BUILDING PROBATION CAPACITY: WHAT WORKS?

Learning from the European Experience of Probation Service Development in the 21st Century

Stephen Pitts
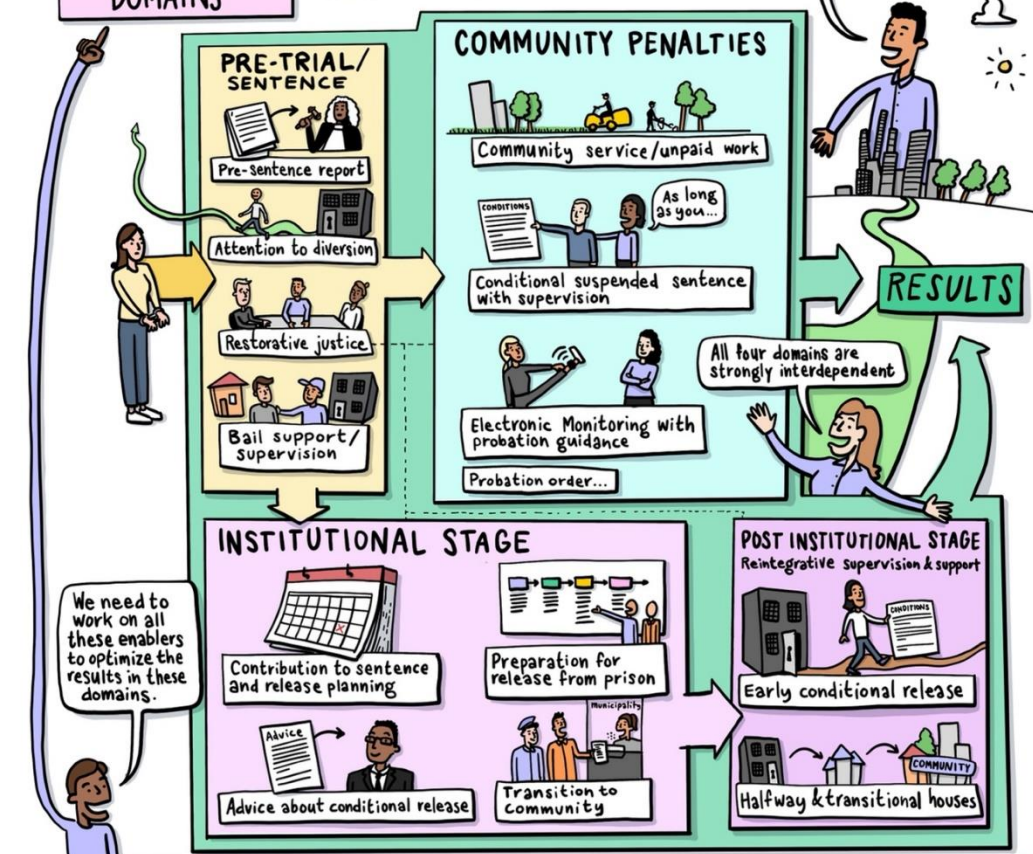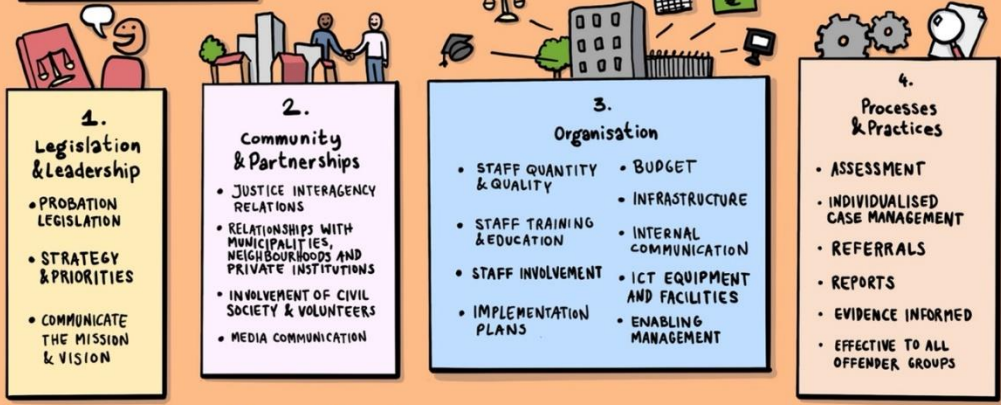
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PROBATION CAPACITY BUILDING

AREAS OF RESPONSIBILITY/ DOMAINS

Objectives: reducing reoffending, supporting reintegration, preventing further victims, reduce the use of prison...

PRE-TRIAL/ SENTENCE
- Pre-sentence report
- Attention to diversion
- Restorative justice
- Bail support/ supervision

COMMUNITY PENALTIES
- Community service/unpaid work
- Conditional suspended sentence with supervision — As long as you...
- Electronic Monitoring with probation guidance
- Probation order...

All four domains are strongly interdependent

RESULTS

We need to work on all these enablers to optimize the results in these domains.

INSTITUTIONAL STAGE
- Contribution to sentence and release planning
- Preparation for release from prison
- Advice about conditional release
- Transition to community

POST INSTITUTIONAL STAGE
Reintegrative supervision & support
- Early conditional release
- Halfway & transitional houses

ENABLERS

1. Legislation & Leadership
- PROBATION LEGISLATION
- STRATEGY & PRIORITIES
- COMMUNICATE THE MISSION & VISION

2. Community & Partnerships
- JUSTICE INTERAGENCY RELATIONS
- RELATIONSHIPS WITH MUNICIPALITIES, NEIGHBOURHOODS AND PRIVATE INSTITUTIONS
- INVOLVEMENT OF CIVIL SOCIETY & VOLUNTEERS
- MEDIA COMMUNICATION

3. Organisation
- STAFF QUANTITY & QUALITY
- STAFF TRAINING & EDUCATION
- STAFF INVOLVEMENT
- IMPLEMENTATION PLANS
- BUDGET
- INFRASTRUCTURE
- INTERNAL COMMUNICATION
- ICT EQUIPMENT AND FACILITIES
- ENABLING MANAGEMENT

4. Processes & Practices
- ASSESSMENT
- INDIVIDUALISED CASE MANAGEMENT
- REFERRALS
- REPORTS
- EVIDENCE INFORMED
- EFFECTIVE TO ALL OFFENDER GROUPS

Steve Pitts & Leo Tigges (2023)

BORD&STIFT

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About the Authors

Steve Pitts began his career as a Probation Officer in London, working later in management and national roles including probation partnerships and prisoner (re)integration. Following European Commission work advising on probation development, he led the England and Wales Prison and Probation Service's international function, working with international partners on research and on capacity building worldwide. He now works independently with governments and international organisations supporting community-based justice reform, research, and probation development including with nations in Asia, Africa, and Europe. He contributes to several international justice initiatives, networks, and NGOs and is an ambassador for, and Honorary Member of, the Confederation of European Probation (CEP).

Leo Tigges worked as a researcher, director, and program manager (at central and decentralized levels) at the Dutch Ministry of Justice: probation, prisons, and child protection. His more recent positions were operational director of the Dutch Probation Service, and Secretary General of CEP of which he is an honorary member. His last post was liaison officer of the Dutch Ministry of Justice to the Dutch Caribbean islands. He now works independently as a consultant in community-based justice, including capacity building in Montenegro, Surinam, Serbia, Ukraine, Kazakhstan, Azerbaijan, and Armenia.

Authors' Note

We are happy to present this report in which we offer insight into "what works" in probation capacity building. We hope this publication will help to promote stronger probation roles and organisations globally, and to build provision where it is envisaged or new, thereby helping to realise the potential contribution of probation or community corrections to fair and effective justice worldwide.

The report is extensive. We decided to include our more detailed findings in the belief that some readers will wish to delve into aspects of this material. For these readers we have included annexes containing more comprehensive content including full country studies.

Other readers will be drawn to specific areas of the report. Essential information is found in the Executive Summary. We also draw attention to the 11 figures (for example Figure 2: 10 Success Factors when building Probation Capacity, and Figure 3: Five points for consideration by the International Community to support development globally. Table 3 summarises key findings of the literature review and implications for probation capacity building practice. In Chapter 6 (Conclusions and Recommendations) Section 6.2.2 describes characteristics of effective capacity building projects, Table 6 discusses potential hindrances, and Section 6.2.3 implications for probation development globally. Table 8 proposes 5 points to support probation development globally. All can be accessed via hyperlinks.

Any opinions, findings, conclusions, or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of interviewees, of individuals that gave advice or feedback on drafts, or of the institutions that are mentioned in the materials. Any errors are the fault of the authors. We are immensely grateful to everyone who has helped to make this report possible.

Steve Pitts and Leo Tigges

Contents

The following annexes can be downloaded separately:

Annex F1 – Albania Country Study

Annex F2 – Georgia Country Study

Annex F3 – Latvia Country Study

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Annex F5 – Romania Country Study

Annex F6 – Serbia Additional Country Information

List of figures and tables

Acknowledgements

Executive Summary

Introduction and synopsis of main results

This report describes a project to improve understanding of good practices in building probation capacity, both of new services and those already in the process of development.

We found that "success" is promoted by several factors -

- A collaborative, partnership approach
- Creating a shared vision or aspiration regarding probation's potential contribution to wider justice system evolution
- Recognising and working with complexity and context – international and national
- Building a network – engaging, involving and harnessing the expertise of critical stakeholders and partners
- Technical and soft skills – an inspiring, individualised, knowledge and tools-based approach, building on strengths to foster organisational and personnel capacity and sustainability
- Achieving the vision - planning and implementing through challenging steps, piloting, and review, with flexibility
- Recognising and engaging with the stimulating and sustaining role of supra-national organisations and professional bodies, including through standards, data, finance, research and knowledge sharing

Together with a range of project management skills we found to be especially important in international capacity building, and risks to be aware of, we propose **10 points for consideration, or implementation "Success Factors"**, when building probation capacity at the national or jurisdiction level. We also offer a model (**the "Domains and Enablers Model"**) to support communication between actors in this field, and **5 points** for deliberation by **the international community** which we believe may help progress the contribution of probation work globally.

Our findings and recommendations are based on a study of European probation development in the 21st Century, supplemented by a review of international literature. Whilst the origins of probation work in Europe are

traceable to the 19th Century[1], early pioneers having since been joined by other Western European nations, perhaps most striking has been the acceleration over the last 25 years in establishing probation organisations in Central and Eastern Europe in former Soviet republics and other countries previously within the Soviet sphere of influence.

The European picture is in this sense both remarkable and successful. However, this is not the whole picture. As this study makes clear, European probation services vary greatly in their scale and focus. The Council of Europe offers a guiding basic principle[2] -

"Probation agencies shall aim to reduce offending by establishing positive relationships with offenders in order to supervise, guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and fair justice process."

Aside from the inherent difficulties in measuring some of these aims and approaches, probation "success" can be hard to define for other reasons, as we discuss later, not least variation in probation service purpose and emphasis (see for example Durnescu, 2008).[3] We also note some concerning aspects of European probation development, most notably "net-widening"[4].

Notwithstanding difficulties in defining or measuring success, our study shows that some development initiatives appear to have been more successful than others, certainly in the sense of contributing to probation organisations that today have an established and sustainable role in their country, and significant responsibilities and workload.

We ask which approaches to development or methods appear to support success and consider whether the success factors, and risks, we identify in

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[1]   Most especially to the Netherlands, the United Kingdom, and to Ireland where an early form of parole was being practised from the 1850s. Similar developments were taking place in the United States of America where the well-known story is told of John Augustus, a Boston cobbler, who in 1891 requested a judge place a convicted offender, a heavy drinker, under his care so that he could be rehabilitated rather than being jailed.

[2]   European Probation Rules. Basic Principle 1, Council of Europe (2010)

[3]   We explore the concept of success in probation work in the introduction to the main report. We note there is no universally accepted definition of success in probation work, just as there is limited understanding of successful approaches to probation capacity building. One reason for difficulty in defining probation success is the range of purposes. Durnescu (2008) for example, describes four main variations in European emphasis such as promoting community sanctions and measures, assisting judiciary, support to offender rehabilitation, and public protection.

[4]   Net-widening refers to an increase in the total number of people either in prison or under probation supervision, usually without clear evidence of cause such as growing crime rates. Community sentences may widen the net of persons supervised rather than being an alternative to incarceration.

Europe are likely to be relevant in other regions of the world. We conclude that, for the most part, they are.

Why a project on probation capacity building?

A need for more, and often better, probation service[5] delivery is rarely contested at global level, driven in part by a desire for "alternatives" to incarceration. International bodies including the Council of Europe and United Nations argue strongly for, and support, efforts to deliver alternatives more widely, reliably, and convincingly, whilst resolutions[6] of both, such as those of the United Nations on the need to reduce imprisonment and to expand the use of effective community-based sentences, are adopted by consensus (see, for example, Joutsen, 2020).

Furthermore, the benefits of community-based provisions, including reduced rates of reoffending overall in comparison to imprisonment (for example Petrich et al, 2021), lower exchequer cost, and reduction of some of the "side effects of mass incarceration" (Porporino, 2015) such as stigmatization, disconnection, and destabilized communities are argued with increasing power and frequency (See for example "Probation, Why and How", 2021[7]).

Yet despite often considerable national and international financial investment and development expertise, **probation provision remains far from universal** and, where it exists, varies greatly in maturity and emphasis. Moreover, custodial use continues to grow, both overall and in many of the world's regions. As PRI reports "Two years after the adoption of the Kyoto Declaration and the UN Common Position on Incarceration, … little progress has been made in moving away from using imprisonment as the 'default' response and towards improved proportionality in sentencing."[8]

Whilst there are encouraging global developments such as the World Congress on Probation and Parole, the introduction of data and practice sharing platforms, and the significant decision of the UNODC to develop a handbook on the establishment and sound operation of probation services globally, due

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[5] We use the terms probation and probation service in the broad European sense, embracing provision that may be termed Probation and Parole or Community Corrections in other parts of the world and including work that may be delivered pre-trial, pre-sentence, post sentence in the community, with custodial and other institutions, and post-institutional release including parole and other forms of aftercare.
[6] Resolutions of the United Nations Congresses on Crime Prevention and Criminal Justice
[7] Bosker, J., Tigges, L.C.M., Henskens, R., (2021)
[8] Penal Reform International, Global Prison Trends. (2023)

for publication in 2023, **information regarding the global picture** including data, with which to inform progress, **remains far from complete.**

The picture is also incomplete on the question of effective approaches to probation capacity building. Given disparity between expressed intention and investment on the one hand, and results on the other, it is perhaps surprising that processes of probation development remain little researched and lack ready structures for comparison. Approaches to capacity building and policy transfer appear almost as individual and numerous as, and often to reflect, the countries and organisations involved.

It is therefore not surprising that definitions of capacity building vary too. The following is offered by the European Commission Toolkit-

"Capacity is **shaped by, adapting to and reacting to external factors and actors**, but it is not something external – **it is internal to people, organisations and groups or systems and organisations."**[9]

This definition points to the **complexity of capacity** itself, including its multi-faceted internal nature. It is not surprising therefore that processes of capacity building are complex too, including the interplay between "external factors and actors" and internal capacity. We explore the nature of capacity building further in the report's main introduction and literature review.

Finally, the study is also motivated by long experience of probation work in our own countries - the United Kingdom and the Netherlands - and in supporting probation development in other European jurisdictions, in European "near-neighbours", and around the world. Aware of marked differences in approach, priority, and apparent success on the part of donor organisations, providers and beneficiaries, (and increasingly aware of our own biases and variations in success) we have increasingly reflected on our own practice and asked ourselves how countries could best be supported in their endeavours to build probation provision.

Through the study we sought, in brief, to answer two central questions –

- To what extent a model, tested and refined during the project, provides a framework or "language" to assist probation capacity building?
- What factors support, or hinder, success in probation capacity building?

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9   Bold added. European Commission (2010), Toolkit for Capacity Development

During the study, it became increasingly clear that the international community has untapped potential to progress the contribution of probation work globally. We sought therefore also –

To identify steps that international bodies could take to support probation development and further probation work at the global level.

Methodology

In setting out to better understand good practices in capacity building, we first constructed an analytical framework or "common language" with which to examine and support capacity building. We drew on the widely accepted standards offered by the Council of Europe and United Nations, in particular the Probation Rules and Tokyo Rules respectively. Whilst these "rules" do not address the process of development, they do provide "end states" that countries or jurisdictions are encouraged to work towards. We describe a series of four **"domains" of probation** representing in simplified but practical form areas of responsibility or "competencies" that services can move towards during development and maturation: work pre-sentence, post-sentence in the community, or during and following imprisonment.

Utilising principles of well-tested models of organisational development such as the European Excellence Model, we then describe **probation service "enablers"** – four groups of conditions for success based on legislation and leadership, a resilient organization (including sufficient and well-trained staff, clear communications), effective practices, and strong partnerships[10].

We then applied the "domains and enablers" model in **field research in five countries** – Albania, Georgia, Latvia, Poland, and Romania. In each case we interviewed stakeholders and conducted desk research. We also conducted a more limited review of probation development in Croatia and Serbia. Each of these countries has introduced or sought to strengthen its probation service during the last two decades. We also considered probation developments in countries with which we are familiar in other regions of the world.

We also **met representatives of European international bodies** concerned with probation development, examined other European and international influences on probation, and **reviewed capacity building literature** in the probation field,

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[10] An early version of the Domains and Enablers Model is illustrated in the full methodological overview. A later version in simplified infographic form faces the title page and is included in the report final chapter.

supplemented by literature from other areas of justice and general literature on capacity building.

Findings

1.   The Model –

> The Model provides a succinct and user-friendly tool with which to explore probation concept and purpose, potential areas of competence ("domains") and probation "enablers".

We found the Domains and Enablers Model to be an effective tool in discussion with all parties to probation development (beneficiaries, donor and international organisations, providers, consultancies and other parties). The model provided a common and easily communicated accessible "language" with which to clarify probation concept and proposed purpose and to discuss development. It helped to assess the current stage of probation development (when present) and future, and to distinguish between areas of probation competence and enabling structures or processes.[11]

In terms of contribution to humane and effective criminal justice, the model illuminates the necessity of both a strong probation role and strong probation organisation. We find a general trend for the number of domains worked in to increase as services gain experience and maturity. The more domains addressed by probation activities, the higher the visibility and activity of the probation service to all stakeholders in different phases of the justice process, and the greater the opportunity to achieve probation aims whether reducing reoffending, restoration, proving alternatives to custody, or other aims.

The Model is illustrated in simplified infographic form inside the report's front cover.

2.   Factors that support, or hinder, success in probation capacity building

We found very considerable congruence between field study findings, findings from the examination of European and International influences, and the literature review.

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[11]   By supporting communication and clarity of planning and delivery, we believe the tool has potential to assist coordination between multiple parties, thereby supporting capacity building effectiveness and efficiency.

Field study findings

Taken together, field study findings illustrate the complexity of probation capacity building. They identify possible success factors, for example understanding and working with context, allowing sufficient time and flexibility, attention to aims and vision, early stakeholder engagement, strategic attention to domain and enabler development, and enduring international engagement based on partnerships and mutual knowledge-exchange. Findings also illustrate several risks or "miss-steps" to avoid.

It is evident from the field studies that probation capacity building is a **complex endeavour.** To state perhaps the obvious, no two beneficiary countries, capacity building providers, or donors are the same. Direction and success are influenced by multiple internal and external factors. Capacity building impacts on a range of stakeholders and systems and is frequently unpredictable. Every project is different! These features mean that there is no one blueprint; sustainable success is generally achieved only after considerable **time, with an individualised approach**, often requiring **flexibility**, the need for which should be recognised.

Foremost influences include context (see Figure 1). These, certainly in Europe, embrace prevailing **international and regional context** including international bodies and professional associations:

Internationally, the desire of most European countries to join the European Union has helped stimulate probation development (as an aspect of humane and decent treatment of those who break the law), whilst the EU, Council of Europe (further CoE) and other donors have helped to support and fund international probation development projects, informed by standard setting of the CoE. The Confederation of European Probation, (further CEP), has supported knowledge exchange, helping to develop and share the practice research base (with sustained academic involvement), holding events on probation development, and contributing to the feeling of a probation "family" to which countries want to belong.

National context matters greatly too, embracing historical and current political, economic, social and cultural factors, including **justice and penal system climate or context**. In several European countries these have been influenced by the legacy of the Soviet Union. National and international contexts interact, effecting current and potential response to crime and therefore probation scale and focus, with implications for capacity building.
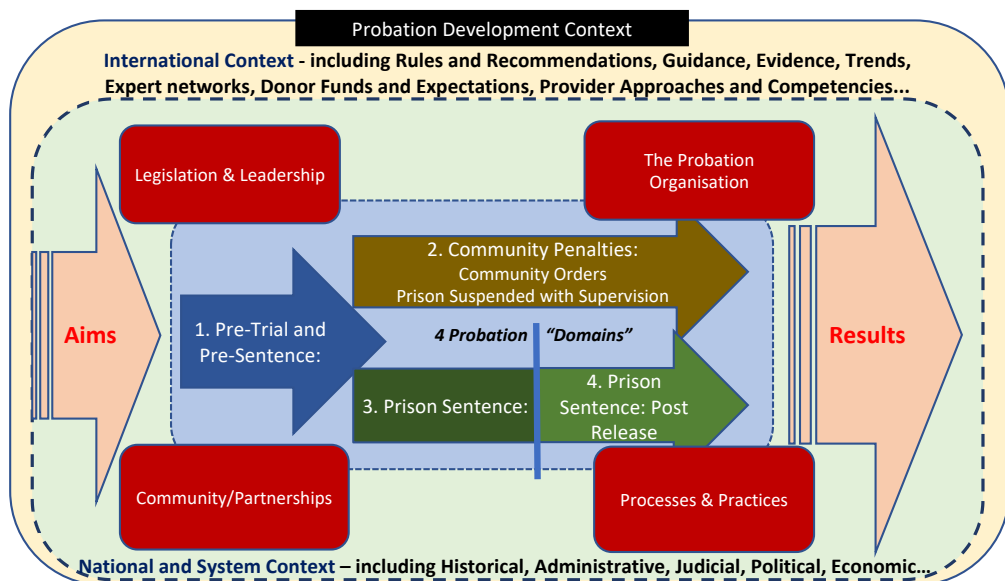
Figure 1: Domains and Enablers within an International, National, and System Probation Development Context.

We then offer insight into good practices in building probation capacity at the programme or project level. Whilst the benefits of "policy or practice transfer" (such as opportunity to learn quickly from others' experience, avoid pitfalls, and reduce reinvention of the wheel) are evident and real, successful capacity building amounts to a great deal more than borrowing selected practices and implementing them, and doing so with clarity of plan. Successful capacity building is much more than a technical process; the reality is far more nuanced as will be clear from the following!

Creating an **inspiring shared vision**, a rationale including regarding probation's potential and intended place in the sentencing framework, is fundamental. Clarity is necessary regarding probation's use as an alternative - rather than an addition - to the use of prison, to reduce risks of "widening the net". There is worrying evidence this is not always the case. Other aims, for example to reduce reoffending, support rehabilitation and reintegration, or to prevent further victims should be clarified too, taking prime account of needs as expressed by the beneficiary. In other words, clarity concerning the **"why?"** of probation helps to both initiate and sustain development.

Where clarity of vision is lacking (which we have observed particularly in some cases not in this study) progress has been slower, sometimes compromised by differences in assumption or expectation between main project parties (beneficiary, donor and provider); tension may also arise between beneficiary expectations and those expressed in European guidelines.

Hand in hand with clarity of vision are **the people involved and active engagement**. Of notable importance are committed political and service leaders, willing to introduce probation work and embark on this complex journey. Success is more assured with continuity of dedicated individuals. Whilst in practice early development often involves only a relatively small cohort of "trailblazers", building and sustaining probation works best when supported by a range of engaged and informed stakeholders from an early stage (who ideally become more committed over time or come to play a leading role, participating in service design especially in policy and practice areas that impact on stakeholder interests**). Networking and partnership** are therefore vital, including "justice-chain" system partners such as judges, prosecutors, and prison leaders.

There is of course interaction between people involved and vision. A network supportive of probation can help review the current situation, contribute to development of a shared vision for probation's potential, clarify views and roles, create buy-in, help to communicate the probation concept, and identify and overcome obstacles and differences in perspective over time (the **"who?"** of probation development).

Achieving the vision should be supported by systematic planning and strategic attention to implementation, creating challenging steps which consider work priorities in the four domains (the **"what?"** of probation), building on strengths, and linked to (realistic) aims. Steps should in turn be supported by focus on all four of the enabler areas, (emphasized according to prioritised domains and tasks within those domains) including the legislative framework, determined leadership and communications, a strong organisation (including satisfactory infrastructure, sufficient and well-trained staff, appropriate and effective practices), and community engagement with a range of partnerships (the **"how?"** of probation).

Achievements should be reviewed on a regular basis, including by stakeholders, identifying and recognising success, moderating plans where necessary, and acting as a stimulus for future development.

The project approach and relationship between the parties (including beneficiaries, donor-funders, and those offering technical support) matter too, including taking time to build sufficient understanding of national and penal context on the part of "donor" nations or organisations, and mutual identification with beneficiaries of priorities or steps that are likely to "strike a chord". Clarity and realism regarding what may be involved, appropriateness, and potential obstacles, resistances, risk, and how to mitigate them (especially when a beneficiary is new to probation work and/or donors have a significantly different background), also count.

