudov, R and Keenan, E, *Achievements, issues and problems of introducing restorative justice into Russia*. Paper presented at the Third Conference of the European Forum for Victim-Offender Mediation and Restorative Justice, 2004.

<sup>56</sup> Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

138. Probation work should be based on the best available evidence about what works to reduce re-offending alongside human right standards. Consideration should be given to:
- a. using standardised tools for evaluating an offender’s risks and needs and for measuring changes in these;
  - b. the creation or adaptation of a range of treatment and intervention programmes;
  - c. ensuring staff are properly trained to use the assessment tools and offending behaviour programmes;
  - d. developing methods to encourage desistance from crime by listening to the voice of the offender, building on their strengths and encouraging supportive and hopeful relationships;
  - e. introducing processes which match offenders to the most suitable community service placements which make use of existing skills and teach new ones;
  - f. exploring the possibility of restorative approaches as part of probation supervision.

## Section 8: Public relations

139. For countries with no probation service the first task is, as in the MENA region to raise ‘public awareness and build the political will to establish a legal basis for alternatives’.<sup>57</sup> Public support is required to make the necessary changes in the sentencing approach and the effective implementation of alternative sanctions. For example, ‘a community service order is based on restorative justice principles where an offender offers something back to the community usually through voluntary work. To be effective this involves the support of the local community’.
140. Once probation is introduced, maintaining judicial and public support remains a challenge. In 2014, the Tunisian Minister of Justice told PRI that Tunisian judges do not trust the system; they do not trust that alternative sanctions will be properly implemented. Judges need to make sure that justice is done.
141. At a political level, in recent years, in Western countries ‘penal populism’ has had a major impact on probation. Some of its underpinnings have been eroded as faith in rehabilitation and the welfare state have weakened. Many developments – whether it is increasingly inflexible rates of breach for non-compliance with orders, requiring that all community orders have a punitive element, or the wearing of orange bibs while doing community payback – are designed to look tough rather chosen for their effectiveness.
142. Yet it is neither desirable nor possible for probation to operate in a vacuum, insulated from media, political or public discourse. Increasing public understanding about and confidence in the work of probation services has been recognised as an explicit goal in

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<sup>57</sup> PRI, *Evaluation - Promoting human rights-based approach towards vulnerable groups in detention in the Middle East and North Africa Region*, 2015 <https://cdn.penalreform.org/wp-content/uploads/2015/08/MENA-SIDA-Evaluation-Final-for-website.pdf> <accessed 23 November 2016>.

many countries in recent years. Indeed, the Council of Europe's Probation Rules include as a key principle that 'the competent authorities and the probation agencies shall inform the media and the general public about the work of probation agencies in order to encourage a better understanding of their role and value in society'<sup>58</sup>.

143. Probation must go some way towards meeting the public's desire for justice for four main reasons. Firstly, a great deal of probation work forms part of the sentencing arrangements in particular jurisdictions. The sentencing of offenders, of course, plays an important role in upholding social norms and responding to people who breach them. As a sentencing review carried out in England and Wales put it in 2001: 'achieving a satisfactory level of public confidence is therefore an important goal of sentencing, and the framework for sentencing needs to support that goal'.<sup>59</sup>
144. While it may be possible to think that a criminal justice system could operate with little regard to detailed public concerns, that public opinion must be seen to justify and legitimise sentencing and other initiatives in the field constitutes a general trend in modern penal policy, in most Western countries at any rate. Even in Denmark, usually seen as moderate in its criminal policy, 'the claim that punishment should reflect public opinion has driven all penal reforms over the last decade'.<sup>60</sup>
145. Secondly, pragmatically, if law and policy in respect of community-based sentences are significantly out of step with public opinion, courts will find it harder to make use of such sentences and probation could wither on the vine. Research has found that 'it is particularly in the area of community penalties that judges are most likely to be apprehensive of public hostility',<sup>61</sup> and this may be more the case in jurisdictions in which the public are involved in sentencing. In England and Wales, most criminal cases are sentenced by lay magistrates, who number well over 20,000 and see themselves as members of the public albeit with particular powers. A review of literature relating to conditional sentences concluded that 'if the public is (perceived to be) strongly opposed to suspended sentences, then over the course of time, they may fall into disfavour with the judiciary as well'.<sup>62</sup>
146. The third reason for the public to be aware of and informed about probation relates to the specific work which probation services do to supervise convicted offenders in the community, whether they are serving community-based orders or have been released from prison. While crime has fallen in most Western countries over the last twenty years and is generally of much less concern as an issue to the public than it has been, the

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<sup>58</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules <http://cep-probation.org/wp-content/uploads/2015/03/CMRec20101E.pdf> <accessed 23 November 2016>.

<sup>59</sup> Halliday J, *Review of the Sentencing Framework in England and Wales*, UK Home Office, 1991.

<sup>60</sup> Ryberg J and Roberts J, 'Exploring the Normative Significance of Public Opinion for State Punishment', in Ryberg J and Roberts J (eds), *Popular Punishment: On the Normative Significance of Public Opinion*, 2014.

