Forum: Human Rights Commission Sub-commission 1  

Issue: Promoting initiatives for community-based alternatives to imprisonment and greater use of early release from prison  

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Introduction

Prison is a system that has been proven to be flawed in more than one way. That is why many Member States want to change it, even if the change doesn’t come perfectly.

The two ways that these changes are implemented are through the usage or community-based alternatives to imprisonment and the early release from prison. But why is prison a broken system and why does it need to change? The problem with prisons is that the prisoner population increases over time, and conditions often decrease, leading to major issues in the penal system, from prison overpopulation to inhumane prison conditions.

The change to prevent and repair these issues is necessary and it is urgent. The issue is that most countries do not implement these alternatives in a proper manner or don’t use them enough. They do this to reduce their ever-growing prison populations while others build more prisons to hold more prisoners. The first method focuses on rehabilitation while the second is more focused on detention and punishment.

Each nation has their approach to prison population control and each country has received different results on the issue, which is why the issue is so polarizing and partisan. There is often not enough or conflicting data regarding this issue which leads to different conclusions and support for differing opinions in different ways. Each country has its own opinion and way of dealing with prison populations and some can work while others don’t.

The UN’s and NGOs such as Penal Reform International’s perspectives is that they wish to see a reform in the justice system in order to allow for better instalment of community-based alternatives to
imprisonment and for early release to be used more frequently in order for prison quality and human
rights overall in the prison system to increase, as they are currently at a low status.

Definition of Key Terms

Imprisonment

The act of putting someone in prison. In this case, it is whenever a person commits a crime that is
severe enough for them to be found guilty and to go to prison.

Incarceration

The act of confining a person in order to provide limited freedom. Incarceration is different to
imprisonment in it being broader since it can happen in other locations such as medical facilities,
training schools, or domiciliary arrest.

Community-Based Alternatives

As defined by UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and
the Treatment of Offenders), community-based alternatives are a punishment ordered by a court that
occurs within a community as an alternative to incarceration. This can be done in several ways,
usually through fines, community service, monitoring of the criminal. There are many other ways but
they are grounded in the belief that prison is not the best way of dealing with criminals, especially if
they are of low or manageable risk.

Suspended sentences

A prison sentence carried out in the person’s community, in which a person must meet certain
conditions such as doing unpaid work in the community. A person granted a suspended sentence
serves their entire sentence outside of jail but if conditions are broken, then they are sent to prison. It
is often granted to those who are unlikely to commit another crime.

Parole

Parole is the early release from jail under specific terms and conditions. It is often granted to those
who are on their first offense or non-violent offenders. A person must apply to receive have a parole
hearing to determine if they will be granted parole or not. Some crimes specifically do not allow for
parole to be granted. Offenders are supervised and if these specific conditions are not met, they will
return to jail. If parole is granted is determined by the laws of the country and is often decided by a parole board.

**Restorative Justice**

Restorative Justice is a type of justice that tries to repair the harm done by the crime or conflict by enabling all that were affected to come into communication. It helps to give the offenders responsibility by making them understand the consequences of their actions and help to make amends.

**Recidivism**

Recidivism is the tendency to relapse into a previous condition, usually applied to criminal behaviour. In this context, recidivism is a former convicted criminal who has been freed from jail committing another crime and returning to jail.

**Background Information**

**Problems with prisons**

Imprisonment is often the main sanction imposed on criminals proven guilty of a crime. A large and increasing prison population are leading to the overuse of prison. This outlined in several UNODC reports that state what the problems these prisons face and how they should be fixed. Many nations face these problems and they all have different solutions for them.

**Prison crowding**

Due to the criminal justice system, prisoners should be incarcerated due to their sentence. Due to the fact that people spend prolonged periods of time in jail, more people will come into the prison than can be removed due to the end of a sentence. This leads to a build-up of prisoners in the jail which leads to major crowding. Many countries are currently experiencing an increase in their imprisonment rates. This is also partly due to harsh laws, especially on drug offense, which makes it so prisoners spend longer than usual in this environment. Overcrowding leads to worsening conditions in the prison, resources being spread ever thinner and worsening prison violence. 9 million people in the world are being held in conditions that are below human rights

Overcrowding also leads to the spread of many dangerous infectious diseases such as AIDS.

