



## The Lawyer's Handbook on Legal Aid Non-custodial Measures and Probation



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We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

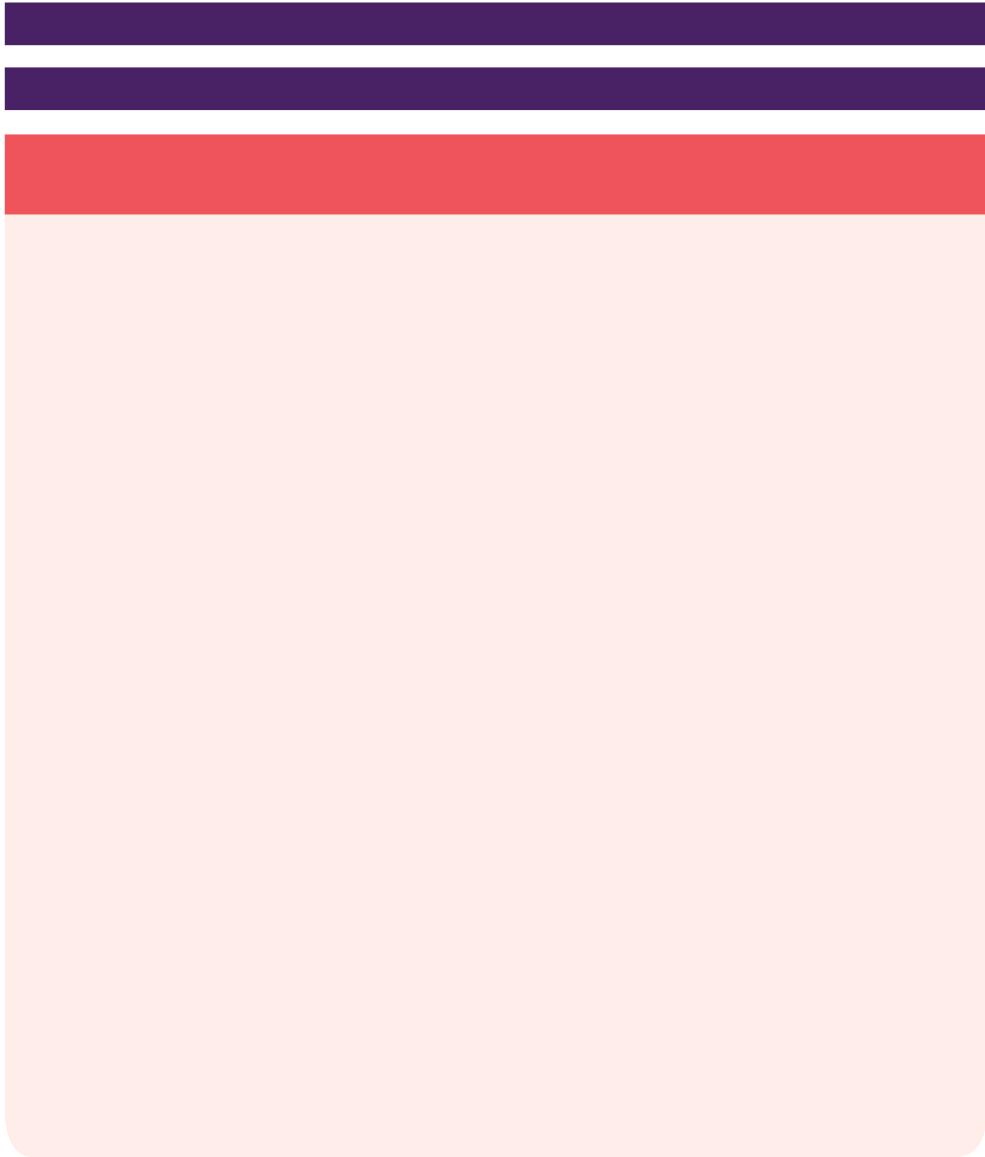
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## Acknowledgement

We are deeply grateful for the scientific support and training endowed by the Penal Reform International, and for the aid they offered to the Execution Committee of the pilot project for the implementation of alternative sanctions and non-custodial measures, not to ignore their preponderant role in bringing the probation office in the Court of Appeal of Sousse into the limelight.

Our deepest appreciation goes to Mr. Ahmed Rezig the first president in the Court of Appeal of Sousse, and to Mr. Abdelhamid Aabada, the Public Prosecutor in the Court of Appeal of Sousse, for their moral support and unprecedented effort in the organization of scientific seminars and training workshops, and in supervision, in cooperation with the Penal Reform International, before and after the creation of the probation office.



# Introduction

## Legal Aid: Rights and Guarantees

People in conflict with the law are always in need of legal aid that guarantees access to fair and effective measures throughout the criminal justice process, including the pre-trial investigation, the conflict settlement through mediation interventions, or even during the trial proceedings and eventually sentence enforcement. The justice process is governed by a huge legislative, regulatory and administrative arsenal which needs a thorough understanding of the functioning of the justice system. One of the most important sources of assistance is the legal aid which goes beyond the traditional role of lawyers in defending the rights of individuals and protecting the right to a fair trial, to cover other functions like counseling, legal sensitization and bridging the gap between adversaries to conciliate their positions through mediation and community intervention, in accordance with international standards for the administration of justice and reparation for the damage, not to ignore the necessity to compensate the community and restore harmony among its members. Modern studies in criminology and penology confirm that custodial sanctions do not serve their retributive goals of deterrence, and a growing tendency looks to sentence enforcement as an opportune time for rehabilitation and educational programs, while detention, due to its ruthlessness and regarding the lack of resources directed to prisons, could undermine all these rehabilitative endeavors. Therefore, the international standards take as a priority the protection of the right to fair trial and procedures guaranteed by the existence of a legal aid and guidance facilities and direct assistance beside the right to the legitimate legal defense.

Lawyers should undoubtedly contribute to the promotion of human rights, which is the heart of their noble functions that emanate from the ethics of this legal profession, based on deep insight and scientific specialization. Lawyers advance the administration of justice through their participation in dialogue, coordination and networking to correct any deviation or breach of the law, and restore rights to their individuals by implementing legal measures to protect society and provide a positive atmosphere for rehabilitation, reform and alternative sanctions. Their community-oriented undertaking is extremely important to respond to the needs of society, the victims and the persons in conflict with the law. Equally significant is the active

role they play in rehabilitation and reintegration in order to achieve security and stability in the community, and to reduce overcrowding in prisons due to excessive detention, by working towards the implementation of non-custodial alternative sanctions, and boosting the work of civil and public institutions to provide guidance and legal services, in addition to raising the efficiency of the justice system and the dissemination of legal culture based on the relevant international standards.

This procedural guidelines handbook comes to identify the strengths that improve legal and community work, and to help legal aid and counselling organizations to carry out legal activities that promote the application of community service and develop probation programs in Tunisia. It takes aim at enhancing reform pathways, reintegration and the implementation of international standards in the administration of justice as well as rehabilitation and remedy for people in conflict with the law through probation interventions during sentence enforcement, or post-release care and follow-up.

Thanks to the fruitful cooperation between the Penal Reform International, the Ministry of Justice and the Court of Appeal in Sousse, with the support of the Fight Against Drugs and the Rule of Law Office in the US Embassy in Tunisia, this handbook tries to give impetus to alternative sanctions and probation programs, and to improve community services. We hope it becomes a reference for effective policies and procedures that ensure the good functioning of justice systems and the rule of law together with the respect for human rights.

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## Introduction

Penal sanctions have passed through different stages in human history, in parallel with the growing tendency towards criminalization and the humanization of punishment. The history of human lawmaking and all heavenly messages bear witness for the tendency to ‘humanize’ sanctions as a consistent approach that emerged since the first written law in the Code of Hammurabi, through the message of Moses and the message of Jesus, and eventually the Mohammedan message that declared worldliness, and introduced the last holy law for all humanity. The same as it encourages jurisprudence in all disciplines, the Mohammedan message venerates knowledge and the discovery of laws of the universe, as a religion of compassion, true to God’s words “And We have not sent you, [O Muhammad], except as a mercy to the worlds” (The Prophets: 107), and for humanity at large as a religion of values and lessons as God says “Say, Indeed, my Lord has guided me to a straight path - a correct religion - the way of Abraham, inclining toward truth. And he was not among those who associated others with Allah” (The Cattle: 161).

Positive legislation has always sought to push forward this humanization tendency, in search for penal sanctions that end abuse and amputations of body. However, prison sentences were and still are prevailing punitive measures in modern positive laws. Perhaps it is worthwhile to recall here the hardships endured by Prophet Yusuf, peace be upon him, when he called his Lord that he would bear the horror of a prison sentence against the maliciousness and the scourge of vice. “ He said, My Lord, prison is more to my liking than that to which they invite me. And if You do not avert from me their plan, I might incline toward them and [thus] be of the ignorant,” (Yusuf 33), which is a prophetic statement on the severity and the cruelty of the prison sentence.

Accordingly, human thought has remained bewildered over the effectiveness of the prison sentence, and new arguments were raised by jurists from the criminology school, who relentlessly struggled against the downsides of this punitive measure. Imprisonment, though adopted by all positive criminal laws in the world, has never gained consensus as the best penalty, as was previously advocated by the jurist Pellegrino ROSSI in his book *Traité de droit Pénal* in 1829. As a result, victimology and social defense theories emerged as credible theses that stand against

the prison sentence and its disadvantages in certain criminal cases, and here the international community turned attention to non-custodial measures as effective alternatives to custody.

The international humanitarian law is continuously expanding, noting that the international community seeks always to cover new areas of interest, by crafting binding conventions and guiding rules as new legislative frameworks that enrich the international registers. The supremacy of international law leads national legislatures to harmonize domestic legal texts with these internationally recognized rules and conventions.

It is worth noting that the standards contained in this handbook are different in terms of legal value. While some treaties are binding to States, other texts, which do not bear the nature of a treaty, are consensual standards for members of the international community to be considered as guiding rules in law-making. Some rights enshrined in these standards have been recognized as rules of customary international law, while standards issued as ‘charter’ or ‘convention’ or ‘protocol’ or ‘covenant’ are treaties legally binding to the States Parties. On the other hand, there are human rights standards relating to legal aid and non-custodial measures that do not take the form of a treaty, and are usually called ‘rules’, ‘guidelines’ or principles like the Universal Declaration of Human Rights, the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners. Although these standards do not constitute a binding legal authority like treaties, they have a prominent power for legal argumentation, given that the issuance of each standard which was the culmination of the process of negotiation between governments, and that all of these standards have been adopted almost unanimously by the General Assembly of the United Nations. In view of the considerable international political value they have, these standards are considered a mandatory reference framework, and the judge has the right to take them as a source for sentencing, the same as lawyers are entitled to refer to their provisions, pursuant to customary international law.

Prisons in Tunisia are painfully terrible, due to the incessant overcrowding and lack of resources along with the rising public spending on every prisoner. 27 penitentiaries and 06 reformatories exist in Tunisia (reformatories amount to 21 % of the total of penitentiaries). Although 08 of these penitentiaries are sentence enforcement prisons, and 19 prisons are reserved for detention, overcrowding seems to undermine this classification.

Until December 2015, prisons in Tunisia accommodate more than 26,000 inmates, while its capacity does not exceed 16,000 inmates. It should be noted that the number of adjudications for arrest in 2015 amounted to 53.300, and the pre-trial detentions are at more than 55 % of the total number of prisoners, which necessitates the mobilization of nearly 80 % of the human and material resources, which were supposed to be directed to the rehabilitation programs. Also, the proportion of spending on each inmate ranges between 25 and 30 dinars per day, noting that recidivism rate reaches 45 %, and that the majority of the prison sentences are not long enough for an effective rehabilitation.

There is a deep conviction that the adoption of alternative sanctions for cases of non-grave offenses and first time offenders, and the activation of the restorative justice approach based on conciliation by mediation mechanisms will largely serve as good tools to avoid the defects of prison sentences, which seem unquestionably ineffective and lack the efficiency desired as deterrence mechanisms to reduce recidivism. Alternative measures seek to overcome the deficiencies of retributive approaches which could not go beyond its punitive function to touch upon the needs of the victim, and to eradicate the seeds of crime in the community.

As there is a necessity to harmonize the Tunisian domestic penal system with the relevant international standards, the Ministry of Justice has formed a working group that includes judges from the Court of Appeals of Sousse and the director of the civil prison of Messadine, in collaboration with the International Red Cross organization in accordance with the partnership contract with the ministry, after the resounding success of non-custodial alternatives in Kairouan Court of First Instance in 2008. A Regional forum for all the sentence enforcement judges was organized to agree upon legislative amendments to include alternative sanction under law n° 68-2009.

It was agreed to launch a pilot project under the supervision of the international expert Mr. Andre Vallotton. The onset was in 08<sup>th</sup> January 2010, which has already led to the creation of a probation office that provides literary, social and psychological accompaniment for the juvenile in conflict with the law or for accused or convicted individuals, who generally fulfil the conditions enlisted to benefit from psychological and social education, to induce their sense of guilt or regret, and to ensure their re-integration into the community, and help them build resilience in an open space. These measures take aim at reducing recidivism, and ensure the security and safety of the community, with the launch of this probation office on 23<sup>rd</sup> January 2013 based in the First Stance Court of Sousse 2.

