The Judge's Handbook on Restorative Justice, Non-custodial Measures and Probation

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Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

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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Introduction

The Almighty says “O you who believe! Stand firmly for justice, as witnesses to God, even if against yourselves, or your parents, or your relatives. Whether one is rich or poor, God takes care of both. So do not follow your desires, lest you swerve. If you deviate, or turn away—then God is Aware of what you do” (Women, 135).

All inclination of human conscience, particularly the conscience of the judge about the elements of the criminal justice, is prompted by ‘instinct’ first, like all mankind on earth as bestowed by God, true to His words “And when you speak, be fair, even if it concerns a close relative. And fulfill your covenant with God. All this He has enjoined upon you, so that you may take heed” (Livestock, 152). Love for justice is an innate value in the human conscience, since the beginning of creation. God says “God instructs you to give back things entrusted to you to their owners. And when you judge between people, judge with justice. God’s instructions to you are excellent. God is All-Hearing, All-Seeing” (Women, 58).

Like all values, and on the purpose to protect it from any mutations or deviations, the value of ‘justice’ has been subject to steady loadings, to run abreast of civilizational and legislative developments of humanity. It has become a general principle that binds all States together, and a foundational value in constitutional law at the top of the legislation pyramid. The Tunisian constitution states that “the accused is innocent until proven guilty, and has the right to a fair trial, and the right to legal defense during all phases of investigation and trial” and that “all prisoners shall be treated with the respect due to their inherent dignity. The State takes into account the interest of the family in the enforcement of custodial penalties, and undertakes to rehabilitate and reintegrate the prisoner into the community”.

Among the most important developments is that the international community has built consensus over the norms governing the measures of investigation, trial and enforcement of penalties. States then have adhered to standards of fair trial, including guarantees for the right not to be subjected to cruel or degrading treatment or any form of torture, and the inadmissibility of arrest or detention of a suspect except by the competent authorities and for reasons and conditions previously laid down by law, and the right of a detainee to be immediately informed of the reasons for his detention, and to be informed of the right to appear before a judge promptly

and the right to challenge the legality of detention, and the right to a fair trial within a reasonable time and under humane conditions of detention. The authorities shall recite all rights of the detainee with the help of his defense.

The prison sentence was and still is the penal measure mostly taken in positive legislation today. However, human thought is relentlessly in search for alternatives to this penalty, due to the many adverse effects of imprisonment, which could not gain consensus as the appropriate punishment. This has given rise to theories of social defense and victimology as ground-breaking theses against the prison sentence and its disadvantages, especially for a certain category of criminals, for the sake of infiltrating the penal system with standards which prove humanitarian and effective in dealing with offenders who break the law.

All these advancements in the penal system could not mitigate the crisis of penal jurisprudence, since the last quarter of the twentieth century. The predicament of penal legislation has generated discontents about the swelling criminality and legislative inflation, not to ignore the increasing criminalization of all illegal acts inside any new legal organization to protect its activities from delinquency and exploitation. Because the punitive retributive approach has always been predominant to the detriment of the compensatory and reformist approach, most of penal systems and governments tend to keenly look for solutions to the crisis of penal legislation, with regard to the growing impunity and the number of dismissed complaints, due to insufficient evidence or to the ineffective technical means to investigate a crime, and the snowballing recidivism which has caused distrust in the justice system.

Increasing the number of judges recruited was not enough to keep pace with the enormous amount of lawsuits filed, the same as the overcrowded prisons are not capable to provide room for the increasing number of detainees, nor are they eligible to perform their role in reform and rehabilitation. The State is also saddled with the ever-growing budgets destined to prison inmates, sorely needed for expenditures on development and public interest. Policy-makers and practitioners in the field of crime prevention and criminal justice convene every five years at the United Nations Congress on Crime Prevention in order to contribute to the crafting of a framework for standards on crime prevention and criminal justice. In 1990, United Nations General Assembly declared the Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 14th, December 1990), which introduce the guidelines adopted later by several international conventions and standards either for women or children or persons with disabilities.

Though important in the penal system, all non-custodial measures taken since the last quarter of the twentieth century were not operative to contain the crisis of the traditional system. Howard Zehr, an American criminologist and pioneer of the modern concept of restorative justice, was at the vanguard of jurists who brought to limelight the predicaments of penal justice, and called for the foundation of restorative justice in a mediation system as an alternative under the existing wide scope of penal justice. In the same vein, part of the French jurisprudence, pioneered by Robert Cario, argues for restorative justice as a mechanism for normalization between parties involved in criminal matters. The international community has eventually agreed upon 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 24th July 2002.

The emergence of restorative justice has motivated several Arab countries to enshrine mediation mechanisms in penal law. The Tunisian legislator has adopted this mechanism under Law No. 2002-93 dated October 29, 2002 on the establishment of a mediation procedure in criminal matters, as amended in 2009.

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. Because of this international political influence, they are considered a mandatory reference framework, and the judge has the right to take them as a source for sentencing, 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. 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 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, 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.

It was agreed to launch a pilot project under the supervision of the international expert Mr. Andre Vallotton. The kick-off was in 08th 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 23rd January 2013 based in the First Stance Court of Sousse 2.

Amongst the roles played by the Penal Reform International organization (PRI) is to pursue reform in penal law through the development and implementation of international human rights mechanisms pertaining to law enforcement, and the improvement of conditions in prisons and detention centers, as well as the reduction of custodial penalties whenever possible, and the use of alternative reformist sanctions, including community service orders. The organization has led, since the inception of the Probation Office, several training workshops for all stakeholders, more particularly judges, lawyers, prison staff and civil society. They were all convened to discuss the challenges posed, and to overcome the difficulties. The working group of the Pilot Project in the Court of Appeal of Sousse, headed by the public prosecutor, Mr. Abdelhamid Aabada, have all showed devotion to this training programme, which was a rewarding opportunity for all participants to gain deep insight into the relevant international standards, thanks to the skilled experts of PRI, whose contribution was of paramount importance in boosting the motivation of the working group.

Penal Reform International and its partners, together with the various stakeholders have provided much support to the probation office to fulfil its mission. The probation office will certainly succeed its functions only when the criminal judge places trust in non-custodial measures currently available in law, noting that restorative justice and conciliation by mediation mechanisms would smooth the path for the reduction of overcrowding in prisons, and minimize public spending at this level. For this purpose, a joint committee was formed on 16th April 2016, composed of the working group of the Pilot Project, judges, the prison director in Messadine and Sidi El Hani reformatory with civil society organizations and all other stakeholders, who meet on a regular basis.

Beside two handbooks for civil society and lawyers, this handbook is intended for judges as a guide to areas of intervention and ways of activating restorative justice and alternatives to imprisonment and probation. It sheds light on the practical mea-

sures that may be needed in the restorative justice field, with more emphasis on the good practices in courts of Sousse and Kairouan, together with the probation office as an incipient experience that still needs legal recognition under a special legal framework.