Work should also consider **capacity for development** on the part of the beneficiary, including sufficient leadership, staff and access to other resources, and as noted earlier, build in opportunity for flexibility in the light of experience (informed, when possible, by pilots) and as mutual understanding grows.

Successful probation development is supported by **coordination** of effort on the part of all parties, including the multiple donors who may be involved, thereby improving synchronicity and efficiency whilst helping to avoid gaps and duplication. This was a consideration we found, perhaps surprisingly, often underplayed but of real value when present, further aided by **continuity** on the part of both international and national staff.

Opportunity to learn from a **range of countries** (donors, providers, or through project planning involving contact with more than one established service), especially those with similar experience, also helps ensure choice from a range of perspectives or "solutions" to better meet need.

Furthermore, capacity building appears most likely to succeed when the underlying **philosophy and principles** of approach embrace concepts and practice grounded less in policy or practice "transfer" or "copying", but rather reflect an individualised, **collaborative, partnership approach, based on knowledge-exchange**, equality, vision, inspiration, mutual learning, building on strengths and development of personal capacity - all of which help to foster conviction, delivery and resilience. More direct forms of copying or transfer may nonetheless succeed with sufficient attention to need, to adaptation, and especially between parties sharing similarities. They may contribute to products and tools of sustained value, especially when transfer is informed by a prior phase of knowledge-exchange and forms part of a strategic process of development. The beneficiary should always be in the "driving seat"!

Important in this respect are the **professionalism and qualities** of individual staff, as well as their organisations, in particular international experts who bring both strong technical (probation, project, and development) and culturally aware relational skills – technical knowledge of probation development and understanding of beneficiary context.

Findings on the Influence of the European and global context

The growth of probation services in European countries has been positively influenced by developments in the European and the global context. In brief these include:

- European Union (EU) criteria for new member accession which have encouraged improved prison conditions.
- Fund availability for countries to create alternatives to custody.

- Bi-lateral "twinning" exchange projects (European and sometimes trans-continental), multi-lateral research and development, and other financially supported arrangements.
- Standards developed by the Council of Europe (CoE) e.g., European Prison Rules 2006, European Probation Rules 2010.
- Influence of the European Organisation for Probation - the Confederation of European Probation (CEP).
- Increasing interest of the academic world in probation and alternative sanctions.
- The developing European evidence base.
- Development outside Europe, mainly expressed by guidance from the United Nations and elaborations of the practice and evidence base.

The European Union has had a strong influence on probation development, especially because of the process of accession. New members have joined in different phases. "Twinning" and other projects have offered significant boosts to development, financing international collaboration. Nonetheless a penal divide (Krajewski, 2007) persists, demonstrating the enduring regional and national influence of political, economic and other historical factors, and contributing to the risk of net-widening.[12] The CEP professional "epistemic community" has been another strongly positive influence. Further important influences have come from the Council of Europe's human-rights based standards, academic interest and engagement with probation work, and the evolving practice/evidence base, both within Europe and wider.

Systematic evaluation and collation of what has worked well in international probation capacity building (or what constitutes "success" in probation work) is lacking - perhaps surprising, as we remark elsewhere, given the investment of time and money. However, some limited international (beyond Europe) practice-based literature does provide insight into good practices in capacity building in related fields. These, and findings on European influences on probation development, are discussed further in the chapter of the main report on findings on European and International influence.

Findings from the Literature Review

As noted earlier, we find considerable congruence between findings from the field study, the examination of European and International influences and the literature review. The latter helps validate field findings whilst providing

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[12]   Statistical information is provided in *__The European__* mean is 212 in the Chapter on European and International influences.

additional understanding and insights into processes and good practices in capacity building.

Literature on capacity building specific to the probation field is comparatively rare (relative to, for example, health, prisons or security). We therefore drew also on other literature, concluding that literature of value to the project consists of three interrelated categories:

- General literature on policy transfer and capacity building
- Literature on the typology of justice systems in different countries
- Literature on policy transfer and capacity building in probation

General literature emphasised the complexity of capacity building including impact on systems beyond the "target" system (in this case probation) within and outside of justice. As Leroux-Martin and O'Connor (2017) comment, development in one field may set off a "chain-reaction" elsewhere with hard to predict consequences, one of several factors contributing to development processes often being more like "clouds" than "clocks".

Dolowitz and Marsh (1996 and 2000) elaborate questions such as why, who (is involved), what, and how, and other analytical dimensions of transfer including "degree of transfer" and what restricts or facilitates transfer. Each point echoes findings from the field research, illustrating for example how "why" probation and "who" to involve are critical early questions in capacity building. Transfer "degree" refers to another transfer continuum flowing from inspiration, through emulation and adaptation to direct copying (an insightful concept we found only rarely discussed in practice). Factors that may restrict or facilitate transfer include understanding and taking sufficient account of cultural, political, or ideological compatibility and economic cost. Policy failure may also equate with what they term uninformed, incomplete or inappropriate transfer.

Evans (2017) suggests a continuum of motivation to adopt policy or practice from overseas ranging from voluntary to partly or mainly coercive. The latter may occur when international pressure for penal development may be linked, for example, to membership of the EU or funds, whilst conflicting to some extent with penal culture. He argues that transfer success is more likely between countries sharing characteristics, and identifies potential transfer barriers to address, for example cultural fit, economic and absorption capacity, and public opinion.

Andrews, Pritchett, and Woolcock (2012) elaborate the "capability trap" which may arise from ambition of the receiving jurisdiction, the donor, provider, or all three relative to resources available to implement and/or to manage demanding international projects (often undertaken by beneficiaries in

addition to a "day job"). They advise "Problem Driven Iterative Adaptation "to minimizes "solution" transfer in favour of identifying local problems and building flexibly on local solutions to resolve them (albeit stimulated or informed by international experience).

On the theme of justice typology, the strong influence of international context is illustrated by Krajewski (2007) who describes a regional context - a European east-west penal divide reflecting in part the legacy of communism. Haney (2016) and Drápal (2021) reflect, perhaps unexpectedly, on a possible negative impact of economic and political change on the liberalisation of penal policy. Cavadino and Dignan (2006) discuss how national context may interact with justice development, arguing a strong association between national political economy and penal policy, as does Tonry (2007). All imply how penal system legislation, policy, practice - and embrace of development - are part of bigger national pictures which may resist or encourage global or regional justice trends.

Turning to literature on probation transfer or development, Lappi-Seppälä (2003) suggests three issues to work on to reduce the number of detainees:how to get community sentence laws accepted on the political level, implemented on a practical level, and how to confront the punitive-populist pressure from the politicians and the media. Phillips (2010) illustrates the durability of penal culture through a comparison of probation in the United States and England and Wales. By implication, hindrances may result from attempts to impose change in conflict with an existing culture or approach (with potential for conflict with newer international standards). Joutsen (2020) argues the mutual reinforcement of actions to support offender social inclusion and build safer societies, as embraced by the UN Sustainable Development Goals, pointing to the vital role of probation partnerships.

Špero (2020) describes a step by step holistic and strategic approach in Croatia, attending in effect to domains and enablers. The importance of "who" is involved, communication and partnership are evident in relation to the judiciary and prosecutors, as are communicating with media and public, drawing on hard facts on the benefits of probation. Špero notes the benefits of continuity in international projects, preferably drawing on a range of national experiences.

McFarlane and Rob Canton (Editors, 2014), based on England and Wales work with Turkey, suggest allowing time to get to know a country before finalising a well-informed (mutual) plan, delivery flexibility as understanding develops, and the importance of attention to language meaning, experts' inter-cultural skills, and building familiarity over time.

Canton (2006) and Durnescu and Haines (2012) explore their own case studies of probation development in the Ukraine and Romania respectively. Recognising the significance of existing culture, systems, and practice (and that motivations may vary over time), Canton advocates piloting and building on existing practice, supporting "fit" and ownership, rather than programme transfer, and argues for stronger emphasis on evaluation. Durnescu and Haines encourage a partnership approach and knowledge exchange, whilst Wheeldon (2012), describing work involving Canada and Latvia, recommends constructive (not proscriptive) interaction, local pilots, a national coordinating council, and sustainability encouraged by a participatory, pragmatic style that builds human capacity to develop probation independently, supported by strong relational skills.

In short, the literature reinforces field study findings, and review of international influences, regarding the significance of factors such as capacity building complexity, international, national and justice system context, structured approaches including - why, who, what and how - and potential issues to address and hindrances. Technical success factors such as pilots, flexibility, attention to domains and to enablers, working with a range of countries, longer-term involvements, and the value of relational as well as technical skills, are highlighted.

Conclusions and Recommendations

We offer three sets of conclusions and recommendations –

- The Domains and Enablers Model as an aid to building probation capacity
- 10 "Success Factors" when building probation capacity at the national or jurisdiction level
- 5 recommendations for the international community to support probation development globally

First, the domains-enablers model supports clarity of communication about the "essence" of probation and offers a practical language and analytical framework which all parties to capacity building can use in order to understand the current, and plan the future, development of probation work in a nation or jurisdiction.

Further, we believe the model has wide international application in different regions of the world. The model stresses the need for a strategic and balanced approach in extending the work of probation to all domains, supported appropriately by enablers, over a period of years - recognizing that establishing

a "successful" probation organization and delivery requires an enduring investment of time and resources.

We therefore commend use of the model as a helpful tool for probation development in Europe and other regions globally.

Second, based on consolidated field study results, enquiries concerning European and international influences on capacity building, and literature findings, we identify **10 success factors** in building probation capacity.

The 10 factors address a range of aspects of probation development at the national or jurisdiction level. They provide discussion points which are, we believe, helpful to all closely involved parties, in particular donors, beneficiaries, and service providers.

They are noted in overview in Figure 2 and presented in detail in the concluding chapter of the main report.

1 A collaborative, partnership approach – based on knowledge exchange and equality, empowering the beneficiary country to build capacity by addressing identified needs, drawing on a range of international policy and practice, and on national policy, practice and strengths, to create a tailored approach.

2 Creating and communicating a shared vision or aspiration regarding probation's potential contribution, that strikes a chord.

3 Recognising and working with (national, system, international) context and complexity: the influence of international, regional, and national social/economic environment or context on penal and justice system culture, drivers for change and direction, capacities, capabilities, budget, resources; the complex, multi-layered, unpredictable nature of change; consequently, potential duration of change and support.

4 Identifying and addressing a range of potential resistances (such as political, system, organisational, public) and risks, including net-widening, over-reliance on training at the expense of wider organisation and system needs.

5 Building networks and alliances – engaging and involving critical stakeholders and partners, placing probation's vision and contribution within the context of wider justice system evolution.

6 Achieving the vision – by devising a holistic and widely understood and communicated integral strategy (preferably incorporating benefits analysis) and implementation plan that balances work in domains and enablers.

7 Project Management – allowing for preparation time, development of mutual understanding, a step-by-step approach, piloting, review,

iterative and flexible development, continuous and coordinated across time and donors.

8   Professional technical and "soft" skills – involving experienced, knowledgeable, long-term, committed, inspiring, technically skilled and relational experts/consultants, "getting into the space of" the nation or jurisdiction, balancing international and national context - sensitive and adaptable to culture and language.

9   Drawing on and collaborating with supra-national organisations and professional bodies in probation development (including through standards, data, finance, research and knowledge and practice sharing).

10 Building in evaluation, research and reporting

Figure 2: 10 Success Factors when building Probation Capacity.

Note: Based on our research, we have sought to identify the most important success factors in building probation capacity. These factors can be distinguished but are interrelated. For this reason, there is a degree of overlap in their descriptions, which in our opinion supports understanding of the relationship between them.

Third, we suggest there is scope for more coordinated, collaborative, and inclusive action at global level to support probation development. We therefore offer **5 recommendations for the international community** to support probation development globally.

Central to the recommendations are recognition of the stimulating and sustaining role played by supra-national organisations and professional bodies in Europe whose influence extends to standard setting, delivery data, development finance, research, and knowledge sharing and more.

We are convinced that supra-national organisations, professional networks, and other forums and bodies, at global level and in other regions, similarly have a key role to play in probation development alongside other stakeholders and voices, important regional differences in organisations and circumstances notwithstanding.

We therefore argue for –

- **a world-wide probation network, "network of networks", or organisation** linked to regional networks and able to support their development strategically, through knowledge exchange and other means,

- for further attention to **international guidance** to address areas of work which currently receive less focus (for example pre-trial work or electronic monitoring and other forms of technology),
- that efforts are made to direct **justice development budgets** towards community-based practice, and
- that increased attention is paid to **data**,
- and that focus is directed towards **research, evaluation, and communicating the benefits of community-based work**.

The five recommendations are set out in full in Figure 3 and presented in detail in the concluding chapter of the main report.

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1 Build a world-wide probation network, platform, or organisation:
  - linked to regional networks and able to support their development, and to relevant regional and global trans- and international bodies, NGOs and other organisations
  - encouraging regular intensive exchange and cooperation on an equal basis on probation policy, on research, and on evidenced and promising practice, learning from and enriching probation's global diversity
  - supporting accessible communication of the societal and economic advantages of probation and how to introduce and strengthen probation systems;
  - assisting capacity development initiatives, globally and regionally informed, including facilitating access to knowledge and collaboration with experts and countries with a similar background or trajectory.
2 Revisit and update existing recommendations and guidance on probation / community-based work, ensuring attention to all domains and measures (for instance pre-trial work, reintegration, Electronic Monitoring), informed progressively by attention to regional differences and learning.
3 Ensure that budgets at the disposal of the UN and potential donor organisations have a direct focus on the development of probation agencies and their work. Improve donor coordination in the interests of helping ensure projects are complementary, avoid duplication, and provide continuity in beneficiary support.
4 Strengthen the availability of data, comparable to the SPACE data of the Council of Europe, addressing development in all four domains of probation.
5 Promote research and evaluation in all domains to inform development, impact, and communication about the contribution of community-based work to fair and effective justice and safer societies
  - to improve stakeholder-informed understanding and evidence on effectiveness in achieving probation aims, for example reducing reoffending
  - to ensure attention to regional and national factors (such as relationships between national political economy and penal/justice system context,

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policy and practice, the influences of colonialism, relationship between justice policy, practice, and sustainability including S.D.G.s, and exchange between the global south and north, supporting learning from both)

- to improve understanding of effectiveness in building capacity, and knowledge and practice exchange, between jurisdictions and regions.

Figure 3: Five points for consideration by the International Community to support development globally, attending to all four probation domains.

Taken together, we believe these steps could produce a step change in probation provision globally, thereby helping community-based provision play its full role in delivering fair and effective justice systems and safer societies.

Stronger inclusive collaboration - enhancing roles, organisations, and a richer contribution!

Chapter 1. Introduction: Why a Project on Probation Development?

1.1. Probation – a Developing European and Global Picture

The benefits of community-based probation and parole (or corrections) services are rarely contested and indeed are argued with increasing vigour. These benefits including, relative to imprisonment, increased opportunity to deliver proportionality in sentencing and for improved impact on reoffending, lower cost, and less "collateral" damage to families, have led to significant growth in Europe of probation capacity. This growth has, especially during the last two decades or more, been *encouraged by the European Union* including through *attention to prison overcrowding* during pre-accession reporting on a nation's preparedness to join the Union, and by significant support, including financial, of cross-border work to develop viable alternatives to imprisonment.

The *Council of Europe* has also encouraged probation development including through the "Probation Rules" (2010) and subsequent *guidance*, and by support of *data* (SPACE II) on member state probation provision, to complement data available on prisons.

Several other regions of the world have also seen efforts to increase community provision, often encouraged by a similar desire to reduce rates of imprisonment (see for example initiatives within the ASEAN region, and proposals to develop a network to exchange and support probation initiatives in Africa), whilst *at a global level* the United Nations encourages "measures to address overcrowding … and to improve the overall effectiveness and capacity of the criminal justice system, including by considering the use of alternatives to pre-trial detention and custodial sentences…" (Kyoto Declaration, UNODC, 2021[13]).

Furthermore, the repeated resolutions and declarations of the United Nations Congresses on this subject, adopted by consensus, show that all member states

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[13]   The "Kyoto Declaration" resulted from the 14th UN Congress on Crime Prevention and Criminal Justice held in Kyoto in 2021.

are agreed – at least in principle – on the need to reduce imprisonment and to expand the use of effective community-based sentences (Joutsen, 2020).

1.2. The Contribution of Capacity Building

Stimulated by factors including the desire to support effective development and avoid "reinvention of the wheel", technical assistance and capacity building in probation has a substantial history in Europe and progressively in other regions of the world: for instance, the Kyoto Declaration addresses international cooperation, including through capacity-building and technical assistance.

Donor/funding organisations contribute considerable financial resources to this work, whilst service-providing countries and organisations deploy skilled staff, experience, and expertise. Beneficiary countries commit significant staff and resources to new probation activity, often stretching their own limited financial and human resource capacity.

The term **capacity building** is common in European projects aimed at supporting the construction or further development of the probation service and the probation organization in beneficiary countries. It seemed that the term needed no further explanation. In retrospect, it is also striking to us that reports have been published in UN circles outside Europe, which – based on systematised experiences – offer hints to be considered or avoided by "lending" countries in particular. To our knowledge, we have not seen any indication in our study that these reports were known in Europe or played a role in the approach to capacity building.

The United Nations Office for Disaster Risk Reduction (UNDRR) gave the following definition of capacity building:

"The process by which people, organizations and society systematically stimulate and *develop their capability over time to achieve social and economic goals, including through improvement of knowledge, skills, systems, and institutions- within a wider social and cultural enabling environment." (2011)[14]*

The European Commission did not give a definition as such, but discussed some essential aspects of capacity building:

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[14] UNDRR, Basics of capacity development for disaster risk reduction, 2011, https://www.undrr.org/publication/basics-capacity-development-disaster-risk-reduction; retrieved 18-11-2023

*"Capacity is **shaped by, adapting to and reacting to external factors and actors**, but it is not something external – **it is internal to people, organisations and groups or systems and organisations**". (2010)[15]*

Originally the term capacity building was used. Later, the term capacity development became preferred because (nearly) always there is already some development or structure. Capacity building seems to imply that it starts "from a plain surface and a step-by-step erection of a new structure"; this is however not according to reality.[16]

As in our sector the term capacity building is used predominantly, we as authors of this study maintain this term. An argument may also be made that, in the sphere of probation, in most cases a probation organisation did not yet exist but was built up during the course of projects.

1.3. Complexity and Success

Yet despite this investment, the potential benefits of the work, and international guidance on probation "end-states" that countries or jurisdictions are encouraged to work towards (such as provided by the Council of Europe "Probation Rules", and the United Nations "Tokyo Rules"), we observed that these do not address the process of "getting there". Furthermore, there exists no clear analytical or development framework for probation capacity building and no comprehensive studies have been conducted to discern different approaches and their effectiveness.

These observations are perhaps even more surprising given the complexities we have observed in undertaking capacity building (complexities which are fully confirmed by the literature review, and the country studies described in this report), and our observations regarding what appear to be *marked contrasts in the "success" of probation capacity building initiatives in different countries.* Because no development framework is at hand, testing has not occurred internationally to confront a theoretical framework with practical experiences to inform, guide or help coordinate investment or successful development approaches.

We also gave further attention to the question of just what constitutes "success" in probation work or capacity building. It is perhaps unsurprising there is no clear answer or answers - success in probation work and probation development (or capacity building) is hard to define! One reason is

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15 European Commission, Toolkit for Capacity Development, 2010.
16 https://en.wikipedia.org/wiki/Capacity_building; retrieved 18-11-2023.

undoubtedly that *purposes of probation work vary substantially* between jurisdictions. In "An exploration of the purposes and outcomes of probation in European jurisdictions" Durnescu (2008) describes a range of purposes such as promoting community sanctions and measures, aiming to assist the judiciary in making the best decisions, and support to offender rehabilitation and public protection. We note that social inclusion and restoration are sometimes mentioned (amongst other aims) by probation organisations.

Outcome measures stemming from the forementioned purposes would include reduced reoffending, and indicators of assistance to the judiciary in decision-making including increased use of alternative measures.

In terms of development, it would seem clear from our model that the introduction of probation in *all four domains*, rather than in none or only one or two, represents progress or in a sense "success". However, work in the domains should also, we would argue, address more than one activity - more than electronic monitoring in domain 2 for example. Similarly in relation to *enablers*, decent infrastructure, sufficient and well-trained staff (as suggested earlier), methods that attend to the needs of diverse populations, and partnerships to support social inclusion, would represent significant progress.

Canton (2009), whose work we discuss further in the literature review (see Chapter 5 and, fort further detail, **Annex D**), argues that success (or failure) criteria of transfer are insufficiently understood. He suggests success might be said to be creating a system which the beneficiary country believes and sees as suited to its own country culture and circumstances. But transfer can fail or become corrupted (for example, community service might be considered to have failed if no or very few orders are made, a corruption to have occurred if the orders are made mainly for the affluent or privileged whilst others continue to receive imprisonment). Arguing that a system cannot deviate in essence from the common values as expressed by all the member states (and is therefore not imposed); he proposes that *enhanced human rights* is the most important criteria for evaluating transfer.

Other indicators of success are provided by the expanding evidence base: to what extent is desistance enabled, what feedback is received from quantitative data or from qualitative such as the views of stakeholders including staff and service-users? We also note other factors, such as the sustainability of development, and impact on the community and wider environment such as feelings of community safety. Furthermore, potential effects of probation development may be viewed negatively. An example is provided by *net-widening*, which we discuss later this report. Should community measures which add to the "net" of supervision rather than replace use of custody be seen as success?

We suggest that our model provides a useful tool to help assess success, but that more attention is required from the international probation community, taking account of national and other differences, to inform better understanding of success in probation development.

1.4. Probation Capacity Building - improving Understanding and Impact

We have been involved in probation capacity building for a combined period of 30 years and in probation work generally for several decades more. During this time, whilst we have noted successes in capacity building, *shortcomings* attributable to the absence of such a clear analytical or development framework are evident.

Capacity building is carried out by different organisations or conglomerates of organisations, often involving contributions by several countries simultaneously or in succession. Those organisations or countries are themselves respondents to calls launched by, for example, international bodies such as the European Union, philanthropic organisations, or the foreign affairs ministries of Western European or other "donor" countries.

The *exchange of information* between those organisations, or conglomerates is, unfortunately, frequently close to *non-existent*. Different countries and providers regularly advise and work from their *own (national) paradigm*, employing varying means to assess the state of a probation system at the start of a project, or in the development of project activities. The result is too often poorly coordinated or even incompatible activity, duplication or "reinvention of the wheel", and gaps in development. The overall effect is wasteful of resources and ultimately fails to achieve potential impact.

In response we have, during the work described, taken steps to develop a model which helps to analyse the actual state of play regarding probation in the beneficiary countries and to build a common understanding of which further steps can best be taken.

The approach set out in this study then tests, refines, and validates this model in the field. The result we offer is a *language for communication* about probation capacity building, and an improved possibility of transparent and logical approaches to capacity building which can be understood and widely accepted.

Informed by use of the model in the field, interviews with a range of persons involved in capacity building including recipients, donors and providers, and a review of literature, we have also sought to *better understand* what has *worked*

well in capacity building and, through these experiences or "lessons learned" in several countries, to devise an indication of approaches that appear most likely to contribute to success.

And given the striking development of probation work in Europe this century, we ask whether success factors, and risks, we identify in Europe are likely to be relevant to probation developments in other regions of the world, concluding that in the main they are.

The language provided by the model also makes the exchange of results of separate capacity building projects more doable and practical, either because projects make use of the model in planning and delivery, or because the model facilitates "translation" of project activities and results when different approaches are used.

We hope that the analytical model and capacity building *"language"*, together with the good practice approaches at the project or national level and recommendations for the global community informed by European experience, will be of *value* to all those institutions, NGOs, academics, individuals, and others involved in capacity building - whether as recipients, donors, providers of international justice assistance, or who are otherwise interested - who want to contribute to probation development, and to do so informed by international experience.

Chapter 2. Methodological Overview

Introduction

The study was progressed in 5 delivery phases. These were preceded by a concept stage, application for funding, and establishment of an Academic Advisory Board.

The original concept corresponded closely with the arguments set out in Chapter 1, "Introduction: Why a project on probation capacity building?". The aims of developing an analytical model or "language" to support international capacity building and enquire into apparent success factors in this area of work, were put to a Dutch Probation Charity, NRA, who have funded the study costs, whilst the Dutch Helsinki Committee has contributed assistance including the handling of budget and practical arrangements, together with constructive advice and sustaining encouragement. The Academic Board is comprised of probation experts from the Netherlands, Romania and the United Kingdom and has guided the project and provided valuable guidance including on sources of literature.

The 5 delivery stages were:

- Phase 1: literature review and developing the analytical model
- Phase 2: selecting the 5 focus countries and undertaking field work
- Phase 3: meetings with European Institutions
- Phase 4: developing the 5 country reports
- Phase 5: drafting, receiving feedback from the Academic Board, and finalising the main report

The project has also benefited from feedback received from several presentations at international workshops and conferences.

More detailed information about the 5 phases and the methodology are to be found in Annex A. Here we provide an overview of the 5 phases, emphasising phases 1 and 2, in particular development of the analytical model and selection of the 5 countries, in order to inform description and discussion of the field work studies which follows in Chapter 3.