The participatory approach thriving in our country since 2011, in an atmosphere of

freedom, dignity and social justice, has elevated the status of the lawyer to a merited position as a constitutionalized partner in the justice system. The lawyer is exclusively entrusted with the task of representing the parties, whatever their legal status, to defend, assist and advise them, and to carry out on their behalf all proceedings before the courts and before the judicial police all judicial, administrative, disciplinary and regulatory measures. He is also exclusively responsible for the drafting of contracts and conveyances of immovable property and contracts for the supply of real estate to the capital of commercial companies, organized by Decree-Law n° 2011-79 of 20 August 2011 on the organization of the profession of lawyer.

The core functions of a lawyer are counselling, defense and legal aid which contribute to the administration of the justice system in general. Thus, the lawyer should play a role in the implementation of non-custodial measures and in gaining an institutional recognition of probation as an emergent experience.

Legal aid is advice and procedures or interventions of judicial nature, performed by a specialized person who has the professional capacities to achieve the desired legal benefit for a customer, including the unveiling of truth and the administration of justice. Legal aid may cover all the lawyer functions.

The National Bar Association of Tunisia has played an indispensable role in promoting professional standards and ethics, and the protection of its members, not to ignore the legal services it provides to those in need. It has also made an important contribution to human rights and educational programs to ensure ethics and dignity for all lawyers. It takes aim at strengthening the profession of lawyer in protecting his client's rights, and upholding justice, human rights and the fundamental freedoms, as recognized nationally and internationally, and as enshrined in the guidelines.

Initiating non-custodial measures in the required manner, and providing legal aid services to individuals subject to detention or prison inmates, aside from the institutionalization of the probation office as a leading legal body, are in fact the outcome of serious endeavors taken by both the Penal Reform International and the working group of the pilot project of the Probation Office under the chairmanship of the public prosecutor at the Court of appeal of Sousse.

Therefore, this handbook aims in the first part to introduce the human rights standards relevant to legal aid and its applications in force under Tunisian law. In the second part, the handbook addresses the non-custodial measures as alternatives to preventive detention or other prison sentences pronounced against a certain category of defendants, according to what is legally available for such measures. The third part of this handbook will shed light on the different ways of leading probation as an emergent typical experience that seeks to provide support and rehabilitation services for defendants and convicts.

1

Legal Aid



# 1

## Legal Aid

Noting that legal aid is the advice and procedures or interventions of judicial nature, performed by a specialized person who has the professional capacities to achieve the desired legal benefit for a beneficiary, including the unveiling of truth and the administration of justice, the international standards adopted for legal aid provided by lawyer will give other dimensions to the applications of the law.

### A. International Standards for Legal Aid:

Article 5 of the Basic Principles on the Role of Lawyers (Havana, September 1990) provides that governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence, while article 6 stipulates that any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services. As for article 8, it is enshrined that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Therefore, legal aid is in fact a key element that enhances law enforcement and justice in any criminal legal system, the same as it lays foundation for fair trial, as contained in Article 11 of the Universal Declaration of Human Rights. Instituting an effective legal aid system in any country would undoubtedly reduce the number of suspects put to detention, and scale down prison overcrowding caused by some erroneous convictions or by inappropriate prison sentences. Legal aid covers also legal consciousness-raising endeavors among the public, including seminars, lectures and training workshops and educational programs, on the purpose to stand against criminality, unintentional crimes, and crimes based on ignorance of law.

It should be noted in this regard that the reference document in this area is the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems issued on 20<sup>th</sup> December 2012, as a useful framework to guide countries on the principles that should underlie the provisions of legal aid in the criminal justice system.

The term legal aid includes legal advice, assistance and representation for persons detained arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process.

These principles recommend that this right is guaranteed in the Constitution, and that State should provide human and financial resources, and that the police, prosecutors and judges assume their responsibility of providing legal aid at no cost for those without sufficient means or when the interests of justice so require. They also recommend that the victims should have equal access to legal aid, without prejudice to or inconsistency with the rights of the accused, and that assistance should be provided to witnesses in order to ensure their protection.

To ensure the effectiveness of legal aid system for those who are unable to afford the cost, States should enhance the knowledge of the people about their right to freely benefit from legal aid, and to protect the rights of defendants and witnesses in danger. They should also provide medical and mental care for the victims. Special measures should also be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

The international community has paid a special attention to legal aid for the juvenile through the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, November 1985). Rule 15-1 states that throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country, while Rule 20 states that each case shall from the outset be handled expeditiously, without any unnecessary delay, especially that, as time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

The Convention on the Rights of the Child ratified by Tunisia by Law No. 92-1992 dated 29th November 1991, states that children have the right to obtain legal aid promptly, and the right to challenge the measure taken against him/her before a court, and the right of the child to have his or her best interests taken as a primary consideration for every action or decision. As stipulated in UN Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council), the child is allowed to apply for legal aid when available.

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power (November 1989), as well as The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (20<sup>th</sup> December 2012), not to ignore the international Convention on the Rights of the Child have all stipulated that children should promptly have access to legal aid, health, social and educational services. These texts call on governments to provide support for child witnesses. Where the safety of a child witness may be at risk, appropriate measures should be taken to protect the child from such risk before, during and after the justice process, as provided for in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted on 17 November 2010.

It should be noted that the United Nations Standard Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, December 2010) state that newly arrived women prisoners should have access to legal advice and information about prison rules and regulations and the prison regime. Most women who face detention or imprisonment are in fact mothers and often primary carers of children. The sudden and often unexpected removal of the carer requires that mothers be provided with legal advice for alternative care arrangements to be made in order to protect the children.

According to some studies women prisoners are at heightened risk of self-harm and suicide, due to the harmful impact of isolation from the community on the mental well-being of women, which requires access to legal assistance and guidance, and offering possible legal solutions on alternative care.

As contained in the Convention on the Rights of Persons with Disabilities ratified by Tunisia under Law No. 4-2008, legal aid should be provided to people with disabilities, and to those who suffer from physical, mental or sensory impairments that prevent them from acting in a natural way and from taking part in the normal life of the community on an equal footing with others. Legal aid should focus on the rights

guaranteed by international conventions, such as the right to prison regulations written in Braille, tactile communication and bold characters, and to multimedia tools and sign language for the deaf. Legal aid should also guarantee access to concessional arrangements at the investigation stage, or at the trial stage or during the sentence enforcement, and to facilities that address the access requirements for people with disabilities.

## B. Legal Aid Applications:

The legislator has organized legal aid for low-income people through a legal aid mechanism, and a requisition mechanism for people subject to detention in criminal matters, or during trial as required by the justice system. These are all interventions that take the form of free legal aid, carried out by lawyers assigned for this purpose. The costs incurred by these interventions shall be borne by the State Treasury, noting that the voluntary free legal aid conducted under the supervision of the National Bar Association keeps inactivated.

### I. The Legal Aid Mechanism

After being sporadically enshrined in various texts that belong to the pre-independence era, legal aid has been organized under Law No. 52-2002 dated 03 June 2002, which actually revised by Law No. 27-2007 dated 07 May 2007. As enshrined here, legal aid should be upon request of the person concerned, and a specialized office called the Legal Aid Office decides on applications for legal aid. This office consists of the public prosecutor or his deputy, as chairperson, and a cassation lawyer appointed by the Minister of Justice, and a representative of the Ministry of Finance or his deputy appointed by a decree of the competent minister for a period of one year, as members. The Legal Aid Office shall hold its meetings at least once a month unless the number of requests or their causes require otherwise. The chairperson of the Legal Aid Office may decide on requests for emergency assistance outside the official dates for holding hearings, and can not wait for the periodic hearing of the Office.

#### 1. Scope of Coverage:

Law No. 52-2002 has granted legal aid in civil cases to any individual claimant or defendant at any stage of the proceedings. It may be awarded in criminal cases to the civil party, including natural and legal persons, like civil organizations, and the applicant for revision as well as in offenses punishable by imprisonment of at least three years, provided that the applicant for legal aid is not a recidivist.

The scope of coverage of legal aid includes many offenses, which requires that the court provides the necessary information about legal aid to the litigants, and that lawyers should fulfill their part by providing advice and guidance to those who have no income or that their annual income is limited and is not sufficient to cover the litigation and enforcement costs in offenses not covered by legal aid. Free legal aid should be provided for a foreigner where the Tunisian courts have jurisdiction to hear disputes of which he is a member, pursuant to a convention on judicial cooperation in legal aid concluded with the State of which he is a national. The legal aid may also be granted in the penal cases subject of an appeal in cassation, after it had been limited to litigation in misdemeanors punishable by less than three years only in primary and appellate phases, pursuant to Law n° 2007-27 dated 7 May 2007, amending and completing some provisions of law n° 2002-52 dated 3 June 2002.

Noting that nothing prevents the possibility of access to legal aid for the victim if the conditions are met, it has become possible for him, standing as civil party, to appoint a lawyer to assist him in front of the judicial police, and the costs be borne by the Legal Aid Office, the same as the defendant, as provided for under law n° 2016-5 dated 16 February 2016. Total or partial legal aid includes the costs normally borne by the parties, and in particular the registration fees and the fiscal stamp relating to the documents submitted by the applicant to establish his rights, late payments and fines incurred for non-payment of registration fees and stamp duty within the statutory time limits, the costs of expert appraisals and the various tasks ordered by the court, the costs of notarial deeds authorized to be issued, the costs of the judges' movements, the remuneration of the designated lawyer, the costs of summons and notifications, the costs of legal announcements and the costs of execution. Every decision issued at this level should define the reason behind coverage.

The provisions of Law No. 52-2002 suggest that the legislator has adopted a flexible method in terms of access to coverage for the most part in line with the existing international standards, by making the conditions on legal aid attainable, fast and efficient. The beneficiary is required to declare his genuine financial ability being insufficient to cover the litigation and enforcement costs, without affecting income needed for living expenses.

Among the favorable judicial practices at the Legal Aid Office is that the applicant is required to submit a destitution certificate provided by the Mayor of the region or by the municipality, or to simply declare his annual income to the customs service, which would enable the Legal Aid Office assess the applicant's genuine financial ability. The Legal Aid Office usually tries to smooth the path for the administrative procedures by focusing its intervention on documents that provide proof for the right to be protected, both for the defendant's presumption of innocence and to the victim's right to proceed civil action or to cassation appeal.

## 2. Terms of Coverage:

A decision is to be issued by the Legal Aid Office, confirming coverage for a beneficiary. This decision granting legal aid must include the designation of its scope, the nature of the costs it covers, and the legal assistant in charge of aid, after consent of the beneficiary, if necessary. Accordingly, the Regional Branch of the National Bar Association provides a list of counsel, to equally alternate the division of legal aid work among the lawyers.

The President of the Legal Aid Office may decide on requests for emergency assistance outside the official dates of the hearings of the Office, and who can not wait for the periodic hearings. He has the right to take a decision thereon as soon as the request is submitted to him. In such cases, members of the Office shall subsequently ratify the decisions of the president, or decide to withdraw the grant of legal aid if the legal conditions are not met. The registrar of the Legal Aid Office shall in all cases notify the applicant directly or by registered letter with acknowledgment of receipt of all decisions rendered within a period not exceeding five Days from the date of the decision, and a copy of these decisions shall be notified to the president of the court of competent jurisdiction, to the legal assistants, and to the general treasury. The registrar of the court hearing the dispute must state on the back of the file "the benefit of partial or total legal aid by the party concerned", to stand as a reference for follow-up and for the work of the lawyer in charge of the case or for repayment of fees.

Decisions rendered by the Legal Aid Office are not subject to appeal. The decision to reject the application must state the reasons on which it is based. If the rejection is motivated by the failure to produce proof of the serious-

ness of the application, the person concerned may renew it once he has received new evidence justifying his application. Lawyers, bailiffs and other designated judicial officers may not refuse to undertake the assignments for which they have been appointed unless there is a legally valid reason. In such a case the designated judicial officer may request to be relieved of the assignment entrusted to him within three days of the date of notification of the appointment.

These deadlines have considerable impacts, especially if linked to the appeal deadlines or to expiry deadlines for values or assets, which requires careful coordination between all stakeholders.

As far as the legislator is keen on facilitating the terms put on legal aid, every applicant for legal aid who has deliberately refrained from disclosing his actual annual income and any person who intentionally contributed to the concealment of the applicant's income shall be sentenced to imprisonment and a fine, without prejudice to the civil liability which he may incur with regard to the State.

### 3. Ways to Pay Lawyer's Fees:

A special scheme of fixing lawyers' fees has been regulated under Decree n° 2007-1812 dated 17 July 2007. The assigned lawyer for legal aid may, once the trial is over, present a request to the president of the court who delivered the judgment whereby he requires fixing the fees, with documents enclosed with the request for fixing the lawyer's fees, including a copy of the assignment decision, a copy of the presented conclusions during the trial, a copy of the delivered judgment of the trial he was assigned to, and the memorandum of the elements of the required fees. The president of the court who delivered the judgment fixes, after the opinion of the president of the Legal Aid Office, the lawyer's charges, taking into consideration in fixing the charges the court of the trial, the nature of the case, efforts exerted by the lawyer, the roll of lawyers to which the lawyer belongs.

The fixing of the lawyer's fees decision is not appealable, but it is subject to revision within an eight-day deadline after its receipt. To apply for the revision, a reasoned claim shall be presented to the tribunal president who delivered the judgment.

Upon the expiry of the revision deadline or after it is ruled on, the president of the court, taking into consideration the state contribution, orders the con-

cerned tax collector to pay the due amount as an advance cash.