Therefore, this handbook aims in the first part to put human rights standards related to restorative justice as a complementary reference framework for the existing penal justice in Tunisia. In the second part, it addresses the non-custodial measures that will provide alternatives for custody, preventive detention, confinement or imprisonment for certain category of defendants, pursuant to the laws in force. The third part of this handbook suggests methods and ways of how to actuate probation as an emergent pilot project seeking to provide support and rehabilitation services for defendants and convicts.

1 Restorative Justice

1 Restorative Justice

Jurists and legal practitioners have always debated over the escalating disadvantages of the traditional penal justice with regard to the mushrooming crime rates and the risk of the defendant's relapse into criminal behaviour not to forget the growing indifference to the needs of the victims since the perpetration of a criminal act. For all these reasons, jurisprudence with the various penal justice stakeholders, including the designers of penal policies, together with the international community have undertaken to lay foundation for a restorative justice that bridges the gap between the parties to the criminal case through dialogue. This would help meeting the minimum needs of the parties to the litigation, by conciliating their positions, and restoring social peace, which would simultaneously defuse hatred and revenge, and scale down retributive justice based on custodial punishment.

A. Restorative justice in international standards

This chapter covers two main areas of study: (a) the guidelines on the role of public prosecution as a party involved in criminal justice, and (b) the basic principles on the use of restorative justice programs in criminal matters.

I. Guidelines on public prosecution

It is worth mentioning in this regard that prior to these guidelines, a set of principles were adopted by the General Assembly of the United Nations, such as the Code of Conduct for Law Enforcement Officials in 17th December 1979, or the Basic Principles on the Independence of the Judiciary under resolutions 32/40 in 1985 as well as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power dated in 29th November1985.

The Guidelines on the Role of Prosecutors, which were adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana in September 1990, have included several important recommendations. These guidelines have set forth standards on qualifications, selection and training appropriate for members of the public prosecution. Among these we note that prosecutors should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights

of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law. Also, as essential agents of the administration of justice, States should ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference, and their families should be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

The guidelines have also recommended that prosecutors should, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. They should also protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect. Moreover, they should keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise, the same as they should consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Accordingly, the prosecutors should not initiate or continue prosecution, or should make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded. They should give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offenses.

When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they should refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and should take all necessary steps to ensure that those responsible for using such methods are brought to justice.

It has also been endorsed that, in accordance with national law, prosecutors

should give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect and the victim. For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment, and to desist from initiating legal action against juveniles only when strictly necessary.

Pursuant to all these principles, the public prosecutor is in fact entitled to allow at any time an 'intervention' that would end the dispute at its eruption.

He also has the capacity to pursue restorative justice in accordance with the "mediation mechanism" whenever the crimes fall under the law contained in the table that follows.

II. Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters:

Member States in the United Nations have applauded the growing number of restorative justice initiatives since 2002 in all parts of the world, often based on traditional and indigenous forms of justice that seek to constrict crime and its effects, and develop alternatives that respect the dignity and equality of all people, and build understanding and promote social harmony through the healing of victims, offenders and communities alike. This approach is more focused on victims, their feelings, concerns and needs, as it works towards providing compensation for them, and establishing reconciliation and safety. It also allows for offenders to recognize the reasons for their unlawful behaviour and its consequences, and assume responsibility in a more constructive way, the same as it inculcates the culture of peace in communities by building immunity and resilience against causes that give rise to crime.

Restorative justice is gaining more prominence in the international community, with regard to its flexible but consistent measures, adaptable to suit and complement the criminal justice systems, taking into account all possible differences in legal, social and cultural backgrounds, and the necessary respect of the right of the public prosecutor and States to law enforcement.

We deem useful in this regard to introduce the content of these principles, as an important reference framework for the effectuation of mediation mechanisms and the enhancement of restorative justice in our criminal system.

I. Use of terms

1. "Restorative justice programme" means any programme that uses restorative processes or aims to achieve restorative outcomes.
2. "Restorative process" means any process in which the victim, the offender or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party or "facilitator". Examples of restorative process include mediation, conferencing and sentencing circles.
3. "Restorative outcome" means an agreement reached as the result of a restorative process. Examples of restorative outcomes include restitution, community service and any other programme or response designed to accomplish reparation of the victim and community, and reintegration of the victim and the offender.
4. "Parties" means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative justice programme.
5. "Facilitator" means a fair and impartial third party whose role is to facilitate the participation of victims and offenders in an encounter programme.

II. Use of restorative justice programmes

6. Restorative justice programmes should be generally available at all stages of the criminal justice process, pursuant to national law.
7. Restorative processes should be used only with the free and voluntary consent of the parties. The parties 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.
8. All parties should normally acknowledge the basic facts of a case as a basis for participation in a restorative process. Participation should not be used as evidence of admission of guilt in subsequent legal proceedings.
9. Obvious disparities with respect to factors such as power imbalances and the parties' age, maturity or intellectual capacity should be taken into consideration in referring a case to and in conducting a restorative process.

10. Similarly, obvious threats to any of the parties' safety should also be considered in referring any case to and in conducting a restorative process.

11. Where restorative processes or outcomes are not possible, criminal justice officials should do all they can to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and reintegration of the victim or offender into the community.

III. Operation of restorative justice programmes

12. Guidelines and standards should be established, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should address:

    a. The conditions for the referral of cases to restorative justice programmes;
    b. The handling of cases following a restorative process;
    c. The qualifications, training and assessment of facilitators;
    d. The administration of restorative justice programmes;
    e. Standards of competence and ethical rules governing operation of restorative justice programmes.

13. Fundamental procedural safeguards should be applied to restorative justice programmes and in particular to restorative processes:

    a. The parties should have the right to legal advice before and after the restorative process and, where necessary, to translation and interpretation. Minors should, in addition, have the right to parental assistance;

    b. Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

    c. Neither the victim nor the offender should be induced by unfair means to participate in restorative processes or outcomes.

14. Discussions in restorative processes should be confidential and should not be disclosed subsequently, except with the agreement of the parties.

15. Judicial discharges based on agreements arising out of restorative justice programmes should have the same status as judicial decisions or judgements and should preclude prosecution in respect of the same facts (non bis in idem).

16. Where no agreement can be made between the parties, the case should be referred back to the criminal justice authorities and a decision as to how to proceed should be taken without delay. Lack of agreement may not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or to the criminal justice authorities and a decision as to how to proceed should be taken without delay. Failure to implement the agreement may not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, based on the facts of the case and on the needs and wishes of the parties. They should always respect the dignity of the parties and ensure that the parties act with respect towards each other.

19. 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.