**Poor conditions**

Prisons habitually [22] have very poor conditions, often due to the overcrowding of prisons. A major one is often the lack of space. Prisons are often filled with more prisoners than they can hold, which leads to single cells holding two people and other ways that makes living uncomfortable and worsens the conditions of the prison over time. Inmates also often experience a lack of nutrition and the necessary nutrients they need, which leads to significant health problems. Even then, most prisons are not equipped with the proper health services necessary to treat these ailments. Worsening the situation, poor sanitation is commonplace, making disease spread even more. Another large problem is that they do not have the facilities to help those with mental issues that require that assistance and fails to bring education to those who need it, which leads into the issue of poor social reintegration

**Lack of social reintegration**

The main problem that most prisons encounter that eventually leads to reincarceration is that their emphasis in on punishing the prisoners for their actions instead of rehabilitating them, so they don’t commit other crimes. Some countries believe that this is the way to go while others wish to rehabilitate the prisoners but it is a proven fact that prisons who emphasize punishment have a higher reincarceration rate. This is partly due social alienation that the prisoners feel. This type of behaviour towards them makes them feel like outcasts and increases the crime rate. Furthermore, failure to reintegrate inmates is more economically and socially costly for governments and for communities.

**Call to reform criminal justice**

UNODC and Penal Reform International support a reform to criminal justice in order to carry out their goals of:

**Promoting alternative sanctions**

Prisons are widespread all over the world, all housing different numbers of people. The problem is that it is overused in many situations by imprisoning those who have committed small and non-violent offenses which with current laws makes it so the system is unsustainable. Some governments fix this issue by building more prisons but the thing is that this method is also
economically unsustainable due to growing prison populations. This is what makes alternative imprisonment an attractive option for many governments. In many cases, alternatives are more effective methods of criminal sanctions. Alternative sanctions, especially when they are implemented in the community, supply prisoners with the skills necessary to be properly implemented as a functioning member of society. As a direct consequence of this, the recidivism rate of prisoners who have undergone community-based alternatives to imprisonment is significantly lower than those who have gone through the usual justice system. This is because it is a method of implementing restorative justice which leads to less crime and social reintegration of inmates. Other methods of imprisonment use isolation to try to stop crime but there is no evidence correlating between imprisonment and a decrease in crime. This is because prisoners’ attitudes have not changed ever since entering the prison so when they leave, they will continue the same activities and continuing to contribute to crime. This is why several organizations want to promote community based alternatives to imprisonment, to reduce the crime rate and recidivism rate

**Promote human rights**

Prisons are some of the places where even the most basic human rights a human can have are infringed upon. Liberty and freedom are essential human rights for all people and for the prisoners, they do not have it, even if it is temporarily. Aside from this, there are many more human rights that prisons often enforce. A common example is solitary confinement which can count as cruel and inhuman punishment because people are deprived of human interaction, which is necessary for well-being. It is also a way of denying human dignity, which is also a human right. Often, conditions in these prisons are terrible and prisoners are malnourished and poorly clothed. The UN has tried to fix these issues by creating rules that prisons should follow as the conditions for prisons such as the “Basic Principles for the Treatment of Prisoners” to try to promote more humane practices in prisons around the world. This is one of the main goals of the UNODC and Penal reform International, to make sure that prisons around the world conform to UN guidelines and international law. Case appropriate alternatives to imprisonment often are more humane. These alternatives also help because less people inhabit the prison so conditions become better due to less overcrowding.

**Legal systems and prison sentences**

A big issue is that many countries do not have laws that allow for the widespread usage of alternatives to imprisonment. Sentences are ultimately decided by judges but those judges have
to award them in accordance with the law. If the laws of the country do not allow for alternatives to imprisonment to be given out or have not provided administrative structure for the alternatives, then the judges cannot give out those alternatives.