The Lawyer has the right to receive all the fees after sentence enforcement, if legal fees form part of the sentence pronounced. He can then proceed in deductions after detente.

## **II. The Requisition Mechanism:**

Since the scope of legal aid is more comprehensive than just providing judicial assistance to the poor or needy, the interests of justice and fair trial standards require that the court ensures the presence of a lawyer in proceedings for offenses punishable by imprisonment for more than five years, as well as for the best interests of the child in the course of proceedings in the justice system. Consequently, the legislator has organized requisition measures by enacting provisions for the court to ensure the assignment of a lawyer to defend the defendant's rights, and guarantee the fairness of the trial, both when arrested by the judicial police, or during the trial phase in criminal matters.

### **1. Scope of Coverage:**

As Law No. 5-2015 requires, the judicial police officers must inform the defendant that he is entitled to be assisted by the lawyer, who shall be informed immediately by the judicial police officer of the date of the hearing of his or her client, which should be recorded in the minutes. In such cases, the lawyer is entitled to take cognizance of the proceedings beforehand.

Upon request made by the applicant for legal aid, the assignment of a lawyer by the judicial police should be for offenses punishable by imprisonment for more than five years. Therefore, the president of the Regional Branch of the National Bar Association shall be notified, on the purpose to assign a lawyer from the list of counsel available to alternate the division of legal aid work among the lawyers.

Article 77 of the Child Protection Code stipulates that if the acts attributed to the child are of a serious nature, the public prosecutor must automatically appoint a lawyer to assist the child, in case the child has not chosen one. Article 93 states that the investigating judge notifies the president of the Regional Branch of the National Bar Association to assign a lawyer to assist the child subject to criminal proceedings.

Article 69 of the Criminal Procedure Code requires that if the defendant is charged with a crime, and requests designating a defender for him, a counsel shall be assigned to him. The appointment shall be made by the president of the court, and usually, in coordination with the president of the Regional Branch of the National Bar Association, to assign from the counsel list available for requisition purposes, noting that the rules of criminal circles require that the court assigns a lawyer for a defendant who did not assign a lawyer on his own.

## 2. Ways to Pay Requisition Fees:

The governmental order n° 2015-44 dated 13 January 2015 contains provisions that regulate granting a requisition allowance for the benefit of trainee-lawyers officially designated in criminal cases. This allowance is however limited to trainee-lawyers, and does not cover all lawyers who are in fact eligible to requisition by stating that “a trainee lawyer appointed ex officio in a criminal case before the courts of law or military shall be granted a requisition allowance amounting to two hundred and fifty dinars for each case”. This makes the provisions of the governmental order n° 2015-44 inconsistent with the provisions of Article 37 of the Decree No. 2011-79 of 20 August 2011 on the organization of the legal profession, which stipulates that a lawyer appointed in the context of legal aid or assigned in criminal cases is entitled to compensation, the amount of which is fixed by decree, and collected from the State budget on presentation of the requisition decision. Therefore, the requisition allowance covers all lawyers, considering the supremacy of the decree over the governmental order which limits it to trainee-lawyers.

## III. The Role of the Regional Branch of the National Bar Association in Sousse in Activating Legal Aid:

It should be noted that a participatory approach is worthwhile in the administration of justice and the international commitment to the principles of Havana on the role of lawyers (1990), and with regard to the recommendations of the International Bar Association ([www.ibanet.org](http://www.ibanet.org)) which serves as an umbrella organization for all lawyers. All lawyers, law firms and bar associations should unquestionably show readiness to provide legal aid mainly to the poor, the disadvantaged and the marginalized on equal footing with other customers, and to

civic associations that devote a considerable part of their activity to community services. Therefore, the Regional Branch of the National Bar Association, aware of the value of this participatory approach, may be considered the most worthy and capable to offer this free legal aid, beside the other legal mechanisms in force and the judicial advice that might provided by the Office of the judicial advice in the Court of First Instance. This would serve as an alternative source of free legal aid for social groups who do not meet the legal requirements in force, or because of barriers that hinder access to justice.

## 1. Target groups

According to a report prepared by the Penal Reform International, the number of women in prison has reached until March in 2014 up to 656 prisoners, 58% of them serve a sentence of less than two years imprisonment, and according to the same statistics, the Messadine prison hosts 120 prisoners, 76% of them are awaiting trial, and also 6 babies are accompanying their mothers who spend 23 hours inside small cells, and are rarely allowed to go outdoors, even though law n° 2008-58 dated 4 August 2008, relating to the prisoner pregnant or breast feeding mother requires that the prisoners pregnant or breast feeding women are, during the pregnancy and breast feeding period, imprisoned in an appropriate place fitted up for the purpose, which offers the medical, psychological and social assistance to the mother and the child, and that the children accompanying their mothers during their imprisonment are accepted to stay till the age of one year, renewable once.

The fire which broke out in the Messadine prison in 2011 has caused harmful impact on the mental well-being of children and their mothers, which necessitates providing legal advice for alternative care arrangements to be made in order to protect the children, in accordance with the international standards. For this purpose, Penal Reform International is willing to work with its partners, to create a child-friendly detention environment in collaboration with civil society organizations.

The prison regulations allow one visit per week, and more than once a week only upon request. Women prisoners are not allowed to see their children of more than 13 years old, without prior permission, and can be subject to disciplinary measures including the suspension of visits. According to statistics, 41% of women prisoners have expressed their discontents with their

tarnished image in family and society, which impedes their reintegration after release. It is worth mentioning that there are no training workshops or rehabilitation programs in Messadine prison since the fire broke out at the prison in 2011.

Offering legal aid to women, especially those who bear the responsibility of taking care of their young children, requires accompaniment, advice on alternative care mechanisms following the sudden imprisonment, and to promote their rights to visit and to communicate with the external environment and their families with the regard to the international standards (Nelson Mandela Rules issued on 17 December 2105). It is also of paramount importance to repeal the denial of the visit as a disciplinary sanction in the prison regulations, and include the right to appeal the decision and the right to legal aid in case of disciplinary procedures.

Since the Child Protection Code came into force, the number of children put to Sidi El Hani reformatory has markedly decreased, noting that it has hosted more than 350 children, and now it accommodates nearly 60 children and a maximum of 80 children in the winter period. It also provides several vocational training workshops specialized in aluminum, agriculture, rabbits breeding, music. However, children seem to increasingly drop out of school, and are still in need of legal aid mechanisms to complete the proceedings in expeditious manner, and to give them the right to sentence review by the children's judge whenever they show positive behavior and acceptance of the rehabilitation and reintegration interventions. Children subject to criminal proceedings are in dire need of legal aid which would make them closer to the child-friendly environment.

In this regard, the Penal Reform International has initiated a pilot experience with the creation of a child-friendly juvenile police station in one of the Arab states, and has provided all the necessary human and material resources, with the support of its partners. It is a pioneering experience worth emulating in our country, to cover childhood spaces in courts, almost absent, to make children in conflict with law subject to child-specific procedures carried out by specialized officers, beyond the regular procedures performed by uniformed police officers.

The child victims and witnesses need legal aid, to protect their rights both as victims by ensuring effective measures and legal procedures for redress, and as witnesses to ensure their safety.

Foreigners and illegal immigrants are also in need of legal aid, including translation at the preliminary investigation, up to the trial phase, which requires that they benefit from free legal aid when necessary.

The inmates who suffer from chronic diseases and those with disabilities need to receive legal assistance, especially about the international standards that ensure their access to information and to the prison regulations supervised by skilled staff, and provide magazines, books and newspapers inside the prison.

## 2. Free Legal Aid Mechanisms:

Being part of the noble functions performed by the attorney, legal aid should be efficiently managed by the Regional Branch of the National Bar Association. It is a form of voluntary intervention made through a list of counsel, which equally alternates legal aid work among the lawyers, under effective safeguards that ensure the good performance of this role, without aberration or deviation. The Regional Branch, composed of civil society organizations under the auspices of the National Bar Association, is most capable to forge a partnership with the General Directorate of Prisons and Rehabilitation, to provide guarantees that help lawyers carry out their work in a good manner, like the creation of offices for legal aid in prisons, wherein lawyers could voluntarily alternate their legal aid interventions. This partnership will give the Regional Branch the right to follow up lawyers' work inside prisons, and will pave the way for more effective measures to be included in the prison regulations, as information on free access to legal aid by lawyers will be available for all inmates upon request, beside the counsel assigned for their individual cases. This will have a positive impact on all parties, and will certainly enhance the noble message of the attorney, under the supervision, control and guidance of the Regional Branch. The latter has the right to receive a periodic report about the form and nature of the legal aid provided, from its partners, including Messadine prison or Sidi El Hani reformatory, or the Probation Office, represented by the sentence enforcement judge if legal aid covers those subject to probation, when necessary.

# 2

## Non-custodial Measures



# 2

## Non-custodial Measures

From overcrowding



To open spaces



The purpose of non-custodial measures generally lies in finding effective alternatives to the detention of the defendants subject to criminal proceedings, and who could benefit from interim release during the trial, or who were sentenced to alternative sanctions that serve the same punitive goal of prison penalties. Non-custodial measures help avoiding the inadequacies of the traditional criminal proceedings, as they provide ample room for the court to implement flexible but efficacious sanctions that individualize cases, and look to the needs of the defendant, the community and the victim as commensurate with the crime committed. They allow eligible defendants to remain in the open space under follow-up measures and surveillance, to continue their work or study, which would preserve for sure family life under the guarantees of non-custodial measures.

In what follows, we will shed light on the international standards of non-custodial measures, and later on its judicial applications under Tunisian law, and the prospects for its activation.

## A. Non-custodial Measures in International Conventions

The lawyer, as an important partner in the administration of justice, sees the harmonization of domestic legislation with non-custodial measures as a priority, pursuant to the recommendations set forth by standards developed in some comparative experiences. Accordingly, the source of inspiration for any nascent experience in non-custodial measures should be the Tokyo Rules issued on 14<sup>th</sup> December 1990, which contains a set of basic principles to promote the use of non-custodial measures on the one hand, and the minimum guarantees for individuals subject to sanctions alternative to imprisonment on the other.

These rules urge Member States to take endeavours to strike a balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention, taking into account the protection of human rights, the requirements of social justice and the rehabilitation needs of the offender. Article 2-4 for example requires that the development of new non-custodial measures should be encouraged and closely monitored, and their use systematically evaluated. This means every decision taken, at any stage of the implementation of criminal justice, by the competent authority to subject a suspect, offender or convicted of a crime to certain conditions and obligations that do not include imprisonment, should be uncomplicated, easy and not burdensome in accordance with the principle of minimum intervention.

These rules contain the legal safeguards that shall be available to offenders subject to non-custodial measures, so that they can appeal in matters affecting their rights in the implementation of measures. The offenders should be entitled to make requests and complaints, and their dignity should be protected at all times, the same as their rights and their families' rights to privacy.

## I. Pre-trial stage

The Tokyo Rules advocate for the public prosecution dealing with criminal cases to be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. They also insist that pre-trial detention should be used as a means of last resort in criminal proceedings, and should not be lengthy, with due regard for the investigation of the alleged offense and for the protection of society and the victim. Accordingly, the offender should have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

The international community has taken as a priority the activation of restorative justice in criminal matters, by initiating prompt measures to stay proceedings, noting that the community shows inclination towards reconciliation with offenders in simple offenses.

The basic principles on the use of restorative justice programmes in criminal matters, which were adopted by the Economic and Social Council Resolution 2002/12, dated 24<sup>th</sup> July 2002 emphasizes this dimension, based on the belief that restorative justice is a thriving approach that aims at protecting human dignity and equality of all people, and promoting understanding, solidarity and social harmony. It works towards providing compensation for victims, and establishing reconciliation and safety, and encourages offenders to recognize the reasons for their unlawful behaviour and its consequences, and assume responsibility, the same as it enhances trust in the justice system.

Restorative justice plays an indispensable role in boosting the understanding of civil society of the reasons that lie behind the emergence of some crimes. It should be used only with the free and voluntary consent of the parties, who should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily by the parties and contain only reasonable and proportionate obligations. In addition, participation in a restorative process

should not be used as evidence of admission of guilt in subsequent legal proceedings, and discussions in restorative processes should be confidential and should not be disclosed subsequently, except with the agreement of the parties. Judicial discharges based on agreements arising out of restorative justice programs should have the same status as judicial decisions or judgments and should preclude prosecution in respect of the same facts (non bis in idem). Facilitators should show good understanding of local cultures and communities and, and should receive initial training before taking up facilitation duties and should also receive in-service training.

## II. Trial and sentencing stage

It becomes possible, at the trial and sentencing stage, to implement non-custodial measures, in case the mediation intervention fails under restorative justice. For this reason, the Tokyo Rules confirm that, if the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offenses. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

A range of non-custodial measures enshrined in the Tokyo Rules are at its disposal of the judicial authority, to take them into consideration in making its decision on the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate. Sentencing authorities may dispose of cases in ways that include:

- Verbal sanctions, such as admonition, reprimand and warning;
- Conditional discharge;
- Status penalties;
- Economic sanctions and monetary penalties, such as fines and day-fines;
- Confiscation or an expropriation order;
- Restitution to the victim or a compensation order;
- Suspended or deferred sentence;
- Probation and judicial supervision;
- A community service order;

- Referral to an attendance centre;
- House arrest;
- Any other mode of non-institutional treatment;

### III. Post-sentencing stage

It should be noted that the decision on post-sentencing dispositions, parole, furlough and half-way houses or remission shall be subject to review by a judicial or other competent independent authority, upon request by the offender, thus making the implementation phase subject to considerations that change based on the purpose of the sanction and the offender's susceptibility.