IV. Continuing development of restorative justice programmes

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding of restorative processes and outcomes, to increase the extent to which restorative programmes are used and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encour-

age regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

It should also be noted that the Basic Principles of Justice for Victims of Crime and Abuse of Power issued on 29th November 1985, specify that victims should be allowed to present their views and concerns, which should be considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused. Measures should be taken to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

Article 7 has necessitated that informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

These guidelines provide an illuminating normative framework for the public prosecutor to boost penal justice in the absence of supportive tradition of jurisprudence.

B. The Judicial applications of restorative justice

The judicial application of restorative justice in our country has taken two separate but close pathways. The first is more related to the procedural process and the functions of prosecutor vis-à-vis the records and the complaints submitted to him or in which he orders investigation in accordance with the 'intervention for conciliation' mechanism, rooted in Arab-Islamic culture. The second is about the mediation mechanism instituted under law No. 93-2002, which seeks to find solution for the criminal dispute in a wide variety of crimes.

I. The Intervention Mechanism:

Restorative Justice is deeply rooted in religion, and has wide applications in the Arab-Islamic civilization. Over the ages, it has been associated with blood money penalty (Diya), a prevalent mechanism in the resolution of conflicts, which gives the possibility of amnesty, as inspired by religious teachings that force upon the implementation of local social arbitration, which still to this day work as influential tools in the resolution of some minor disputes or collective complicated quarrels.

Inspired by the lessons and values ingrained in the culture of litigants as contained in the words of God "Take amnesty and ordered custom and away from the ignorant" (The Heights, 199), the public prosecutor, as the people's deputy, is always entitled to file lawsuits against perpetrators.

The potency of this role derives from God's words "if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly" (The Rooms, 09). Besides, the prophet's pronouncements have always called for reconciliation as priority in managing conflicts.

The fact that reconciliation is still the prevalent arrangement for the community to avoid grudges and disputes has made Tunisia closer to the conciliatory approach celebrated by the international community in accordance with the international treaties and conventions. This of course has brought Tunisia to limelight when we received a well-deserved Nobel Peace Prize on 09th October 2015 as the culmination of the constructive national dialogue that defused the tension and hatred in the Tunisian community.

Though not governed by full-fledged legal instruments and consistent procedural acts, the 'intervention' mechanism in force under the penal system is the output of a rich judicial legacy since the inception of the Criminal Procedure Law in the early twenties of the last century. This mechanism was later reinforced by the Code of Criminal Procedure in 1968. In practical terms, 'intervention' is the prevailing approach that seeks to conduct reconciliation for any potential conflicts, to prevent its exacerbation.

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.

It should be noted that the prosecutor, when authorizing investigation in the complaints that are submitted to him, explores the possibility of 'intervention' by agents of judicial police and others, which may help settling the dispute between neighbours or family members or usually between any two parties who have social or administrative ties. The prosecutor orders investigation, which should necessarily be preceded by an 'intervention' attempt performed by officials en-

titled to preliminary investigation. The outcome of this intervention should be recorded with the concessions reached by both parties in a special register, which will be available as a reference when required. As a successful form of mediation in criminal justice, a high percentage of cases that are stayed has been achieved thanks to interventions, which equals the percentage of dismissed complaints due to insufficient evidence.

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, sometimes with the help the lawyer within the scope of legal advice and assistance if asked by his customer.

II. 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. Although the legislature has adopted this approach under Law N° 93-2002, mediation keeps inoperative due to the several difficulties that this handbook seeks to identify and provide solutions for, with respect to the important jurisprudence capitalized so far in some courts. It goes without saying that penal judges place confidence in this pioneering approach of restorative justice, which would contribute to increasing the efficiency of the courts by reducing the burden of lawsuits, and boosting trust of litigants in the justice system, through the flexibility of procedures, and not putting violators of the justice system on an equal footing in breach of the law, bearing in mind the impact of mediation on the public right, no matter how simple infractions are.

Mediation procedures have proven in comparative criminal justice their ability to provide effective and complementary alternatives to the penal system, which

however still lacks implementation in judicial operations. The role of the criminal judge is to push this restorative approach forward, and make it a real alternative that draws the attention of the legislature to the necessity to further activate and expand its functioning to cover civil and commercial disputes as is the case in many comparative systems legal.

The Judge's Handbook in restorative justice, non-custodial measures and probation Offenses Eligible for Mediation				
All Infractions				
All the following misdemeanours				
247 Gossiping	226 bis. prejudice of good morals or committing debauchery	225 Inflicting bodily harm to others un-intentionally	220 Participation in a battle	218 Severe violence
280 the appro-priation of a movable thing found fortuitously	-277 Fraudulent disposition of an undivided property be-fore 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 recovery of an extin-guished debt	286 Destruction, removal or displacement of real estate signs	282 Inability to pay after being served with drinks or food
Law N° 22-1962 The non-pre-sentation of a child	264 Theft (for non-recidi-vist, with social investigation)	309 involuntary fire	304 damage to the property of others	298 Illegitimate abstention from perform-ing a contract

III.NMediation Mechanisms

The legislator has defined conciliation by mediation in criminal matters through the goals it seeks to achieve as 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". For this reason, access to restorative justice passes through the public prosecutor as the competent authority that investigates crimes, and initiates proceedings for any infractions or complaints submitted to him by individuals or public officials. The public prosecutor is entitled to suggest mediation under article 335-3.

1. The Meditation Stage:

Restorative justice is not always a consistent process, which justifies the fact that conciliation by mediation is always subject to discretionary powers of the prosecutor, since it is not a mandatory measure. For this reason, the meditation stage is a very important step before the implementation of the mediation mechanism, that pays enough attention to the following elements:

- Convenience in estimating interests and the feasibility of the restorative stage
- The study of requests for mediation, submitted by one of the parties or by their counsels, to ensure the realization of public interest.
- The prosecutor selects the minutes and complaints eligible for "conciliation by mediation", and submits them to the mediation Office.

2. The Jurisdiction Stage

- Minutes and complaints are referred to the competent official, who pledges, whenever there is enough evidence to file a lawsuit, to settle the criminal dispute through conciliation by mediation.
- There is a common standard in most of the comparative systems that reflects 'best practices' with regard to the qualifications of mediators, which include good training, professional experience, integrity and a personality committed to ethics and good conduct. The mediator should have the necessary skills for an operative mediation process, which also requires

to undergo an initial period of supervision of mediation work and performance evaluation. The basic skills required of mediators include:

- Patience, active listening skills.
- Ability to create an environment in which the parties may have free and creative interactions, to reach an agreement that addresses the interests of all parties.
- Ability to show respect for all parties, and balance their interests.
- Ability to perform their duties in an impartial manner;
- Strong sense of organization, self-confidence;
- Ability to express support and empathy.
- Be interested in gathering information.

  Mediators should take all measures to ensure social peace, and fight recidivism.

3. The Mediation Stage:

Because mediation is a special process of restorative justice, it is important to devote a place for mediation programmes, preferably closer to the court, to facilitate the management of sessions and the presentation of the parties, notwithstanding their health conditions.

Both parties are summoned either administratively, or by bailiff at the expense of the other party.