2.1. Overview of Methodology

Phase 1: Literature Review and Developing the initial Analytical Model

Literature review: Probation practice in Europe is informed and guided by the Council of Europe Probation Rules. Whilst individual countries or jurisdictions vary in explicit influence they ascribe to the rules (see for example Canton, 2020[17]), and the rules do not describe the process(es) of capacity building, they do illustrate what a well-developed probation service should look like. We therefore drew on the European Probation Rules as a starting point for consideration of a framework for exploring and understanding the current stage of development of a service, possible further goals, and by implication the steps it might take to achieve maturity. A similar function is delivered at a global level by the United Nations "Tokyo Rules". Both sets of rules are supported by guidance evolving in relation to prisons and to address specific areas or aspects of probation practice such as (in the case of Europe) electronic monitoring or training or (globally) work with women offenders (the "Bangkok Rules").

We then expanded the review, supported by guidance from the Academic Board. General literature on capacity building in probation is scarce. We however drew on sources on work in individual countries including formal project progress reports to donors such as the European Union and papers written by academics, consultants and others directly involved in capacity building. These we supplemented by materials suggested by national experts in the countries studied.

A further source is literature on capacity building per se, in related fields including prisons, and the justice field more widely, and in social and related development. We were struck by congruence in findings across fields and authors - emphasising their potential value.

We present the literature in three categories:

i) General literature on policy transfer and capacity building.
ii) Literature on the typology of justice systems in different country
iii) Literature on policy transfer and capacity building in probation.

We also identified practice guidance on capacity building published by, for example, the United Nations Office on Drugs and Crime, and Bureau of International Narcotics and Law Enforcement Affairs. Although, surprisingly,

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17   The European Probation Rules: A Celebration and a Reflection - https://www.cep-probation.org/wp-content/uploads/2020/11/The-European-Probation-Rules-for-CEP39669.pdf

apparently little known in Europe, at least in the probation development field, we believe they are insightful. Given the intention of direct practice influence, we refer to these and other sources in Chapter 4 (European and International Influences).

Developing the analytical model: As noted earlier, we have worked together in several probation capacity building projects, for instance in Kazakhstan, Azerbaijan, and Armenia, and separately in several other countries and jurisdictions.[18]

In all those instances in which we have been involved, one of the essential tasks was to explain the concept and the value of probation and what needed to be organized to start probation activities (in other words the "why", the "what" and the "how" of probation). To support this work, we consulted (among other sources) the European Probation Rules simplifying, for the purposes of clarity, the essence of content in 2 diagrams: one on four areas of competence or "domains" of probation (pre-sentence work, non-custodial options, custodial options, early and post-release) and a second on what needs to be in place to support probation (probation "enablers").

Development of the enablers was further informed by the application of elements drawn from quality management approaches such as the European Quality Model. We noted that presenting the essence of probation in this way worked well as an aid to communication. The structure later formed the basis of the first draft of the analytical model and was utilized in the project concept and application for a subsidy.

The model consists therefore of two core components, both of which have, as noted, a basis in recognized international guidance or approaches. The two core components are in summary–

- a framework of four Probation "Domains", based on international guidance, in particular the European Probation Rules, and
- an inventory of supporting probation system elements, or enablers, as mentioned in the European Probation Rules, and based on the European Quality Model.

Whilst the domains deal with the work of the probation service in the different phases of the journey of the offender through the criminal justice system, the

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[18] Including: as Residential Twinning Advisor in Bulgaria (Pitts), as participants in CEP conferences on Capacity Building and as strategic advisors and lecturers in several capacity building projects including Kazakhstan, Azerbaijan, Armenia, Montenegro, and North Macedonia (both), in several countries in south-east Asia and in Africa (Pitts) and as strategic advisor to Dutch organizations that carry out capacity building projects (Tigges).

enablers deal with the terms and conditions that must be in place to make the work of the probation service in these different phases effective.

During more recent international capacity building experience (additional to the 5 countries which form the study reported on here), we have gained experience in using the capacity building framework as the basis on which we could –

- explain the essence of probation to the beneficiary countries
- analyse the present state of play of probation in those countries
- help the beneficiary countries to gain insight in what needs to be done to enter the next stage of development and what this entails in terms of resources and conditions.
- assist the countries to measure changes over time

The model is intended to assist equally throughout a country's experience of development, and during the lifecycle of individual capacity building projects.

By combining these two core components of domains and enablers, the model therefore provides a tool to –

1. Express the essence of the International Guidance
2. Understand the probation systems of countries in Europe (and beyond)
3. Analyse the present state of play in the beneficiary countries
4. Support discussion and drafting of a joint plan and priorities regarding the next stages of development of probation (both domains and enablers)
5. Review the changes over time (base-line study/evaluation at the end of the projects)
6. Find out which chain partners (police, prison, judiciary municipalities) and stakeholders in the wider society (public opinion, the political environment) need to be involved to build up the probation service(s) and system.

The domains and enablers were represented in their early form by the following diagrams (Figures 4 and 5):
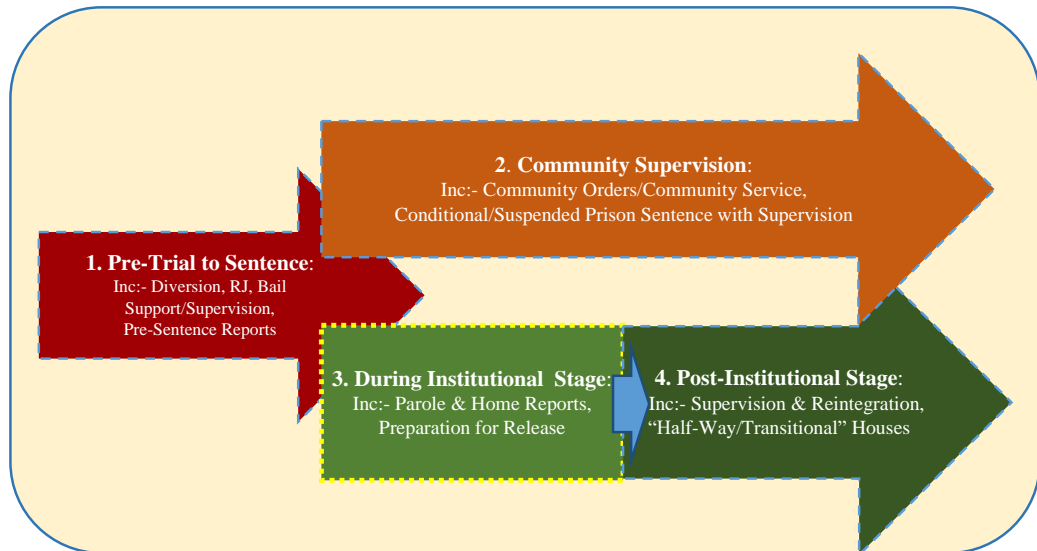
Figure 4: The Four "Domains" of Probation in Outline.

Legislation/Leadership	The Organisation
In 4 Domains • Pre-trial/diversion from prosecution, from pre-trial detention/Pre-sentence • Community Sanctions and Measures • Work in prisons • Work post-release Related legislation e.g., for social inclusion such as housing	Is there probation organisation legislation? Mission/values Priorities/Principles Standards and Guidance Resources Staff including training, numbers, proportion to caseload Infrastructure Communication
Community/Partnerships	**Processes/Practices**
Implementation in 4 Domains • Types of Partnership (e.g., Justice Chain, Statutory bodies, NGOs)? • Structural partnerships (protocols)? • Partnership aims (e.g., solutions for life problems/integration, public safety?) • Practices regularly involving partnerships • Civil Society engagement	Implementation in the four domains • What? Which practices? Scale? • Diversity appropriate? • Research-informed?

Figure 5: The Four "Enablers" of Probation.

We also combined the domains and enablers figuratively (Figure 6), noting that together they contribute to results:

4 Probation "Domains" (Areas of Responsibility) and "Enablers" or Conditions

Legislation/Leadership

Probation Organisation

2. Community Supervision:
Community Orders

1. Pre-Trial and
Pre-Sentence:

4 Domains

Results

3. Prison Sentence:

4. Prison
Sentence:

Community/Partnerships

Practices
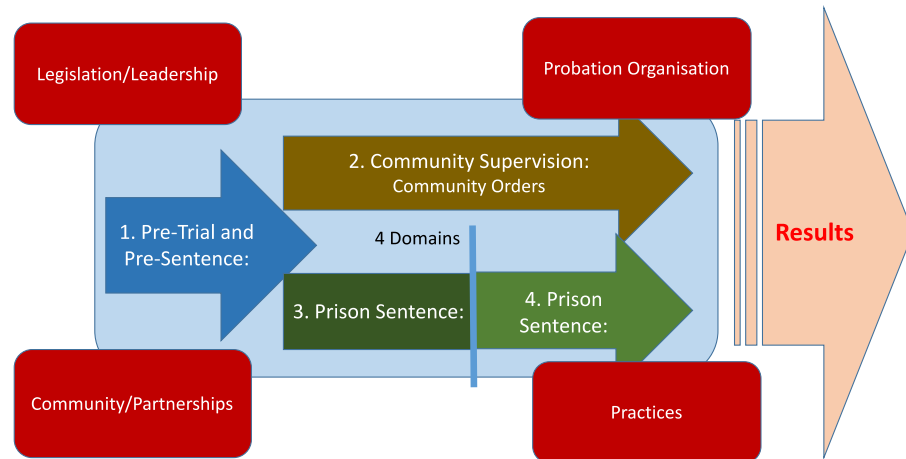
Figure 6: Probation Domains and Enablers as contributors to Results.

The applicability of the initial tool was then tested, and the tool enhanced in order to become an accepted framework for the joint (beneficiary, funder, and provider) analysis, planning, delivery, and review of probation capacity building. The methodology involved conducting case studies, 5 over a period of 12 months, in countries where the build-up of probation had been begun within the previous 15 years. This learning was supplemented by our experience of capacity building in other jurisdictions.

Furthermore, as well as testing, refining, and validating the tool, we were able to use the tool to support analysis of what worked well in capacity building, supplementing desk research and interviews with many of the people involved.

The final model is shown in simplified infographic form inside the front cover and in Chapter 6 (6.2.1), Conclusions and Recommendations – the Probation Capacity Building Model.

Phase 2: Selecting the 5 focus countries, field work, and learning from additional countries

Selecting the 5 Focus Countries

We needed to make a choice regarding field focus countries, bearing in mind the budget was limited to visit 5 countries for a maximum of 3 days each. We developed the following criteria:

1. European regional spread (North-eastern Europe, South-eastern Europe, Mid-eastern Europe).
2. Differences in the number of years ago that capacity building started (e.g., 15 years ago to 3 years ago); the effect of external capacity building assistance could only be observed if the probation systems had already existed for several years in order to enable a degree of stabilisation and to assess sustainability.
3. Differences in the coverage of the 4 domains of probation.
4. Differences in the proximity of the prison institution towards probation (extent to which probation is integrated with or within the prison system).
5. Practical considerations (e.g., travel times, likely access to relevant actors)

Based on these criteria the following 8 countries seemed appropriate to "short-list": Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Romania.

The scientific advisory board however signalled that it would also be important to include a country that had not, or not greatly, participated in capacity building, in order to make a comparison with countries with more experience of capacity building. Despite the fact our own contacts (and indeed CEP) with Poland were limited, we decided to follow the advice and to include Poland. Whilst one or both of us inevitably had some prior contact with most countries through previous roles, to reduce possibilities of bias we did not include any country in which we had worked extensively in a capacity building role.

Also, on the advice of the advisory board, it was decided to include Albania, as an additional country in which probation projects are taking place currently.

The countries finally selected were Albania, Georgia, Latvia, Poland, and Romania.

Country Field Visits

In each case relevant persons were identified prior to visits. They included:

- initiative-takers in the early days of probation (from involved NGOs, relevant ministries - in particular justice, and academics)
- present leaders of the probation service and, where feasible, previous leaders
- persons that were involved in delivering capacity building activities (for instance: Residential Twinning Advisors)
- former and present CEP Board Members

We were highly appreciative of time and insights offered. We also received signposts to additional relevant literature, supplemented by further materials after we returned home.

Insights from other countries

Further, we drew also from experience and knowledge of countries where we had been, or are still, involved in capacity building projects. Those countries include Kazakhstan, Azerbaijan, Armenia, Montenegro, Ukraine, and Serbia together with, as noted earlier, some experience of probation capacity building in other world regions including south-east Asia, Africa and South America.

Phase 3: Visits to the European Institutions

Although in the initial project plan no visits to the European Institutions were foreseen, during the country visits it became clear that information from the European Commission and Council of Europe would complement and enrich learning from individual countries. We are again grateful for the time given and insights gained into, for example, past and present policy of both institutions regarding the need to develop probation in the EU accession countries and in the member states of the Council of Europe.

Phase 4: Developing the country reports

We revised the structure of the country reports several times as project findings emerged, particularly in the light of helpful comments to drafts by interviewees in the countries studied. Reports include accounts of historical development of probation and probation at the present time (to illustrate use of the model as a descriptive tool) and explore and summarise learning regarding best practices in capacity building in each of the 5 countries studied.

Phase 5: Drafting the main report, receiving feedback from Academic Board, and finalising the report

In this, our main report we describe, then draw together, findings from the five country studies, literature review, and meetings with European institutions. We add insights from our knowledge and experience of probation development in Croatia and Serbia, of countries in other world regions, and significant international influences and developments in Europe and globally, for instance the growth of professional networks and research, and work of the United Nations including at and following the 14th UN Congress on Crime Prevention and Criminal Justice 2021.

We are grateful as always, to the feedback and advice of the Academic Board and from participants during project presentations at international events.

We conclude with reflection on the utility of the model, recommendations on success factors (and points to avoid) in capacity building, and (based on the European experience of probation capacity building) suggestions for the development of probation work globally.

Chapter 3. Findings and Implications – Country Field Work Studies

Introduction to the Field Work

In this chapter we report our field work results. We offer insights into good practices (and steps to avoid!) in capacity building.

The countries studied were visited between late February and mid-June 2019. Meetings with representatives of the European Commission and the Council of Europe were held in December 2019 and January 2020 (we report on these in Chapter 4 on European and International Influences). As noted previously, the five countries studied were Albania, Georgia, Latvia, Poland, and Romania. We later enriched the study with a limited review of probation development in Croatia and Serbia, countries we were familiar with from other work and with whom we could apply our analytical model with the benefit of refinements developed during the earlier phase. The field studies described in the annexes were carried out before the main report was written. The data -with some exceptions- were updated as far as possible up to and including 2022. Recent developments may shed new light on the described situation. For an overview of the findings of the field studies, see paragraph 3.5. Paragraph 3.6 contains a list of potential missteps to avoid.

3.1. Limitations of the Field Work Study

The study visits to the countries were each of only *two days duration*, too short therefore to obtain a fully detailed comprehension of probation development in the country from our work on the ground. Furthermore, data and knowledge acquired were dependent on the people we met and the organisations we were able to contact and speak with. We were however able to extend our insights through reports and extensive literature, and during the visits we were especially appreciative of often substantial written sources of information brought to our attention.

As the countries, circle of interviews and information gathered vary, there are limitations in ability to make direct comparisons between the countries. Despite our efforts to gather as much information and to be as factual as possible, we

are aware that descriptions and interpretations are *on occasion impressionistic* in nature.

3.2. Analytical Approach and Structure

It took us as researchers considerable time to determine the eventual structure employed in our country reports. The final structure, developed during the project, reflects insights into capacity building gained during the study (an original project aim was to develop and refine an analytical approach). Helpful feedback was received from a member of the advisory board (who happened to be one of the interviewees), and from numerous other interviewees and parties, connected with all five countries who also provided comment on draft report content. We are immensely grateful for this informed advice.

Full and extensive reports of the field studies are included in the annexes. In this chapter we summarise development of our field analytical approach and describe key findings from the studies regarding good practices in (and several hindrances to!) probation capacity building.

Using the Domains and Enablers Model

> The model provides a succinct and user-friendly tool with which to explore probation concept and purpose, potential areas of competence ("domains") and probation "enablers".

The domains and enabler model (described in detail elsewhere in this report), formed the backbone of our initial field studies. We found the *model* to be an *effective tool* in discussion with all parties to probation development (beneficiaries, donor and international organisations, providers, consultancies and other parties). The model provided a common easily communicated "language" with which to discuss probation development. It helped to identify aims, to assess the current stage of probation work and current or future plans, and to distinguish between areas of competence and the enabling structures or processes necessary to achieve results.

Respondents from each country visited were also of the opinion that the model structure worked well and *helped deliver insight into probation development*. This is congruent with feedback obtained when offering the model in numerous conference presentations in Europe and beyond, and during meetings with representatives of the European Commission and the Council of Europe.

As researchers we also found the model to provide insight into the *process* of probation development, including analysing capacity building projects that

were undertaken and their contribution to probation development in the countries studied.

A *further "real-life"* test was enabled by input of the researchers into a Eurasia project in *Albania* which developed a business and action plan for the years 2021-2025. The action and *budget plan* were structured according to the domains and enablers model, supporting communication and mutual understanding between parties including donors, providers and beneficiaries. The model helped analyse and explain further steps in the development of probation in Albania and to clarify and submit the necessary required data on outcome indicators. According to the project leader, the model supported action planning in line with current thinking on budgetary governance and performance budgeting.[19]

Refining the Analytical Approach

We are convinced the domains and enablers model offers a valuable "founding" tool, providing insight and understanding with which to progress probation development. Nonetheless, while preparing our field studies we reflected on our own experiences of probation capacity building in an effort to capture and better understand the "nuances" of what we were sure is often a complex and multi-layered business. We were aware from our own experiences and those of colleagues that capacity building initiatives have variable success (and that the definition of success is itself not straightforward) both at the time of delivery and in terms of sustainability. Potential pitfalls of capacity building are also prominent in the literature, as we reflect in our review.

We were aware too, from our exposure over many years to probation work, of the importance of *context*, including the *international* context within which probation work develops. Well-known examples include the United Nations "Tokyo" Rules (and the more recent Council of Europe Probation Rules), the influence of professional organisations such as the ICPA and CEP, and the developing evidence-informed practice base.

During our visits the high importance of *national context* in probation development also came to the fore; we became aware of the even greater significance of economic, political and penal culture than we had anticipated. All five countries were former members of the Soviet Union or within the Soviet sphere of influence. Resources available to support public services were also limited. Probation development had to compete with other priorities, including

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[19]   OECD, Public Governance, Public Governance & Territorial Development Directorate (2015), Recommendation of the Council on Budgetary Governance
Robinson, M., (2007), Performance Budgeting,
https://www.theclearinitiative.org/resources/performance-based-budgeting-manual-english

high prison numbers, and had not, in the modern sense achieved a place within the justice system. Probation work in all five countries has developed to varying extents within this legacy and the international, national, and justice system context.

From our own experience, and knowledge of the work of others (again later reinforced by the literature) we also recognized that capacity building is a *"human" process*, generally delivered via a programme or project approach. What could we learn about these aspects of probation development?

Central to our enquiries therefore were questions regarding the *motivations, drivers, or vision* for introducing or strengthening probation work, and for engaging international *partners*, on the part of key players; the part played by significant individuals quickly emerged as a key factor in driving development. It became clear that there is constant *interplay* between the many aspects of context (we include here international, regional, national, and justice system – there are undoubtedly others!), the people involved, and steps taken in probation development.

These human factors provide a critical relational milieu or environment within which more technical considerations such as which probation domains are prioritised (and which activities are selected within those domains) and which enablers are given precedence (for example leadership, legislation, training or partnerships) are taken forward.

In short, in seeking to understand good practices in (and hindrances to) probation capacity building, we found capacity building to be **complex** and much more than a technical process!

Our study visits revealed therefore the critical importance of **CONTEXT** and four questions[20] central to the process of understanding probation development –

- **WHY** (introduce or develop Probation, and why transfer from another jurisdiction)?
- **WHO** (is involved – the Key stakeholders[21])?

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[20] The first three of our four questions are also posed and elaborated in the literature, most clearly by Dolowitz and Marsh (1996, 2000) whose framework we review in our literature study, but to which they add other questions including the extent of transfer. We were reassured to find, emphasised in the literature, questions like those we had ourselves developed earlier when forming our own approach to the field studies. Furthermore, other commentators on capacity building have used the Dolowitz and Marsh framework to explore and understand their own experiences (see for example Canton, 2006; MacFarlane and Canton, 2014; Evans, 2017), further validating these central questions.

[21] We later distinguish various overlapping "relational aspects" of capacity building, such as supporting probation concept and service (involving for example politicians, judiciary and civil society), and preparing for and delivering the relational nature of work with service-users (involving partnership with municipalities, communities and others).

- **WHAT** (competencies are transferred/developed)?
- **HOW** (is probation work enabled and sustained – legislation, leadership and organization, community…)

These are underpinned by **Capacity Building Process(es)** such as planning, structure, timeline, management and review, flexibility, project and personnel continuity (including continuing **International Engagement** and support), and important **"softer" Relational Qualities** - factors such as project relational "style" and the personal qualities of those involved, including of international personnel.

Subsequent literature review strongly supported these initial questions which we believe should be examined in every capacity building project.

3.3. Findings

Introduction to the findings – the multi-faceted nature of probation development!

As we have noted and can all imagine, capacity building is therefore about far more than technical processes, including the place of probation within an entire national penal context, a context which is itself developing within a changing international context.

None-the-less, capacity building is (even) more complex than we anticipated! Multiple factors interplay, whilst every country or jurisdiction is (of course) different in, for example, needs, aims and "drivers", history, politics, penal philosophy, culture, resources etc.

Furthermore, every international partner (donor, capacity building "provider",) is different too! Despite no two projects being the same, and notwithstanding complexity, probation and capacity building have often been a huge success (legislation, organisation, professionalism…) whilst in others progress has been slower. What lessons can we draw?

With complexity and context, our core why, who, what and how questions, and relational questions in mind, we draw on the following structure to present our field study findings -

- **Complexity and Context**, including international, national, and justice system.
- **Vision and Aims** – drivers for change (developing the *"why"* of probation)

- **People and Partnerships** (engagement, inclusion and connection - the *"who"* of probation)
- **Scoping, Priorities, and Delivery** – Achieving the vision.
  - Competence in each of the four domains (the *"what"* of probation work)
  - Enabling the service (the *"how"* of probation work)
    - Legislation/Leadership
    - Organisation (systems, human resources/training, infrastructure…)
    - Practices
    - Partnerships
- **Project Planning and Sustainability**
  - Characteristics of successful programmes and projects
    - Project Processes
    - Continuing International Engagement
    - Project "Style" and Relational Qualities
  - Miss-steps to avoid.

Role of the international community

In conclusion we note what is, in our view, scope to greatly enhance probation development through attention to factors such as these - not only in individual capacity building initiatives, but through concerted attention and effort on the part of the international community to capacity building in areas such as knowledge sharing, international guidance, and practical support, including financial.

The Findings in detail

Each of the following 7 findings are discussed in turn.

Finding 1: Probation capacity building is complex and takes time.
Finding 2: Understanding and working with context.

  A. International context
  B. National context
  C. System Context

Finding 3: Vision and Aims - Why Probation? Drivers for change
Finding 4: People and Partnerships - Who was involved?
Finding 5: Changing work priorities in the Probation Domains
Finding 6: How Probation work has been Enabled

  A. Legislation and Leadership
  B. The Organisation

Finding 1: Probation capacity building is complex and takes time.

Probation is often, including in our studied countries, a new *phenomenon*, requiring effort to convince politicians and stakeholders of the many benefits. As we discuss later, to grow and be sustained, the concept of probation, its evidence-base, and its potential contribution to national justice needs to be explored, explained, and digestible to all parties including the public. Development needs to take account of, and sometimes "balance", context including national penal culture (and stances of individual agencies and individuals) and the evolving international world of probation. Simultaneously, the *environment* – judicial or even national - into which a new service is introduced or develops is itself frequently *in a state of, often profound, change*. This was the case in all five countries we studied, adding crucial variables and uncertainty. Furthermore, providers or donors may add complexity by bringing their own national and/or international perspectives!

As we see from international guidance and the domains and enablers model, probation delivery can extend throughout the justice process, not developing in isolation but impacting on staff in post, other justice players, municipalities and other government departments. *Resistances* may occur for many reasons (lack of knowledge or involvement, harsher penal culture, "intrusion" on long-held responsibility, resources...). Resistance aside, probation's potential always requires fundamental decisions on where to begin and what to prioritise.

Probation work also needs to be supported (or "enabled") through legislation, and a host of organisational developments: sufficient infrastructure, the selection of methodologies, recruitment and training of staff, partnerships, and more.

We found probation development to be complex, dynamic, and often unpredictable. In all the countries we studied, the standing of, and confidence in, probation, including access to an adequate budget, and the achievement of sustainability, took *time*. A recurring aspect of complexity can be a need to understand and work with context (as we hint above and discuss next), build clarity and mutuality of expectation, and to anticipate and allow for flexibility and realism in timescale in the light of delivery experience. What's more,

probation and context don't stand still but continue to evolve nationally and internationally!

Complexity notwithstanding, *probation has developed well* in most of our studied countries, supported by determined national effort and several international projects, delivered both in parallel and consecutively. We discuss these and other findings, and implications regarding good practices in probation capacity building, in the remainder of this chapter.

Finding 2: Understanding and working with context.

As we have suggested, context – international, national and system - can stimulate or hinder probation development. The determining factors in success (or failure) are difficult to disentangle, not least because of the interaction between these aspects. We found understanding and working with context to be a vital ingredient of success.

A.   International context

In all five countries (and Croatia and Serbia) we could not fail to be aware of international context and the impact of geopolitical factors on European probation capacity building.