The Tokyo Rules recommend, *inter alia*, the non-custodial measure is susceptible to suspension at early stage if the offender shows commitment to the restorative interventions. Yet, non-custodial measures hinge on the stakeholders' willingness to strike a balance between the needs of the community, the offender and the victim, and to provide oral and written explanations of the conditions required for the measure, adaptable based on the degree of commitment of the offender.

Special non-custodial measures for children have been adopted in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which were replicated in the United Nations Convention on the Rights of the Child ratified since 1991, and later in the Child Protection Code issued in 1995. A large variety of disposition measures endorsed by Beijing Rules including:

- Care, guidance and supervision orders;
- Probation;
- Community service orders;
- Intermediate treatment and other treatment orders;
- Orders to participate in group counselling and similar activities;
- Orders concerning foster care, living communities or other educational settings.

Equally important, no juvenile should be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

It should be noted that this approach requires taking into account gender-specific measures to achieve criminal justice for women, as contained in United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) issued in December 2010. The provisions of the Tokyo Rules (57 to 66) guide the development and implementation of appropriate responses to women offenders. They stipulate that gender-specific options for diversionary measures and pre-trial and sentencing alternatives should be developed within Member States' legal systems, and that women offenders should not be separated from their families and communities without due consideration being given to their backgrounds and family ties.

Rule 59 confirms that, generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, should be used to protect women who need such protection. Correspondingly, temporary measures involving custody to protect a woman should only be applied when necessary and expressly requested by the woman concerned. Unlike what is applied for men, when sentencing women offenders, courts should have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds. And as enshrined in rule 64, non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate.

## B. The Judicial Application of Non-custodial Measures

The Criminal Code and the Code of Criminal Procedure have included many non-custodial measures that cover prosecution, the court of competent jurisdiction and the execution of the prison sentence, on the way to include a range of measures proposed to the Commission on the revision of the Criminal Code, like the daily offense or electronic surveillance bracelet or others. However, the difficulties that face the effectuation of many of the measures already in law, have made the provisions enshrined at this level mere ink on paper.

The efforts geared to overcome the practical difficulties faced by the application of these measures would certainly raise awareness of the various stakeholders in the penal system. This chapter takes aim at spotlighting the roles of the public prosecutor, and of the judiciary in non-custodial measures, and look finally at the implementation phase of prison penalty.

## **I. The role of the prosecutor in the non-custodial measures**

Law has authorized the public prosecutor to take several non-custodial measures for good reasons to keep the defendant in release, and that the presence of the lawyer with his client at the judicial police entitles him to be present with him before the prosecutor, whenever the offense perpetrated is subject to conciliation, which would undoubtedly smooth the path for good decision-making, and to revive the criminal conciliation institution which has been inactivated for more than ten years.

### **1. The Presence of the Lawyer at the Investigative Proceedings:**

Pursuant to the provisions under law No. 5-2015, the presence of the lawyer before the preliminary investigation judge can be considered a quantum leap in providing guarantees of a fair trial proceedings from the outset of investigation. Thus, the lawyer became an active participant in ensuring the proper functioning of the initial hearings, which is truly an important transition in the penal system thanks to the joint efforts for the application of this law. Notwithstanding the difficulties and imperfections it contains, it has led to a marked reduction in the number of preventive detention orders, by repealing all unjustified decisions or those built on the discretion of the judicial police. The presence of the lawyer has an impact on ensuring the proper decision-making relating to preventive detention, which now requires written permission and exclusively within the jurisdiction of the prosecutor in all cases.

The legal basis for the mandate of the prosecutor stipulates that he should “diligently decide on the complaints and denunciations which he receives or which are submitted to him,” with all discretion to choose the appropriate pursuit instrument, based on what is required by the circumstances of each incident separately. This ‘real reconciliation’ carried out during preliminary investigation is usually open to every good advice provided by mediators to settle the dispute, as a successful intervention that leads to immediate stay of proceedings. The prosecutor and judicial police spare no effort to solve outstanding problems, usually with the help of the lawyer within the scope of legal advice and assistance if requested by his customer.

The prosecutor, in addition to being entrusted with the power of non-permission for preventive detention unless it is an exceptional measure in cases like the seriousness of the crime, has the right to take some non-custodial mea-

sures to ensure the presence of the defendant if allowed interim release after finishing the legal preventive detention term. A law issued on 14<sup>th</sup> May 1975, and revised in 2008, provides for some measures like a fifteen-day travel ban, if it would affect the conduct of the case.

Within the scope of exercise of his functions in relation to the Judicial Police, the prosecutor is also entitled to authorize the presentation of the defendant after investigation, as a flexible procedural measure to avoid renewal of preventive detention whenever required to appear before the prosecutor. This is done to either give the defendant a summons for a dated session to ensure his appearance, or to initiate mediation procedures under the restorative justice approach, including the conduct of a social research if accused of theft, or to refer the case directly to the court to verify whether or not the defendant is to be detained. The prosecutor opts for these measures in certain cases to avoid preventive detention, as a form of procedural flexibility, and to boost the role of the lawyer at the judicial police in case of any action taken against the defendant, and before the prosecutor if the case is subject to conciliation interventions.

## **2. The Public Prosecutor and Mediation**

The legislator has organized mediation in criminal law within the provisions of the Code of Criminal Procedure under Article 335bis which stipulates that “conciliation by mediation in criminal matters tends to guarantee compensation for the damage caused to the victim of the acts attributed to the defendant and to restore the defendant's sense of responsibility and ensure his reintegration into social life”. This law has accordingly made the prosecutor as a restorative actor who may propose to the parties a conciliation by mediation in criminal matters, before the initiation of legal proceedings, either on his own initiative or upon request of the defendant or the victim or upon request of the lawyer of one of them, in all infractions and misdemeanours.

## The Lawyer's Handbook on Legal Aid, Non-custodial Measures and Probation Offenses Eligible for Mediation

All Infractions				
All the following misdemeanours				
247 Gossiping	226 bis. prejudice of good morals or commit- ting debauchery	225 Inflicting bodily harm to others unintentionally	220 Participation in a battle	218 Severe vio- lence
280 the appropriation of a movable thing found fortuitously	277- Fraudulent dis- position of an undivided property before partition	256 entering the private property of others with- out their consent	255 Trouble after execution	248 false allega- tion
297 Breach of trust	296 Pretending to know the place of the stolen against a sum of money	293 Continuous re- covery of an ex- tinguished debt	286 Destruction, removal or displace- ment of real estate signs	282 Inability to pay after be- ing served with drinks or food
Law N° 22-1962 The non-presenta- tion of a child	264 Theft (for non-re- cidivist, with social investi- gation)	309 involuntary fire	304 damage to the property of others	298 Illegitimate abstention from per- forming a contract

The lawyer's role is of paramount importance in activating the conciliation by mediation in criminal matters under the supervision of the prosecutor. The judicial applications proved that his contribution is inextricably vital to reach a conciliation agreement between the parties to the conflict, with regard to his close relationship with his client, both as victim and defendant, which necessarily facilitates the mediation work for both parties, and helps them reach a consensus easily. The defendant is obliged to attend the hearing personally. He may be assisted by a lawyer, to discuss the facts and receive suggestions on how to reach a conciliation, after clarifying the legal consequences that may arise from the execution of a conciliation. The victim is not obliged to attend the hearing personally. He may be represented by a lawyer, under a special power of attorney, unless his presence is necessary for the mediation, to listen to his concerns, needs and reaction to the defendant's apology. Thus, the assigned lawyers can negotiate and exchange reports, and an execution

deadline shall be fixed, of a period not exceeding six months from the date of signature, should be fixed for the parties (the period may be extended to three months once and by reasoned decision). The minutes must be signed by the parties, and in case the defendant refrains from providing evidence for the execution of the terms of agreement, then the prosecutor diligently determines the subsequent criminal justice proceedings against the defendant. If the plaintiff refrains from executing the terms of conciliation, which included actions to be performed, the public proceedings against the defendant, who fulfilled his part of the agreement, shall be stayed.

Therefore, lawyers should spare no effort to succeed the mediation endeavors, with regard to the provisions of the decision of the Minister of Justice dated April 22, 2016 and published in the Official Gazette N° 35-2016, which limits the number of public institutions served by every lawyer, with a reference table that provides guidelines for the estimation of lawyer's fees, including fees for mediation work. This decision takes into account remuneration for the lawyer in case he provides aid to clients in a mediation process. The Regional Branch of the National Bar Association has included fees for the mediation mechanism in the table, beside the regular fees the lawyer receives in case he is assigned counselling for a defendant in criminal matters, which is a clear recognition of the lawyer's efforts in both processes.

### **3. Conciliation by Mediation in the Juvenile Court:**

Article 113 of the Child Protection Code defines mediation as a mechanism aimed at reaching a conciliation between the offending child, or his legal representative, with the victim, his representative or his successors in title. It aims to stop the effects of criminal prosecution, trial and execution. Mediation may be carried out at any time from the date on which the crime was committed until the date of enforcement of the sentence against the child, be it a penal sentence or a preventive measure. The request for mediation is presented to the Child Protection Officer either by the child or by his or her legal representative, noting that the role of the lawyer is very crucial throughout the mediation process.

### **4. Conciliation with Public Administrations:**

The legislature gives many public administrations the right to initiate public proceedings, and the defendant in criminal cases the right to seek a conciliation agreement with these administrations, including Customs Administration, Forestry and the Environment, and the Department of Economic Monitoring.

A good example of non-custodial measures undertaken is when public administrations decide to stay proceedings through a conciliation agreement with offenders who are subject to imprisonment for the acts they committed. And here again the lawyer fulfils an important part through his endeavors to reach a conciliation accord with the administration, to avoid putting the offender to detention or even after.

The lawyer should have deep insight into the requests raised by the administration, which would help him find common grounds for the parties to the conflict, especially if the offender is subject to imprisonment and financial penalties. These endeavours come even before the initiation of non-custodial measures in front of the court of competent jurisdiction.

## **II. Non-custodial Measures in the Court of Competent Jurisdiction:**

Once the prosecutor makes a decision on referral, the court of competent jurisdiction will have all judicial powers to deal with the penal case, by either referring the case to the investigating judge, as an independent judicial body, or to the penal judge, with its composition, and in all cases the activation of non-custodial measures becomes possible.

### **1. Interim Release:**

The legislator has enshrined, within the provisions of Article 85 of the the Code of Criminal Procedure, obligatory release ordered by the investigating judge to the accused who has a fixed residence in Tunisia and who has not previously been sentenced to a penalty of more than six months imprisonment, when the maximum penalty provided for by the law does not exceed two years imprisonment, with the exception of the offenses of involuntary manslaughter or threatening national security. There is still an ample scope for the interim release with or without surety which covers all cases referred to the investigating judge, or the indictment chamber or the competent criminal courts at its different degrees. The release with surety contained in Article 86 is rarely in force, although the legislator has enshrined all conditions for surety under Article 89 of the the Code of Criminal Procedure; this surety entails either the deposit in the treasury of a sum in cash or certified checks or securities, or a person, with sufficient solvency, who takes responsibility for the defendant's appearing in court during all investigation process, or for

paying to the treasury an amount determined by the judge in case of failing to ensure the defendant's appearing in court, especially if the advance deposits made by the civil party will be a surety for release, to strike protect the right of the victim against the interim release.

The interim release without surety has always been in force in courts, although measures necessary in this case are not always respected, that law clearly stipulates that "interim release may be ordered only with the requirement that the defendant undertakes to respect the measures imposed in whole or in part by the investigating judge". These five measures were difficult to be activated in the past, for lack of an independent institution that ensures the follow-up and provides objective reports on the extent to which the released defendant respects the measures imposed. The Probation Office comes as a mechanism that ensures follow-up and reporting of these measures through specialized supervisors and justice agents who have enough professionalism, with facilities that help succeeding their missions. The probation office provides guarantees for the respect of follow-up in compliance with measures defined by the investigating judge, which will certainly make interim release, as demanded by the lawyer, a successful non-custodial measure, and will respond to the legal requirements, not to ignore its utility in verifying whether or not criminality is ingrained in the defendant by individualizing cases.

## **2. Community Service Orders (CSO):**

The Community Service Order was enshrined in Article 15 since 2002, and was then expanded under the law 68-2009 issued on 12<sup>th</sup> August 2009. In case the court pronounces imprisonment for a period not exceeding one year, this sentence can be replaced by unpaid community service order, for a period not exceeding six hundred hours on the basis of two hours for each day in jail, and its ordered for all contraventions and many misdemeanours.