- 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.
- For the crime of theft, it is necessary to carry out a social investigation, to verify with the prison administration the absence of recidivism.
- 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.

4. The Stage of negotiation and the exchange of reports:

- Community interest is important to consider at this stage.
- The parties or their counsels exchange reports, and the prosecutor receives the statements and positions, suggestions and needs of each party, and listens to their expectations from this stage, which should be recorded in the minutes, with the possibility to ensure in full measure advice and negotiation, ahead to successfully ending the conciliatory stage.
- In case it becomes difficult to reach a consensus, the mediation circle can be expanded, similar to successful practices in some comparative systems, and allow the intervention of other parties who can help avoiding the negative consequences of the acts perpetrated, and restore the defendant's sense of responsibility (like civil organizations active in the field of family, childhood and reconciliation..), or parties working to help victims of crimes by listening to them and satisfy their needs.

5. Stage of Agree on the terms of the Conciliation:

- The conciliation minutes will be drafted only after agreeing on the reasonable terms of a proportional conciliation between the concerned parties. It should be proportional in the sense that it should meet the needs of the defendant to end the consequences of resorting to the retributive criminal justice, and the needs of the victim to get a reasonable minimum of both moral and material compensation and redress, and finally the needs of the community to restore peace and order, as well as the cohesion of the social fabric.
- The minutes includes the date, the registration number, the names of the parties and their counsels when necessary, and the terms of the irreversible conciliation agreement:
- An execution deadline, 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).
- Parties must respect their obligations, and the consequences arising from non-execution caused by one party.
- The minutes must be signed by the parties. It must also be signed by the public prosecutor, the bookkeeper and, if necessary, the lawyer and the interpreter.

6. The execution stage:

- If the conciliation is executed as agreed:

  If the defendant provides evidence for the execution of the terms of agreement, if the obligations, contained in the minutes or in a subsequent decision of the extension, include to take action or to pay a sum of money or any other legal actions, then the prosecutor stays proceedings pursuant to the mediation outcome.

- In case of non-execution:

  If 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, and the stage of conciliation process will be suspended, and will no longer have any legal force, even if it included an explicit recognition of the crime.

  If the plaintiff refrains from executing the terms of conciliation, which included actions to be performed (like some reform work, or the restitution of documents which caused the criminal acts…), the public proceedings against the defendant, who fulfilled his part of the agreement, shall be stayed, and shall be pursued against the plaintiff if justified.

An Example of the Mediation-Conciliation Minutes

Republic of Tunisia
The judge's handbook
Ministry of Justice
in restorative justice,
Court of First Instance in Sousse
non-custodial

MEDIATION-CONCILIATION

measures

registration number…….. MINUTES and Probation

Introductory Chapter:

We.....the public prosecutor at the Court of First Instance in Sousse, after reviewing the complaint n° ...../ minutes n°..... edited by security centre .....Guard .....On..... under number.....

And depending on the good reasons available to pursue the mechanisms of restorative justice between the parties, before initiating public proceedings in front of the competent criminal court for the crimes contained in this minutes. It was decided to open the way for both parties to conclude a conciliation after several office sessions, with the help of their counsels Mr..... and Mr.....

These sessions enabled the parties to assess the causes of the conflict and its background, and the violations of law, and their penal sanctions, and provided for them an opportunity to evaluate the conflict from different perspectives, and recognize their actions and its consequences. Both parties have agreed to forgive each other, and repair the damaged relationships between them.

Chapter One: the defendant's (first party) obligations

(ensuring avoidance of all obligations that cause executive problems whatever their nature)

Chapter Two: the plaintiff's (second party) obligations (If there are any, he would be also defendant), or he only commits himself to accepting conciliation, as contained in the obligations of the first party, and the defendant's apology if necessary.

Chapter Three: This conciliation agreement is executed not later than 6 months (or less depending on the size of the damage, the extent of exacerbation, how expeditious its avoidance, and the outcome of mediation).

Signatures:

First Party His Counsel Second Party His Counsel The prosecutor

....

Done in Sousse, on .....

Warning

Both parties must perform the obligations and consequences arising from this conciliation, and implement its provisions within the time limit. This conciliation is irrevocable, and the following consequences arise from non-execution:

Conciliation is suspended If the non-execution of the conciliation is due to the act of the defendant, who could not provide execution documents, and public proceedings shall be initiated before the competent criminal court.

Non-execution due to the act of the plaintiff or the second party shall lead to the extinction of the public action against the defendant, and shall stay proceeding, while continuing to consider the right of the second party in front of the Criminal Court, where appropriate.

Litigation is mostly a process that squanders time and effort, while restorative justice, through the mediation mechanism, provides opportunities for smooth negotiated settlements of the conflicts, under the supervision of the judiciary, which restores peace in community, and reduces rates of detention and recidivism.

As much as it depends on the important contribution of the the lawyer who combats for the settlement of the conflict in the mediation stage, restorative justice builds upon the indispensable role played by the public prosecution in enhancing mediation performance, through meetings, study days and capacity-building programmes on the advantages, procedures, skills needed for the mediator, and in providing an

opportunity for the judges of the Council for Offenses to ask questions and receive answers, display the subsequent applications and attend mediation and negotiation sessions. Therefore, the public prosecution should develop its performance to keep pace with the work of lawyer, who is entitled to register under the name of the public prosecutor at his first appearance, and has the right to proceed in the mediation process from the preliminary investigation stage. The public prosecutor should re-think the distribution of work to members of the public prosecution, by modernizing the management style adopted in the judiciary, in line with the requirements of law, by allocating to some members full-time functions for mediation, rather than maintaining the traditional quantitative methods that overlook the existing disadvantages of the criminal justice.

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 criminal judge takes 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 14th 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.

It can be said that non-custodial measures at this stage have become a part of the international human rights customary law, and that States are bound to implement them to serve the big goals of the Tokyo Rules, especially with respect for the inherent dignity of human beings.

Pursuant to Rule 04, non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent. Therefore, the offender should be informed of the potential consequences of refusal to approve the non-custodial measures, without putting any pressure on him.

As for the juvenile, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) recommends that they should have the right to be represented by a legal adviser to give their consent.

II. Trial and sentencing stage

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 de-

cision 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;

The personal needs and interests of the offender must be assessed based on the interests of the community, the rehabilitative needs of the offender and "the interests of the victim."

III. Post-sentencing stage

At this stage, the competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society. This rule is based on the principle that reducing the prison term could reduce the risk of reoffending, noting that long prison sentences and the prison regulations and rules of procedure have significant impacts on the offender's susceptibility to reintegration into his normal social life. For this reason, any form of release from an institution to a non-custodial programme should be considered at the earliest possible 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.

Special non-custodial measures for children have been adopted in the 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.

The Tokyo Rules argue that, within the framework of a given non-custodial measure, like community service orders, or referral to an attendance centre, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the supervisors.