The most common alternatives to imprisonment in the laws of most countries are the two punishments of parole and suspended sentences. Parole is the most common one, where prisoners serve time within the prison and then outside prison. Its effectiveness is often questioned but many organizations such as the EU consider it to be a humane method for prisoners to be released and that life sentences without parole are not humane at all due to death occurring in prison. Some nations still give out many sentences that do not have a parole option due to the belief that it puts too much trust in prisoners.

A more controversial way that the legal system can award sentences is through suspended sentences. Some sources state that these suspended sentences have not caused a decrease in offenders being sent to prison but might have actually had the opposite effect and actually prevented other non-custodial sanctions such as, community service orders, from being handed out. The opposing side to this will argue that people that were awarded suspended sentences had a reduced rate of recidivism which causes less criminals to be in prison.

There is a lot of conflicting information regarding whether or not alternative sanctions are effective or not due to issues in research such as small sample sizes, bias, and lack of data. This leads several experiments in different parts of the world to reach very different conclusions from the same baseline experiment.

**Mandatory minimums**

Mandatory minimum sentencing laws are laws that require judges to hand down a minimum prison sentence based on the charges placed on the defendant. Sometimes these minimums are fair but other times they are not. They can be a problem because mandatory minimums can often increase the amount of time a prisoner spends incarcerated by a substantial amount. This then leads to overcrowding which leads to the other problems previously discussed. Why does it matter if there is a mandatory sentence if they committed a crime? The problem is that the circumstances of the case are not taken into account and the jury/judge have very little input, which defeats some of the purpose of the legal system. A lot of these laws were implemented in the 1990s when the stance on crime was one focused on hard punishment for wrongdoers. Many countries have changed their stance on crime since then and some have changed their laws to fit
this to allow for jury input but others still lack these reforms to the law that allows specific circumstances and more input from jurors and judges.

**Guidelines and implications of alternatives to imprisonment**

Non-custodial measures, such as community-based alternatives, are mostly guided by the United Nations Standard Minimum Rules for Non-custodial Measures, often called The Tokyo Rules. Its objective is to promote greater community usage in prison sentences while also making sure that they follow the rule of law and human rights of each nation. It does this by encouraging Member States to develop these alternatives to imprisonment and carefully monitor their effectiveness. It also encourages the greater usage of restorative justice, taking into account the rehabilitative needs of prisoners to make sure that they are properly reintegrated into society. It ultimately puts the power of these non-custodial measures in the Member States but strongly encourages every country to implement them and restorative justice and makes sure that these measures are properly implemented.

**Usage of early release**

The issue of early release is quite polarizing. Some see it as a necessary part for a criminal justice reform towards a more restorative pathway while others see it as releasing dangerous criminals into society. The problem is that, like any released prisoners, there is a higher chance of them committing more crimes. The issue is if those crimes are significant enough to endure the risks. Some studies actually suggest that recidivism rate of those who were released early was 2%, compared to the usual 16%, but this was only in the USA, not in other countries. It did increase the crime that the general population experienced but it was still less 1% of reported crimes and the total crime rate actually decreased. The problem is that the solution of early release is viewed as a temporary method to solve prison overpopulation, not as a permanent method to prevent prisons from becoming overpopulated.

John Malcolm, director of the Center for Legal and Judicial Studies at the Heritage Foundation in the United States said this about early release: “But the big question is, once someone has been incarcerated for two years, do they need to be there for five years? If prison is designed to send somebody a message, after you’ve sent that message and have given them the skills they need, and you determine that they’re not going to pose a threat, perhaps it’s time to free up a prison cell for someone who richly deserves it.”
Some sentences actually say that half the sentence should be served inside the prison while the other half is a conditional release, which is a type of early release that is more common and more widely regarded but does not come without its controversy. The opposing side often says that prisoners should serve their sentence to their full extent because they deserve it. The problem is that prison actually changes the personality of inmates in a negative manner. This is because they need to act tougher to be able to adapt and survive the environment. This then makes it so when they are released, they have changed and now it is harder for them to adapt and reintegrate into the society, which will cause them to commit more crimes. The longer that they are exposed to the prison environment, the more they change to adapt to the environment. This makes it so longer prison sentences will actually cause an increased recidivism rate, which is counterproductive to the sentence’s cause.