The demise of the Soviet Union and attraction of the European Union and accession process

With varying degrees and timelines, we have seen that the fall of the Soviet Union created *"oxygen"* for countries to examine and compare their political, judicial and penal systems, and to discover new approaches, often inspired by professional and personal contacts in the "Western" world. Dissatisfaction developed with prison conditions, especially overcrowding and sparse preparation for release. The plight of juvenile offenders was often a prime concern. More broadly, a desire to break with the past, to stress European roots, or to begin a new era, was present in most countries in varying degrees. Aspiration to become members of the European Union grew.[22]

The influence of the European sphere

A broader influence of the European sphere on justice, including penal systems, is also evident in all countries in our study.

The *European Commission* stressed the need to improve prison conditions. This could be achieved by refurbishing existing prisons or building new ones taking

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[22]   In three of the five countries in our study, accession to the EU has since completed.

account of the standards of the Council of Europe (for example cell size, meaningful out of cell activities, focus on limiting the harm of detention and extending reintegration). Another avenue was to limit the number of prisoners to reduce overcrowding, an aim which found expression in part through promoting increased use of alternatives to custodial sanctions (including pre-trial options and early release).

We have also observed the very significant influence of the *European Union* on probation matters, notably in the framework of the *accession process* during which candidate countries have been required to take practical steps to reduce prison overcrowding and improve conditions; however if countries have wanted to establish, or improve existing, probation systems, then funds have been made available.[23] Several countries in our study have made use of this facility to achieve clear and beneficial results.

The *Council of Europe* too has focused progressively on probation for several decades including the significant introduction of *"soft law"* (see our chapter on European and International Influences). Formulated standards have helped countries to better understand probation, and assisted probation leaders to explain probation, its status and what must be in place to enable effective functioning, to the political level and to justice stakeholders. In some cases, we saw that Probation Rules inspired the shape of national law on Probation: The European Probation Rules were issued in 2010, well after Latvia and Romania started their journey in probation. Nonetheless, we found strong evidence of their influence: Latvia currently uses the Rules to improve regulation and practice in several fields, whilst Romania is updating the probation law with clear reference to the Rules including wording of legal text. Thinking of the Council of Europe is recognisable in Albanian Probation Law, whilst in Georgia probation law is adapted in the sense that pre-sentence reports are now regulated, and other changes in law inspired by, the Rules. We did not see a similar effect in Poland.

Understanding of developments and trends in probation work has been greatly strengthened in Europe since 1992 by the introduction of *European statistics* on probation (known as "SPACE II").[24]

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[23]   Whilst the primary "driver" was to improve prison conditions, countries could apply for capacity building funds to develop alternatives (in effect to create a probation service). Most funds were made available for a form of (mainly bi-lateral) "twinning" project with a well-regarded service in another country. Countries with established services bid to deliver a project, bringing their own approach and expertise to a plan developed by the EU donor and beneficiary, then delivered over 1- 2 years, usually with a resident lead expert. Other projects have been funded by individual "donor" countries or international philanthropic organisations.

[24]   We include a table based on SPACE II data later in this chapter to illustrate differences in activity in European jurisdictions in the four probation domains.

The Confederation of European Probation ("CEP") has united all who want to belong to the European *"family"* of probation. In Europe, the value of the CEP to established and newer members is evident in wide and active membership. During our research, we heard examples of the CEP acting as a motivator, learning resource, and "companion on the journey." Membership offers a feeling of belonging, of *sharing* similar ideals, of knowledge and practice sharing, and inspiration. It also offers credibility to national leaders arguing the probation role and benefit to a wider audience. Furthermore, national leaders can find support and knowledge from countries that have gone through similar experiences of development. Four of the countries we discuss have hosted CEP events, in some cases focused specifically on capacity building in the region.

The probation cause is also served by the contribution of NGOs, and by academics (an academic member sits on the CEP Board) who enlarge the scientific base. The *science of probation* in Europe has developed significantly in the last 20 years, including contribution by countries where probation has more recently been established. An important feature has been the strength of communication within academia, and between academia and practice. Multi-national research and development projects (which may be part-funded by the European Union or Council of Europe) frequently involve statutory, not-for-profit, and academic partners, and are designed with European-wide benefit in mind.

At the *"sub-regional"* international level, context was again important. It was clear to us that countries often expressed strong (and mutual) interest in probation developments in neighbouring countries. A desire not to be left behind (or to be in the lead!) was sometimes evident. Furthermore, similarities in factors such as history, culture or resources increased the value of knowledge exchange with regional partners.

We found the probation evidence base to be a frequent and significant factor in probation development in most of our studied countries. A country's leadership, standing or eminence in evidence-led policy and practice was often a factor in its choice as *development partner* by countries new to probation, and in several instances, experts directly involved in capacity building were leaders in the field in their home country (for example experts delivering evidence-informed training in Albania, assessment and rehabilitative work in Georgia, and research-informed assessment and case practice in Latvia).

The influence of international context on probation development in Europe is, *in summary*, profound. Furthermore, this context is increasingly global. The CEP, in partnership with the England and Wales services, hosted the first World

Congress on Probation[25] in 2013. European services have participated in subsequent Congresses in different regions of the world. European practice has also benefitted from direct wider international experience and assistance (for example COSA[26] developments in Canada, and bi-lateral projects with Canada and the USA). Canadian assistance was significant in developing probation in one of the countries in our study, Latvia, with important contribution of the Latvian "Diaspora." Moreover, several of the recently established services in our study now contribute significantly to other services[27], informed by their own experience of transition.

B.   National context

Turning to national context we frequently observed the *legacy of the Soviet period* expressed by penal culture, severity, and practice, reflected in the high number of prisoners and sometimes a focus on more controlling or punishment orientated sanctions, including extended hours of community service work. On the other hand, the drive in a country to "break with the past" can stimulate justice development; probation can make use of the slipstream of an upbeat drive for change, evident in several countries we visited, perhaps most clearly in Latvia.

In addition to core agency qualities such as the balance of focus on control or rehabilitation, national context impacts on, amongst other things, new probation agency development *priorities*, for example domain(s) or community measure prioritised (we refer to this point again in relation to Croatia and Serbia). We also noted potential for *tension between the influence of international rules or guidance and national context*. This was clearest in some other countries[28] with which we are familiar, reinforcing our finding that tension may be moderated (as noted earlier) by other aspects of international context such as the pull of membership of a transnational body, democratisation, or economic transition, by the influence of regional neighbours (especially those with a similar history), international networks and the probation evidence base. Tensions may on the other hand be aggravated by, for example, conflicts and uncertainties resulting from the process of democratisation (findings we see also reflected in the literature)[29] and lack of resource or capacity available to

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[25] The World Congress on Probation (and Parole) is held every two years. It brings together experts, researchers and practitioners from around the world to promote and develop probation and community corrections through the sharing of practical and academic knowledge.

[26] COSA: Circles of Support and Accountability

[27] For example, Romania has supported Moldova, Latvia has supported Ukraine, and Croatia has supported Slovenia.

[28] For example, in Central Asia where in some countries we observed desire to modernise including by developing a probation organisation, but at the same time deploying staff having a predominantly bailiff service background and giving priority to punishment in the community (EM or Community Service) while not focussing on rehabilitative activities.

[29] See for example Cavadino and Dignan (2006), Tonry (2007), Lappi-Seppälä (2008)

support public services. As we also note earlier, *probation elaboration has had to compete with other priorities*, including within the justice system (as we consider next) high prison numbers, and had not achieved a modern place within the justice system.

C.   System Context

National context also influences the system with which we are most concerned, the *justice system* - other agencies with which a probation organisation will interact. A developing probation organization will not exist in isolation but depends on, and affects, others with which it connects, most obviously the judiciary and others in the justice system. We saw that overcrowding and poor prison conditions can stimulate "alternatives" (particularly the case in Albania, Latvia, Georgia, and Romania). However, probation implementation had to compete with *other priorities*, including within the justice system: pressing, higher prioritised issues can reduce focus on probation (for instance: substandard prison conditions or overcrowding; or in the case of Poland, lack of an independent judiciary, or confidence in the police). Even when the case for probation is accepted, lower prison numbers are not guaranteed, and prison costs may rise in any case as conditions and delivery are improved. Savings from the introduction of probation work realistically will always take time to realise.

Probation can also be supported (or resisted) by other parts of the justice system and may even be seen as a *threat or competitor, including for resources*. We have seen too that "system culture" may impact on probation and its use, for example attitudes to punishment or rehabilitation, reinforcing or amplifying the influence of national context through the activities prioritised (for example emphasis on electronic monitoring or community service rather than reintegration), staff and manager training, and more.

In some countries we studied we found that *judges* are *ambivalent* towards, or do not welcome, pre-sentence advice from the probation service. Whereas detailed consideration of the impact of the Soviet legacy on constituent parts of the justice system was beyond the scope of our field study (we do however comment more on penal culture in our literature study), we wonder to what extent this legacy influences not only penal severity but factors such as the actual or perceived independence of the judiciary, in turn influencing acceptance of probation's potential.

Moreover, as we note in discussion of complexity, justice systems are not static systems and may themselves be in a state of evolution as a whole and in constituent parts including political, prosecutorial and judicial. Significantly, we found that *change seldom appears smooth*, whether in a whole system or part. The views of leaders and other key individuals matter greatly. Further, change in personnel (which we saw happened more in some countries than others, often

with negative rather than positive results), can have major impacts on a change trajectory.

Context at all levels provides vital background to our subsequent findings, not least growth of belief in probation's value and the rational or drivers for development we consider next.

Finding 3: Vision and Aims - Why Probation? Drivers for change

As we have seen from the foregoing description of international and national context, the influences on probation development (positive and negative) in Europe have been strong.

The fall of the Soviet Union had many consequences for the countries studied, although timelines in which they started to use freedom to adapt their justice system differed. A *desire to do things differently*, to voice willingness to become member of the EU, to address the human rights gap (caused by using the prison sanction as the default option), and a growing awareness that non-custodial options needed to be extended and focused on reintegration and rehabilitation, were apparent in most of the countries studied.

These developments coincided or were reinforced by *stimulus of the European Commission* (including the availability of budgets for change projects) to help countries to alleviate prison overcrowding and improve conditions. Whilst in four of the five countries awareness was growing that high prison numbers and overcrowding (including the lack of viable alternatives to prison) posed a problem in itself, it was also as a barrier to EU-membership; a push from the EU to reduce prison population was coupled with insight that an alternative approach was possible and desirable and could in the long run be more effective and less costly.

Although *guidance from the Council of Europe* provided impetus and support, it was not developed until the second decade of the present century, adding clarity and consistency in probation rationale and method, which could be communicated among practitioners, managers, justice partners and other stakeholders. Furthermore, *scientific evidence* on the benefits of probation was accumulating and spreading internationally and as noted earlier, we also saw countries including the Baltic States wanting to "keep up with" what went on in the other countries and to use already tested solutions or avoid "reinventing the wheel".

Therefore, although there was pressure from the EU to address overcrowding and to improve prison conditions, we can safely say that inspiration and learning from abroad, and internal determination to change the system, were all

apparent drivers for change. The *combination of internal and external drivers* was apparent in varying degrees in all five countries in our study.[30]

In practice multiple paths led to early steps in probation. A common factor in almost all cases were keen and persuasive *individuals*, positioned variously including at political or justice leadership levels, or in academic, local or international civil society organisations (providing therefore a link to the next finding on who is involved). In many cases these individuals were already well connected or informed internationally, for example, professionally, academically, by being members of an international body, through work assignments overseas, or by being a member of the diaspora (as in the case of Latvia).

We include examples from our study of probation development in Latvia to illustrate a number of these "drivers for change":

Country study Latvia Extract: why build probation?

- Because of the Soviet legacy custody was (almost) the only option
- Prison numbers were high, conditions poor and overcrowded. Linkage was made between a need to reduce prison population and improve conditions, and probation development, particularly "alternatives"
- Concern evident regarding length of time to trial and young people in pre-trial detention
- Concern for vulnerable groups, especially juveniles, and to "humanise" system, as a whole
- Influence of international organisations/donors/providers including Canada, Scandinavian states, and Council of Europe
- Influence of anticipated EU and NATO membership (in particular on prisons and their overcrowding)
- EU Progress reports commented regularly on progress in probation building.
- Accession to the EU was therefore a "good carrot".
- Influence of the CEP, including becoming members at an early stage of service development, participating actively
- Growing links with other countries and international organisations, including about a need for a more "humane" approach and to address reintegration of prisoners - and about probation service development.

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[30] Although a further distinction can be made between a drive to develop probation and to do so through "transfer" or capacity-building arrangements with one or more third countries, we found this distinction to be clearer in the literature than in reality (in the five countries studied at least).

- Several keen and well-respected Latvian individuals, based within justice and international bodies, often with strong international contacts and knowledge.

In Latvia several people came together, motivated by national and international drivers, to develop and lead a **vision for probation, and concrete aims** to be implemented over a period of years. The people involved, and the bodies they represented, which in Latvia were numerous, helped probation to be accepted across the board. This approach was found to a greater or lesser extent in other countries we studied. The people involved and the partnerships formed (the "who" of probation development) to develop a vision and bring it to reality, are points we turn to next.

Finding 4: People and Partnerships - Who was involved?

The *picture is diverse* in terms of service stakeholders, personnel, and issues. In some countries politicians actively led probation development, whilst in other countries politicians followed development, and did not obstruct it, as it was generally understood that modernisation of justice systems was required. Commitment at the political level appeared essential, but due to sometimes rapid cabinet and government changes, was sometimes interrupted.

This offered challenge to probation leaders (who were often in place for longer periods of time) who needed to make the probation case afresh to new political leaders, thereby emphasing the continued importance of clarity regarding the benefits of probation. That they succeeded is even more *admirable* considering that the evidence base on the effectiveness of probation, and international guidance, was less developed than today, and that in society many social problems demanded attention and substantial changes were necessary to meet the requirements of membership of the European Union.

On the other hand, leaders were able to point to countries with established services, and to developments in neighbouring countries, particularly those with a similar history (for example in the Baltic States), drawing on their experience and expertise. Furthermore, international capacity building projects offered inspiration and practical guidance (and on occasion material resources), frequently and helpfully enduring over several years.

In several countries civil servants *invested long-term energy* in the development of probation, thereby being open to establish strong and enduring relations with international experts. Whilst there was resistance among individual officials and politicians, apparently sceptical about the new approach, the breadth of resistance is hard to determine retrospectively. However, when initiators and promoters of probation involved others (such as NGOs, judges, legal departments) to *"win over" doubters*, this produced visible results, as in Latvia.

Although on the one hand the judiciary in most instances became gradually open to new approaches, their newly won independence in some cases sometimes appears to have made them wary of advice, from probation organisations in the sentencing process.

Academic involvement and input were present and important in some countries (Romania, Latvia) from an early stage, and increased over time in others (for example Georgia and Albania), adding academic backing, and further international weight through academic networks, to probation development.

In hindsight we can safely say that service-users did not seem to feature strongly during early development, although involvement and learning from experts by experience was usually at an early stage even in more established countries. Recent plans in Georgia will involve probationers who graduate successfully from a training course in pro-social and life-skills going on to deliver the course as co-trainers to other probationers, with remuneration.

Country Study Report Extracts

- In *Latvia*, key stakeholders were involved from early on in strategic planning. A multi-agency group was established and guided development of the new service including an overall vision and three-year strategy for its achievement.
- In the beginning support was mainly from outside the political level, but that soon changed. Also, the Prison Director became a protagonist of probation - starting the journey of a long-term, committed involvement of international donors, projects, and providers (Canada and Norway); furthermore, the diaspora was eager to assist.
- Communities and NGOs were invited or took the initiative to develop a "community-up" approach to dealing differently with offenders than custodial sanctions.
- In *Romania*, the first initiative was from an NGO in Arad. The project that started on their initiative was with the help of the Know-How Fund (UK). The Open Society Foundation supported the probation pilots financially. At the ministerial level there was enthusiasm: at high speed several Ordinances and Legislation were prepared and passed.
- A probation-judicial working group helped develop understanding of pre-sentence reports and their use, and to inform the use of alternative sentences and measures.
- In both *Latvia and Romania* leading figures in probation have provided stimulation and continuity of service development over many years. The same is true of Croatia. Leaders were also, from the outset, well connected internationally, supporting inspiration and knowledge transfer.

- In *Albania*, the Minister of Justice was convinced that prison numbers could only be decreased through development of a probation service. The OSCE played an important role in laying the groundwork for the establishment of probation by formulating the necessary draft legislation, in bringing public prosecutors and judges together, in opening the first probation officers and training them. Whilst the probation relationship with the prison service was limited, networking with prosecutors and judges has become more intensive recently, an international capacity building project drawing representatives together from the justice chain, to help develop the probation plan and its implementation.
- In *Georgia*, the political leadership and top management of the service were open and eager to push for the modernization of probation practice and organization, with active leadership by Justice Ministers knowledgeable about European institutions and practice.
- Over the years, coordination with the judiciary on pre-trial reports, diversion, and mediation and in the framework of the Juvenile Code was strengthened with the support of donor organizations (EU, UNICEF, PRI). The Prosecutor's office now organises coordination meetings with other CJ agencies, including probation, both at the central as well as local levels in municipal towns, and the service participates in CJ reform coordination council chaired by the Justice Minister.

Finding 5: Changing work priorities in the Probation Domains

We drew on the Probation Domains element of the domains and enablers model to inform our research and structure our findings, focusing therefore on the four main areas of probation work – pre-trial/sentence, post sentence community supervision, and work pre- and post-release from prison/institutions.

It was difficult to establish - before the probation organisations were founded and were being professionalised – whether an already perhaps rudimentary form of probation activities existed. Van Kalmthout, Roberts and Vinding (2003)[31] comment that in most of the countries some attention to prisoners and ex-prisoners by *voluntary organisations* was in place. In some countries prison social workers were assisting prisoners, including preparing them for release. When countries started to establish probation in its more modern form, additional tasks were mainly focused on implementation and enforcement of *community sanctions and measures* (in some cases utilising existing dormant legislation of "protective supervision" or a deduction from salary earned

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[31] Van Kalmthout, A.M., Roberts, J. and Vinding, S. (2003) 'A Palette of Probation Systems in European Accession Countries': In: "Probation and Probation Services in the EU accession countries", Nijmegen, pp. 3-34

through existing work), and to a lesser extent on *pre-sentence reporting* to public prosecutors and judges and the formal organisation of conditional release. We found limited attention to work pre-release (such as advice on conditional release) although this has in some cases become more formalized in recent years, as in the case of Georgia.

We see therefore a strong influence of legacy and national context in the prioritisation of probation domains. This extends further to prioritisation *within* domains. As we described earlier (see SPACE II data provided by the Council of Europe) and above, in all five studied countries the *major focus was on community sentences* (conditional sentences with supervision and/or community service). Community service is strongly present in Poland, Latvia, Romania, Georgia, and Croatia; EM is well developed in Poland and Georgia, present but less used in Latvia, and not or rarely applied in Romania or Albania.

In most cases conditional sentences with supervision are less applied than community service, although use is high in Georgia[32]. Presentence reporting in Albania, Georgia and Romania is in the main employed exclusively for juveniles (for Georgia including adults under 21). Conditional release is in numbers a relatively minor probation task in most countries in our study, although higher in Poland and higher still in Croatia where the focus is on supervision of offenders who had not received a community sentence due to the nature of their offending. Involvement in advice about conditional release is present in Georgia although absent or negligible in Albania, Poland, and Romania.

It seems possible that, recognising context, those activities, for example community service, were *prioritised that had a higher probability of "catching on"* with the judiciary or with politicians and/or the public. In Georgia and Poland, the severity of the community sanction can be expressed by its maximum length (Georgia: up to 800 hrs[33]; Poland 960); this is very high in contrast to the other three countries and other western European jurisdictions and could be seen as an adaptation to make the system of alternative sanctions more acceptable or more in line with culture or sentencing tradition. Pre-sentence reports were focused on the vulnerable category of juveniles (as in Romania, Georgia – including adults under 21 - and Albania), being therefore

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[32] In Georgia the high rate of community supervision is supported by technology including fingerprinting and the PROBBOX, introduced in 2021, installed on the premises of other organisations, mainly public service halls and municipalities, and delivering electronic control and information services.

[33] For adults, community service may be imposed for up to 800 hours and for juveniles up to 300 hours, but in practice, maximum hours of community service sentenced by the court was 300 for adults and 180 for juveniles (2020-2022 data). (For adults, if a fine is substituted by community service, or if a prisoner receives substitution of sentence by community service, or if a plea bargain is concluded between the parties, community service may also be imposed for a longer period).

probably less disputable on introduction, and/or reports contained information but not advice (as in Romania, Albania, and Poland).

We see therefore that the predominant focus on domains remains until the present time on domain 2, and within domain 2 on *sentence options leaning in a more controlling and punishing direction*. However, we have also seen, in the majority of the seven countries we study, that attention has been paid to the rehabilitative and reintegrative aspects of probation work from an early stage in probation development in each country. These aspects have endured, and in most cases expanded over the years, evidenced by developments such as risk needs assessment systems, structured interventions, partnerships, and an increasingly supportive and desistance-focussed probation officer orientation. These changes do, we think, reflect a progressive move away from an inherited legacy with a predisposition to control *towards a rehabilitative probation culture* reflected in the Council of Europe and United Nations guidance, the mission statement of the CEP, and in line with evidence-informed practice.

We discuss these and several other points further in finding 6 on probation "enablers", but first consider what light may be shed by European statistical data on priorities in the probation domains.

Statistical data

The influence of context (international, national and system) continues to be reflected today in the remarkably varied caseloads and priorities of probation agencies in different parts of Europe.

Table 1 on the next page brings together the SPACEII-data in 2020 of the seven countries we discuss and in several other countries within Europe that have longer-established probation systems. As SPACEII data is sometimes lacking (for instance Albania and the Netherlands), or due to differences in the definition of probation tasks in each country, the table is not valid or reliable in every respect. Probation tasks post-sentence are presented in 4 categories (requiring in some cases subsuming of data for the purposes of ease of comparison):

1   Suspended sentence with probation supervision
2   Community Service
3   House Arrest with/without EM or plain EM
4   Conditional Release

What does this table teach us? First, concerning the countries studied (shown with italics):

Countries are ordered according to probation rate. The Probation Rate in Poland is highest, followed by Georgia. Romania and Latvia follow at some

distance. Croatia is low, and Serbia even lower, the latter explained by the underdeveloped service. The European mean is 212.

On the	Prob. Rate	Prison Rate	Case-load per officer	Pre-sentence reports per officer	% Offenders under supervision after sentence	% Suspended sentence with probation	% Comm. Service	% EM/House arrest	% Conditional Release	% Other
Poland	*645*	*179*	*28*	*2*	*99*	*17*	*55*	*3*	*6*	*19[34]*
Georgia	*506*	*232*	*146[35]*	*0.9*	*106*	*88*	*5[36]*	*2%*	*2*	*3[37]*
Romania[38]	*352*	*114*	*108*	*8.6*	*100*	*+/- 40*	*+/- 60*		*1*	
Latvia	*292*	*161*	*14*	*1.8*	*98*	*34*	*45[39]*	*-[40]*	*2*	*18[41]*
Albania[42]		*183*	*100*						*-*	*-*
Croatia	*88*	*88*	*34*	*0.2*	*98*	*33*	*60*	*-*	*7*	*1*
Serbia	*30*	*153*	*29*	*0*	*80*	*2%*	*9*	*80*	*1*	*7*
E+W	262	132	14	6	100	22	9	0.4	41	30
Nether-lands	210	54	?	?	90	37	57	-	3	2
Denmark	124	67	20	33	100	17	28	1	16	38
Ireland	121	74	14	22	95	42	29	-	6	23
Sweden	108	70	12	31	100	22	36	1	36	5
Finland	57	43	14	25	100	25	39	15	10	10

Table 1: Key comparative data on countries based on SPACEII[43] 2021

1 Most probation work occurs post-sentence, i.e., in what we term "Domain 2".
2 Pre-trial reports are very low per probation officer.

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34 Mainly "simplified supervision"
35 According to Georgian Administration in October 2022
36 This includes 773 cases classified as "mixed sanctions" that -in reality- is Community Service
37 Mainly deprivation to hold a specific position or job.
38 Rate of reports based on SPACEII 2019 as the data on 2020 were lacking.
39 Including 146 of Mixed sanction (Community Service plus +fully suspended sentence with probation supervision)
40 EM in Latvia can only be imposed when a person is released on parole: these 31 cases are here added to the category Conditional Release
41 This includes probation supervision (417 cases), the combination of probation supervision with Community Service (410 cases) and Conditional Discharge (178 cases)
42 SPACE data on Albania is lacking. Prison Population Rate according to World Prison Brief in 2022 183. Caseload according to information received from Albanian Probation Service.
43 The Council of Europe Annual Penal Statistics, better known as SPACE (Statistiques Pénales Annuelles du Conseil de l'Europe) consists of two related projects. SPACE I provides data on imprisonment and penal institutions annually since 1983. SPACE II collects data on non-custodial sanctions and measures since 1992 (annually since 2009). The SPACE II data is collated and analysed by the University of Lausanne. See Aebi, M., Delgrande, N. and Marguet, Y. (2015)

3   Conditional Release is a small or very small part of Probation Service workload in all countries, although most present in Poland.
4   The caseload per officer shows a large variation, the highest in Albania and Romania.
5   In comparison with the other countries, Georgia shows a very high suspended sentence with probation rate of 88% of total caseload; Community Service is strong in Poland, Romania, Latvia and Croatia, but strikingly less so in Georgia and Serbia.
6   In Serbia 80% of the caseload is home arrest, with and without EM.