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 the prison penalty, waiting for the inclusion of 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.

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

Based on the Criminal Procedure Code, and in reference to the practice of the judicial functions of the public prosecutor, various non-custodial measures are taken whenever convinced that the offense under lawsuit is not dangerous, unintentional and does not cause any severe damage to the victim.

The public prosecutor has broad powers in estimating cases susceptible to preventive detention, and take some of the available measures to ensure the appearance of the defendant under interim release before the court.

1. The prosecutor: an exclusive authority for preventive detention orders:

Despite the ambiguity inflicted upon the constitutional principle contained in Article 29 which states that "no person may be arrested or detained unless in flagrant delicto or by virtue of a judicial order", especially in what is related to the flagrant delicto, law N° 5-2016 has fully explained the need to subordinate flagrante delicto with a judicial permission. Thus, commissioners of the Judicial Police, set forth in paragraphs 3 and 4 of article 10, and customs agents, pursuant to the Customs Code even, are not permitted to put an offender to preventive detention unless ordered by the public prosecutor, in the case of flagrante delicto of misdemeanours or crimes.

This law has made a quantum leap in penal legislation, as it consecrates the role of the judge in the protection of freedoms, especially that the defendant may be subjected to preventive detention only in cases of flagrant delicto, or as a means to the security of the information during investigation, and only after written permission from the prosecutor to the judicial police. This permission should be available for the lawyer, who has the right to be present with the defendant at the beginning of the investigation. Although it has triggered much controversy before, this can be considered the first building block for the fair trial.

The judicial application of the aforementioned law was in fact the output of painstaking efforts made by members of the public prosecution, honest and motivated by the conviction to protect freedoms, and to overcome the imperfections and difficulties posed. This has led to a marked reduction of preventive detention rates and the number of prison inmates, compared to the pre-application juncture, which amounted to about 24.000 August 2016, with a difference of two thousand prisoners.

If every unthoughtful preventive detention, based on irresponsible discretion of judicial police officials, would certainly lead to unsuccessful decisions, non-custodial measures help covering the supervision of detention and its conditions, as well as the preliminary hearing of the defendant.

2. Procedural applications of non-custodial measures for the prosecutor:

The prosecutor, in addition to being entrusted with the power of non-permis-

sion 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 measures to ensure the presence of the defendant if allowed interim release after finishing the legal preventive detention term. A law issued on 14th 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, or decide on the possibility of opening an investigation if accused of crimes subject to obligatory release contained in the provisions of Article 85 of the Code of Criminal Procedure.

In some exceptional cases, the prosecutor has the right to order a bail, a sum of money to be lodged, after conviction, to pay fine and case costs, for crimes that preferably do not incur detention for defendants like pregnant women and nursing mothers, in accordance with international standards.

All these non-custodial measures constitute significant flexible procedures that the representative of the public prosecution should implement, to avoid hasty or inappropriate detention.

3. Non-custodial measures for children

The Child Protection Code provides under Article 68 that the age of criminal responsibility of the child is between 13 and 18, and those under 15 years old are presumed not to have the capacity to infringe the penal law, and may not be preventively detained in contravention or misdemeanour matters (Article 94), while Article 69 provides for the possibility of considering all felonies as misdemeanours, except for murder.

In contraventions, the presentation of the child before the juvenile court is not obligatory. In all cases, actions taken by the judicial police against children, including hearings, should be permitted by the prosecutor, after being

informed of the acts. If the acts attributed to the child are of a serious nature, the prosecutor must automatically appoint a lawyer to assist the child.

All these measures aim to narrow the scope of preventive detention permitted by the public prosecutor during the investigation carried out by the judicial police. The prosecutor may order the return of the child to his parents or guardian during investigation, and permit the investigative judge to coordinate with the Child Protection Officer to take prompt measures, if required, in cases of vagrancy, threats or if the child in conflict with his family, and order to refer the child to a centre for observation or social guidance, pending the appropriate measure of the competent judge after investigation.

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.

Release is entitled, five days after the interrogation, with the exception of the offenses provided for in articles 68, 70 and 217 of the Criminal Code.

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 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.

To activate this procedure in this case in particular, a copy of the release decision could be automatically referred by the secretariat of the court or the investigating judge to the probation office under the supervision of the sentence enforcement judge, whenever authorized by the court through a document that include the following expression " a copy shall be referred to the probation office for execution".

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 12th 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 Judge's Handbook on Restorative Justice, 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". This is a legislative flexibility that aims to avoid a second difficulty related to when the court is supposed to receive "the right of refusal": before the sentence pronouncement or during the hearing. However, this expression seems to be open and unconditional, since it does not put any restrictions on when to necessarily receive the defendant's response, noting that this response might already be declared through the written report provided by his counsel, and then there is no need to set limits for something kept unrestricted by the legislator, as is the case in most of comparative justice systems.

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.

A Sample of a certificate of conviction ordering a community service

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

To replace one year (or less) of imprisonment by a community service of two hours of work per day for the remaining period.

The convict should not exceed one year and eight months (or less based on the seriousness of the crime and the speed of execution) to execute to this service.

Since the pronouncement of this sentence/informing the convict of this sentence (in absentia or in presence). This sentence shall be executed under the supervision of the sentence enforcement judge in the first instance court of Sousse 2, or the convict shall serve the sentence pronounced against him, and bear legal expenses.

3. The Criminal Compensation Sanction:

The basic principles on the use of restorative justice programmes 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 Article15 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 com-

pensation for the damage caused directly by the offense, as an alternative to the prison sentence.

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:

Penal code			
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
traffic code			
90 unintentional vehicular manslaughter		89 Unintentional injury	
commercial code			
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.

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's lawyer, 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.

III. The Enforcement Stage

The enforcement of custodial penalties in the prison is also subject to the possibility of release by a sentence enforcement judge, or it may be replaced by a community service order for those convicted to the penalty of imprisonment for debt.

1. Parole as Ordered by the Sentence Enforcement Judge:

The sentence enforcement judge may propose that some detainees convicted to a prison sentence not exceeding eight months benefit from parole, after having served half of the sentence, provided that the detainee is not recidivist, or if so has served at least two thirds of the sentence. Parole is a

procedure frequently carried out by the sentence enforcement judge, and is facilitated and supported by the prison administration, which prepares a dossier for social and psychological research about eligible convicts.

Sentence enforcement is susceptible to much flexibility regarding the study of individual cases and the needs of the convict, and on his responsiveness to the punitive and reformative interventions and rehabilitation. All these considerations push the sentence enforcement judge to take more measures as conditions for parole.