**The Lawyer's Handbook on Legal Aid, Non-custodial Measures and Probation**  
**A table of the offenses covered by the community service order**

**1. All contraventions**

**2. misdemeanors punishable by imprisonment not exceeding one year**

Gossiping	Participation in a battle	Calumny	Severe violence
Trouble after execution	dispossession by force of a property belonging to others.	appropriation of a movable thing found fortuitously	Inflicting bodily harm to others unintentionally
uttering slogans contrary to morality	defamation against public or private sports institutions	involuntary fire	Mendicity
Theft	Fraudulent disposition of an undivided property before partition	interfering registered buildings	Invading fields
committing debauchery	The harassment of others by prejudice to good morals	prejudice of good morals	damage to the property of others
Illegitimate abstention from performing a contract	false allegation	Destruction, removal or displacement of real estate signs	The non-presentation of a child
refusal to perform military service	the concealment of assets of a debtor	Issuing bad checks	Abusing a child under the defendant's authority
	Inability to pay after being served with drinks or food	repeated and intentional intoxication	Violating the freedom of publicity
All offenses violating the following laws			
All offenses arising from industrial accidents and occupational diseases	All offenses arising from Social Security Law	offenses arising from driving incidents (except for the offense of driving while intoxicated or when connected to the hit and run offense).	All offense arising from labor law
All environmental offenses	All offenses arising from consumer protection law	All offenses arising from competition and pricing law	offenses relating to town planning

Due to many constraints facing its application, the community service order keeps inactivated, notwithstanding the wide range of contraventions and misdemeanours it covers, and the higher rates of offenses treated as misdemeanours by courts, which usually amount to 70 %.

The legislator, within the last revision conducted in 2009, has included more flexibility to the community service order, while maintaining the requirement for eligible convicts to be non-recidivist, leading to the implementation of Article 47 of the Penal Code, which stipulates that it is necessary to verify that the previous sentence was fully served, and not just a reoffending subject to lawsuit.

The second condition, which requires that “the court, before the pronouncement of the sentence, must inform the accused” has been repealed, and replaced by “the court must inform the accused of his right to refuse community service and records his answer”.

The defendant, whenever he appears before the judge, has the right to submit, through his lawyer, a report that includes a request for the implementation of the community service order, and this report will serve as the consent of the defendant to accept the sanction, and there is no need for further confirmation of the court by “informing him of his right to refuse”, especially that his counsel has declared his position through his report to the court at his appearance. Accordingly, it has become possible that the court can pronounce the sentence in the presence of the defendant, which requires attention to the sentence enforcement procedures, advice and legal awareness, especially from the secretariat of the court, to avoid the elapsed-terms of punishments, which might render alternative sanction inoperable.

Therefore, to simplify the implementation procedures, the court secretariat, and after verifying the identity of the defendant, gives him or his counsel, a certificate of conviction which contains all the information and sentence enforcement deadlines for the probation office, which would certainly ensure more respect for time limits, in case the court would want to proceed with the prison sentence pronounced before.

### 3. The Criminal Compensation Sanction:

The basic principles on the use of restorative justice programs in criminal matters have formed an important reference framework for establishing criminal compensation in the criminal justice system, which was also based on the International Standards for Victims of Crime and Abuse of Power (General Assembly resolution 29/11/1985). This required that the governments should review practices and regulations, to make the restitution option available to sentencing in criminal matters as well as other criminal sanctions. Criminal compensation was first enshrined under law No. 68-2009 in August 12, 2009 in Article 15 quater of the Penal Code. It aims to replace the prison sentence not exceeding six months by a financial compensation determined by the court. For the pronouncement of a criminal compensation, it is required that the defendant is present in court, and was not convicted before by a criminal compensation or imprisonment. The execution of criminal compensation should be carried out in a period not exceeding three months from the date of expiry of the appeal period, or from the date of the final verdict. A sum of money (between 20 and 5000 dinars) should be repaid to victims as a compensation for the damage caused directly by the offense, as an alternative to the prison sentence.

#### **The Lawyer's Handbook on Legal Aid, Non-custodial Measures and Probation**

Criminal compensation can be ordered for **all offenses** punishable by imprisonment Or for **all misdemeanours** punishable by imprisonment not exceeding six months Except those explicitly prohibited as on the following table:

Offenses not covered by criminal compensation:

<b>Penal code</b>			
90 Any judge who did not recuse himself after receiving objects, values or amounts of money	87 bis. Corruption of public official to grant to others an unfair advantage	87 Corruption intermediary with public official	85 Corruption of public official
104 Any public official who abuses a defendant or a witness to unjustly acquire immovable property	103 The use of violence by public officials against a defendant or a witness	101 The use of violence by public officials	91 Corruption of public official

128 involving public officials or similar, through the press or advertising, without establishing the truth.	127 Violence against a public official	126/1 Outrage against a magistrate at the hearing	125 Violence against public officers through words, gestures or threats
212 Refrain from providing for the maintenance of the minor	209 Participating in violent brawl resulting in murder	206 Support for suicide	143 Failure to comply with a legal requisition
224/1 Abusing a child	219/1 violence inflicted upon the body of another person, which results in disfigurement	215/1 Maliciously administer to another person a destructive thing to become mentally incapacitated or physically helpless	214 Provide abortion of a pregnant woman
240 bis. Hide or evade search for a minor	238 kidnapping or diverting or moving a minor without fraud or violence	228 bis Unforced sexual abuse of young child under eighteen years of age	227/bis./2 Sexual intercourse with a female aged between fifteen and twenty, with her consent
284 Confiscating other's money or forging a signature	244 Forcing someone to give false testimony	243 Perjury in a criminal or civil case	241 Deliberately hiding the truth in the interest of the accused
<b>traffic code</b>			
90 unintentional vehicular manslaughter	89 Unintentional injury		
<b>commercial code</b>			
411/1 knowingly modifying the signature in order to make it impossible for the drawee to make the payment, or refusal to return check forms	411 issuing bad checks		

Among the practical difficulties posed for the criminal compensation is in fact the confusion that may happen between the right of plaintiff to commence a civil action and the compensation ordered by the court in the form of sanction. This is a mere theoretical confusion, since the court will take into account the value of civil compensation when ordering this sanction which is also a financial compensation essentially subject to the standards for estimating the penalty and not to the civil compensation standards. The compensation sanction should not annul the right of the plaintiff to discuss the material and moral damage which may be compensated

by more than five thousand dinars, or the right to proceed a civil action until the exercise of his appeals.

There are also various difficulties regarding how to make the payment to the plaintiff, the procedural complications at the rejection, the making of a compensation offer, the authorization of payment, the deposit in the treasury, evidence for payment, and respect of deadlines for appearance before the prosecutor. These difficulties are in fact obstacles that face the convict subject to this alternative sanction, which is supposed to be a flexible effective non-custodial measure. For this reason, many courts, like Kairouan Court of First Instance, have sought to overcome these difficulties through the certificate of conviction itself.

### A Sample of a certificate of conviction ordering a criminal compensation

The First Instance Court has ruled in the presence of the defendant its following sentence :

To replace six months (or less) of imprisonment for .....

by a criminal compensation of 5 thousand dinars (or less, based on the seriousness of the crime, affordability, and the civil compensation) to be deposited in the treasury as a redress for the plaintiff.

The convict should not three months from the date of expiry of the appeal period (or less, based on the seriousness of the crime and the speed of execution) to execute to this service, or he shall repay the compensation with insurance.

The legal aid provided by the lawyer in handing over a copy of the certificate of conviction, or of any document that contains the penal sentence provided by the secretariat of the court, to the convict, will help overcoming all those difficulties. It will lead to prompt restitution for the victim in deadlines, the same as it will help the convict avoid detention in case of non-payment, and its subsequent procedural complications, as authorized by the court, especially the legislator has required that the community service order and criminal compensation cannot be registered in bulletin no 3 of the criminal record, to motivate positive interaction with alternative sanctions and encourage its acceptance.

# 3

## The Role of the Lawyer in Probation



# 3

## The Role of the Lawyer in Probation

Most of the comparative experiences agree that the concept of probation entails a range of activities and psychological and social interventions, directed both to children in conflict with the law or to defendants or convicts in general, which induce their sense of guilt or regret, and ensure their reintegration into the community, and help them build resilience in an open space. These activities take aim at reducing recidivism, and ensure the security and safety of the community. In the following chapters, we will shed light on the phases of the launch of the probation office, and the key challenges and prospects for this project.

### A. The Inception of the Probation Office:

The creation of this mechanism has started first with a pilot project that laid foundation for an effective probation office.

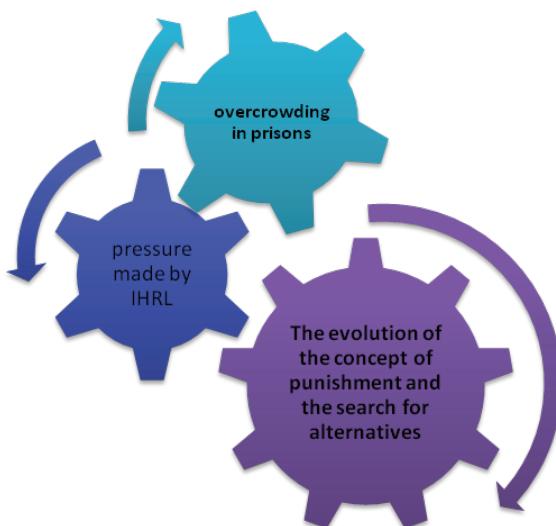
#### I. The stage of establishing a pilot project:

Though enshrined in law, especially the community service order since the issuance of law N° 89-1999 dated 02<sup>th</sup> August 1999, and the conciliation by mediation in law N° 93-2002, it should be noted that alternative sanctions have remained de facto inactivated, despite the many serious attempts to avoid the legal and practical difficulties faced by the criminal courts, and stood as obstacles to the defense requests.

However, the Court of First Instance in Kairouan has tried since 2008 to meet these challenges, and capitalized an important experience in the implementation of non-custodial measures. The success of Kairouan's experience was a source of inspiration for all the justice system, which led to the organization of a regional meeting under the supervision of the Ministry of Justice, and was attended by most of the sentence enforcement judges. It was an opportunity to flag up the difficulties posed, and propose alternatives and solutions. In the following year, the 68-2009 law was issued to overcome the practical obstacles in the community service order, by repealing some requirements like "expressing remorse at the trial session" or "informing the defendant of the right to refuse", and to be "present before the sentence pronouncement". These legal revisions enhance

procedural flexibility, and boost the role of the lawyer, the same as they unburden the courts, by expanding the scope of implementing community service to cover other offenses, and by enshrining the new criminal compensation as an alternative non-custodial measure, not to ignore the expansion of the scope of implementing the conciliation by mediation mechanism.

Pursuant to the partnership between the Ministry of Justice and the International Red Cross since 2005, an agreement was concluded between the two parties within the scope of their common objectives to launch a pilot project and a working group which consists of judges from the district of the Court of Appeal of Sousse (Sousse - Kairouan) and the Director of Civil Prison in Messadine. They took aim at establishing a pilot project under the supervision of the international expert Mr. André Vallotton. This project aims to apply alternative sanctions, and initiate conciliation by mediation in criminal matters, and interim release which all seek to effectuate new mechanisms to reform the penal system and develop new punitive methods, in parallel with the second project for a pilot rehabilitative prison in Mahdia. The pilot project in Sousse is on track since 08<sup>th</sup> February 2010, seeking to develop practical mechanisms to smooth the implementation of community service orders and non-custodial measures in line with the legal texts, and to use the convenient ways to reduce overcrowding in prisons, the escalating recidivism and the growing public spending, in accordance with international principles and guidelines.



Various workshops have been organized on a regular basis by the working group, on their own initiative, or under the supervision of the Ministry of Justice, or with the help of experts from the International Committee of the Red Cross (ICRC) over two years to the end of the year 2012. A study-visit of the Working Group to Switzerland in order to get insight into the Swiss justice system and methods of implementation of alternative sanctions, especially the community service order. This has given an impetus to a domesticated probation structure, rooted in the Tunisian cultural and societal environment, and to all stakeholders who vowed to succeed this experience by developing probation based on the existing tools, on the purpose to carry out all necessary legislative reforms to launch a project that is legally full-fledge. The outcome of all these efforts was the creation of an institution that ensures the proper application of alternative sanctions, and serves as an executive body to the sentence enforcement judge and probation, including follow-up, advice, assistance, rehabilitation and reintegration for defendants subject to this procedure in an open space. Training workshops were organized for the benefit of officials of the General Directorate of Prisons and Rehabilitation by Mr. Jacque MONNEY, President of the Fondation Vaudoise de Probation, in collaboration with the International Committee of the Red Cross, after a visit to districts of Fribourg, Canton of Vaud and Lausanne, under continuous guidance and supervision of the public prosecutor, Mr. Abdelhamid Aabada, as head of the working group.

The probation office was created for the first time in the First Instance Court of Sousse 2, on Wednesday, January 23, 2013.