Turning to countries with *longer histories* of probation (shown non-italicised):

7   The Probation rate is generally lower.
8   There is less variation (or greater balance) in workload between domains, with more work occurring pre-trial and post-release -
9   The task of providing pre-sentence reports is more developed.
10 Conditional release is more strongly developed.
11 Within Domain 2 (community sentences) Community Service generally represents a smaller proportion of the caseload than in the newer services.
12 EM in most countries is not a major probation task.
13 The caseload per officer is overall lower, and the pre-sentence reports per officer are higher.

Whilst the data shows clear *differences between the newer and more established services* in terms of spread of activity across all probation "domains", it is more difficult to be sure of the explanation for the differences observed. How much are differences a function of probation "maturity" or to what extent might they reflect differences in penal culture, or in the confidence of the judiciary? Combining these two thoughts, we can certainly imagine that the *build-up of trust between the judiciary and probation organisations takes time.*

It is pertinent to note that the *European guidance of the work of probation in the pre-sentence phase* (for instance alternatives to prosecution or to pre-trial detention, and pre-sentence advice to public prosecutors and the courts) is limited, in contrast for instance to conditional release and Electronic Monitoring, a point we return to later in our recommendations for the international community.

Finding 6: How Probation work has been Enabled

If domains describe the "what" of our work, then enablers describe the "how". Effective work in all domains is supported by the right agency "enablers". Like the four domains, enablers can be configured in different combinations. Less important than the precise grouping is that all enablers are present:

A. Legislation and Leadership

We found, in all the countries in our study, that *new probation tasks are frequently unable to begin before the law has been adapted* so that it to describes the probation organisation's competency in this area. We found this may have an inhibitory effect (in effect create a "dependency" in project terms) on the speed at which changes can take place. It also often contrasts with some Western European approaches in which new activities and piloting may be undertaken, as long it is not forbidden in legislation. On the other hand, in some countries, for example Croatia[44], legislation has been developed at speed to enable changing competence and practice.

A key lesson is that in the many jurisdictions the timing of *legislation* is critical and must be considered a *priority* in order not to cause delay in probation development, including within time-limited projects.

Turning to **leadership**, we have already considered the "why" and "who" of probation work in the opening sections of this chapter. They seem to us fundamental questions when exploring probation development. We saw how the *continued commitment of leaders* made a real difference to probation development, for example in making the probation case with politicians, often bringing wider international developments to their attention.

Leaders have been central therefore to the crucial questions of **purpose, strategy, and priorities**, together with communications. We have noted that purpose (the "why? of probation) has sometimes evolved over time rather than been to the fore in the early days of development. On other occasions important drivers have included reducing prison population and improvement of human rights and rehabilitative support, especially initially in relation to younger persons. (Elsewhere we report that purpose has sometimes followed rather than preceded legislation, an important caveat to the argument that legislation leads development).

We found variable attention to **communications**, but positive results when addressed. *Internal* communication was rarely raised as an issue (perhaps because in the early stages of organization development staff numbers are

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[44]   See for example Špero (2015)

small and informal communications sufficed). However, once the organization grew, more effort was invested in internal communication.

On the other hand, where *external* communication received a high priority, the benefits were clear. These could include promoting the role and *benefits* of probation such as in relation to the sentencing framework. This was especially the case regarding judges and prosecutors, for example in Latvia where they were involved from an early stage in strategic planning of the service or in Romania in relation to the introduction of pre-sentence reports. The situation in Poland illustrates the importance of discussion of probation benefits with judges and prosecutors.

Poland Country Study Extract
"Despite the increasing use of non-custodial penalties by courts, imprisonment is still the primary means of responding to a crime. It seems that one of the reasons is the insufficient appreciation by judges of the advantages of a non-custodial means of criminal reaction and their insufficient awareness of disadvantages of imprisonment." (Daniluk & Gensikowski, 2021, in: Faculdade de Direito da Universidade de Coimbra Colégio da Trindade, Coimbra, Portugal)

Communications with the media and public in most cases intensified once probation was established when *actual achievements* could be communicated. The Croatian service successfully communicated, including with judges and the public, including regarding the involvement of their community service caseload in emergency flood relief, and cost-benefit. In Latvia, the service has increasingly drawn on its research base to communicate the benefits of probation work.

B. The Organisation

Staff and Training (training in the main of practitioners) has in all cases been a *core component* of capacity building work. Often a "highlight" (as expressed by beneficiary leaders and practitioners, and by partner country delivery staff) and clearly an essential aspect of probation development, it has however *not* always appeared to *achieve its potential*, nor to reflect the investment of resource by donors, providers or beneficiaries.

Reasons appear complex but to include lack of training resource, high caseloads (limiting time available to invest in "change" work), a continued dominance of tasks with a more controlling or punishing character (which also limit opportunity to use "change" skills), or high staff turnover post-training (as we saw in Albania where retaining trained staff for a long period has often proved difficult). If staff have little opportunity to practice skills learned, because of high caseloads, or a primary focus on Electronic Monitoring as we saw in

Serbia, then they may be more inclined to look elsewhere for satisfying work. Furthermore, trained staff are likely to be in demand by other organisations. Resistances were also sometimes encountered, especially on the part of older actors within and outside services.

Training is an essential aspect of building the capacity of individuals, teams and services. But we also saw that training may fail to achieve potential when *delivered in isolation* from other aspects of capacity building. Training may appear comparatively easy to plan and deliver, to require less "buy-in" on the part of politicians or stakeholders, little or no legislative change, and little investment in work processes. Whilst this *"stand alone"* approach may still deliver training that is appreciated by trainees it reduces opportunity to apply learning in practice and diminishes sustainability. Trainees may also be aware of gaps in parallel development, reducing motivation.

On the other hand, training appears to have worked well in several of the countries we studied. In Romania training "transfer" and retention has been supported (despite high caseloads) by the probation organisation's obvious commitment to evidence-informed practice and an international approach; several key staff are well-connected and play leading academic, practice or management development roles internationally. In Romania, early discussion of probation and later training also appear most *successful* when there was a *"partnership of equals"* – in training but reflecting the entire approach (we note a similar point below in discussion of training in Latvia).

Romania Country Study Extract
It seemed that there was a balance between the external project leaders from abroad and the Romanian counterparts. There was an eagerness to listen to each other and to see how with respect to national experiences and sensitivities on the one hand and the long experience of countries with a mature probation system the best possible outcome could be reached. The experts were outstanding. There was inspiration from abroad, not a copying of foreign systems. In other words, probation approaches and systems/processes were not imposed by experts; knowledge and experience were supplied; the international experts helped stimulate the national experts to find their own solutions.

Early training in Latvia covered a wide curriculum, including assessment, pre-sentence reports, case management, and methodologies, for example restorative. The latter also helped to reduce communication barriers between practitioners and to develop understanding of working with the "human" side of service users. Training formed *part of a broader capacity building programme* including strategy, manuals, tools, communication processes, and drawing on Canadian methodologies. Later training in both Latvia and Georgia, especially in more complex approaches (for example sex offender treatment in Latvia), has

followed clear leadership decisions to invest in and deliver evidence-informed practices. Both services have subsequently developed active practice research capacities. Training timing appears important: larger scale - or more complex – practice training appears more successful when the service (early in, or before, a current project) has developed service aims, values, approaches that training will then support, and sufficient infrastructure.

We also noted that countries in which training appears to have been most successful are *active members of CEP*, a factor which supports the frequent exchange of knowledge and practice, including between countries newer to probation or with areas of common history.

Whilst a dependence on international projects may be understandable during the early phases of development, we saw that training appears to be a necessary but insufficient enabler of successful development. As part of development of all "enabler" areas, training is more likely to succeed when part of wider Human Relations strategy and elaboration, including recruitment criteria and selection processes, sufficient staff for the service caseload (related to sufficient budget overall), and ongoing practice support - including *practice knowledge and support skills for managers* or other dedicated practice support and enhancement staff, something we found *rarely prioritized*, especially in earlier stages of capacity building. We found a sophisticated training structure in Latvia, Georgia and Romania, whilst in Poland and Albania training has a more ad hoc character (in Albania still relying on international capacity building projects, although national funding for permanent provision is in progress.)

Sustainability also requires contextualisation. There is of course a close relationship between training and practice direction (as we consider later). Training is often a (or even the) major point of contact between provider and host countries. This has wide implications, including being an important opportunity for "getting to know" each other, discussion, and sharing of differences in practice tradition and emphasis. In the best cases, as we mention earlier in Romania and learnt for example in Latvia, this was very much a *two-way process* – a real opportunity to develop understanding, by international providers about host country context, legislation, culture and more, and by host country colleagues about international practices and underpinning values. A *"horizontal" or participatory style* allowed for "getting into the space of" Latvian colleagues. Relationships that developed (extending sometimes into informal contacts and even friendship) were significant in building mutual understanding, conveying knowledge and ideas as much as specific practices, exploring the meaning of language, developing practice and skills appropriate to context, and helping to build individual and organizational capacity and confidence to address future challenges.

This *relational aspect of training* emphasises a key finding, and success indicator, regarding capacity building style in general, an important area we return to later in this chapter.

Infrastructure development is in our opinion an aspect of probation implementation commonly *overlooked*, or at least downplayed in significance, by capacity building donors and partners. It is of course a vital aspect of development as we found to varying extents in all countries we studied. Moreover, we found it requires real effort on the part of countries building their services, in terms of competing for financial resources for furnishings, and especially for IT hardware and the software and other aspects of registration, recording and reporting systems.

Office accommodation presents a further *demand, of resource and attention*, sometimes resolved in part by sharing facilities with courts or other public services. In most cases countries began with the centre and developed wider national office coverage over time. We found in most cases that facilities are good or at least adequate, although provision for privacy is sometimes in short supply. Georgia has adopted an innovative approach: the PROBBOX system allows service users in some areas an alternative to probation bureaus to report and access some services remotely, and reduce travel, via an IT facility located in Municipality and similar facilities open to the public (a resource which service research finds also assists user confidentiality and helps to reduce identification as an offender).

It is noteworthy that *EU-funded projects rarely contribute to the costs of probation infrastructure*, nor prioritise knowledge exchange in this area (although registration, assessment, case management and related processes that in modern services depend on infrastructure are frequently addressed) include support. Whilst most European donors[45] and service providers concentrate on "knowledge" exchange, in Georgia the United States has financially supported infrastructure hardware including finger-printing technology, EM equipment, and the PROBBOX system mentioned earlier.

There are in our view *implications for future projects*. At the very least international donors and providers of capacity building support should be aware of the scale of challenge (such as time and liaison, organisation, goodwill on the part of other services, and resources including securing central finance) involved in creating serviceable infrastructure. Advice could be offered on identifying future priority needs, budget, and applications for funding. There is no doubt that direct financial support to infrastructure would, in many or most

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[45]   It should be noted that justice reform is only one part of a much larger European program, often linked to EU accession, which address very different subjects including infrastructure, for example road construction.

cases, be welcomed. There is also often scope to improve coordination between donors and providers attached to different (sometimes simultaneous) projects – a point we emphasis later.

Sufficient infrastructure, particularly registration and related systems, is also a necessary background to many aspects of Research and Development, which we consider next.

As with infrastructure, we found little evidence that **organisational structure** was considered in depth as a strategic or practical project topic during the process of introducing or developing a probation organisation. This is not to say that structure was not important to service leaders; on the contrary we heard several examples of its significance and impact, including on relations with prisons, courts, and communities. Structure appears usually to have occurred as an extension of existing arrangements, most often as a department within or alongside the existing prison service. Over time an identity has developed (in some cases with several structural iterations) with varying impact on features such as perceived status, leadership and management, and access to resources, relative to established prison services.

We suggest that structural questions deserve further attention, not least on the part of international providers, both as a research issue and when services are established or strengthened. Points to consider on which structure has a bearing include the obvious one of relationship between prison and probation services, which can of course impact on what should be joined up processes such as reintegration (the links between domains 3 and 4 in our model - reflected in legislation, policy, guidance, and practice), resource competition and allocation, and governance.

Other important aspects of structure, which we also found underplayed in most development projects, are the potential impact of the "centre" on collating and communicating evidenced or promising practices, and the relationship between central direction, control, and accountability on the one hand and responsiveness to stakeholders including courts and local communities on the other.

We found **Research and Development (R&D)** to be another aspect of capacity building which receives comparatively *little attention* – in this case by any partner to the process including beneficiary. R&D is seldom an early concern; it seems reasonable that other questions take priority, such as getting people - staff and stakeholders – "on board", addressing legislation, training and so forth. R&D is also dependent to varying extents on other elements of the service being in place, such as (consistent) delivery and registration and related data systems.

We saw however, in several of the five countries in our study, in particular Latvia, Georgia, and Romania (and in Croatia), a *combination* of rapidly growing attention to the international evidence base, development of programmes and internal research capacity (which may be linked to communication strategy), and the perspectives and stimulation of academic relationships. Furthermore, several countries now contribute to the international knowledge base, including in the use of technology (for example Latvia's experience of sex offender treatment and Electronic Monitoring, and Georgia's introduction of the PROBBOX).

We see opportunity to increase R&D in developing services. This could be achieved in part through drawing more extensively on the work experience of staff (especially practitioners) and the lived experience of service users. Neither appeared to feature strongly in shaping probation in the countries in our research until recently (doubtless reflecting the comparative newness of these approaches) but have potential to improve design and delivery, in particular responsivity.

A need for, and often difficulty in securing and maintaining, sufficient **budget** has been a theme throughout all the countries studied and underpins much of the forgoing findings and discussion in relation to the organisation. Leadership, clarity of purpose, and communication appear to have been central to relative success, including data on numbers managed, work delivered (including work on behalf of the community at time of national stress, as in the case of Croatia), results when available, and the contribution over time to reduced overall cost in comparison to use of custody.

We see that where leaders have been longer term this appears to have assisted in securing (or resecuring following financial crisis) budget resources, reasons perhaps including the ability to communicate need and accomplishments, and personal strength and credibility.

C. Processes and Practices

As noted above, with the (comparative) exception of Poland, all five countries are increasingly embracing and implementing *modern scientific insights* into how offenders can be supported to change their lives and engaged in European forums for practice exchange. **Practice** embraces in brief, for example, European Guidance (Probation Rules) regarding the overall methodology of probation work (such as systematic application of assessment, planning, interventions, and evaluation) together with a range of specific practices - a combination which may include monitoring and support, risk assessment and risk management, and use of "core correctional" and other specific practices.

Visibly and understandably, practice has drawn on prevailing international emphasis at the time of development (most clearly RNR-based with some use of cognitive-behavioural approaches). The *influence of partner countries* is evident as in Latvia where practices have drawn on the advanced experience of Canada, and to some extent European partners including the United Kingdom (England and Wales) as in the case of programmed work with sex offenders. Restorative and community-focussed practices have also been developed, most notably in Latvia (again based on Canadian experience of Circles of Support and Accountability) and more recently in Georgia. The influence of partner countries is also evident in Albania, Romania, and Georgia and (as we note earlier) it appears likely that a strong reputation for evidence-informed work has been a factor in partner selection, frequently then progressed by the direct involvement of leading partner-country experts.[46]

Practice development is in most cases closely related to training; in all countries in our study training was to a greater or lesser extent the primary mechanism for practice development or "transfer", although accompanied by support in the development of tools (for example assessment), guidelines, and on occasion more detailed manuals for training and or delivery. The value of a "partnership of equals" we describe in discussion of training is therefore important too in practice development.

Emphasis on RNR[47] appears to have been both a strength and on occasion potential weakness. On the one hand it has chimed with a desire to address and to reduce individual risk – a probation task that not only reflects the international evidence base but *fits comparatively comfortably* (relative, for example, to more reflective or counselling-orientated approaches) in a new service in a country with a historically *punitive culture*.

> **Country Study Romania Extract**
> (Romania has developed) good risk assessment procedures (SERN, the Romanian Risk and Needs Assessment tool developed with the support of Correctional Services Canada,); an automated version is available in the IT-network.

Assessment processes and practices also have the benefit of appearing to guide front-line staff who may not possess depth of knowledge or expertise in psychology, social work, or relational approaches. The same may be true of

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[46] For example, the work of Canadian experts with Latvia, United Kingdom (England and Wales) experts with Albania, Latvia, Georgia and Romania, and frequent involvement of leading experts from other countries advanced in practice including the Netherlands, Norway, and Sweden.
[47] Risk Needs Responsivity

programmed work. This has advantages especially when staff may be drawn from settings such as prisons with a background emphasising security rather than change skills (something we have seen in several other countries in which we have worked, especially in the earlier stage of probation development). Similarly, managers may also not be versed in change skills, especially in the early days of probation implementation.

On the other hand, RNR-based systems and interventions can *require complex resource-intensive support* to achieve good impact, for example data recording and analysis (IT) systems, practice and quality support, and (as discussed earlier) adequate staff and manager time. We found in Albania that high quality and well-received practice training (in this case based on well-regarded England and Wales methods) foundered later due in part to insufficient staff resource to deliver and support practice, to staff turnover, and to a lack of centrally led training or practice capacity to sustain implementation.

The evidence base, and in particular understanding of strength-based or desistance[48] approaches has grown markedly in Europe over approximately the last decade. *Desistance-enlightened* work features prominently in European academia and CEP events, and increasingly informs delivery in several jurisdictions including some in this study. However, desistance-informed work appears more readily embraced by more established jurisdictions (in making this observation we draw mainly on experience in countries not in our study). It seems to us important to better understand how it can be utilised effectively in jurisdictions with a more punitive or control-orientated legacy. Promotion and explanation of the evidence base will be important, including benefits of relational work and the "therapeutic alliance" to change. *Core relational skills* are important in most, and enhance all, probation work. Approaches such as for example "Core Correctional Skills[49]" include a range of practices which draw on desistance theory and the relational therapeutic alliance, motivational theory, cognitive-behavioural work, and pro-social modelling. They provide a strong basis for practice training and foundation for later (possibly more advanced) work.

As with all practice, sustainability requires that services develop the resource to support staff in delivery, and to ensure appropriate tailoring where necessary.

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[48] Desistance approaches involve attention to personal factors such as identity beyond "offender", building on strengths rather than a deficit emphasis, supporting a sense of community inclusion and belonging, access to "social capital" including employment, and recognition of value of the therapeutic "alliance" in change. We do not elaborate further here, but for a brief overview of practice principles see for example HM Inspectorate of Probation (Research, Models and Principles, Desistance – General Practice Insights), 2019

[49] For example, Durnescu (2020)

We have noted elsewhere that some countries in our study have adopted *technology* in practice. Electronic Monitoring has been implemented in Latvia, Georgia, and Poland (and Serbia which we consider later), whilst Georgia has also invested in finger-print technology and the PROBBOX reporting and information system (primarily for its lower risk caseload).

Country Study Georgia Extract
Methods include technology-supported practices, notably fingerprinting and electronic monitoring. Most recently, the "PROBBOX" system provides electronic control and services to probationers remotely through technology installed on the premises of other organisations, with increased anonymity. Research and Development capacity has been developed in Analytical Department of the National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation.

In terms of further *implications of our findings*, we suggest that it will be important to maintain (as in all jurisdictions globally) insight on both the strengths and opportunities offered by technology and weaknesses and possible threats. Another area we suggest will benefit from more attention (again reflecting global need) is diversity and responsivity, including women-centred work. Whilst the needs of youth have often been a catalyst for development, women-centred work is addressed only latterly in most countries we visited.

A trend towards increased practice learning and exchange between a *wider range* of jurisdictions (rather than one "twinned" partner) is a welcome development. This is especially true when a partner has itself had recent experience of developing probation, a similar recent history, or other relatable quality such as language or culture. Benefits include helping realistic appraisal of success factors and obstacles, and transfer or adaption of suitable practices. Examples we found include Croatia learning from Romania, Slovenia from Croatia, and Romania support to Moldova. We address this theme again when we consider project management, delivery and sustainability later in this chapter.

We turn next to the fourth enabler, partnerships, and community, recognising the close relationship with processes and practice (and that some may regard this work as a core aspects of practice) and their vital place in supporting (re)integration, inclusion, identity, and a sense of belonging, amongst other factors supportive of desistance and reduced reoffending.

D. Partnerships and Community

We consider here engagement with justice chain stakeholders, prisons, municipalities and NGOs, together with academic institutions, the CEP and

Council of Europe. Whilst the latter are international, relations with them can impact significantly on probation development. We did not consider partnerships or other arrangements with private organisations (other than on occasion as providers or donors) and these were not brought to our attention.

Public Prosecutor's Office and Courts

In the four countries where capacity building projects have taken place, we found that the *relationship between judiciary and probation* has in varying degrees been the focus of development. In Latvia some judges were involved in early work to develop service strategy. In Romania specific liaison arrangements were developed, with an early focus on pre-sentence reports with juveniles (a frequent focus of initial probation-judicial liaison). This was necessary as *probation* was the *"new kid on the block"* - it needed to find its place in the existing structure. The function of pre-sentence reports and probation measures, and how they were practiced by the probation organization, were a focus. It can be difficult to win over the majority of the judiciary for several reasons: the high number of judges and public prosecutors, the independence of judges (when some judges involved in capacity building projects are convinced of the useful role of probation, that does not mean that their colleagues will have the same opinion), and the fact that the relationship with the probation organisation is just one of the many aspects of the internal and external organisational aspects of the work of the judiciary.

However, in all countries we studied it appears that the judiciary-probation relationship *still needs attention*, whilst the *number of pre-sentence reports remains limited*. In all five countries the prison-population ratio is high as well as the probation-population ratio. From this it might be inferred that more discussions are needed about the aims of probation and what the contribution of probation might be in bringing down the number of custodial sanctions. Structural exchanges and meetings between probation remain necessary.

See for details on the five countries Annexes F1 through F5.

Liaison with Prison Service

Although the push for (further) development of probation has been, in at least 4 of the 5 countries, encouraged by the desire to diminish the number of prisoners, we found that in most cases limited contact has taken place between prison and probation services, during capacity building projects, on how to develop their working relationship and the separate and joint tasks they must perform. Probably other aspects such as working relationship with the judiciary, with municipalities and NGO's (to provide work placements in the framework of Community Service) had a higher priority. The image of probation and prison each working in its own silo is pertinent here. Nonetheless, in Latvia the chief of prisons became an ardent supporter of and frontrunner in the development of

probation. More recently in Latvia and Georgia there have been, and currently are, substantial actions to better align prison and probation policy and practice (joint strategy development). We note the value of cross-reference between those involved in probation and prison capacity building to identify possible synergies (for example aspects of training such as on developing a rehabilitative culture and practices).

Relations with Municipalities and NGO's

In Latvia and Romania, the involvement of NGOs (and for Latvia also the involvement of municipalities), have been important in *first steps* towards the development of probation - taking initiative, and helping to increase awareness that civil society can be active and influential in testing out new approaches and contributing on behalf of society to aims such as rehabilitation or reintegration. However, it appears that once probation organisations have been able to stand on firmer feet, the manifold issues to which they had to pay attention led to a *loosening of ties with civil society*.

In most countries we studied, the majority of links with municipalities relate to the *need to find workplaces* for the implementation of *community service*. Paying attention to the needs of offenders on the part of municipalities (for instance in the phase of after-care, following release of a prisoner) was and often is difficult: the *resources* of the municipalities were and are *limited* while the needs of the general population are high. The probation service in Albania aims to achieve written agreements with municipalities on their commitments during the rehabilitation process. In Georgia, on a strategic level, the aim is to involve NGO's and local communities more, in order to facilitate the social inclusion of the offender. The orientation of the Polish probation system is in the first place towards the court, but regional councils with the participation of municipalities and NGOs seem to achieve success in finding solutions for the resettlement needs of offenders and are helpful in finding work placements in the framework of community service. The involvement of *volunteers* appears to have been a comparatively *recent development*: Georgia for example has embarked on a specific programme of volunteer engagement. Moreover, it plans to involve ex-service users in support of the rehabilitation of low-risk clients (for which they may be paid). Peer support is a quite recent development in even more established services. It may be that newer services feel a need to achieve a level of maturity before moving in this direction.

From a developmental perspective it becomes apparent that the *relationship of probation services with municipalities and civil society* is complex. It is just one of the factors to which attention needs to be paid regularly. Although central to effective (re)integration and the support of desistance, it has to *compete in terms of management attention with other pressing issues* such as the relationship with other stakeholders, and the internal professionalisation and development of the probation organisation.

In Romania, strong links with the University of Bucharest have contributed to scientific interest on the part of the probation organisation and to training on a scientific basis.

Although not internal partnerships, Latvia and Romania have had strong and productive two-way links over a long period of time with the CEP, including leadership Board roles; Georgia has shown active support to CEP by regular event participation, and by organising a conference (on the main subject of capacity building in the region); Albania's willingness to participate actively is hindered by financial limitations; Poland is no longer a member.

Probation laws in Romania and Albania are clearly influenced by the European Probation Rules. (Whilst not countries in our study, the authors are aware that this is also the case in, for example, Croatia and Moldova). International partnerships and influences are considered more fully in the chapter on European and International Influences.

Finding 7: Project Planning and Sustainability

Our seventh and final area of findings focusses on project planning and sustainability. We heard about many factors that appear important in helping to determine the success, short and longer-term, of a capacity building initiative or project – or (because continuity and coordination are significant success factors) of a series of initiatives, projects or a programme.