The legislator has authorized under Article 356 of the Code of Criminal Procedure that "the sentence enforcement judge shall grant parole in accordance with the conditions and procedures prescribed by law" (Added by the law n ° 2002-92 of October 29, 2002), while Article 357 specifies that parole might entail a house arrest if the convict has not been sentenced to a supplementary penalty under the prohibition of stay or administrative supervision; or an automatic placement in a public service or a private institution; or the two aforementioned measures concurrently. The duration of the house arrest or placement in a public service or a private institution may not exceed the duration of the part of the sentence not incurred at the time of release. Therefore, the non-custodial measure in parole ordered by the sentence enforcement judge is usually combined with a community service order, of no more than two hours of work per day for the remaining period; this procedure bears fruits now, and proves effective in reducing recidivism.

2. Conciliation by Mediation and the Review Mechanism in Juvenile Court During Enforcement:

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. The Juvenile Court should then effectuate the role of this officer who is supposed to supervise the conclusion of the conciliation agreement between the various parties concerned.

The Review Mechanism contained in Article 109 of the Child Protection Code is a flexible measure in dealing with a penal sanction imposed on the child, which provides that the juvenile judge is entitled to review mediation agreement or the sanction. “He is responsible for supervising the measures and penalties pronounced, as well as those imposed by the juvenile court. He is also obliged to supervise the decisions taken with regard to the child, by visiting the child to be aware of his condition, the degree of acceptance of the measure decided, at any time. At the request of the prosecutor, the child, his parents, guardian or lawyer, the juvenile judge can change the preventive or criminal measures that have been ordered, by commutation of sentence” like ordering a community service under parole if he is more than 16 years old, or ordering medical or psychological examinations or any other preventive non-custodial measures undertaken by the probation mechanism.

3 The Probation Launch

3 The Probation Launch

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:

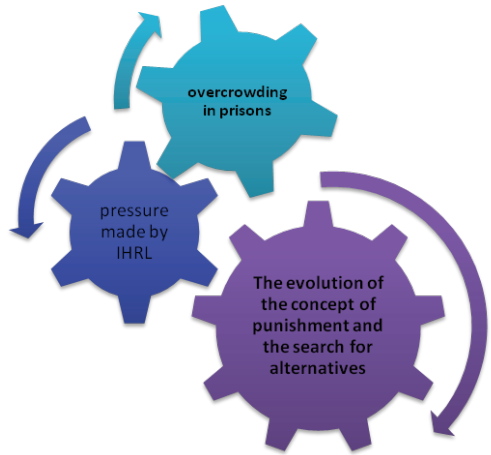
Though enshrined in law, especially the community service order since the issuance of law N° 89-1999 dated 02th August 1999, and the conciliation by mediation in law N° 93-2002, it should be noted that alternative sanctions have remained de facto inactivated, despite the many serious attempts to avoid 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.

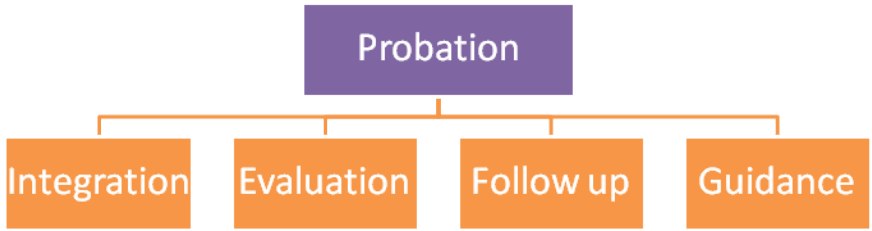
Pursuant to the partnership between the Ministry of Justice and the International Red Cross since 2005, an agreement was concluded between the two parties within the scope of their common objectives to launch a pilot project and a working group which consists of judges from the district of the Court of Appeal of Sousse (Sousse - Kairouan) and the Director of Civil Prison in Messadine. They took aim at to establishing a pilot project under the 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 08th 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.

The probation approach has first emerged with released convicts in England since 1790, and then was legalized in 1792 in Switzerland, to permeate since the 19th century several provinces. Probation was then adopted in the Germanic system, and in France under a law issued on 14th August 1885 seeking to reduce reoffending by ordering paroles. This approach has evolved during the second half of the twentieth century through a petition on 23th December 1958, which provided for postponing sentence enforcement and testing, and then on 10th June 1983 by a law enacted for community service in a direct relationship with probation. The working group with the Red Cross experts have undertaken to institute a probation project that will certainly contribute to advancing the penal system.



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 officers have been selected from the staff of the General Directorate of Prisons and Rehabilitation, by virtue of their knowledge and experience in prisons management, especially in methods of treating inmates and delinquents, which would facilitate the effective performance of probation tasks.

The probation office was created for for the first time in the 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.

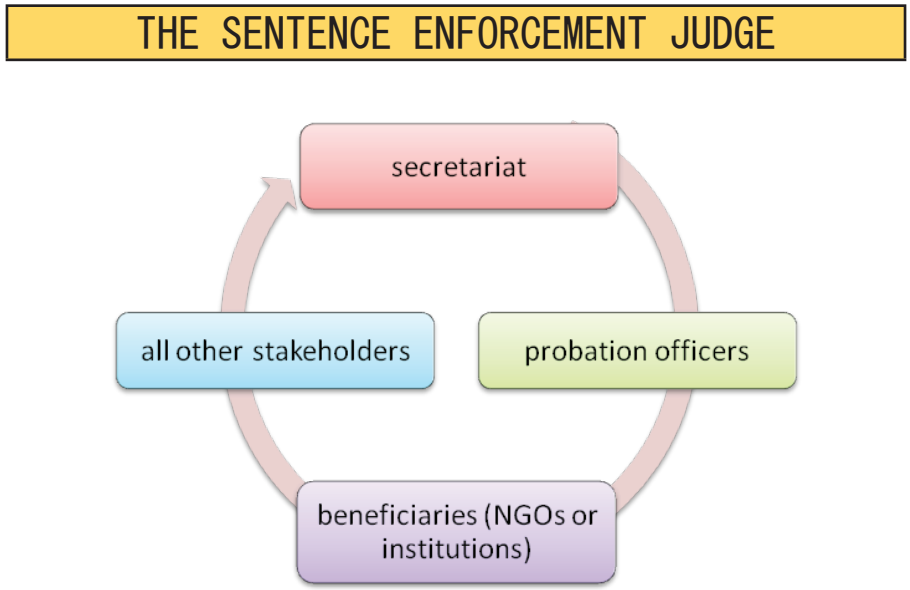
What has been achieved so far by this office is the fruit of the continuous support of the Penal Reform International and its partners, and the active contribution of all parties involved, who spare no effort to meet the goals set for this probation mechanism.

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. This handbook comes as a contribution to push forward this project, and enhance its role in the institution of community service as developed by the restorative justice approach, and non-custodial measures in the open space as a vital area of the probation.