## **II. Stage of Exercise and Judicial Application of Probation:**

### **1. The Outset of the Probation Office**

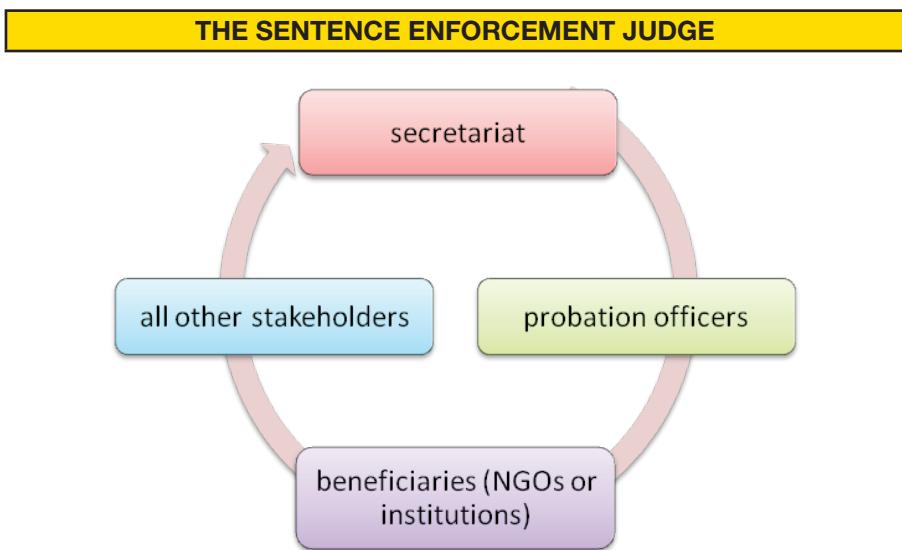
With the support of Penal Reform International and the Program for Judicial Reform Support, funded by the European Union, the second phase has witnessed the launch of a series of scientific and training programs. Initiated by the Penal Reform International and its partners, training workshops have been staged for probation officers, prison agents, judges and lawyers, who constitute the pillars of the criminal justice system. Support was also offered to civil society organizations through capacity-building programs. The probation office has thus become a nucleus for activities carried out in cooperation with a network of stakeholders who all strive to improve its functions, and meet the challenges that hamper its mission.

What has been achieved so far by this office is the fruit of the continuous support of the Penal Reform International and its partners, and the active contribution of all parties involved, who spare no effort to meet the goals set for this probation mechanism.

For this purpose, a joint committee has been created on 16 April 2016, which constitutes of judges from the working group of the pilot project, under the supervision of the prosecutor of the Court of Appeal of Sousse, and representatives of civil society organizations. This committee convenes periodically to facilitate work, and promote cooperation and partnership with the probation office, not to ignore the important role played by the lawyer at this level.

The Probation office consists of the sentence enforcement judge who supervises the work of four probation officers brought from the General Directorate of Prisons and the rehabilitation, and a secretariat.

#### Organizational Chart of the Probation Office



The Regional Branch of the National Bar Association is deeply convinced that the probation office will be a vanguardist institution in the promotion of non-custodial measures, and that this pilot project raises much hope in a promising probation experience, after revision of the Code of Criminal Procedure, especially in the reintegration of defendants in social life, and avoid

imprisonment which certainly generates recidivism after abrupt release to the open space, without any rehabilitation phase. All these tools would serve the goals set for probation, among which the reduction of recidivism, rehabilitation and reintegration, particularly for first-time offenders.

## 2. The Judicial Applications of the Probation Office:

### ■ Defendants Subject to Community Service Order:

The Probation Office receives the convict who meets the sentence enforcement judge for an initial conversation. The convict then provides information about the crime he perpetrated, and his qualifications and background. Later, he goes through a medical examination to eventually identify the kind of work he is supposed to do, based on his qualifications and vocational background, or with regard to the community value he violated. For instance, a defendant who damages any public property, like a hospital or a railroad or an educational institution, shall provide services that redress this damage, as an expression of remorse for the offense committed, and a revival of his sense of responsibility towards the community. The convict should be informed of his right to adequate safeguards and medical insurance against accidents at work, and his right to stop work in cases of occupational diseases, and how to resume working after legitimate excuses.

After agreement with the beneficiary (NGO or institution) on the calendar of work, the probation officers start performing their part by providing advice and assistance for the other agents who are supposed to know everything about the convict, and his social and psychological conditions. Convicts should carry out the community services ordered in uniform, and with the rest of the workers, without any form of discrimination, so as not to be singled out or exploited.

The sentence enforcement judge writes a final report that confirms the performance of the sanction, and transmits it to the prosecutor who authorizes the stay of proceedings. The person concerned has the right to receive a document that certifies the execution of the punishment which will be omitted from his criminal record, either automatically by virtue of law, or otherwise by correspondence from the prosecutor to the forensic identification service.

### ■ Defendants Subject to Parole:

As an important non-custodial sanction, parole, when ordered by the sentence enforcement judge, is usually combined with a community service ordered for a public or private institution for the remaining duration of the prison sentence (Article 357, CCP).

Therefore, and based on the nature of every individual case, the prisoner, who spent half or two-thirds of the eight-month period, has the right to benefit from this non-custodial measure combined with parole, by contacting the probation office, and completing the aforementioned procedures.

Given the importance of interventions, every probation officer covers a specific geographical area, to facilitate movement and follow-up, to smooth consultations later in the office where necessary, and under the guidance and supervision of the sentence enforcement judge.

### ■ Follow-up Measures for the Juvenile

As specified in Articles 87 and 93 of the Child Protection Code, the probation office, after receiving a resolution on follow-up for a child, proceeds in a series of interventions, which include social research, psychological examination, in-office consultations with the parents, and the preparation of a detailed report to be referred to the investigating judge. Among the results of these interventions the reintegration of a child in the work of antiques industry.

The Scope of intervention of Probation Office
All convicts subject to community service orders
All defendants released under parole to serve the remaining period of the sentence as community service, pursuant to Article 357 of the CCP on parole measure
Juvenile subject to follow-up measures ordered by the juvenile court or the investigating judge for the juvenile

The Probation Office may cover the following measures, conforming to law
All measures imposed on convicts benefitting from interim release during trial
All juvenile in case of ordering a review mechanism for a reformatory punishment

## Statistical data

Community Service	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
The total number of cases	55	89	16	32
192				

Parole	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
The total number	63	337	32	46
478				

The Juvenile	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
The total number	4	2	0	5
11				

The total number of cases is 681, with a 5 % of recidivism, while recidivism in prison sentences amounts to 45 %.

## B. Challenges and Opportunities:

Despite the various challenging difficulties that face the probation office, there is still a strong will to succeed this approach among all stakeholders, including the judges of the Court of Appeal of Sousse, the regional branch of the National Bar Association, the Civil Prison of Messadine, and the support provided by the Penal Reform International. In the following, we introduce the key challenges posed, as well as the opportunities available for the success of probation.

### I. Challenges Facing Probation:

Among the challenges faced by the probation office is the reluctance of the criminal courts to put into force community service orders, whether due to lack of conditions for this non-custodial sanction, among other penalties provided in law, which do involve the probation office for its execution, like fines or suspended prison sentences. The enforcement of these sentences is usually uncompli-

cated, since it is not subject to many conditions, unlike the alternative sanctions, especially community services in relation to the probation office.

The difficulties that may face the implementation of the community service order:

- How mandatory is the presence of the defendant during all trial sessions? Or is it enough to be present in one session? and how to inform him of the right to reject a community service order? Should this be at all stages or in a particular stage?
- To what extent it is obligatory for the defendant to express his acceptance of the community service? Or is he supposed to express only his rejection without documenting his acceptance that may entail inquiries from the court about sanctions that do not cover his case, noting that law gives him the right to express clearly and concisely his refusal if he wants?
- How useful is the registration of the defendant's opinion by the court if he rejects the sanction, with reference to the lawyer's report, which accepts the execution of the community service, contained in a written request or in requests recorded in the minutes of the session at his presence? Isn't it a fore-gone conclusion?

There are of course other difficulties related to the enforcement of community service orders, which face the probation office in dealing with sentences all along the process from the public prosecutor to the sentence enforcement judge, more particularly when the defendant changes his address, or in case of non-compliance with terms of execution.

More procedural flexibility in sentence enforcement will certainly help overcoming the aforementioned difficulties. In this case, the lawyer has the right to receive a copy of the certificate of conviction, to inform the defendant of the sanction ordered, and urge him to execute it in the provided time limits, which would facilitate the procedure, and avoid the communication problems that may face the probation office if the defendant changes his address or does not know the work site in Court of Sousse 2, wherein there is no sentence enforcement judge. The Penal Reform International has convened workshops with judges and lawyers, to reach consensus solutions to simplify sentence enforcement, with full respect of the legal texts.

It should be noted that an updated list of prison inmates convicted for less than 8 months was not available for the sentence enforcement judge and the probation office, because of the lack of an informational system covering this area. Now this has become possible thanks to the good archival work done in cooperation with the Messadine prison administration to overcome this difficulty by providing a list of cases under eligible to parole.

**Nevertheless, there are still pending challenges, including:**

- Lack of full-time judges for sentence enforcement, due to the traditional management styles in the judiciary, especially in the division of work among judges, which ignores the wide scope of intervention of the sentence enforcement judge and his responsibilities in supervising the probation staff and operations.
- The challenges facing the agents working with the probation office, especially the lack of means of transportation to the beneficiary institution to carry out their regular follow-up functions, after the expiry of appeal terms for those released by the public prosecutor.

It is more urgent today than ever to find solutions for the challenges raised about overcrowding in prisons (about ten thousand prisoners above the capacity of prisons). The overcrowding in prisons has generated pejorative connotations among inmates, by calling those bedless inmates who sleep directly on the ground ‘stacks’, and those who sleep on walkways between beds ‘highway sleepers’.

The high recidivism rates which amount to 45%, the growing public spending on prison inmates which reaches 30 dinars everyday, the social and financial burdens put on families of defendants convicted for imprisonment, the increasing number of defendants put to jail for short period sentences to no avail, detention orders for defendants committing simple offenses, those first-time offenders detained, which interrupts their studies or work; these are all challenges posed for the probation office which comes as an experience that emanates from the philosophy of restorative justice that seeks to institute a new approach in the judicial system, and to stand against all the problems that face criminal courts, and influence the community. It is an institution that advocates for alternative non-custodial measures that may educate and reintegrate defendants into their communities, and raise their sense of responsibility towards their societies.

## **II. Opportunities for the Success of Probation**

The contribution of the lawyer to the success of the probation office is no less important than the legislative role he plays in the adoption of international standards for the application of the law in accordance with a humanitarian approach to criminal punishment, not to ignore the necessary individualization of cases in trials, based on the needs of the defendant, the victim and the community, to ensure rehabilitation and reintegration for defendants, and redress for victims, and to avoid recidivism.

Criminal Justice should pay more attention to restorative justice in parallel with the ongoing humanization of the criminal justice system, which is supposed to give priority to rehabilitation and reintegration, especially for a large segment of offenders who lapse unintentionally into criminal conduct, and have no previous felony convictions, especially if the damage caused by their offenses is reparable and can be compensated, to avoid the downsides of imprisonment.

The lawyer should submit a request to the criminal judge who is invited to interact with it, by pronouncing a community service order, if provided by law, either as included in the memorandum submitted to the Court or in the form of oral advocacy during the hearing session, whenever the lawyer agrees with the defendant on follow up without further emphasis on registering his rejection of the sanction if he already declared acceptance in the report.

The probation office, and based on the follow-up reports on parolees, proves that non-custodial measures enshrined in Article 86 of the Penal Code may serve as a reference, by using these reports before the court of competent jurisdiction, and for children as reference for a review mechanism before the juvenile judge to change the non-custodial measure taken against the child.

Legal aid should cover the enforcement of non-custodial measures, with respect for human rights and under the supervision of the judiciary, the skilled probation officers and volunteer lawyers, who play a crucial role in strengthening the functions of the office, on the purpose to go beyond the retributive approach in sentencing, and to give more eminence to reintegration and reform.

All the measures undertaken by the probation office may serve as effective tools of psychological rehabilitation for defendants released, and may restore their community functioning and well-being inside their families. This conditioned release reduces possibilities of their relapse into criminal behaviour, which will

definitely raise the criminal court's confidence in non-custodial measures as real alternatives to imprisonment.

The legal aid that parallels the transition from the imprisonment-oriented retributive approach to the restorative open-space measures, as performed by the sentence enforcement judge and the criminal court, has brought to limelight the important role of other public administrations and of civil society working in areas related to sentence enforcement, childhood, reintegration and rehabilitation, and shelter care institutions, who all help implementing restorative measures for all eligible defendants. This voluntary and free legal aid may be extended to those subject to probation measures, to overcome the difficulties and build on the good practices and the opportunities for the success of this experience, mainly by providing legal aid in acquiring expungement from the court, which erases community service orders from their criminal records.

As one of the main components of civil society organizations in Tunisia, the National Bar Association, and its Regional Branch in Sousse, are certainly important stakeholders in relation to probation and restorative justice in general. The National Bar Association has the right to access to information, follow-up reports and to all activities undertaken by the National Commission for the Prevention of Torture, as an independent public body created under the Basic Law dated 21<sup>st</sup> October 2013 after the ratification of the Optional Protocol to the Convention against Torture. It is worth mentioning that the National Commission for the Prevention of Torture has commenced work on 30<sup>th</sup> March 2016, by conducting regular periodic or sudden visits to detention centers. These recent institutional developments will undoubtedly give an impetus to legal aid undertakings based on plans and programs crafted in the light of the statistical data and research conducted. It will also enhance capacity-building and consciousness raising programs in areas related to conceptual frameworks for alternative sanctions and the role of the probation office.

A worthwhile partnership between the Regional Branch of the National Bar Association in Sousse with the General Directorate of Prisons and Rehabilitation will offer voluntary legal assistance to inmates in the Messadine prison and Sidi El Hani reformatory, with a joint action plan led by the probation office to properly perform its functions. Equally important, a participatory and constructive approach should be accentuated between the probation office and a network of civil society organizations (more than 18.558 NGOs until March 2016), especially those working for the reintegration and rehabilitation of the juvenile, parolees

and released defendants, including reformatories, without ignoring the significant contribution of lawyers in establishing civil exchange platforms to disseminate legal advice and guide the work of these organization in the various areas of activity.