Characteristics of successful programmes and projects fall into three main groups –

- Project planning, management, and processes
- Continuing International Engagement
- Project "Style" and Relational Qualities

7.1 Project planning, management, and processes

We noted the *significance of project planning, management, and related project processes* (preparation, review, flexibility, adequate management, and implementation resource, reporting etc.) in probation capacity building - particularly in the early stages of a project lifecycle. Whilst our clear overall impression in Georgia, for example, is of several well-run and effective projects, information we received[50] regarding an early probation project suggests that

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[50] Private communication

the main delivery parties (provider and beneficiary) had not reached sufficient mutual understanding regarding project content. This led to a false start, later requiring substantial attention and review. (A similar experience regarding a need for mutual understanding is described in our literature review - in a book chapter[51] based on probation capacity building project experience in Turkey. A paper prepared by two other experienced provides of probation capacity building from England and Wales[52] offers further examples of potential miss-steps in the early stages of project design and delivery. Both describe occurrences we can relate to from our own experience in countries not included in our study).

Projects in our study were most successful when sufficiently well-resourced in terms of management and implementation capacity and capability. As we describe elsewhere in relation to training, we heard how in an early project in Albania there was insufficient staff resource at the time to implement the - well-designed and delivered - training provided, despite desire to do so. (We describe this, and related issues of "capability trap", more fully in the literature review). There is a balance to be struck (which will vary according to individual country characteristics and needs to be assessed) between on the one hand a relatively comprehensive approach which supports strategy, clarity, the involvement of stakeholders, and a progressive step by step approach, whilst on the other hand not exceeding capacity - as we saw for example in Latvia and Croatia.

Overall, we see particular value in sufficient planning (a "getting to know" phase ideally before project plan finalisation), agreement of expectations, flexibility, and ensuring a demand-resource match. Pilots can assist appropriateness and flexibility in delivery.

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[51] McFarlane, M. (2014)
[52] The Interpretation of Dreams (Perry and Barrows), Eurovista Vol 1.2. p 72-78. In this paper the authors describe several ways in which delivery likely to be most helpful to the beneficiary may be compromised. Amongst other factors, they mention that fiches for which providers tender can be over-prescriptive on method as well as objectives, leaving little room for innovative solutions, be out of date, and that implementation plans may become subject to different views over time, such as of changing ministers. The authors also highlight that "legislation is not strategy". They argue that the result of emphasis on legislation may be focus on the mechanics rather than purposes of supervision, whilst strategy should include vision, purpose, and values. Further, they note differences between Common and Roman Law systems which may influence how, for example, advice reports may "fit" in a trial and sentence process. They also suggest strategy should precede legislation (the latter should be in effect a means to achieve agreed strategy), and for better understanding by providers of differences such as in processes, language terms, political and economic realities, culture, and management approaches. On the last of these points, they highlight how top-down style combined with poorly developed internal communication may hamper achieving consensus behind organisational objectives, failure to delegate - including resources - to project managers, poor staff training, supervision, and appraisal systems. In short, change management is often not part of the organisational culture, and "professional management approaches must follow the initial enthusiasm if the changes are to be sustained and developed further."

7.2 Continuing International Engagement

We noted several inter-related aspects of capacity building which we bring together under the broad heading of continuing international engagement.

Strong, longer-term donor involvement and project continuity and coordination.

In Latvia, Romania and Georgia, long-term donor and provider involvement has been invaluable (involving at various time the EU, UN, CoE, INL, and ICRC; locally based international NGOs, and countries with well-established probation traditions). Longer-term roles help to ensure continuity of understanding and development, as we saw in Georgia – ("never change a winning team"), reduce duplication, and support coordination.

Uninterrupted flow of projects

A feature of the countries referred to above is the fact that not only was the engagement of many of the international actors long-term, but the flow of projects had *little interruption*. As well as continuity, the development process received new impetus from other jurisdictions and from other international project experts. This meant that subsequent projects could built on each other, and helped to maintain the enthusiasm of the participants as a continual process of development towards maturity could be seen.

The absence of gap between the closure of a project and the beginning of a new project strengthened their impact. For example, in Georgia we noted longer-term donor involvement; continuity of projects supported consistent practice development, including of assessment and case management. Furthermore, probation leadership was actively and continually on the lookout for new international funding and projects (a point which also applies to Croatia).

Further support in Latvia and Romania also came in the form of annual EU progress reports which frequently paid attention to alternative sanctions and establishment of the probation system. In contrast it is observed that these topics were not mentioned in progress reports on Poland.

In Albania we observed an interruption of several years between two significant internationally funded projects. However, before completion of the second of these projects a small but significant project was implemented focussed on probation service strategy and budget, thereby supporting continuity of development.

Fruitful international cooperation with strong partners

In the four countries studied that have received major capacity building projects, the *receiving countries* valued contact and cooperation *with countries with leading reputations* in probation (Latvia with Norway and Canada; Romania with England and Wales and the Netherlands; Albania with England and Wales and Sweden; Georgia with the US, England and Wales, and Estonia). We see the same pattern in other countries (for instance Croatia with England and Wales and Spain). As well as benefiting from the experience of these countries, being able to draw from several rather than one partner service allowed host countries to compare and *select* approaches with *the best "fit"*.

Value of expertise from and of countries that have experience of a similar transition.

We also observed the valued nature of cooperation with countries with elements of a common culture, history or transition, such as Georgia receiving commitment and advice from Estonia and, in the case of Latvia, work with a neighbouring country and with its diaspora (in Canada). In turn, Latvia has been helpful in assisting Ukraine, whilst Romania has reached out to support Moldova and Croatia. Similar experiences help to understand (and not to underestimate) the journey over time through an evolving "penal culture" or political climate, stakeholder resistances, and budgetary and legal constraints.

We also note that representatives from Latvia and Romania (and from other countries, for example Croatia and Estonia) have been very active in CEP, as board members, or organising CEP-conferences. It was stressed in interviews during field studies that membership of CEP - by being part of the *European "family" of probation* and participating in conferences - encourages and supports change.

7.3 Style and approach

We found that the "style" of the international dimensions of capacity building, as well as the relational qualities of individuals and the relationships that developed, are a significant support to success.

For example, in Latvia we heard about *"passionate"* international experts. Moreover, they contributed to training events that were participatory, emphasised knowledge transfer, whilst projects also supported provision of practical models and tools such as assessment systems and templates which could be adapted, and attention to the supply of practical resources (for example equipment) as well as knowledge. The *respectful* approach included "knowledge provision without an expectation of "doing it this way", and (as noted earlier in relation to training which often provides a main international

"interface"), "international experts who "entered the Latvian space." It was also said that "without relationships no knowledge transfer was possible".

In Romania approaches were valued that offered inspiration, were a partnership, and supported locally owned local solutions (building where possible on existing local initiatives).

In Georgia, international project leaders /experts were often described as "impressive", experienced, skilled, responsive, with whom mutual respect and regard developed. Longer term involvement enabled understanding to develop - *"Never change a winning team"*, and again approaches were valued that inspire rather than tell, provide *knowledge* to inform, contribute hard resources (infrastructure, technology) as well as knowledge, prepare and pilot (rather than aim to immediately implement on a large scale) and, (as in the case of Romania), support local solutions.

In *summary*, valued elements of approach and style (which appear to us very important and are therefore reflected in the section of this chapter on implications) are to inspire not tell, provide knowledge to inform, and to avoid "cut and paste" transfer. Passionate and knowledgeable experts are appreciated, who offer participatory training events (and study visits), who respect, value, and adapt to differences including context, culture and language (and who are involved long enough that these factors can be understood), and with whom strong relationships and mutual respect can be developed. Approaches should also build on strengths and support owned local solutions (assisted by piloting), and preferably also offer the possibility of practical models and tools (for example, assessment systems and templates to be adapted to the local situation) and contribute hard resources such as infrastructure and technology.

Taken together these approaches help support strong and fruitful capacity building that also engenders sustainability.

3.4. Croatia and Serbia

We undertook a "mini" field study on Croatia and Serbia, two countries that have a similar historic background but quite different pathways in the development of probation.

This information deepens the information collected in the 5 countries involved in our main project fieldwork. We discuss first Croatia, then Serbia. We then compare probation development of in the two countries.

3.4.1. Croatia

Špero (2020) describes the successful development of the Probation Service in Croatia over about two decades.

The new service works in all four probation *"domains"*. Community Service is especially strongly developed (representing 50% of total of probation sanctions). Pre-sentence work is so far limited, but as the number of cases of Community Service and conditional release is decreasing the leadership is stepping up work in the pre-trial domain (discontinuity of prosecution if the suspect follows a program of meaningful activities; pre-sentence reports).

There have been few personnel changes in crucial positions since the start of the probation service. Attention has been paid to all *"enablers"* including legislation, practice, staff, partnerships, and infrastructure. Communication with the public and political and justice system stakeholders, for example about probation benefits, has been important. Much attention is paid, as in annual reports, to the savings achieved by the service (for example community service as an alternative to a custodial sentence) and the benefits for society.

Capacity building has been going on for more than a decade and has involved *regular international partnerships with a range of partner services*. The net result is the service being in a strong position, increasing its areas of competence and strengthening all its enablers. Špero has remarked how useful international projects have been, as it has enabled the Croatian probation organisation to learn from a variety of international partners.

3.4.2. Serbia

We base our information mainly on a recent report that described an impact assessment of the application of Alternatives Sanctions and measures in Serbia (Kolaković-Bojović, Batrićević & Matić Bošković, 2021). Several laws were passed between 2005 and 2020 aimed at reducing the number of non-custodial sanctions. An impact assessment of these laws has recently been carried out. The assessment researchers concluded that *the relevance, efficiency, effectiveness, and sustainability of the legislative framework fall short*. We also made use of several descriptions of capacity building projects.[53]

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[53] Assessment reports by the Council of Europe Experts: Prof. Jacqueline Tombs, University of Stirling, Scotland; Mr Raymond Swennenhuis, Dutch Probation Service, Netherlands; Mrs Luisa GANDINI, Regional Probation Office, Italy, on the Systems of Alternative Sanctions and Probation in Serbia, Assessment visit 11– 12 October 2006, Belgrade, Document elaborated by the Directorate General I – Legal Affairs In the framework of the CIDA Project "Assistance for the Reform of the Correctional System in Serbia" Strasbourg, 24 November 2006

Some key findings follow:

- The number of detainees is high (153 in 2021) and the number of persons under probation supervision is low (30 in 2021).
- In terms of *domains*, most of the alternative sanctions are house detention and house arrest; in many of these cases *EM* is applied. Community service is rarely pronounced and protected supervision even less so. The same applies to conditional release with supervision. The phenomenon of presentence reports does not exist. As presentence reports are not made, once the sentence has been imposed, it often transpires that the suspect is unwilling or unable to cooperate with the probation service, or that their accommodation is not suitable for carrying out house arrest (for example the telephone does not work).
- There are major deficiencies in the *enablers*:
  - Roles and responsibilities of the stakeholders in the relevant laws are insufficiently described; the work processes are not or are insufficiently elaborated.
  - The number of staff is low (73 in 2021).
  - There is insufficient contact between the probation offices and the judiciary and public prosecutors to discuss current cases and problems. The probation organization is highly centralized and there is little or no room for individual probation branches to respond effectively to local circumstances or issues.
  - There are insufficient contacts with municipalities and the Employment Agency to offer probation workers opportunities for training, treatment (medical, psychiatric, addiction) and to obtain workplaces for community service.

Over the past 15 years, a great deal of international attention has been paid to the development of alternative sanctions and probation in Serbia. (See Annex F6 for an overview.) On the surface, the impact of all projects so far has been limited. The prison population rate is relatively high (153 in 2021) and has been increasing since 2000 (in comparison the prison population rate in Croatia is 98 (World Prison Brief). The number of alternatives to prison with a rehabilitation component is very limited, and the probation service remains a small organization. Despite support from judges and prosecutors who participated in a pilot around pre-sentence reports, the expectations are low that the probation

Prof. Dr Nataša Mrvić-Petrović, Faculty of Law, Union University, Belgrade, Evaluation of the OSCE Project Support to the Establishment of Alternative Sentencing in Serbia and Functioning of Alternative Sentencing System; 2010; Report kindly shared by the International Office of Reclassering Nederland (Dutch Probation Organisation)
Final Report November 2014; a project funded by the EU under The European Union IPA 2010 Programme for Republic of Serbia. The report was kindly made available by the EU office in Belgrade.

service will be enabled in the coming years to prepare information reports or to advise on the conditions under which conditional release will take place.

If there are no opportunities to carry out "real" probation work (beyond Electronic Monitoring) in the coming period, we question the impact of the energy invested in the professionalisation of probation officers achieved during these numerous projects.

3.4.3. Comparison of Probation Developments in Croatia and Serbia

The question arises as to how countries that shared a common history have developed so differently in the field of probation. Here we attempt to explain the different pathways. We highlight 4 points that appear to shed light on probation development.

1   Eagerness to become a member of the EU
The will to become a member of the EU was strong in Croatia. In the context of the EU accession negotiations many changes in the field of justice and fundamental rights were prepared and implemented. The Probation Service has fully participated.
One cannot infer from the Progress Reports of the European Commission on Serbia that major steps are being taken. Further, the conflict over Kosovo hampers progress.[54] Serbia also seems to want to maintain equally intensive ties with Russia and with Europe.[55]

Perhaps here the Canton's[56] analogy of the ecological niche is helpful: unlike Croatia, Serbia appears still attached to its history and ties with Russia. They share similar orthodox church principles, alphabet, and experience family ties. Moreover, international relations with other European nations, including in the probation field, are limited (in contrast Croatia has good contacts with Slovenia, Austria, and Romania). In terms of ties of the probation agencies with CEP, we note that Croatia has been a long term and very active member of CEP since early 2010 whereas Serbia is not yet a member.

2   Development of probation is less high on the domestic political and administrative agenda
In EC progress reports on Croatia and Serbia, we saw emphasis on the issue of overcrowding and prison conditions. In the Serbian Progress Report 2012 we read: *"Alternative sanctions need to be introduced on a larger scale… An efficient probation system remains to be introduced."* In later years, the subject of alternative sanctions and probation was rarely

54   Kostic, V., (2022), 'Serbia: Prospect of EU membership in exchange for giving up Kosovo?'
55   Ushkovska, M., (2022), Between Russia and the EU: Serbia's balancing act is wavering
56   Canton, R. (2009), 'Taking Probation Abroad'

mentioned, whilst the judiciary was continually brought up: *"The scope for political influence over the judiciary remains a concern."* (2012). In 2021 it was reported: *"The use of alternative measures to detention continued to increase, but a large percentage of convicted persons are under house detention rather than serving community sanctions. In addition, the share of alternative measures to detention – 35 per 100.000 of the population, including those under electronic monitoring – remains low."* The focus in Serbia was more on prison than probation projects. Furthermore, probation projects did not follow each other on a regular basis.

In stark contrast, in Croatia the Ministry of Justice took regular initiative to ensure subsequent probation projects alongside projects to reform the prison sector. From 2007 until the date of accession to the European Union (2013), EU projects have been carried out, without interruption, to develop and improve the probation service. Over the years, the commitment has remained unabated to undertake and complete the transformation process towards a well-developed probation service.

3   Internal and external focus of probation work

It is crucial for the development of probation that the external world of the probation service is involved: ensuring that politicians understand the importance of probation, that the public understands why offenders can receive an alternative punishment and its value for offenders and society (see Läppi-Seppala, 2003), and involving justice chain partners by providing information and engaging them in probation service development.

In Croatia there has been a continuous focus on the political level, the judiciary and the public prosecutor's office, the municipalities, and the public. At the same time probation officers were trained to perform probation work.

In contrast in Serbia, we have not seen a clear focus on making arrangements with the judicial partners to create the circumstances and work processes required to carry out probation work. We also did not observe a drive to influence politicians or the wider community on the benefits of probation. As a result, most capacity building projects focussed on training probation officers. Probation officers were however not able to apply this knowledge and skills in practice, on the one hand because the caseload was very high, and on the other because the focus of work was on the more controlling and punishing aspects of probation work, such as Electronic Monitoring as an alternative to (pre- and post-trial) custody and Community Service.

4   Inhibiting effect of Electronic Monitoring

In Croatia Electronic Monitoring in pilot form was only taken up a few years after the probation organization was already well established and alternative sanctions such as Community Service and Protected Supervision as part of Suspended Sentences had already developed

well.[57] Electronic Monitoring is used as support for Protected Supervision and not as a tool in Home Arrest or Home Detention.
In Serbia, Electronic Monitoring was introduced in the period between two projects: after the conclusion of the OCSE project and before the start of the EU project. Even during the OCSE project, cautionary remarks were made regarding not introducing Electronic Monitoring too hastily. However Electronic Monitoring currently accounts for 80% of the probation service's work in Serbia. Once could argue that introduction of Electronic Monitoring, at a time the probation organisation was not sufficiently mature, has hampered the development of probation in Serbia.

These four points highlight the vital significance of the international and national context to the development of probation. We also see how these dimensions interplay: *the interest of the EU in developing probation needs to be in tandem with the individual candidate member country* to have effect. Croatia has been much more proactive in seeking probation-related contacts with the EU, whereas Serbia's contact with the EU has been mainly in relation to modernizing the prison sector (for example new infrastructure, improving health care).

We also see the importance of *"who"* is involved: probation leaders showing an inclusive approach by engaging and connecting with stakeholders was more prominent in Croatia. Turning to the *"what"* of probation, we observe that Croatia has developed probation work across the domains, whereas in Serbia it is limited to certain aspects of the pre-trial domain and the alternative options domain, namely Electronic Monitoring without assistance and guidance. The controlling aspects are dominant.

In terms of the *"how"* of probation we saw in Croatia a stronger focus on engaging and connecting with stakeholders - the judiciary and prison service to create the conditions for pre-sentence reports and the preparation and implementation of conditional release. Croatia invested more in preparing and applying elements of effective practice (including an assessment tool and intervention programs). Staff training could be applied. In contrast, the significant training delivered to probation officers in Serbia has not been followed through for a combination of reasons including staff capacity and a lack of rehabilitative opportunities in probation tasks.

Looking at capacity building projects, we note that - whereas in both countries many international projects have taken place - a *more consistent approach in Croatia* which was very active in seeking timely follow-up projects which

[57]   See presentation by Goran Brkic, Head of Probation Croatia, at CEP-conference on Electronic Monitoring, Zagreb 2018

connected and built on each other. Partners were engaged from a range of countries, including some whose own services were relatively new and had greater similarity to Croatia in history and penal culture than established western European jurisdictions. The exposure of Croatia to the probation practices of different countries provided a variety of approaches and practices that helped it to select and adapt learning to its own national context and circumstances.

3.5. Summary of Main Implications of the Findings for Capacity Building

In this final section of our field studies chapter, we formulate what appear to be, based on our findings, some of the most important implications for future probation capacity building activities. (For further details relating to individual countries, see stand-out points in capacity building in each country Annexes F1 – F5). Whenever useful we draw too on our reviews of probation development in Croatia and Serbia. We conclude by highlighting what seem to be important missteps to avoid in probation capacity building.

Whilst the focus is on findings from our field studies, interpretation is influenced by the results of the literature study and findings in the chapter on European and International influences. These have informed the 8-point structure we adopt which moves from international and national context through to project delivery and qualities of staff involved.

1. Introduction - the complexity of probation capacity building
2. International Context - Relevance of European Probation Rules and role of the European Commission and Union
3. Adaptation to penal culture – an interplay of international and national context
4. The need to achieve clarity on the essence of probation and its priority
5. The significance of political will as a driver and supporter of change
6. Continuity of probation leadership
7. Strategic, holistic approach
8. Project Management and Delivery

1 Introduction - the complexity of probation capacity building

In all our field studies (with, to a degree, the exception of Poland) we observed the complexity of probation development and challenges posed to persons and organisations in the beneficiary country as well as to the international institution(s) that contribute to or facilitate capacity building (such as the EU and the CoE) and the "lending" countries.

Influences include historical and cultural *tradition*, evolving political and penal *culture* (which may develop at different paces and in different ways, even within one justice system), variable (but hopefully growing) *resources*, together with a wide range of international factors. Here we include donors (who may differ in respects such as priorities and length of involvement), evolving international probation *guidance*, influence of the international *probation "family"* (for instance the CEP), a growing evidence base, and alongside these often a bigger and *changing* regional and international *political picture* (such as the fall of the Soviet Union or expansion of EU membership). All influence in various ways the trajectory and speed of change. Whether and how they have been addressed or harnessed has impacted significantly on capacity building.

Clearly the standing of, and confidence in, probation, including access to an adequate budget, takes time to develop and to sustain. In our model we distinguish 4 domains of probation and 4 groups of enablers: each in turn having sub-domains or sub-enablers. We found that the model was not familiar in the countries we studied, but proved insightful in discussing developments – past, present and future.

In summary we found *many factors* need to be *attended to simultaneously* or within a limited timeframe. *Choices* need to be made regarding what needs to be tackled first - and next – a *development strategy* including factors such as initial competencies (community sentences, early release etc.) and how they are supported. However, we saw that other elements are also critical to success, including understanding and taking account of *context*, engaging, involving, and building alliances with politicians and with stakeholders in the justice field, agreeing aims and mutual clarity of purpose, and building international links for funding and projects. Also important are project planning and delivery both, practical aspects including scope for flexibility in the light of experience, and relational qualities and style.

2 International Context - Relevance of European Probation Rules and role of the European Commission and Union

The European Probation Rules are clearly a significant *reference point* for countries wanting to update or formulate their probation legislation and practice, as we found in Latvia, Romania, and Albania. We found the converse in areas not addressed by the Rules in detail, for example a slower development in the domain of pre-sentence activities. Whilst this might be attributed to resistances from the judiciary (the perception, as we discuss earlier, that pre-sentence advice might interfere with their independence, and we know that trust between the judiciary and probation organisations takes time to build), we suggest that perhaps more should be done on a European level to develop *guidance* on the work of probation in *the pre-sentence* phase (for instance alternatives to prosecution or to pre-trial detention, and pre-sentence advice to public prosecutors and the courts).

We found too that the European Commission (EC) has played, and is playing, an invaluable role in probation development; it showed active interest, in accession progress reports on individual countries, in steps to build probation organisations to provide alternatives to detention. Their financial support has been essential in enabling capacity building projects.

However, in other countries (for example Moldova, Armenia, Kosovo, Serbia, Ukraine), European Union membership is, due to geopolitical considerations, further away than was the case with countries of the former Soviet Union that have already joined. Although EU funds are available to support probation investment, a question is whether the *appeal of potential EU membership* some way ahead will prove sufficiently strong in itself to motivate countries to reorganise systems, and specifically justice arrangements, which reflect well-established traditions including penal culture (even when many actors may be so disposed).

We found other international factors to be significant in probation growth too, including the mounting international evidence base, developments in neighbouring countries, and membership of epistemic communities such as the CEP. In brief, all have played their part in taking forward probation development to date, and will we believe be significant in future.

3   Adaptation to penal culture – an interplay of international and national context

We found an apparently significant *impact of national context, including penal culture*, in the countries studied. As we note (findings 2 and 5) in Latvia, Romania, Georgia and Albania, probation development began by prioritising juveniles in conflict with the law. Perhaps motivated by a strong belief in the needs of this vulnerable group, it may also have been assumed that probation activities for this group could be more easily supported by politicians and stakeholders in the justice field. A successful "sowing of the seeds" of probation might lead to other, sizable, target groups.

We also observed that *Community Service* is popular in Latvia, Romania, and Albania. Community Service might also be seen as a sentence type that appeals more to politicians, the public and to stakeholders in the justice field than does a conditional sentence with probation supervision. The severity of the sentence might also be expressed by the *high maximum of hours* that can be imposed by the courts: focussing on Community Service, and its more ready perception as a "real sanction", might therefore be seen as a way of promoting judicial and political acceptance of probation work.

In Georgia, probation supervision consisted in most cases mainly of reporting to the probation office (at least once a week) and having fingerprints registered.[58] This practice still exists but is now supplemented with Community Service and House Arrest, the PROBOX system, and other non-custodial sentences combined with probation supervision directed at supporting the supervisee to improve their life and to reduce reoffending.

We noted considerable differences in the use of *Electronic Monitoring* (EM). It is striking that in Latvia and Romania there is notable caution - apprehension it may be used predominantly to control, without supporting change. In addition, it is also feared that the technical processing of EM will detract significantly from probation officers' capacity to the detriment of their ability to support an offender's desistance (especially in the case of Serbia).

We believe that future projects need to allow for finding a *balance* between the existing *penal culture* in a country on the one hand and the *international guidance* on the other. A message on the part of international project leaders that everything must change in the direction of the European norms may cause resistance, even more so than the usual resistance to change that is part and parcel of change processes. This may lead to a situation in which the practice is not or not wholly in line with international guidance. However, in the long run it might be expected that countries and their national organisations will, through an increasing exchange of information, by contributing (as well as responding) to international guidance (Council of Europe and the European Commission), and by being part of the European family of probation (CEP), will slowly move toward each other in achieving more *congruity of probation's position in the penal system.*

4   The need to achieve clarity on the essence of probation and its priority

As probation is a new, or at least developing, phenomenon in countries where capacity building takes place, it is understandable that a part of a project or initiative will be to help *achieve a common understanding* of what probation is "about", and why it is needed. In the countries and individual projects we have studied (within this research and elsewhere) we see that over the years a lot of effort has been expended to get the "message" and essence of probation across; we saw, in every project in varying degrees, attention to explaining the concept and the benefits of probation - to people in the ministry of justice, probation staff, stakeholders, and the wider public.