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



Although this pilot project raises much hope in a promising probation experience, after revision of the Code of Criminal Procedure, the criminal judge could not put non-custodial measures in force, notwithstanding the deep conviction in the necessity to overcome the downsides of short prison sentences and the difficulties convicts face after imprisonment, especially their reintegration in social life, which certainly generates recidivism after abrupt release to the open space, without any rehabilitation phase. Non-custodial measures will prove operative only if there is an integrated vision that incorporates all instruments for the success of probation,

including a strong mobilization of audio-visual media to campaign for the advantages of this new approach, the reinforcement of judicial specialization in probation, boosting the organizational dimension in the field, and the improvement of scientific research in criminal matters. 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 medial 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				
The total number of cases	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
192	55	89	16	32

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

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

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 Commission for Lawyers, the Civil Prison of Messaadine, 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 foregone 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 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 proba-

tion 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 Messaadine 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, not to forget of course the lack of means of transportation between the prison, the probation office, and the beneficiary institution.
- 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.
- Due to the impact of quotidian practices, the criminal judge seems to show resistance to changes in the judicial work, although there are legal provisions that allow the initiation of restorative justice and non-custodial measures, and authorize probation measures. More decisive legislative interventions are necessary to overcome this situation, since it is not sufficient to rely on the criminal judge's inclinations so as to ensure more effectiveness in judicial work.

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, lactating women incarcerated in collective rooms for 23 hours a day; these are all challenges posed for the proba-

tion 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 criminal judge 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.

We should spare no effort to make imprisonment a last resort, with regard to the wide range of alternative sanctions available to the criminal judge for first-time offenders, or for those who committed small offenses, or caused redressable damage to individuals or to the community, or with regard to vulnerable social categories like children at a young age between 18 and 21 years old, for whom the legislature carried out revisions of the Code of Criminal Procedure in September 2010, to provide for special treatment of this category in criminal matters, in a middle stage between the treatment of children and adults. These are in fact legislative tools for the criminal judge to consider, according to his discretionary powers, on the way to install legal mechanisms that authorize mitigation in cases of young offenders, who form the majority of prison inmates.

Modern penal policies 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. In this case, interim release works as an alternative measure supervised by the probation office, which undertakes through regular interventions to provide follow up for the released defendant, conciliate him with the community, and revive his sense of commitment and responsibility.

The criminal court is generally invited to interact with the request submitted by the lawyer, 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 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.

An important experience capitalized so far by the probation office shows the wide scope of intervention of this institution that covers sentence enforcement with respect for human rights and under the supervision of the judiciary, the skilled probation officers and volunteer lawyers, who played 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.

There is a necessity to endorse the restorative efforts geared by the probation office, by expanding the scope of community service orders to cover all contraventions and misdemeanours. Law enactment keeps insufficient unless there are concerted endeavours to overcome the difficulties facing judicial applications, by motivating penal practitioners, notably criminal judges, to opt for this, flexible but punitive, non-custodial measure.

There is also a need to set up a mechanism for statistics and informational services, as an instrument for evaluation, suggestion of alternatives and legislative interventions to integrate new measures, like the electronic surveillance bracelet. This mechanism will serve subsequent follow-up in case of parole orders, and will examine the defendant's eligibility to probation service before the sentence pronouncement. It will enhance the mission of the probation office, with regard to its significant success celebrated by experts from various international organizations, who always recommend that this experience should be extended to other courts of appeal in our country.

Thus, the probation office cannot extend its mandate unless there is some legislative work towards enforcing house arrests by the electronic surveillance bracelet for offenders who have a stable job, or who are in the process of completing projects that necessitate their presence, or who live social and family stability.

Advocates for restorative justice and community service should direct their efforts toward boosting national media attention to this approach. We suggest at this level that the Ministry of Justice launches partnerships with national media, to guarantee a wide coverage of legal issues, to boost the simplification of procedures, and to enhance legal education among litigants, which will certainly increase chances of success.

This steady 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.

The probation office has built a solid network in cooperation with 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 and the Regional Council of the National Commission for Lawyers. It should be noted that Penal Reform International has provided support and advice throughout this process, on the purpose to lay foundation for a national probation experience which started with the working group in the pilot project in Sousse. This experience 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 endeavours 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 be-

come 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

Sample documents employed in the probation office

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

Public interest
Number:

Summons

The probation office invites ……

Resident in…… to appear before the sentence enforcement judge. A community service order was issued by the court …… Date: ……

For this reason, we invite you to appear in the office no later than two weeks from the date of receiving the summons, at 09 a.m.

Note: The lack of presence in the term mentioned having to judge the implementation of the sanctions, to take the necessary actions against you and that activation of corporal punishment.

Note: in case of non-appearance in due time, the sentence enforcement judge will take the necessary actions against you, including corporal punishment.

Date: ……

Pace……

Signature of the probation office

Address …… Phone: …… Fax……

Name and title of the convict him, undersigned,……

admits having received summons to appear before ……date……
…… at (time): ……

Signature of the summoned

The undersigned (1) …… admits having delivered the summons to (2) …… on (date) ……

Signature and stamp

(1) name and title of the plaintiff.

(2) Name and title of the person to who summons was delivered

Attention: this document should be sent back to the secretariat of the probation office

Address…… Phone: …… Fax: ……

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

Place ……Date……

Registration Number: ……

Number: ……

From
The sentence enforcement judge in the Court of First Instance in Sousse
to
The Doctor of Sousse Civil Prison in Messaadine

Subject: Request for medical examination of…… ……. ……

It has been ordered that the convict (name…… ……. ……. will perform a community service sanction instead of the prison sentence. We kindly request that you carry out a thorough medical examination for the above-mentioned, and check his ability to perform the community service as an implementation of the penal sentence against him, and send us a report as soon as possible.

Yours Sincerely,

Signature ……

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

The Social Instructions Card

Name and Surname : …… ……Number :……

Date and place of birth…… …… …… ……

Name of the Father : …… Occupation ……

Name of the Mother: …… Occupation……

Educational level:…… …… …… ……

Occupation:…… …… …… …… ……

Civil Status: Single ( ) Married ( ) Divorced ( ) Widowed ( )

wife's name: …… …… ……number of children ……

Health status: …… …… …… …… ……

Penal situation: …… …… …… …… ……

Current address: …… …… …… …… ……

Phone…… …… …… …… …… ……

The signature of the convict ……

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

The Obligations of the Defendant Subject to Community Service

The defendant subject to community service order (name): ……

ID Card N°:…… Resident in:……

Foreword: This document aims to determine the rights and obligations of the parties responsible for the supervision and execution of the community service order.

The obligations of the defendant subject to community service order towards the probation office:

1. The probation office undertakes, from the starting date of its jurisdiction of a case, to supervise the execution of the community service order, taking into account the rights and obligations of all parties involved in the execution of this sanction.
2. The probation office undertakes to send all notifications, including summons to the defendant to perform the community service order, either administratively, or by bailiff, or by any other medium.
3. Once the defendant appears at the probation office to execute the community service order, he shall be referred to the civil prison in Messadine for medical examination.
4. The defendant shall undergo a medical examination in the the prison, in no more than two weeks of that date.
5. The probation office must inform the defendant of the address of the institution wherein he is supposed to perform community service, and give him a copy of the community service order, which includes a timetable supervised by the office, and the start date and finish date of execution.
6. The defendant shall stop execution of the community service during the days of official and religious holidays.
7. The defendant shall submit in advance a written special leave application to the president of the probation Office, in case his wife, children or parents are sick, in case of death of one of the relatives to attend the burial. All necessary evidence should be

annexed to this application, which should be sent by whatever means, including the fax.