Canada’s approach to community-based alternatives to imprisonment

Canada is one of the nations that takes the most advantage out of community-based alternatives. Their integration of these alternatives began in the mid-1990s when their prison population was large and growing unsustainably. They fixed this by implementing community-based alternatives to incarceration, which significantly dropped their prison population. It is so widely used in the country that about 80% of all sentences are handed out in the community. This happens because the laws of Canada allow for these measures to be implemented through the greater use of conditional and absolute discharges and probation. Alongside this, these alternatives demand it so people complete community work, which makes it so the inmates integrate better into society and reduces the recidivism rate. They use restorative justice in a way that is effective for everyone.

Major Countries and Organizations Involved

United Nations Office on Drugs and Crime (UNODC)

The United Nations Office on Drugs and Crime is a UN office, located in Vienna, under the United Nations Sustainable Development Group (UNSDG), established in 1997, that deals with issue pertaining to drugs and crime. They are the organization that looks for long-term solutions to issues of criminal justice and leading humane way to solve this issue. They have contributed their research to Member States through their numerous reports on alternatives to imprisonment, prison reforms, and the usage of early release. That research is then used and produces a
recommended list of measures that the UNODC suggests countries should implement into their criminal justice system.

**Penal Reform International**

Penal Reform International is an NGO, founded in 1989, with the intent of seeing a global prison reform in order to uphold human rights. Their main goal is to get all prisons to respect the rule of law. Under the rule of law, they specifically wish to see humane treatment of prisoners through prevention of torture which will allow them to grow into better people also with rehabilitation and community-based alternatives to imprisonment. Their action has been effective, especially in African nations, where the rule of law is usually weaker.

**Canada**

As previously discussed, Canada was one of the first countries to properly and successfully implement community-based alternatives to imprisonment and has seen the benefits of their efforts in recent years through the effectiveness of their program in reducing prison population numbers.


UNAFEI was an institute established in 1962 between the UN and the government of Japan, main focus is to develop criminal justice systems in Asia, provides training for personnel in crime prevention and criminal justice administration. They sometimes publish papers alongside the UNODC with recommendations towards community-based alternatives and case studies of nations that have implemented them.

**United Kingdom**

The UK has had community-based alternatives to imprisonment in its legal system for a long time but recently that system has started to deteriorate. More specifically, in England and Wales, the system has allowed the prison population to increase by 66% between 1995 and 2009, outpacing the population growth of the nation. This is due to tougher sentencing laws being imposed and people breaching more non-custodial sentence conditions, which caused a 14% increase in time spent in prison. It seems paradoxical when you consider the fact that crime rates have actually been dropping. The government has associated this drop with the tough sentencing laws but they are actually independent of each other and the crime rate has been dropping before the
administration took power. England is using less community-based alternatives than before which causing longer prison sentences and causing the prison population to be unsustainable, filled with many inmates that could be serving more effective punishments. Meanwhile in Scotland, they have implemented more community-based alternatives and have decreased short sentences from 53% to 29%. They are currently working on reducing recidivism by using more community sentences and by solving wider social problems and have been mostly effective.

**United States of America**

The United States of America has the largest incarceration rate in the entire world with approximately 2 million people being behind bars at any time. This is mostly due to the laws of the country, not changes in crime rate. The US has some quite strict laws related to crime, especially when relating to drug crimes. The purpose of these was to initially scare people into not committing crimes by using phrases such as “getting tough” or “three strikes and you’re out”. These policies did not accomplish their purpose as crime rates did not increase but prison population has increased exponentially. The fact of the matter is that incarceration only causes a decrease between 5 percent and a quarter of crime, not a majority in the US. Even then, conditions in these prisons are not ideal and the sentences are long. There has been a growing movement in the country towards a criminal reform against the hard on crime past on the US’s laws but very little has been done by politicians.