It very much helps that nowadays the *European Probation Rules* form a common standard from which to work. Even so, it requires an investment on the part of

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[58] From 2021 reporting for low-risk probation is also available using PROBBOX devices in the premises of other organisations (for instance municipal offices).

national and international project leaders to check, including at the political level, whether ideas about the aims and roles of probation can be clarified and agreed upon, especially as we saw that the concept of probation often gives rise to *resistance*.

Sometimes resistances lie in the present *political climate* (probation might be seen as soft, or politicians believe the public may perceive it to be so). Resistances may also be found amongst *stakeholders* (prisons, public prosecutor's office and courts). We noted that justice chain partners may see a new probation service as a competitor or even adversary. If there are resistances, the earlier they are identified the better: in this way resistances may be targeted and hopefully reduced. The need therefore to bring stakeholders "on board" highlights the value of identifying key players at an early stage and giving attention to how they may be involved, for example directly in the planning of, or coordination with, probation development. The earlier agreement on the essence of probation is reached, the greater the chance that development of a service, or an individual capacity building project, will run smoothly.

Resistances or hindrances might also stem from the fact that when "Europeanisation" or modernisation of the state apparatus takes place, the demands for political attention, resources, specialists and so forth, may *compete* with the space available to probation development. For example, in Georgia, Albania and Poland early priority was given to prison service improvements rather than probation development, a phenomenon contributed to by the focus and requirements of the European Commission during accession discussion. In Poland priority work on police, courts and prisons detracted and diverted attention from probation. In more recent years this focus has sometimes changed; for example, in Georgia, the development of probation is emphasised alongside the prison system, manifested in the strategic Vision 2030 - Development Strategy of Georgia.

It is understandable when countries on the path towards a fully-fledged probation service *prioritise domains or probation tasks that are resonant with the penal culture* (as long as they are the outcome of conscious decision making). We hope that priorities will be reviewed over time to reflect more fully the European Probation Rules.

5   The significance of political will as a driver and supporter of change

As we report in Finding 4, we found a diverse picture in terms of service stakeholders, personnel, and issues. Strong and consistent leadership (as we discuss next), involved and supportive stakeholders (including in prisons and the judiciary), and active and informed academics and NGOs can, and frequently do, play an important role - as can the international community including project partners, as we discuss elsewhere.

However political will – the priority attached to probation - can make or break service development. If there is a lack of political will to decrease the prison population, to humanise the system of criminal justice, or to look for alternative approaches to punishment, then it is unlikely probation will be established or developed as a strong organisation that performs according to current (international) expectations. *Political will is not always clear or straightforward and may change over time*: when new political alliances are formed there can be a strengthening or weakening of political resolve in building up a probation system.

In most of our studied countries we saw, albeit with varying degrees of determination and conviction, the presence of political will. Noteworthy is that individual people in the studied countries – forming together a national kernel – were extremely committed to develop probation and to reach out to the political and ministerial leadership. However, in addition the role of the EU in the accession processes appears to have been of great significance in reminding politicians they had to play their role in decreasing prison overcrowding, in finding alternatives, and in establishing probation organisations.

In all the countries studied, societal and economic changes were enormous, leading to uncertainty among the population about their economic wealth and future. In such a situation one can see the possibility of a *rise of populist politics* with a stress on harsh sentencing, and influence on politicians. In Albania especially, a long period of political instability has been experienced. Nonetheless, probation has clearly maintained its position despite this headwind. Albeit with international support, it is impressive that people within and outside probation have not lost trust in their endeavour.

6 Continuity of probation leadership

In Latvia and in Romania we heard there have been stable periods of leadership or strong involvement of influential people during the build-up of the probation organisation. In Georgia some key figures also stayed for considerable periods of time in position, considerably influencing essential developments. This holds true for Croatia as well.

The development of probation is served if well-performing and enthusiastic probation leaders can be encouraged or permitted to stay in post for a longer period.

7 Strategic, holistic approach

Countries that have been successful in developing probation are - seen from our perspective - characterised by following a strategic, holistic approach. For instance, Latvia and Romania determined from an early stage which probation

tasks to implement, and in what order, extending equally to a staged focus on what we call the enablers. We also see in Georgia a strategic approach and in recent years in Albania the development of a strategic plan including budget to implement the plan. Notably, especially in Albania, the strategic plan is conceptualised according to the capacity building model we offer in this paper (based on advice we offered).

Where relevant, the holistic approach may be extended to include other stakeholders. For example, relevant aspects of processes, practices and training can be harmonised between prison and probation functions, or with the judiciary, improving efficiency and mutual understanding. Approaches of this kind are greatly facilitated by *good inter-donor and inter-provider coordination*, an issue we refer to later.

We believe that using *our model*, paying attention therefore to the why, the how and the what of probation, may *help* build this *strategic approach*, very preferably involving stakeholders, and (taking into account the specific societal and penal context), informing which priorities have a high chance of taking probation development further. Relationships with Public Prosecutors, courts and prisons are key as it is largely in their hands whether probation sentences and measures are used. For this reason (and others) it appears highly beneficial to involve them in designing and implementing the build-up of the service, as we discuss earlier. We note (see Finding 7.1) a balance to be struck in each system between a relatively comprehensive yet step by step approach, as we saw for example in Latvia and Croatia, whilst not on the other hand exceeding capacity; in Albania the opportunity to practice skills learnt in training was hampered by a shortage of staff including turnover. We noted that pilots can assist in pacing, as in Latvia for example, can support flexibility (as discussed earlier) and local ownership, and can fit with and even inform developments in legislation.

We believe that project leaders and national forerunners need to keep an *open eye* regarding persons who might be effective or influential in bringing the cause of probation further, and to develop a comprehensive approach. That can be on a national level (for example professors, professionals in the prison service, ministers of justice, NGO's, academics) or internationally (such as the diaspora, or neighbouring countries with a similar culture, a relationship or affinity).

8 Project Management and Delivery

A sizeable number of our findings (see Finding 7) refer to aspects of project planning and the support of sustainability. We placed the characteristics of successful programmes or projects into three main groups, each having significant implications for capacity building –

- Project planning, management, and processes
- Continuity of International Engagement
- Project "Style" and Relational Qualities

Project planning, management, and processes

We noted earlier in this chapter the significance of project planning, management, and related processes (such as adequate preparation, review, opportunity for variation in the light of experience, sufficient management, and implementation resource, etc.) in probation capacity building - particularly in early stages of a project lifecycle. For example, we noted (although not the case in later projects in the same country) information[59] regarding an early probation project in Georgia suggested that main delivery parties (provider and beneficiary) had reached insufficient mutual understanding regarding project content, leading to a false start and need for review. This is a caution expressed also in literature on a capacity building initiative in Turkey (McFarlane, M. 2014) and in a paper by Perry and Barrows.[60]

In practice, project content is often almost finalised, sometimes with advice from experts or bodies not then involved in delivery, before delivery parties have opportunity to communicate in detail, with implications for the mutuality of project delivery by those parties then involved – typically donors, delivery providers, and beneficiaries.

An implication is the advisability of *ensuring sufficient mutuality of expectation* (factoring time where possible for this in advance of finalising project planning, and well in advance of start-up), particularly in areas of policy or practice where there is most likely to be difference between for example providers, international guidance, and national or system context, for example penal culture, legislation, systems and processes, management approach, resource availability. Opportunities for in-project review and flexibility are also helpful to accommodate difference.

We found too that projects in our study were most successful when sufficiently *well-resourced* in terms of both management and implementation capacity and capability (relating to a point referred to in our literature review as the "Capability Trap", most evident in less well-off jurisdictions. We note elsewhere the benefits of a relatively *comprehensive approach* to a project (or series of projects), supporting strategy, clarity, the involvement of stakeholders, and a progressive step by step approach, which can help to reduce "peaks and

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[59] Private communication
[60] See also footnote 51.

troughs" in project demand and delivery, and help avoid exceeding capacity. *Pilots* can assist in this respect too, and support flexibility (as discussed above).

All these points further imply sufficient coordination over time between projects and national and international parties, as discussed next.

Continuing International Engagement

We noted several inter-related aspects of capacity building which we bring together under the broad heading of continuing international engagement.

Strong, longer-term donor involvement and project continuity and coordination.

We saw both the pitfalls of insufficient project continuity and coordination and benefits of longer-term involvement on the part of beneficiary and providers. Longer-term donor and provider involvement can provide constancy, help reduce duplication of effort, support coordination, help avoid overlaps and lapses in development, and contribute to "mindfully managing resources". This is the case too when one or more donors support provision variously of finance/materials/infrastructure as well as "know-how".

Uninterrupted flow of projects

A feature of several countries we studied was that the flow of projects had little interruption. The absence of gaps strengthened their impact and supported consistent practice development (as we saw in Georgia).

We see benefit in aiming for continuity of project, with probation leaders actively and continually seeking new international funding and projects (as we saw in Croatia).

Fruitful international cooperation with strong partners

In most of the countries we studied, probation development was enhanced by contact with countries with leading reputations in probation. Furthermore, benefits were found in drawing from more than one (or even several) partner services.

The approach allows host countries to compare and select partners with strengths in different areas they wish to develop, and to ensure ideas, inspiration or approaches are a suitable "match". This may also reduce a need for, and complexities of, adaptation.

Value of expertise from and of countries that have experience of a similar transition

We observed the value of cooperation with countries with elements of a common culture, history, or transition. As we note in the findings, similar experiences help to understand the journey over time through an evolving "penal culture" or political climate, and to anticipate and mitigate obstacles, stakeholder resistances, and budgetary and legal constraints.

Style and approach

Finally in relation to project management and delivery we found the "style" of capacity building and relational qualities of individuals to be significant supports to success.

Beneficial elements of approach which our findings imply, and which appear to support sustainability, include involving and including, inspiring not telling, providing knowledge to inform, building on strengths, and supporting development of locally owned solutions rather than "cutting and pasting" from a third country. Practical tools or methods are often regarded well (which may be adapted). Our findings suggest that hard resources such as infrastructure and technology are often valued too.

In terms of personal qualities of international personnel, passion, strong technical knowledge, and a participatory training style are valued. An open and respectful attitude to the new culture, attention to difference including language, and longer-term involvement (as noted earlier) are important too. It is a real benefit when relationships based on mutual respect develop – informal as well as formal contacts can assist.

3.6. Potential Missteps to avoid

We highlight 7 potential missteps to avoid.

1 Net-widening
2 Reliance on legislation
3 High caseload of probation workers
4 Dominance of training over other enablers
5 Premature introduction of sophisticated supportive systems
6 Poor donor coordination
Insufficient project preparation

1 Net-widening

According to the Council of Europe (Aebi et al, 2019) figures, there are indications that suggest net-widening (increase in the total number of people either in prison or under probation supervision, usually without clear evidence of cause such as growing crime rates) has grown. This phenomenon can be observed also in several countries in Middle and Eastern Europe although there are exceptions (such as Croatia). Although it is understandable, and probably wise, that probation cases in the early phases of development are low risk, for which prison sentences are not in general a reasonable punishment option, over the course of time, the severity and seriousness of cases needs to be increased; only in this way will probation sentences replace prison sentences (assuming prison is itself reserved for higher rather than lower risk cases).

The phenomenon of net-widening appears to be related to wider cultural, societal and historic factors: changing this poses a major challenge, requiring attention from the leadership in, for instance, the Ministry of Justice and probation management. But here *the message is clear that probation serves as an alternative to custodial sentences.* This means this need to be expressed in the legislative framework, and that in the daily practice of the stakeholders, every time a person is sentenced the question needs to be answered whether probation can be applied instead of a prison sentence. Furthermore, regular statistical monitoring of the trends in the number of people sentenced to prison in comparison to probation need to take place, involving probation staff and stakeholders in reviewing whether probation sentences are sufficiently replacing prison sentences.

2 Reliance on legislation

We noted that in all the countries studied, before probation activities can start or when new probation tasks are added to the already existing activities, they are not able to start before the law has been adapted in such a way that it describes the responsibility of the probation organisations.

We have seen this might have an *inhibitory effect* on the speed at which changes can take place (and often forms a contrast with Western European approaches in which new activities and piloting may be undertaken, as long it is not forbidden in legislation). The time taken to prepare legislation can delay work on other enablers, a factor which needs to receive attention in early project planning if later delays are to be avoided.

We also note another phenomenon: it may often be assumed that when legislation is in place that changes on the ground will automatically follow. *Implementation* - translation into work processes in alignment with other stakeholders, requires investment and conscious effort.

3   High caseload of probation workers

We note that with the exception of Latvia the average caseload of individual probation officers is very high (Latvia 14; Romania 108; Georgia 146[61]; Albania 100[62]; Poland 180[63]).[64] High caseloads might stem from the phenomenon of net-widening, may be caused by the success and popularity of probation, and by countries needing time to find the financial means to expand the number of probation officers. However, without doubt a high caseload will hinder sufficient attention to individual supervisees.

4   Dominance of training over other enablers

Training of probation officers is often an activity that is comparatively easy to plan and deliver. It may not require the - sometimes hard - job of selling probation to politicians or stakeholders, to formulate legislative change, or to invest time and energy in devising cooperative work processes and information exchange with stakeholders. It is a "stand alone" activity. Students are usually eager to attend training courses. These factors may all lead to giving training more emphasis than other enablers. Therefore, it may not be possible to apply learning well in practice; significant delay may bring staff disappointment and loss of interest in probation work.

5   Premature introduction of sophisticated supportive systems

Probation is about achieving behavioural change of the offender. It is important that probation officers understand the essence of probation, their role as a change agent, their position towards the offender and towards the penal system. Evidence increasingly points to the importance of relational skills, a constructive relationship or "therapeutic alliance" with the supervisee, motivational and other underpinning knowledge and skills to engage, assess and change. We saw sometimes the untimely introduction of complex systems of assessment and behavioural interventions before probation officers had mastered theoretical underpinnings of effective practice and core correctional skills.

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[61]   According to Georgian Probation Organisation

[62]   According to the SPACE II statistics the caseload for Poland is 28, however this does not take into account the fact that a large part of the staff is "voluntary", "community probation officers. The caseload for professional probation officers is assessed as 120.

[63]   This is the caseload for professional probation officers, not for the "voluntary", "community" probation officers.

[64]   A further question is the extent within the caseload of "sleeping cases": for instance, formally on the caseload but with a frequency of contact that is minimal or non-existent.

6 Poor donor coordination

In countries in transition, several capacity building projects often run in parallel or follow each other in succession. It sometimes happens that these projects do not take sufficient account of each other. In our view, coordination and coherence between projects should be pursued more strongly. The closer that projects are aligned and complementary, the greater the chance that results can be sustainable.

7 Insufficient project preparation

From our own experience and from studying capacity building in several countries we know that it often happens that the time between a "call" for projects and the submission date is short. As a result, project managers may lack time to get to know the situation on the ground and to develop, together with the beneficiary, a mutuality of expectation. It might even prevent bidders to a call from reviewing learning points from previous projects, including previous resistances and whether, and if so how, they still need to be addressed. We believe that funders should build in more time for bidders to scope the project in conjunction with the beneficiary country, and if that is not possible before the assignment is given, to allow for more time in perfecting and detailing the project plan.

3.7. Concluding remarks: towards an international evidence base on capacity building

It was confirmed during the field studies that there is no common framework for, or standard in, capacity building: every project is based on the insights and convictions of the participants in each project. They may therefore differ enormously. *Evaluation reports* of projects are not always made, and if made are not always accessible.

Nonetheless some elements occur in most projects, notably attention to legislation and training. But other important elements are sometimes comparatively lacking, such as leadership, attention to and development of organisational structure and governance, involving justice partners (public prosecutors, judges, and prisons) and communities (municipalities, NGOs), working processes and practices, and internal and external communication. Attention to infrastructure also varies.

Much is dependent of the combination of donors, and in particular the insights of national project leaders and the experience (often in their home country) of international providers, consultants, or project leaders.

We firmly believe that the international evidence base for probation capacity building can be greatly enhanced, in particular by *describing more systematically*, in progress and evaluation reports, *changes in the domains and enablers* and the capacity building approaches that have helped to bring about these changes.

Chapter 4 Findings and Implications - European and International Influences

Introduction

The growth of probation services in European countries has been influenced by many developments in the European and the global context. In this chapter we consider the following topics:

- developments in the European Union (EU), the criteria that are used for accession of new members, and the availability of a range of twinning and other developments funds.
- the increase in standards developed by the Council of Europe (CoE) e.g., European Prison Rules 2006, European Probation Rules 2010
- the influence of the European Organisation for Probation - the Confederation of European Probation (CEP)
- increasing interest of the academic world in probation and alternative sanctions, and the developing evidence base.
- development outside Europe, mainly expressed by guidance from the United Nations.

We conclude with a summary of the main European and international influence findings and implications for future capacity building.

The information in this chapter is based mainly on desk research, meeting with delegations of the Council of Europe and the European Commission, supplanted by the authors' experience.

4.1 Findings

4.1.1. EU enlargement and the Acquis

The EU has seen rapid enlargement. In 1954 the Treaty of Paris was signed. Germany, France, the Netherlands, Belgium, Benelux, Italy founded the European Coal and Steel Community. Over the years the community grew:

- 1973: Denmark, Ireland, the United Kingdom
- 1981: Greece

- 1986: Portugal, Spain
- 1995: Austria, Finland and Sweden
- 2004: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia
- 2007: Bulgaria, Romania
- 2013: Croatia

As of 2015, Albania, North Macedonia, Montenegro and Serbia are officially recognized as candidates for membership and in negotiation. Negotiations with Turkey are frozen. Bosnia and Herzegovina and Kosovo are recognized as potential candidates for membership by the EU. In 2016 an EU Association Agreement with Georgia entered into force. Georgia submitted its membership application in 2022.

The **Community Acquis** is the accumulated legislation, legal acts and court decisions that constitute the body of European Union law. The acquis is the basis for the accession negotiations; it means that the new members must incorporate the acquis in their legislation and practice.

The acquis is *dynamic* and has developed in ways which have had significance for probation development (which will later become clear). The EU developed from a mainly European partnership to strengthen the economy to a context in which European citizens enjoy protection in their own country, but also when they move within the countries of Europe. In 1997 The Treaty of Amsterdam - 1997- has led to a stronger emphasis on citizens' fundamental rights, including the need for citizens to have greater confidence in the justice system across the Union.[65]

The acquis is divided into chapters for the purpose of negotiation between the EU and the candidate member states. Chapter 24 was devoted to Cooperation in the field of Justice and Home Affairs.

For negotiations with Croatia, Turkey and the Western Balkan countries, the former chapter 24 was in 2009 split into 23. Judiciary and fundamental rights; and 24. Justice, freedom and security. The background of this decision was to ensure a significant strengthening of the rule of law, including *"a visibly empowered and independent judiciary and accountable governments and*

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[65] The Treaty was signed by the European Council. The Treaty stated that the EU must "maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measure with respect to……the prevention and combating of crime".

administrations (…) essential for bringing about the lasting societal change that is needed".[66] (Pejovic, 2018)

The European Commission published proposals in 2020 for further strengthening the accession process. *"Credibility (of the enlargement process) should be reinforced through an even stronger focus on the fundamental reforms essential for success on the EU path. These fundamentals will become even more central in the accession negotiations. Negotiations on the fundamentals will be opened first and closed last and progress on these will determine the overall pace of negotiations."* From now on *chapter 23-* Judiciary and fundamental rights and 24-Justice, Freedom and Security are at the top of the list.[67]

The topics of *alternative sanctions* and probation were not, and are not, included as such in the negotiation chapters. For us this was *surprising*. At that time, probation was apparently not yet seen by the European Commission as a necessary part of the rule of law, and as an indispensable element in advising the judiciary when prosecuting and imposing sentences and when to opt for alternative sanctions with an element of supervision and assistance.

During meetings with representatives of the European Commission we were informed that during the negotiations for the 2004 and 2007 admissions, topics such as economic development, border controls, corruption and the independence and quality of the judiciary were high on the agenda. The EC monitored, in its progress reports on chapter 23 (judiciary and fundamental rights), for instance how prison conditions could be improved. *Prison conditions and overcrowding were topics that returned regularly in progress reports but alternative sanctions and probation seldom, and then only when the country itself determined to start a development in this sector.* Whilst the primary *"driver" was to improve prison conditions*, countries could apply for capacity building *funds to develop alternatives* (in effect to create a probation service). Most funds were made available for a form of (mainly bi-lateral) "twinning" project with a well-regarded service in another country. Countries with established services bid to deliver a project, bringing their own approach and expertise to a plan developed by the EU donor and beneficiary, then delivered over 1- 2 years,

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[66] The topics in the chapters 23 and 24 include the judiciary with its independence, impartiality, professionality, efficiency and its reform requirements, issues such as border control, visas, external migration, asylum, police cooperation, the fight against organised crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters. It also includes the administrative structures and their capacity to implement the existing and future legislation in connection with the EU acquis in the area of the rule of law. See Pejovic, A. (2018), The New Approach of the European Union in Accession Negotiations - The Focus on Chapters 23 Judiciary and Fundamental Rights and 24 Justice, Freedom, and Security.

[67] The other chapters are: Economic criteria, Functioning of democratic institutions, public administration reform, 5 - Public procurement, 18 – Statistics, 32 - Financial control.

usually with a resident lead expert. Other projects have been funded by individual "donor" countries or international philanthropic organisations.

Another example of the changing acquis is the phenomenon of **Framework Decisions**. The Treaty of Amsterdam created in 1997 in Article 34 this instrument:

> 2. The Council shall take measures and promote cooperation……To that end……*the Council may: adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods.* ……...

Member states are obliged to transpose them into their domestic law. The European Arrest Warrant (FD 584) was issued in 2002 and the Transfer of custodial sentences was issued in 2008 (namely, FD 909 Transfer of judgments imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union). The European Supervision Order is also to be named here (FD 829 2009; mutual recognition to decisions on supervision measures as an alternative to provisional detention.)

For probation organisations, *Framework Decision 947* (issued in 2008) is particularly *important* on the transfer of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. The following sanctions and measures are mentioned:

- Suspended sentence
- Conditional sentence
- Alternative sanction
- Conditional (early) release.[68]

This Framework Decision obliges Member States to implement alternative sanctions and probation measures where cases are transferred; it does not

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[68] The definitions in the Framework Decisions are as follows:
Suspended sentence: a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures.
Conditional sentence: a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measure are imposed instead of a custodial sentence or measure involving deprivation of liberty.
Alternative sanction: a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.
Conditional release: a final decision on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures

prescribe to the member states what organisation (for instance a probation agency) is needed to implement these decisions.

Relationship between the EU and the Council of Europe: The standard setting of the Council of Europe has over the years become more influential, and the cooperation between this organisation and the European Commission has increased. Two important standard setting products are the Prison Rules of 2006 and the Probation Rules of 2010. An example of the increased cooperation and growing influence of the standards of the Council of Europe are the Conclusions of the European Council on alternative measures to detention in 2019. The Council encourages the member states to extend the use of alternative sanctions and probation measures and reinforcing the probation organisations.

In Table 2, steps in European Union enlargement and important developments that affected alternative sanctions and probation are brought together.

Enlargement	Factors influencing and criteria
1954 Founding of EU (6 states)	
1973: Denmark, Ireland, United Kingdom	
1981: Greece	
1986: Portugal, Spain	
1995: Austria, Finland, Sweden	
	1997: Treaty of Amsterdam: area of freedom, security and justice
2004: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia	
	2006: European Prison Rules
2007: Bulgaria, Romania	
	2008: Framework Decisions 909 (Custodial) And 947 (Alternative sanctions and Probation)
	2009: the Stockholm programme: mutual trust Enlargement strategy: Introducing chapter 23 and 24
	2010: European Probation Rules
2013: Croatia	
	2019 Council conclusions on alternative measures to detention
	2020: Tightening of enlargement process
In Progress: Western Balkans and Turkey	

Table 2: Steps in EU enlargement and developments affecting alternative sanctions and probation.

Conclusions regarding the European Union enlargement process

The European Commission developments that affect probation (Framework Decisions, European Probation Rules, Council Conclusions on greater use of alternative sanctions and probation measures) had *no influence on the large wave of extension* in 2004 and 2007 as they all were of a later date than the accessions in 2007 and earlier years. However, we have seen in our chapter on field study results (Chapter 3), that fundamental changes in the field of alternative sanctions and probation occurred in several countries, even though these topics were not as such formulated as criteria for accession.

In fact, in most of the countries that joined in 2004 and 2007, *twinning projects and other transnational projects, funded by the EC*, took place. We have seen several examples of those funds working well in developing alternative sanctions and probation organisations. Apparently, the *drive to start probation development* might be attributed mainly to a growing conviction of politicians and leaders in the justice field that new *approaches were needed* to reduce prison overcrowding, combat recidivism, and assist people that encounter the law. As our country reports demonstrate, this drive has been further supported by a wide range of other factors we explore including academics, a growing evidence base, NGOs, personal contacts, capacity building projects and funds, network bodies like the CEP, and international guidance.

4.1.2. The work of the Council of Europe

The work of the Council of Europe as far as the field of prison and probation is concerned consists of three elements: **standard-setting, co-operation work, and monitoring.**

Standard setting concerns recommendations that are (after preparation by the Penological Council of the Council of Europe) adopted by the Committee of Ministers. Examples of this kind of work are:

- Prison overcrowding and prison population inflation (1999)
- Conditional Release (Parole) (2003)
- European Prison Rules (2006; Revision 2020)
- European Probation Rules (2010)
- Electronic Monitoring (2014)
- Community Sanctions and Measures (2017)
- Recruitment, selection, education, training and professional development of prison and probation staff (2019)

Co-operation work consists of:

- Organising high level conferences and multilateral meetings on prisons, police and probation-related

- The development of the SPACE penal statistics programme (on imprisonment and penal institutions since 1993 and on non-custodial sanctions and probation measures since 2009)
- Several capacity building projects to improve monitoring and oversight, to develop probation and the alternative to prison and/or reducing overcrowding; some of those projects were (co-)funded by the European Commission, Norway or the USA.