8. The defendant shall inform the probation office, if he changes his residence address or phone number as contained in the social instructions card.

Signature of the defendant … … … … … … … … . . .

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

The Obligations of the Defendant Subject to Community Service towards the Beneficiary Institution

1. The defendant shall perform the community service order, and abide by the timetable attached to the sentence enforcement certificate, and show great respect of time, high level of discipline, good behaviour and decent attire, as well as respect of the rules of procedure of the beneficiary institution.
2. The Defendant must perform the community service order in a right manner, after being assessed by the person in charge of follow-up designated the beneficiary institution.
3. In case of every violation or lack of respect for these obligations, the defendant shall serve the remaining period of the prison sentence, after informing the prosecutor of the non-execution of the community service order.
4. The Ministry of Justice shall bear the burdens and costs of medical insurance against accidents at work and occupational diseases, while performing the community service.

Signature of the defendant ……

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

The Obligations of the Beneficiary Institution towards the Probation Office

1. The beneficiary institution shall clearly define the work to be performed, and provide the follow up instruments necessary for the proper execution of the community service, by setting the entry/exit timetable during the work, and select the person in charge of follow up.
2. For the good execution of the community service, the beneficiary institution shall provide all means available to complete the work required.
3. The beneficiary institution shall provide all appropriate conditions to facilitate the work of the agents of the Probation Office, who follow up and supervise the implementation of the community service order, and help them overcome the difficulties they may face.
4. The beneficiary institution shall notify the probation office with all possible means of communication, of all breaches committed by the convict (misconduct, lack of discipline and punctuality, inappropriate clothes, or not doing the work correctly).

Signature of the head of the institution ……

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

The Program on the Terms of Execution of the Community Service Order

File N°: ……

The name: ……

Surname: ……

date of Birth: ……

Address: ……

Phone Number: ……

Date of the sentence: ……

The Beneficiary Institution: ……

Number of working hours for the community service: ……

Number of working days for the community service: ……

Date of the first day of the execution of the sentence: ……

Date of the last day of the execution of the sentence: ……

Full Name in charge of follow-up in the Probation Office: ……

Proposed activities: cleaning - Garden Care - maintenance (painting, carpentry, plumbing...)

After reviewing the decision

I, Yousef Ramadan, the sentence enforcement judge in the Court of First Instance, decided to order execution of the community service mentioned above, according to the accompanying schedule:

Address:……Phone: …… Fax: ……

Schedule of working days

	Days	Hours
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Signature ……

The Sentence Enforcement Judge

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

Follow-up Card

File N°: .....

Name of the Convict: .....

The Beneficiary Institution: ..... Phone number .....

Official in charge of follow-up: ..... Phone Number: .....

Date	presence/ absence	Discipline and behaviour	Type of work	Notes

Opinion of the probation officer: .....

Signature .....

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

Place: ..... Date: .....

Evaluation Form

The Beneficiary Institution: .....

The Senior Official in the Beneficiary Institution: .....

Full Name of the Defendant: .....

	Evaluation Criteria	Grading									
		1	2	3	4	5	6	7	8	9	10
.1	Discipline in attendance										
.2	Achievement and productivity at work										
.3	The level of work performed										
.4	Organization of work site										
.5	Cooperation and good teamwork										
.6	Initiative										
.7	Concern for the institution's property										
.8	Relationship with all staff										
.9	Appearance										
.10	General behaviour										
Total											

Summary of Performance Evaluation:

Unsatisfactory	Satisfactory	Good	Excellent	Unique
Less than 40	to 49 40	to 79 50	to 89 80	and above 90

Opinion of the Evaluation Committee .....

Suggestions: .....

The signature of the head of the institution .....

Republic of Tunisia
Ministry of Justice
Court of Appeal of Sousse
The Probation Office

Place: ..... Date: .....

Number: ..... / p

From

The Sentence Enforcement Judge in the Court of First Instance of Sousse, head of the Probation Office

to

Mr. the Prosecutor in Sousse

Subject: A report on the implementation of the community service order as an alternative to the prison sentence.

Reference: sentence number ..... in trial session .....

After perusal of the Articles 336 and 336 bis. of the Code of Criminal Procedure

And of the file of the convict (name) ..... registered under number .....

And based on our commitment to follow up the implementation of the community service order by the convict (name) ..... pronounced against him under the number: ..... by the Court of First Instance of Sousse.

We have the honour to inform you excellency that the convict was subject to medical examination, which confirmed his ability to perform the community service. Then we decided that the service will be performed in (concerned institution) ..... for (duration..... hours. In coordination with the concerned institution, and after informing him of the ordered service, the convict serves the entire work required, and during the period from (day) .....to (day) .....

And we hereby confirm the implementation of the sentence pronounced against the convict.

Thus, we kindly request to authorize to the forensic identification service to omit the offense perpetrated from the criminal record of the convict pursuant to the provisions of Article 365, paragraph 6 of the Code of Criminal Procedure, which requires that “the verdicts of community service and criminal compensation shall not be included in the criminal record card N° 3” (added to law N° 68-2009 issued in August 12, 2009).

We hereby inform you, as required by law, and you have broad consideration as deemed appropriate.

The Sentence Enforcement Judge .....

Republic of Tunisia
Ministry of Justice
The investigator / first office in charge of the juvenile
Number of the case: .....

A decision to subject a child to probation
By the Probation Office of Sousse
Under the law

We ..... the preliminary investigation judge in the office ..... in charge of the juvenile in the Court of First Instance of Sousse.

Pursuant to the provisions of Articles 87 and 93 of the Child Protection Code:

We authorize the Probation Office in Sousse in the person of the sentence enforcement judge, as the supervisor of the work of the probation officers, to follow up and support to this child: ..... a Tunisian, born in.....
Name of the mother: ..... single, a journeyman, resident in..... in Sousse. Phone number: .....

Referred to us for ..... pursuant to the provisions of Articles ..... We also request, in addition to follow-up, to refer the child to a training institution, no later than a month. In case of non-compliance with the follow up procedures, we kindly request to refer the child concerned to us.

Seen and approved for execution

In Sousse on .....

The Representative of the Public Prosecutor

The preliminary investigation judge

Notice

at.....

we..... we were informed of this decision by Name: .....
His response is .....

Signature .....

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.

Article335 (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. 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 remedy 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 judgement of the trial he was assigned to,
- the memorandum of the elements of the required fees.

Article 4 - The tribunal president who delivered the judgement 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 judgement 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.