All stakeholders should join their efforts to gain support for the legislative institutionalization of probation, and to lay foundation for an official apparatus for criminal sentence enforcement and the monitoring of alternative sanctions, which will undoubtedly bear fruits in a developing democratic climate.

The success of mechanisms of restorative justice and non-custodial measures in criminal matters is contingent on the readiness of the criminal judge to place trust in mechanisms currently available in law, to reach the lower limits of the humanization of sanctions, for children at risk or for prisoners released or for those serving their sentences. Legislative endeavors should be directed to the refashioning of the penal system, to overcome legal difficulties posed for the criminal judge in individualizing punishment, and to give the lawyer the right to pass to the sentence enforcement phase through the enactment of legal mechanisms that help suggesting alternatives to imprisonment under certain conditions. The inclusion of these alternatives will help the convict become more responsive to sanctions based on rehabilitation and reintegration. There is also the possibility of authorizing, at a final stage of the sentence term, gradual execution from prison to open space, or a combination of both. We suggest enacting a basic law to prisons in line with the Standard Minimum Rules for the Treatment of Prisoners (December 2015), and cooperating with civil society organizations in assessment, and suggestion of alternatives and the promotion of voluntary participation.

The underlying aim of these legislative efforts is to ease the burden on the State and reduce overcrowding in prisons, not to forget the advantages of the innovative restorative mechanisms in the humanization of punishment, and in implementing measures that restore community order and repair damaged relationships. They are prerequisite for a social progress based on reconciliation, solidarity and a sense of national responsibility that emanates from the collective conscience of civil society, with a deep conviction that “human dignity is above all”.





## **Annexes**



## Annexes

### **Law No. 2002-93 of 29 October 2002 supplementing the Code of Criminal Procedure on the institution of mediation in criminal matters**

**Sole Article** - In Chapter IV of the Code of Criminal Procedure, a ninth chapter entitled "Mediation in criminal matters" shall be added as follows:

#### CHAPTER IX - mediation in criminal matters

**Article 335 (bis)** – Conciliation by mediation in criminal matters tends to guarantee compensation for the damage caused to the victim of the acts attributed to the defendant and to restore the defendant's sense of responsibility and ensure his reintegration into social life.

**Article 335 (ter)** - The public prosecutor, before the initiation of legal proceedings, either on his own initiative or upon request of the defendant or the victim or upon request of the lawyer of one of them, may propose to the parties conciliation by mediation in criminal matters, with respect to articles on contravention and in the offenses provided for in the first paragraph of article 218 and articles 220, 225, 247, 248, 255, 256, 277 , 280, 282, 286 and 293, as well as the first paragraph of Article 297, Articles 298, 304 and 309 of the Penal Code and the offense of the non-presentation of the child in custody as provided for under Law No. 62-22 of 24 May 1962.

**Article 335 (quater)** - The public prosecutor takes the initiative to summon both parties administratively. He may order one of the parties to summon the other parties by bailiff.

The defendant is obliged to attend the hearing personally. He may be assisted by a lawyer.

The victim may be represented by a lawyer. However, if he does not appear personally, the conciliation can only be made under a special power of attorney.

**Article 335 (quinquies)** - The public prosecutor, by calling on the parties to the conciliation, takes into account their interests, and records the agreements concluded

between the parties in numerated minutes informing them of the obligations and consequences arising from them of the conciliation. The prosecutor must remind them of the requirements of the law, and set a deadline for the performance of all obligations arising from the conciliation without exceeding six months from the date of signature.

The public prosecutor may, exceptionally, and in case of absolute necessity, extend the period of three months once by a reasoned decision.

The minutes must be read to the parties who must sign each page.

It must also be signed by the public prosecutor, the bookkeeper and, if necessary, the lawyer and the interpreter.

**Article 335 (sexies)** - The mediated conciliation in criminal matters may not be revoked even with the consent of the parties except in the case of new elements likely to change the characterization of the infringement in such a way as to render the conciliation prohibited by the law.

The conciliation benefits only its parties and can only produce effects with regard to their beneficiaries or assigns.

Its contents are not binding on third parties.

It is not possible to rely on what was declared by the parties to the public prosecutor in connection with the mediated conciliation in criminal matters. It can not be considered as a confession.

**Article 335 (Septies)** - If it has not been possible to conclude a conciliation or if it has not been fully executed within the time allowed, the public prosecutor shall assess the action to be taken on the complaint.

The total execution of the conciliation within the time limit or the non-execution due to the act of the victim shall lead to the extinction of the public action against the accused.

The limitation periods for public proceedings are suspended during the course of the mediation procedure in criminal matters and during the time allowed for its execution.

## Law No. 52-2002 dated 03 June 2002, on granting legal aid

### FIRST CHAPTER General provisions

**Article 1.** Legal aid may be granted in civil cases to any individual claimant or defendant at any stage of the proceedings. It may be awarded in criminal cases to the civil party and the applicant for revision, as well as in offenses punishable by a term of imprisonment of at least three years, provided that the applicant for legal aid is not in a state of legal recidivism. The crimes remain subject to the provisions in force relating to the requisition.

Legal aid may be granted for the execution of judgments and the exercise of the right of appeal.

**Article 2.** Legal aid shall be granted to:

- the legal person carrying on a non-profit-making activity and having its principal place of business in Tunisia,
- the foreigner where the Tunisian courts have jurisdiction to hear disputes of which he is a part, in accordance with a convention on judicial cooperation in legal aid concluded with the State of which he is a national and subject to respect of the principle of reciprocity.

**Article 3.** Legal aid shall be granted on condition that the applicant proves that:

1. that he has no income or that his certain annual income is limited and is not sufficient to cover legal or enforcement costs, without substantially affecting his vital requirements,
2. that the alleged right appears to be well founded in the case of an application for legal aid in civil matters.

### CHAPTER SECOND The Legal Aid Office

**Article 4.** A specialized office known as the Legal Aid Office shall decide on applications for legal aid, it shall have its seat in the court of first instance. It consists of :

- the public prosecutor or his deputy, as president,

- a representative of the Ministry of Finance or his deputy appointed by a decree of the competent minister for a period of one year, as a member,
- a lawyer registered within the Court of Cassation, or his substitute of the same degree, designated by the Minister of Justice on the proposal of the Bar Association for a period of one year, as a member,
- a registrar appointed by the public prosecutor from among the members of the tribunal, as registrar.

Should one of the principal members be unable to attend, he shall be replaced by his alternate.

**Article 5.** Applications for legal aid shall be submitted directly to the president of the office of the competent court to decide the dispute or by post by registered letter.

**Article 6.** The application must contain in particular:

- the name and surname of the applicant, his place of business, his profession, his civil status and the number of his identity card or his passport or residence permit for foreigners,
- a statement of the subject-matter of the action, together with the number of the case pending, if any, or the number of the judgment rendered.
- The following must be attached to the application:
  - a copy of the documents which the applicant invokes in order to prove the claimed right,
  - evidence that the applicant has no income or that his annual income is limited and is not sufficient to cover legal or enforcement costs, without substantially affecting his vital requirements.

In the event that the applicant is unable to present all or part of the documents due to the fact that he can not pay for the fees to be issued or the registration fees and the fiscal stamp relating thereto, he must indicate this in the application.

**Article 7.** The Legal Aid Office shall hold its meetings at least once a month unless the number of requests or their causes require otherwise.

In the case of an application for legal aid in respect of a criminal case, or pending, or the exercise of a right of appeal, the office must decide on the application before the hearing or before the expiry of the time limit for appeal.

**Article 8.** The Legal Aid Office may carry out all the investigations necessary to inquire about the actual income of the applicant for the aid.

The services of the State and all private companies or natural persons concerned must make available to the Legal Aid Office all data and information requested by it to assist in inquiring about the applicant's income. The provisions of this paragraph do not apply to tax and statistical services.

**Article 9.** The President of the Legal Aid Office may decide, on his own, provisionally and outside the official dates of the hearings of the Office, on requests for urgent assistance and who can not await the holding of the periodical hearing of the Office. He shall take a decision thereon.

In such cases the Office shall subsequently ratify the decisions of the president, or decide to withdraw the grant of legal aid if the legal conditions are not met.

**Article 10.** The Office decides whether to grant legal aid or to refuse it, in the light of a report submitted by the president.

The office may hear, in civil matters, the applicant for legal aid and the adverse parties. It may instruct one of its members to make an attempt at reconciliation between the parties.

**Article 11.** The decision of granting legal aid must include the designation of its scope, the nature of the costs it covers, and the legal assistant in charge of aid, after consent of the aid recipient, if necessary.

If it decides to grant partial legal aid, the office determines its rate and sets out, where appropriate, the names of the designated legal assistants.

**Article 12.** The Registrar of the Legal Aid Office shall in all cases notify the applicant directly or by registered letter with acknowledgment of receipt of all decisions rendered within a period not exceeding five days from the date of the decision, and a copy of these decisions shall be notified to the president of the court hearing the dispute, to the legal assistants appointed by the office, and to the general treasury.

The registrar of the court hearing the dispute must state on the back of the file “the benefit of partial or total legal aid by the party concerned”.

The chief registrars of the courts shall transmit to the Ministry of Finance, within three months of the date of delivery of the judgment, a copy of the judgments of which one of the parties has received full or partial legal aid.

**Article 13.** Decisions rendered by the Legal Aid office are not subject to appeal.

The decision to reject the application must state the reasons on which it is based.

If the rejection is motivated by the failure to produce proof of the seriousness of the application, the person concerned may renew it once he has received new evidence justifying his application.

The Legal Aid Office shall decide on any difficulties arising in the execution of the decision to grant legal aid at the request of any person concerned.

## CHAPTER THIRD

### The costs covered by legal aid

**Article 14.** Total or partial legal aid shall include the costs normally borne by the parties and in particular:

- the registration fees and the fiscal stamp relating to the documents submitted by the applicant to establish his rights,
- late payments and fines incurred for non-payment of registration fees and stamp duty within the statutory time limits,
- the costs of expert appraisals and the various tasks ordered by the court,
- the costs of notarial deeds authorized to be issued,
- the costs of the judges' movements,
- the remuneration of the designated lawyer,
- the costs of summons and notifications,
- the costs of legal announcements,
- translation costs, if any,
- the costs of execution.

**Article 15.** A decree shall lay down the special scheme of fixing lawyers' fees and experts' charges assigned by decision to provide legal aid when these expenses are chargeable to the aid recipient.

## CHAPTER FOUR

### The effects of granting legal aid

**Article 16.** The legal aid decision covers disputes submitted to the courts, cases pending and those brought before the courts as well as the exercise of a right of appeal and the reply to that appeal.

**Article 17.** Legal aid does not cover the costs of exercising other remedies unless a new application is submitted to the competent Legal Aid Office, and the latter decides whether or not to grant it.

**Article 18.** The legal aid recipient may continue to be assisted by the designated lawyer or bailiff in cases where an appeal has been lodged provided that the Legal Aid Office is informed.

**Article 19.** The legal aid decision is granted to cover the costs of a single case.

However, if the need to protect the right or where judicial proceedings require more than one court or chamber to be seised at the same time, the competent office may take a decision stating that the legal aid granted covers all costs generated by the incurred cases.

In such a case, the registrar of the office must inform the president of the Legal Aid Office of the court in which the dispute is lodged of the decision to generalize coverage so that it may, if necessary, designate legal assistants within its competence.

**Article 20.** The legal aid recipient shall be exempted from payment of the advance of the costs of the expert appraisal and the recording of the amounts due as a result of the exercise of the right of appeal, as laid down by the texts in force.

**Article 21.** When the legal aid recipient has been adjudicated, the legal costs which are charged to his opponent and covered by legal aid shall be paid into the general treasury. The aid recipient has no right to such costs.

In such a case, a judgment is issued to the competent treasurer in order to carry out execution procedures concerning the expenses of the General Treasury.

**Article 22.** Where the costs incurred by the legal aid have been judged to be borne by the aid recipient, such costs shall be borne by the State Treasury unless there is a special provision exempting the State of their payment.

The benefit of legal aid in criminal matters does not relieve the applicant of the execution of the judgment against him, both in respect of penalties for pecuniary or corporal punishment, and in respect of fines or the costs adjudged against him.

**Article 23.** In the case of a judgment approving the conciliation agreement between the two parties, the State is subrogated to the rights of the legal aid recipient with regard to the recovery of the costs awarded to it judicially and which are covered by legal aid.

**Article 24.** The lawyers, bailiffs and other judicial officers designated may not refuse to undertake the missions entrusted to them unless there is a legally valid reason.

In such a case the designated judicial officer may request that he be relieved of the assignment entrusted to him within three days of the date of notification of the appointment.

If the ground invoked has been established, the president of the Legal Aid Office shall replace him/her.

**Article 25.** The Legal Aid Office may, ex officio or at the request of any interested party or the public prosecutor, retract the decision to grant legal aid after hearing the recipient of the aid, in the following cases:

- If the aid recipient comes to have certain established income which make it ineligible for the aid.
- Or if it turns out that he has concealed his income, in which case the president of the office transmits the documents to the public prosecutor.

Total legal aid may be reduced to partial aid if the recipient has an income which renders him ineligible. In this case, the office must determine the rate of the contribution of the treasury in the coverage of the expenses due.

The Registrar of the Legal Aid Office shall, in all cases and within a period not exceeding five days from the date of the decision to withdraw or reduce it, inform the party concerned directly or by registered letter with acknowledgment of receipt. He must also inform the public treasury and the designated judicial officers.