**Timeline of Events**

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<thead>
<tr>
<th>Date</th>
<th>Description of event</th>
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<tbody>
<tr>
<td>December 10(^{th}), 1948</td>
<td>Universal Declaration of Human Rights adopted</td>
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<tr>
<td>1962</td>
<td>UNAFEI established</td>
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<tr>
<td>December 14(^{th}), 1990</td>
<td>Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) drafted with the help of UNAFEI, UNODC and experts from around the world</td>
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<tr>
<td>February 7(^{th}), 1992</td>
<td>First CCPCJ meeting</td>
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1997
UNODC established

July 27th, 2006
ECOSOC session on rule of law and criminal justice system reforms

2007
UNODC releases “Handbook of basic principles and promising practices on Alternatives to Imprisonment”, detailing how they believe nations should carry out alternatives to imprisonment

2013
European Court of Human Rights rules that life sentences violate the right of human dignity

Relevant UN Treaties and Events

● United Nations Universal Declaration of Human Rights (UNUDHR), 10 December 1948
● Kadoma Declaration on Community Service and recommendations of the seminar entitled “Criminal justice: the challenge of prison overcrowding”, held in San José from 3 to 7 February (Economic and Social Council Resolution 1998/23), 17 April 1998, (E/RES/1998/23)
● The rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction, 21 July 2004, (E/RES/2004/25)
● Providing technical assistance for prison reform in Africa and the development of viable alternatives to imprisonment, 27 July 2006, (E/RES/2006/22)
● Strengthening the rule of law and the reform of criminal justice institutions, including in post-conflict reconstruction, 27 July 2006, (E/RES/2006/25)
Previous Attempts to solve the Issue

UNODC has tried many times to solve this issue through their resolutions in the GA and ECOSOC. The problem is that none of them directly tackle the issue of promoting community-based alternatives, only indirectly through strengthening rule of law and setting the minimum conditions for community-based alternatives. Penal Reform International continues to promote community-based alternatives and have been successful, especially in LEDCs. Not many countries have successfully integrated community-based alternatives or increased early release due to a lot of them choosing to ignore the actions taken by the UNODC and other NGOs on the issue. Some have tried to implement them but have failed while others have not tried at all. A select few have implemented them successfully and reap the benefits of these alternatives.

Possible Solutions

Almost every Member State uses mostly imprisonment as their only form of punishment and rehabilitative method for convicted criminals. The fact is that a lot these prisons and penitentiaries have more people than they can hold. Building more prisons and maintaining “tough on crime” laws is not a sustainable way to run a prison system. With those laws, evermore people will enter prison and there will be a never-ending demand for new prisons. Countries should change the laws of their countries to be more inclusive of better methods to rehabilitate those that do commit crimes. If each Member State does not change its laws, then nothing happens and no progress is made. Criminal justice laws have to allow for and outline methods to implement community-based alternatives to make it be widespread in its use, ideally more than prison. The main goal of these laws should be to educate the criminal and to implement restorative justice in order to reintegrate them better into society and reduce recidivism rates. Each country has its own way of determining which community-based alternative is best but they should always follow the Tokyo Rules and the laws of the nation and its implementation should be clear in order for it to be widely used. They should be emphasized more for short sentences while early release emphasized for longer sentences. Alongside this, prisons that currently have inmates should change in order to follow UN regulation and makes it more comfortable for prisoners in order to rehabilitate the prisoners and reduce recidivism. These methods all put together make it so the criminal justice
system in each Member State follows human rights law and makes it more effective in reducing the amounts of crimes committed and reduction of recidivism rates.

Bibliography


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