<sup>61</sup> Roberts J, 'Public Opinion and the nature of Community Penalties: International Findings' in Roberts J and Hough M (eds), *Changing attitudes to punishment: public opinion, crime and Justice*, 2002.

<sup>62</sup> Armstrong et al, *International Evidence Review of Conditional (Suspended) Sentences*, Scottish Centre for Crime and Justice Research, 2013, <http://www.sccjr.ac.uk/wp-content/uploads/2013/01/Conditional-Sentences-FINAL-january-2013.pdf> <accessed 23 November 2016>.

public continue to have legitimate expectations about what the authorities do to prevent it and how they supervise those who have broken the law – particularly those convicted of sexual and violent offences who are seen as a threat to public safety. It is not unreasonable for the public to expect whatever requirements have been imposed by the courts on offenders to be effectively implemented and that the full range of work with offenders – including that which aims to help them to desist from crime or make reparations to their victims or the community – to be carried out as assiduously and effectively as possible. As the former Chief Inspector of Probation in England and Wales has put it, ‘the safety of the public in general, and of children in particular, are hugely sensitive areas’.<sup>63</sup>

147. There are two main ways of trying to improve public perceptions of probation. The first is to moderate the public’s desire for punishment by a strategy of informing, influencing and involving.<sup>64</sup> In some countries, even judicial officers may not be well informed about probation or community service. PRI’s ExTRA project noted that as well as training the decision makers (magistrates and judges), there is also a need to develop and test alternative ways of positively influencing the hearts and minds of the ‘hard-to-reach’ magistrates. Feedback mechanisms should enable magistrates to learn the outcome of the alternative sentences and make exposure visits.<sup>65</sup>
148. It is almost universally true that the general public are not knowledgeable about the criminal justice system and providing information about it has usually been shown to reduce punitive attitudes. Web-based sentencing exercises such as ‘You be the Judge’<sup>66</sup> find that most people think that sentencing is about right. Providing information about where community service work has been done could also be useful, as could enabling people to nominate work that should be done. PRI’s ExTRA project in East Africa involved initiatives such as open days dedicated to raising awareness about community service which were very successful in facilitating public engagement with the concept.<sup>67</sup> However, these successes were isolated and the effect can dissipate swiftly. Clearly attitude change is not something that occurs overnight and systemic-level change requires prolonged attention and focus. For this reason, PRI’s evaluation of the ExTRA project recommended a continued programme of public sensitisation alongside improved feedback mechanisms.
149. A recent study has identified the kinds of narratives and messages that have proved successful in Western countries in bridging the gap between expert and public views on crime and punishment.<sup>68</sup> Persuasive arguments include explaining how ‘an outdated

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<sup>63</sup> Bridges A, *History of HMI Probation*, 2010, <http://www.justiceinspectors.gov.uk/probation/wp-content/uploads/sites/5/2014/03/history-hmi-probation.pdf> <accessed 23 November 2016>.

<sup>64</sup> Allen R, ‘Probation and satisfying the public’s desire for justice or punishment’, in McNeill F, Durnescu I and Butter R (eds), *Probation 12: Essential Questions*, 2016.

<sup>65</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

<sup>66</sup> See <http://www.ybtj.justice.gov.uk/> <accessed 23 November 2016>.

<sup>67</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

<sup>68</sup> Frameworks Institute, *New narratives: Changing the frame on crime and justice*, 2016.

criminal justice system is holding our country back. We need to make changes to this system that will allow all of us to move forward. A criminal justice system that can improve outcomes for our communities and our country is key to making progress as a society'. Another strategy involves using a 'Justice Gears Metaphor' which argues that just as we need different gears for cycling up and down hills, we need different solutions for different problems in the justice system, rather than always relying on prison. Appeals to cost-efficiency or reminding people that punishment works in some cases were found to be less influential.

150. The second approach to strengthening public confidence is to make probation more punitive, for example by requiring orange bibs to be worn by those doing community service, or mandating that an explicitly punitive element is contained in all probation orders. There is disagreement about how far down this road probation should go before it ceases to have positive value. In some countries, the direction of travel needs to be further away from punishment and towards social work.
151. Yet in all countries it is true that probation needs champions, opinion formers or authority figures who are prepared to stand up for the probation approach and its institutions, even when things go wrong. In the UK, the Chief Justice spent a day doing community service work undercover in order to experience it for himself and afterwards to obtain media coverage.
152. **Winning public support for probation is important. Probation services should develop strategies which:**
  - a. **provide training and updates to courts and other criminal justice stakeholders about probation and feedback to courts about completion rates;**
  - b. **keep the public well informed about how probation is used, what it entails and the positive outcomes it achieves;**
  - c. **give the public opportunities to become involved in the work of probation in various ways, whether as volunteers or in suggesting unpaid work projects;**
  - d. **publicise success stories which show how offenders have turned their lives around while on probation;**
  - e. **seek to garner support from influential champions and local leaders.**

## **Section 9: Research, monitoring and evaluation**

153. In order to ensure that probation is subject to a process of continuous improvement, there is a need for programmes of research, monitoring and evaluation.
154. Among the key issues to study are:
  - a. the extent to which probation and community service orders are being imposed and reasons for low take-up by courts;