**Article 26.** The public treasury shall recover by legal means the sums disbursed on behalf of the legal aid recipient whenever the office decides to withdraw or reduce the amount of legal aid.

Where the decision to withdraw is based on a subsequent improvement in the income of the legal aid recipient, the public treasury shall recover from the costs incurred only the part subsequent to the date of such improvement.

**Article 27.** The decision to withdraw or reduce legal aid has no influence on the course of the proceedings to which it relates or on the professional duties of legal assistants.

**Article 28.** The beneficiary of legal aid which has been withdrawn shall pay the expert's remuneration under the ordinary ordinary system of remuneration.

If, as a result of the revision, partial aid has been granted, payment shall be made on the basis of the special remuneration arrangements referred to in Article 15 of this Law.

Article 29. No legal assistant shall be entitled to receive from the total legal aid recipient any sum or other as payment of remuneration and expenses covered by legal aid.

It shall also be prohibited from receiving from the partial aid recipient amounts in excess of the portion of its contribution to cover the remuneration and costs fixed by the decision to grant the aid.

**Article 30.** The decision on legal aid shall lapse if the aid has not been used within one year of the date of notification of the decision of the Office or if the action has not been brought within the time limits.

## CHAPTER FIFTH

### Criminal provisions

**Article 31.** The applicant for legal aid who has deliberately refrained from disclosing his actual annual income is punishable by a term of imprisonment ranging from sixteen days to six months and a fine of from one hundred dinars to five hundred dinars or one of these two penalties only..

Any person who intentionally contributed to the concealment of the applicant's income in order to enable him to obtain the aid shall be liable to the same penalty, without prejudice to the civil liability which he may incur with regard to the State.

**Article 32.** The provisions of the Decree of 13 August 1922 relative to the granting of legal aid in civil matters, as amended on 6 March 1926, 13 December 1956, 13 March 1958 and 5 August 1959, shall be repealed.

This law shall be published in the Official Gazette of the Republic of Tunisia and executed as a law of the State.

Tunis, 3 June 2002.

**Law n° 2007-27 dated 7 May 2007, amending and completing some provisions of law n° 2002-52 dated 3 June 2002, on legal assistance.**

In the name of the people,

The Chamber of Deputies and the Chamber of Advisors having adopted.

The President of the Republic promulgates the following law :

**Single Article:** A third paragraph is added to article one of law n°2002-52 dated 3 June 2002 on legal assistance :

**Article one (third paragraph):** The judicial aid may also be granted in the penal cases subject of an appeal in cassation.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the state.

Tunis, 7 May 2007

**Law no. 68/2009 promulgated on 12th August 2009, relating to establishing the penalty of criminal compensation and developing alternatives to prison.**

In the name of the people,

After approval by the House of Representatives and House of Councillors

The President of the Republic promulgates the following law:

**Article 1**- The provisions of paragraph 1 of Article 15 bis, the first and second paragraphs of Article 15 ter, and the second paragraph of Article 18 of the Criminal Code shall be repealed and replaced by the following provisions:

**Article 15 bis paragraph 1 (new)** - Where the court imposes a prison sentence of a term not exceeding one year, it may replace it in the same judgment by an unpaid general community service, and for a period not exceeding six hundred hours on the basis of two hours for each day of prison.

**Article 15 ter paragraph 1 (new)** - To replace the term of imprisonment with community service, it is required that the defendant be present at the hearing, that he is not recidivist and that he proves to the court, according to the circumstances of the offense, the effectiveness of the sanction in order to preserve reintegration into social life.

**Article 15 ter (new)** - The court must inform the defendant of his right to refuse community service and record his answer.

**Article 18 paragraph 2 (new)** - A person sentenced to a community service shall enjoy the same legal remedies for damages resulting from accidents at work and occupational diseases applicable to prisoners for accidents caused by the occasion of works for which they are asked to be executed.

**Article 2** - Indent 6 is added to the provisions of the Penal Code in paragraph (A) of Article 5 and Article 15 quater as follows:

- Article 5 (A), indent 6:
- The criminal compensation.

**Article 15 quater** - The criminal compensation of a criminal offense tends to replace the sentence of imprisonment pronounced by the court by a pecuniary reme-

dy to be paid by the sentenced person to a person who has suffered personal and direct damage from the offense.

The amount of the compensation may not be less than twenty dinars nor more than five thousand dinars notwithstanding the number of persons injured.

The criminal compensation does not preclude the exercise of the right of recourse to civil remedies, and the court seised must take into account the amount of the criminal compensation in assessing civil remedies.

In the case where it imposes a prison sentence for contraventions or a term of imprisonment not exceeding six months for offenses, the court may, if the circumstances of the offense so require, replace the sentence in the same sentence of imprisonment pronounced by a penalty of criminal compensation. It is required that a criminal compensation be pronounced in the presence of the defendant, and that the defendant has not previously been sentenced to a criminal compensation or imprisonment.

The execution of the criminal compensation shall be effected within a period not exceeding three months from the date of expiry of the time limit for appeal in the first instance sentences or from the date of delivery of the final sentence.

It is prohibited to replace the term of imprisonment with a penalty of criminal compensation for the offenses provided for in articles 85, 87, 87 bis, 90, 91, 101, 103, 104, 125, 126 paragraph 1, 127, 128, 228 bis, 238, 240 bis, 241, 243, 244, 284 of the Penal Code and Articles 89 and 142 of the Penal Code, 90 of the Highway Code and Articles 411 and 411 ter of the Commercial Code.

**Article 3** - The following offense is added at the end of the subparagraph entitled “offenses against persons” under Article 15 bis of the Criminal Code:

- Inflicting bodily harm to others unintentionally.

The following offenses are added at the end of the subparagraph entitled “offenses against property”:

- the appropriation of a thing found by chance
- dispossession by force of a property belonging to others.
- damage to the property of others.
- involuntary fire.

The following offense shall be added at the end of the subparagraph entitled “offenses of prejudice of good morals”:

- Intentional harm to another in a way that violates modesty.

The following offenses are added at the end of the subparagraph entitled “social offenses”:

- Calumny.
- Trouble after execution.
- False allegation.
- Mendicity.

The following offenses shall be added at the end of the subparagraph entitled “economic and financial infringements”:

- Concealment of goods belonging to the debtor trader.
- Impossibility to pay after being served drinks or food.
- Refusal without legitimate reason to perform a contract.
- Obstructing the freedom of auction.

**Article 4** - A subparagraph 10 is added to article 15 bis. of the Penal Code as follows:

- Military offenses:

❖ Failure to comply with the order to perform military service enshrined in paragraph 1 of Article 66 of the Code of Military Justice.

**Article 5** - A second paragraph to Article 335 ter, Articles 336 ter, 350 bis. and a last paragraph to Article 365 shall be added to the Code of Criminal Procedure as follows:

**Article 335 ter (2)** - If the circumstances of the offense so require, the public prosecutor alone can propose the conciliation by mediation for the offense stipulated in Article 264 of the Criminal Code, provided that the defendant does not is not recidivist, and that the prosecutor considers that the criminality is not ingrained in the defendant based on a social investigation carried out by the social welfare services on his moral, material and family situation.

**Article 336 ter** - The representative of the public prosecutor shall supervise the execution of the criminal compensation.

The time limit for the execution of the criminal compensation takes effect from the date of expiry of the appeal period for the criminal judgment rendered in the first instance or from the date of delivery of the final judgment.

Written evidence of the execution of the penalty or the recording of the amount of the criminal compensation must be presented to the representative of the public prosecutor 's office before the court which handed down the sentence imposing the criminal compensation within the time limit provided for in Article 15 quater of the Criminal Code.

In the absence of evidence of the execution of the criminal compensation within the time limit provided for in article 15 quater of the Criminal Code, the prosecutor's representative shall proceed the execution of the prison sentence already pronounced.

If the convicted person is detained on the basis of an arrest warrant, the public prosecutor shall inform the prison authorities of the order for the release of the defendant if it is established that the judgment has not been appealed, and that the provisions of the sentence of the criminal compensation have been executed within the time prescribed by law.

**Article 350 bis** - The execution of the criminal compensation within the time-limit laid down in Article 15 quater of the Criminal Code entails the extinguishment of the prison sentence imposed by the court and, where appropriate, and the release of the convicted person from custody.

**Article 365 last paragraph** - Judgments pronouncing a community service penalty or a criminal compensation penalty shall not be recorded in bulletin 3 of the criminal record.

**Article 6** – “Articles 226 bis and 296 of the Criminal Code” shall be added to the offenses referred to in Article 335 ter of the Code of Criminal Procedure in their respective order.

**Article 7** - The words “three hundred hours” referred to at the end of article 344 of the Code of Criminal Procedure are replaced by the words “six hundred hours” and the words “six months” referred to in paragraph 1 of Article 346 of the Code of Criminal Procedure, by the words “one year”.

This law shall be published in the Official Gazette of the Republic of Tunisia and executed as a law of the State.

Tunis, 12 August 2009.

**Decree n° 2007-1812 dated 17 July 2007, regulating the special scheme of fixing lawyers' fees and experts' charges assigned by decision to provide legal assistance when these expenses are chargeable to the aid recipient.**

The President of the Republic,

On a proposal from the Minister of Justice and Human Rights,

Having regard to of civil and commercial procedures code promulgated by law n° 59-130 dated 5 October 1959, all amending and completing texts, notably law n°2002-82 dated 3 August 2002 and law n° 2007-18 dated 22 March 2007,

Having regard to penal procedures code promulgated by law n° 68-23 dated 24 July 1968, all amending and completing texts notably law n° 2006-34 dated 12 June 2006 and law n° 2007-17 dated 22 March 2007,

Having regard to law n° 89-87 dated 7 September 1989, organizing the lawyer profession as amended and completed by law n° 2006-30 dated 15 May 2006,

Having regard to law n°93-61 dated 23 June 1993, relating to court experts,

Having regard to law n° 2002-52 dated 3 June 2002, on legal assistance grant as amended and completed by law n° 2007-27 dated 7 May 2007, notably article 15,

Having regard to decree n° 70-572 dated 20 November 1970, fixing the list of expenditures which may be paid in advance by the treasury as amended and completed by decree n° 83-180 dated 24 February 1983,

Having regard to decree n° 74-1062 dated 28 November 1974 fixing the duties of the Ministry of Justice,

Having regard to decree n° 92-2120 dated 7 December 1992 fixing the expenses of medical expertise tariff in criminal matters,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Court.

Decrees the following :

Article one - The decree herein shall determine the special scheme for lawyers fees and experts charges assigned by decision, for legal assistance when the fees are chargeable to the aid recipient.

## **CHAPTER ONE**

### **Lawyers' fees**

Article 2 - The assigned lawyer for legal assistance may, once the trial is over present a request to the tribunal president or his/her deputy who delivered the judgment whereby he/she requires fixing the fees .

**Article 3** - The following documents shall be enclosed with the request for fixing the lawyer's fees:

- a copy of the assignment decision,
- a copy of the presented conclusions during the trial,
- a copy of the delivered judgment of the trial he was assigned to,
- the memorandum of the elements of the required fees.

**Article 4** - The tribunal president who delivered the judgment or his/her deputy fixes, after the opinion of the president of the legal assistance office, the lawyer's charges. The following shall be taken into consideration in fixing the charges :

- the tribunal of the trial,
- the nature of the case,
- efforts exerted by the lawyer,
- the roll of lawyers to which the lawyer belongs.

## **CHAPTER TWO**

### **Experts Charges**

**Article 5** - The court appointed expert for legal assistance may, after submitting the expertise report to the tribunal which required it, ask for the fixing of his/her expert charges by a request presented to the tribunal president or his deputy.

**Article 6** - The following documents shall be enclosed with the charges fixing request:

- a copy of the assignment decision,
- a copy of the accomplished expertise report or reports,

- a note from the tribunal confirming that the expert has carried out the mission he /she was entrusted to,
- the memorandum of the elements of the required charges

**Article 7** - The tribunal president who required the expertise or his deputy fixes, after the opinion of the president of the legal assistance office, the lawyer's fees. The following shall be taken into consideration while fixing the fees :

- the nature of the work carried out,
- the exerted efforts by the expert,
- the extent to which the assignment objectives were complied with,
- the extent to which the deadlines set for the expertise accomplishment were complied with.

## CHAPTER THREE

### Final and Common provisions

**Article 8** - The tribunal president or his/her deputy fixes the lawyers' fees and experts charges by decision and put on the same request of the concerned person within a 15-day deadline from the presentation of the demand date.

**Article 9** - The fixing of the lawyer's fees or expert charges decision is subject to revision within an eight -day deadline after its receipt.

To apply for the revision , a reasoned claim shall be presented to the tribunal president who delivered the judgment or his deputy and it shall be ruled on within an eight day deadline.

**Article 10** - Upon the expiry of the revision deadline or after it is ruled on, the tribunal president or his deputy, taking into consideration the state contribution, orders the concerned tax collector to pay the due amount as an advance cash and notifies the concerned lawyer or expert.

**Article 11** - The expenses of medical expertise tariff in criminal matters continue to be governed by the provisions in force notably the abovementioned decree n° 92-2120 dated 7 December 1992.

**Article 12** - The Minister of Justice and Human Rights and the Minister of Finance,

each in his respective capacity, shall implement the decree herein which shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 17 July 2007.





