- b. whether probation is displacing prison sentences and whether there is any net widening;
  - c. how far offenders made subject to orders complete them and where there is non-compliance what are the reasons for it;
  - d. whether probation has an impact on re-offending;
  - e. the attitudes of the public, victims of crime and criminal justice stakeholders towards probation.
155. Research also has an important role to play in:
- a. developing or adapting assessment tools, and treatment programmes and evaluating their effectiveness;
  - b. calculating the benefits of community service for the wider community;
  - c. assessing the resources required to run an effective probation system.
156. During the ExTRA project, PRI found that data collection methods differed between and within countries and in many cases records were hand written and not easily accessible. In some cases, data was collected by researchers directly from court records and this proved the most accurate procedure.<sup>69</sup>
157. Without appropriate and trustworthy data collection procedures, testing and evaluation of alternative to imprisonment projects will not be completely effective and the sooner an accurate database is initiated in each context the better the future analysis can be. PRI is hoping to research and design specific data gathering tools and a procedure for each individual context would be valuable to the project countries and to use as a basis for other countries that wish to reform their system.
158. **Probation systems need to be evaluated both to ensure they are working as intended and to identify areas for improvement. Countries need to:**
- a. **collect timely and relevant data about probation, ensuring records are securely kept, with access defined and confidentiality respected where appropriate, as well as arrangements to and ensure the data is analysed and lessons learnt.**
  - b. **develop annual research programmes which shed light on particular aspects of probation which are of interest to the authorities, stakeholders and the wider public.**

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<sup>69</sup> PRI, *Final evaluation: Excellence in Training on Rehabilitation in Africa (ExTRA)*, 2016, <https://www.penalreform.org/resource/final-evaluation-excellence-training-rehabilitation-africa-extra/> <accessed 23 November 2016>.

## Section 10: Conclusions and checklist

159. PRI plans to continue its role in helping to promote probation around the world and it is hoped that the material in this manual will be useful in doing so.
160. Experience suggests that PRI can play a number of roles in the establishment and development of probation. These include (example countries where this has been conducted in brackets).
- a. research and analysis of the need for non-custodial sanctions (Pakistan);
  - b. building professional and public support for alternatives through roundtables, conferences and other events (Kazakhstan);
  - c. organising study tours and visits to relevant countries (Kazakhstan, Armenia, Georgia, Algeria, India);
  - d. establishing and evaluating pilot schemes (Tunisia);
  - e. training probation staff, community service placement agencies, judges and other stakeholders (East Africa, Georgia);
  - f. advising on legislation (Jordan, Kazakhstan);
  - g. ongoing monitoring and evaluation of the impact of probation (East Africa);
  - h. promoting successful programmes (Algeria).
161. While PRI's approach is rooted in international standards, its work is characterised by the need for strong constructive partnerships with government and non-government agencies for sustainability. These are crucial dimensions to the development of probation.

### Developing a probation service: key questions

1. What are the key functions which you want the probation service to undertake?
  - a. the supervision of court orders which do not require deprivation of liberty;
  - b. the supervision of offenders who have been released from a penitentiary sentence;
  - c. the preparation of reports to assist the court in reaching a decision about the most appropriate sentence;
  - d. work to assist prisoners inside the penitentiary;
  - e. work at the pre-trial stage of criminal proceedings (e.g. to provide or monitor alternatives to pre-trial detention or offer mediation);
  - f. to undertake work to prevent crime;
  - g. to work with victims of crime;
  - h. to undertake miscellaneous other services such as enforcing fines.

2. If (a), will this be the supervision of suspended sentence and/or a community based sentence in its own right?
3. Will the probation system cover juveniles and adults or just adults?
4. Do you want the probation service to be a state organ and if so where should it be located in the government system?
5. How will you ensure the probation service relates well to the Courts at a local level?
6. If it is a state organ, do you envisage all of the tasks for which probation is responsible will be undertaken by the probation service itself or will some of the work (eg supervision of community work placements) be undertaken by partner organisations?
7. Are there existing organs that could be transformed into a probation service or do you want to start from scratch?
8. What kind of training and qualifications do you want probation staff to have initially and in the long term?
9. What kind of sensitisation will be needed within government, with judges, prison system and the general public?
10. Is it possible to pilot the new system in one region or with one type of offender?
11. What changes to the law will be required to establish the service?
12. What changes to administrative processes and criminal procedures will be needed for the probation service to do its work?
13. Will a training programme be needed for police, prosecutors and courts?
14. Over what timescale do you envisage the service being introduced?
15. What would be the most appropriate and effective national body, e.g. a national committee or national working group, for overseeing the introduction of the new service?
16. What numbers of staff do you envisage working for the probation service?
17. What kind of headquarter, regional and local capacity will be needed?
18. What will you need in terms of office accommodation, equipment etc?

19. What system of registration and filing will be put in place for each offender/probationer sentenced to community sanction or measure?
20. What audit and monitoring processes will need to be introduced to ensure the quality of the work of the probation service?
21. What kind of research and evaluation framework could be put in place to inform the development of the service and contribute to its continuous improvement?

Rob Allen, December 2016