Monitoring work is performed mainly by the CPT, the Commission for the Prevention of Torture and Degrading Treatment.

The three elements of the work of the Council of Europe are described as a *dynamic triangle*, as they make use of each other's information and outcome to improve standard setting and cooperation activities. A recent report on the evaluation of the work of the Council of Europe is mainly positive.[69] This report states that there is no doubt that the work has been highly relevant and largely effective. As for added value the report states:

- The Council of Europe is highly *respected and appreciated* for the triangle of standard setting, monitoring and co-operation, access to high-quality expertise and a generally high level of management, organisation and co-operation.
- Council of Europe standards are widely used to bring about changes in legislation and regulations relating to prisons and probation. The work has contributed to significant achievements in the development of alternatives to imprisonment.
- Annual *Conferences* of Directors of Prisons and Probation and other multilateral meetings have provided opportunities to *promote the standards*.
- The European Programme for Human Rights Education for Legal Professionals (the HELP programme) provides online courses for member states on a wide range of legal topics, including alternatives to detention, CPT standards and access to justice for women.
- The Horizontal Facility programme of the Council of Europe, funded by the European Commission, offers funding and assistance to the Western Balkan countries if they feel that improvements in the prison and probation system is necessary.
- The work of co-operation activity has been well *targeted at areas of need* identified by the Council of Europe's monitoring bodies. The countries receiving co-operation are characterised by high rates of imprisonment,

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[69] Council of Europe (2021, 33), Evaluation of the Council of Europe's work under the Programme line "prisons and police" 2016-2019; Evaluators: Allen, R., Craciunel, I.

lack of community-based sanctions, inadequate and overcrowded prisons and poorly trained staff.
- Co-operation activity has very much been guided by Council of Europe standards (including those produced by the CPT).
- Co-operation has also involved bilateral activities funded by the Ordinary Budget of the Council of Europe. These can follow requests from a member state following a CPT report or Court case law, or at the instigation of the Council of Europe (for instance to build new prisons or renovate them).
- Close *co-operation* with other organisations such as *Europris* and the *CEP*.
- Very important progress has been made in *monitoring and oversight* and useful steps have been made towards improvement in prisons at both strategic and practical levels. Nevertheless, in all these areas, much remains to be done to bring policy and practice up to the level required by the Council of Europe's standards.

Conclusions regarding the work of the Council of Europe

The Council of Europe is a driving force in the development and dissemination of standards in prison and probation work. In the five countries studied, we also found that regular reference was made to the standards, especially the European Probation Rules. But also, the yearly SPACEII Statistics remind the member states of the broad European acceptance of these standards and its translation into measurable probation activities: the number of people under the supervision of probation, before and after the sentence, differentiated into several kind of probation activities (community service, probation supervision with conditions, conditional release, electronic monitoring, probation reports). Finally, the Council of Europe has carried out capacity building projects in the field of probation and alternatives to prison,[70] complementing those funded by the EU and other donors.

4.1.3. Confederation of European Probation (CEP)

The European Organisation or Confederation for Probation (CEP) has existed since 1981. Nearly all countries of the European Union are members, except for Poland. Of countries in the Western Balkans and Turkey, only Serbia and Bosnia/Herzegovina are not yet members.

The CEP has *observer status* at the Council of Europe and is developing cooperation arrangements with the United Nations (UNODC). In the Council for

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[70] In Albania, Armenia, Bulgaria and Moldova. See: Council of Europe (2021, 33), Evaluation of the Council of Europe's work under the Programme line "prisons and police" 2016-2019; page 13.

Penological Cooperation where the Recommendations of the Council of Europe are drafted, the CEP participates actively. The SPACEII statistics project on probation statistics was developed with the assistance of CEP and is being actively supported.

The European Commission and the CEP have been *working intensively with other partners* including CEP member service delivery organisations, NGOs and universities, on several transnational projects and events to strengthen probation policy and practice. Some projects have aimed to achieve a good implementation of the Framework Decisions on the transfer of alternative sanctions and probation measures and the European Supervision Order. Others have aimed to counter the radicalisation of offenders. Other project examples funded by the EU include STARR (Strengthening Transnational Approaches to Reduce Reoffending)[71] which ran from 2008 until 2011, DOMICE (Developing Offender Management in Corrections in Europe) from 2009[72] until and 2011, and STREAM (Strategic Targeting of Recidivism through Evaluation and Monitoring),[73] from 2012 until 2014.

The CEP has regularly organized *conferences* on Probation Capacity Building (2009 in Sofia, Bulgaria; 2016 in Dubrovnik, Croatia; 2019 in Tblisi, Georgia). In all these events we were present and/or gave lectures.

The *Board of CEP* is composed of a balanced representation (including in the capacity of vice-presidency) *embracing newer members countries* from Central and Eastern Europe (some of which are now regularly involved in capacity building projects in other countries).

The CEP describes itself as a *"family" of probation*; the sense of belonging to an organisation that shares common values and goals has been an important driver to support probation capacity building across the region.

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[71] Aim of the project: to offer an EU-wide view on What Works in reducing offending, to identify and develop models of good practice, with an initial emphasis on 3 priority areas (youth crime, domestic violence, drugs & alcohol abuse), and to develop evidence-based processes for identifying and sharing good practice in future. Countries involved: UK (England and Wales), Bulgaria, France, Hungary. EU funding programme: Prevention of and Fight against Crime (ISEC). (https://www.cep-probation.org/projects/strengthening-transnational-approaches-to-reduce-reoffending-starr/)

[72] Aim of the DOMICE project: to improve mutual knowledge and exchange best practice in integrated Case Management in all European Prison and Probation administrations. Countries involved: UK (England and Wales), Bulgaria, Denmark, the Netherlands, Spain. EU funding programme: criminal justice funding programme (JPEN) (https://www.cep-probation.org/projects/developing-offender-management-in-corrections-in-europe-domice/)

[73] Aim of the project: to promote and to facilitate the use of programme evaluation in probation, to evaluate the European Probation Rules of the Council of Europe and to provide recommendations for improved implementation of this Recommendation. Countries involved: UK (England and Wales), Italy, Romania (project associate: Malta)
EU funding programme: criminal justice funding programme (JPEN). (https://www.cep-probation.org/projects/strategic-targeting-of-recidivism-through-evaluation-and-measurement-stream/)

4.1.4. The Academic World

Traditionally in the United Kingdom, in particular, there has always been a great interest in the scientific development of probation, partly because the education and training of probation officers was carried out by universities. During the last 20 years the interest in probation in other European countries has grown enormously. In many, the topic of *alternative sanctions and probation* is researched by *universities*. For example, researchers came together regularly in the framework of a project that was financed by the European Commission (COST). Academic institutions participated in the projects mentioned previously (STARR, DOMICE, STREAM). Instruments such as assessment systems, cognitive behavioural interventions, electronic monitoring, and the methodology of supervision (inspired in more recent years by the desistance approach) were and continue to be developed by academics, in close cooperation with probation services and with the involvement of NGOs. A leading researcher and teacher on probation in Europe is based in Romania and was previously a director of the probation organisation. As noted earlier, an academic represents university membership on the Board of the CEP.

In short, the interest of the academic world adds to the profile of probation, including in those countries where probation is still in its first stages; it helps to convey the message that probation is a relevant and mature matter that deserves evaluation and further development of scope and methodology.

4.1.5. Influences from outside of Europe

In this paragraph we first pay attention to the standard setting of the United Nations in the justice field. We also describe the instrument of practice guides to implement the standard setting in this field. This will be followed up by mentioning initiatives to increasing collaboration globally.

Then we turn to guidelines to develop the optimization of capacity building work outside the sphere of justice.

For our field, the *United Nations Standard Minimum Rules for Non-custodial Measures* (The Tokyo Rules) (1990) are of particular importance. We mention here the following aims:

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalise criminal justice policies, taking into account the observance of

human rights, the requirements of social justice and the rehabilitation needs of the offender.

The Rules pay attention to the context in which these Rules must be implemented:

1.3 The Rules shall be implemented taking into account the political, economic, social, and cultural conditions of each country and the aims and objectives of its criminal justice system.

Further on, the Rules describe what we call in our terminology the Enablers of Probation.

The United Nations have issued several *reports* that are of relevance to countries that want to develop alternatives to custodial sanctions. For instance, the United Nations Office on Drugs and Crime (UNODC) published in 2007 the Handbook of basic principles and promising practices on Alternatives to Imprisonment.[74] In 2010 followed the Handbook on Strategies to Reduce Overcrowding in Prisons.[75] The UNODC offers numerous services to enhance the sustainable and gender-sensitive use of non-custodial measures and reduce prison overcrowding:

- "Supporting legislative reform to ensure that a wide range of alternatives to imprisonment is available.
- Strengthen the capacity of criminal justice agencies to implement alternatives to imprisonment through training and advisory services.
- Assist in building public support for non-custodial measures raising awareness about the rationale and benefits of using alternatives to imprisonment with criminal justice actors as well as the wider public through public awareness campaigns; and
- Promoting research and data collection on the use of alternatives to imprisonment."[76]

The Handbooks are based on experiences in many countries on implementing Alternatives to Imprisonment; however, no full accounts of implementation of capacity building projects were given.

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[74] United Nations Office on Drugs and Crime (2007), Handbook of basic principles and promising practices on Alternatives to Imprisonment, Vienna (**https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-alternatives-to-imprisonment.html**)

[75] United Nations Office on Drugs and Crime (2010), Handbook on Strategies to Reduce Overcrowding in Prisons, Vienna (https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf)

[76] **https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-alternatives-to-imprisonment.html**

In October 2022 a *conference* took place in Japan on *Enhancing Technical Assistance to Reduce Reoffending and Promote Inclusive Societies*.[77] We concentrate here on the community-based recommendations. For the recommendations on rehabilitative environments to be created in prisons we refer to the Chair's summary.[78] Some of the ideas on enhancing technical assistance for developing countries on the promotion of non-custodial options are the following:

- Review of legislation and sentencing policies (e.g., sentencing, and prosecutorial guidelines) to ensure that non-custodial measures are available, are gender responsive and can be properly applied, as well as review of criminal law to ensure that outdated penal offences and punishments are repealed and that sanctions, including non-custodial measures and custodial sentences, are proportionate to the offence.
- Provide key stakeholder groups with information and training on the functions and use of non-custodial measures, (e.g., handbooks, toolkits).
- Promote closer cooperation among criminal justice decision makers and representatives of community-based-services agencies, to identify and respond to the needs of offenders, including members of vulnerable populations, and promote utilization of customary justice mechanisms and indigenous infrastructure.
- Promote the implementation of non-custodial measures based on individualized assessments, (including psychosocial and other tailored support and protocols for referral to the respective health, mental health, social welfare or other agencies).
- Promote partnership with the private sector to create employment opportunities for offenders, (e.g., entrepreneurship training and small business guidance)
- Raise public awareness and enhance engagement of stakeholders, including the private sector, by publicizing ex-offenders' positive experiences and involve ex-offenders as peer counsellors and role models in reintegration programmes.
- Support community corrections agencies in identifying new community partnerships including universities/other educational institutions, social welfare organizations and volunteers.
- Assist countries with the establishment of post-release support programmes and facilities (halfway houses, aftercare treatment centres, employment and educational programmes, etc.),

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[77] The conference was hosted by UNAFEI (United Nations and Far East Institute for the Prevention of Crime and Treatment of Offenders), and it brought together representatives of the Programme Institutes of the UN Crime Prevention and Criminal Justice Programme Network.

[78] Chair's Summary: Enhancing Technical Assistance to Reduce Reoffending and Promote Inclusive Societies, (https://www.unafei.or.jp/news/pdf/Chairs_Summary_PNI.pdf)

- Encourage partnerships with peer support groups with the aim of ensuring ongoing community support beyond the term of the criminal justice intervention.

The technical assistance as described in this paper radiates a *holistic view* and stresses the essential *links between the probation services and their environment* if the aim of reducing reoffending and reintegration processes can become successful.

In Autumn 2022 the UNODC started its preparations for the construction of a *Handbook* on the establishment and sound operation of probation services. This will build on the probation focus incorporated in the Kyoto Declaration and work of an expert group on reducing reoffending (both 2021), and on the long-established "Tokyo Rules". The handbook will cover probation work in all of what we refer to as the "four domains".[79]

One global organisation that used to be focused on prison matters is nowadays paying much increased attention to alternatives to custodial sentences: the International Corrections and Prison Association (ICPA). One of the thematic groups for collaboration on key topics was in the Business Plan for 2020-2022 on Community Corrections with the aim *"to increase the understanding of and promote the use of community-based options as an integral part of the criminal justice continuum"*[80] (p. 17).

As we note earlier, probation organisations globally are intensifying their collaboration (for instance the World Congresses on Probation[81] organized by Probation organisations in different parts of the world). This will strengthen the standing and the further development of probation organisations.

Finally, we pay attention to several *publications outside Europe* that contain guidelines based on the collection of *experiences with capacity building* by individuals and organisations. They are not focussed on the field of justice, but on capacity development in general like economic and social development and specific topics like disaster-risk reduction.

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[79] See: Job opening no 22 – UNODC-192093-Consultant (October 2022)
[80] ICPA (2020), Business Plan 2020-2022, **https://icpa.org/icpa-about/icpa-annual-reports.html**
[81] World Congresses on Probation have also been referred to as **World Congresses on Community Corrections** and **World Congress on Probation and Parole** to reflect host organisation terminology and preferences and to reflect their broad focus on all four domains. The World Congress embraces work in all four "Domains" including pre-trial/sentence, post sentence (community sanctions and measures) and pre- and post-release from custody.

A good practice paper by OECD-DAC (<u>Organisation for Economic Co-operation and Development</u>'s Development Assistance Committee) defined capacity development as follows:

> "Capacity development is understood as the process whereby people, organizations and society as a whole unleash, strengthen, create, adapt and maintain capacity over time." ………… "the ability of people, organizations and society as a whole to manage their affairs successfully".[82]

It is also striking that reports with recommendations for capacity building appeared roughly between the years 2000 and 2015. After that, social and economic developments became part of the Sustainable Development Goals, and the concept of capacity development has, as it were, been absorbed into this broader agenda.

Looking at central themes that keep recurring in the publications mentioned, we see the following:

- **Complexity**
  Capacity building is a complex undertaking, as it refers to bringing about changes simultaneously in several interdependent layers or aspects: the whole (social, cultural and political) system, the institutions (the stakeholders) and the people working in those institution. A comprehensive approach is needed.
- **Process and duration**
  Capacity building does not focus on one technical aspect that must be realized, but on the ability of a society to give sustainable direction to the social and economic development of a country or an organization within it. The word "process" indicates that this is a development with a longer duration, even though smaller steps can be taken that fit into a longer development. Capacity building is "not a one-off intervention, but an iterative process of design-application-learning-adjustment". (UNDP, 2008)[83]
  Tensions can arise during the process, obstacles can become visible and unplanned consequences that must be acted upon.[84]

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[82] OECD-DAC (2006, The Challenge of Capacity Development: working towards good practice; retrieved **http://gsdrc.org/docs/open/cc110.pdf**

[83] UNDP (2008), Capacity Development Practice Note, https://www.adaptation-undp.org/sites/default/files/downloads/pn_capacity_development1.pdf

[84] "Implementing a capacity development response involves change which results in winners and losers, so political dynamics and relationships should be addressed." Supporting Capacity Building and the UNDP approach; United Nations Development Programme. 2009, page 12; **https://www.undp.org/sites/g/files/zskgke326/files/publications/CDG_Brochure_2009.pdf**

- **Shared vision**
  The binding force of a development is that both the lending country and the beneficiary country, at all levels, including the main stakeholders, have a shared vision of what needs to be achieved. Without this, problems in implementation are more likely to arise and all kinds of practical obstacles will have to be encountered, which are in fact expressions of the fact that too little unanimity has been formulated about the future and the place of the specific project in it.
  When developing the vision, there must be a connection with opinions that are currently expressed in the recipient country, and what local facilities or possibilities already exist. Experiences and knowledge from elsewhere -if worth emulating- requires adaptation to local conditions; this adaptation starts from the specific requirements and performance expectations of the sector or organization it supports. There are no blueprints.[85]
- **Stakeholders**
  Bringing about change is only possible if the stakeholders are involved, become committed and acquire ownership. In addition, cooperation and harmonization is needed with other development partners (e.g., other donors and organizations involved in capacity development).[86]
- **Functional and technical capacities**
  For successful capacity development, functional and technical capacities are needed in both the recipient country and the donor country.[87]
- **Limitation to education and training**
  Quite often it is becoming signalled that much of the actual focus has been on training and educational inputs where it may be a euphemism for education and training.[88]

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[85] United Nations Development Programme, (2009), Handbook on Planning, Monitoring and Evaluating for Development Results, New York; http://www.undp.org/eo/handbook; see for instances pages 42-45 about the need to develop visions and vision statements.

[86] See for instance: UNDP (1998) Capacity Assessment and Development in a Systems and Strategic Management Context Technical Advisory Paper No. 3 Management Development and Governance Division Bureau for Development Policy January 1998. This publication contains a tool to identify stakeholders.

[87] **Functional capacities** are 'cross-cutting' capacities that are relevant across various levels and are not associated with one particular sector or theme. They are the management capacities needed to formulate, implement and review policies, strategies, programmes and projects. Since they focus on 'getting things done', they are of key importance for successful capacity development regardless of the situation. The five functional capacities that UNDP emphasizes are: Capacity to engage stakeholders, Capacity to assess a situation and define a vision and mandate, Capacity to formulate policies and strategies, Capacity to budget, manage and implement, Capacity to evaluate.
Technical capacities are those associated with particular areas of expertise and practice in specific sectors or themes, such as climate change, HIV/AIDS, legal empowerment, or elections. As such, they are closely related to the sector or organization in focus.
UNDP (2008), Capacity Development Practice Note, page 12

[88] "Capacity development and investment that are not grounded in a rigorous capacity assessment are often limited to training. While often necessary, training is not sufficient for sustained results." UNDP (2009), Supporting Capacity Building and the UNDP approach; page 6.

- **Evaluation problems**
  The various practice guides point out the problems in the evaluation of capacity development projects, if evaluation research is being done at all. Capacity building has been a buzzword within development which comes with a heavy normative load but little critical interrogation and appropriate review. The term capacity building is usually *"loaded with positive value"*.[89] It is not uncommon for it to be unclear from the start what the planned result is or how the result can be measured. The question is also raised whether the underlying problems are being solved and whether they are being addressed in the measurements.
- In 2017 the UNODC published the report: *Evaluation-based analysis of good practices in UNODC's approach to capacity building*.[90] It stresses the importance of evaluation and monitoring of capacity building frameworks. A checklist[91] is provided with which the managers of capacity building projects can monitor their projects in the planning and monitoring stage.

We also draw attention to the *Guide to Corrections Assistance work* of the Bureau of International Narcotics and Law Enforcement Affairs (INL), published in 2014.[92] Unlike the publications discussed above, this brochure is about the *justice system*. This guide has influence mainly on capacity building outside of Europe (although the INL has been and is still active in several countries with which we are familiar including Georgia in our own study, and Armenia).

The underlying approach of this publication - supporting the same approach of our model - is that fundamental changes can only be accomplished if the whole system of the corrections picture is considered and worked upon at the same time: *"INL promotes a holistic approach to criminal justice system reform. Ideally, corrections reform would take place in coordination with reforms in the other two pillars of the crimi¬nal justice system, the police and the courts (including prosecutors and the defence bar). Effective investigations, courts, and sentencing laws work together to prevent overcrowding in correctional systems."* (P.1)

The report stresses the need for national ownership, for collaborating with other assistance providers including intergovernmental organizations, and civil

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[89]   https://en.wikipedia.org/wiki/Capacity_building; retrieved 18-11-2023.
[90]   United Nations Office on Drugs and Crime (2017), Evaluation-based analysis of good practices in UNODC's approach to capacity building, Vienna: **https://www.unodc.org/documents/evaluation/Knowledge-Products/UNODC_IEU_Evaluation-based_Capacity_Building_Analysis_final_October_2017.pdf**
[91]   Ibid: Annex A (A1, A2, A3)
[92]   United States, Department of States, Bureau of International Narcotics and Law Enforcement Affairs (2014), INL Guide to Corrections Assistance, https://2009-2017.state.gov/documents/organization/234722.pdf

society organizations and academic and professional organisations. The report deals with issues (such as autocratic regimes, fragile states, economic situation), offers an assessment framework, addresses programme design and implementation (entry points, type of assistance, sustainability, absorption), activities, and partners. It also highlights the need for donor coordination (in case several donors are active in a country). Although this report is not part of our European study, it is helpful, as it contributes to the global picture of capacity building practice. It helps make a bridge between our European project and global good practice, including to apply and adapt our findings to fragile and poorer states.

The practice guides and guidelines of international organizations based on systematized experiences make it clear that capacity development is a broad phenomenon with many distinct yet interrelated aspects. For that reason, it is particularly important to gain a better insight into how transfer of knowledge can take place against the background of different social systems and cultures. It can also be insightful if we look at the literature on capacity projects in the field of probation. All these aspects are addressed in the literature review that we have conducted.

It is clear to us that *Europe and other world regions have much to learn from each other*. Exchange (involving both more and less developed services) also offers opportunity to augment, and on occasion challenge, Anglo or European interpretations of justice and probation practice.

By way of example, we mention –

- practices of indigenous communities are becoming better recognized and valued internationally.[93]
- the extent of Japanese community engagement in support of (re)integration, especially through the work of community volunteers
- extensive community, family, employer and media engagement in the Singapore "Yellow Ribbon" project
- "sensitisation" of communities in support of (re)integration in Kenya, and attention to achieving Sustainable Development Goals on behalf of, and by, service-users, such as by "green" community service projects, or empowerment projects for women.
- addressing needs of, and learning from, indigenous populations, for example in New Zealand, Australia, Canada, and the USA.

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[93] For example, restorative practices, such as what we now term Family Group Conferencing, practiced traditionally in New Zealand, now recognised internationally for several decades.

In *conclusion* we would like to highlight the following points:

- It is encouraging and stimulating for European countries to see that outside of Europe more and more interest is shown in, and guidance developed on, alternative sanctions and probation measures.
- So far, the development of probation in Europe has been mainly influenced by "internal" changes (the European unification processes, the standard setting of the Council of Europe, the availability of capacity building funds, the active role of the CEP, and the increasing involvement of academics).

- At the same time, the standard setting of global organisations and the development of guidance is of enormous importance for the development of probation on a global level. International influences outside of Europe contribute and accelerate the body of knowledge and experience about probation and about how to assist countries to develop their provision, including in more fragile and poor states.
- It seems highly probable that lessons from the very extensive experience of probation capacity building in Europe in recent decades, including in "transitional" states, will have wider applicability in other world regions, supplementing and enriching international experience of probation development. We return to this theme in the conclusions of this report.

4.2 Summary of Main Findings and Implications for future Capacity Building

Based on the sources studied, we can draw conclusions on the influence of the European Union, the Council of Europe, and global organisations on the development of probation in Europe, and some potential implications for probation capacity building in Europe and in other regions.

We summarise main findings and implications here. Additional information on international roles and influences is contained in Annex C.

1 Since 1954, the early reasons for founding of the European Union have evolved from mainly economic and political (preventing a war in Europe) to wider considerations including the *Rule of Law as a binding force* and topic to be strengthened and defended in the member states.
2 Before 2004, when negotiations took place with countries including Latvia and Poland, other topics – for instance economic development, border controls, corruption and the independence and quality of the judiciary - were high on the agenda. The EC monitored, in its progress reports on chapter 23 (judiciary and fundamental rights), for instance how prison conditions could be improved. *Prison conditions and*

overcrowding were topics that returned regularly in the progress reports but *alternative sanctions and probation seldom*, and then only when the country itself determined to start a development in this sector. In that eventuality EU-funding was available.

3   After the wave of extension in 2004 and 2007, the *development of probation* in the new members of the EU was stimulated by *increased attention* on this topic by the European Commission. It was part of the Commission's thrust to stimulate mutual trust between the member states, as the principle of freedom of movement also required that European citizens could be expected to get equivalent decent treatment when a suspect, or convicted, in another country as in their country of origin. In particular, the *Framework Decision on the Transfer of probation sanctions* to other member states, where the convicted person lives, had a major influence as certain probation sanctions needed to be operative in each member state. In 2010 the *Council of Europe* published the *Probation Rules* which provided clarity about the tasks and position of probation organisations.

4   The real tightening of accession criteria took place after 2007 (for the first time applying to Croatia). Nowadays, for the Western Balkan countries, the acquis is even more extensive and the negotiation process more intensive and frequent. *Mutual trust in each other's justice system* is currently an important criterium.

5   If countries during the last twenty years had the wish to *develop alternative sanctions and probation, then European funds* were and are available to deliver, for instance, twinning projects.

6   In several countries Laws on probation were based on and updated as a consequence of the *European Probation Rules* (Croatia, Romania, Moldova, Georgia).

7   Intensification of *cooperation between the European Commission and the Council of Europe* (in terms of standard setting, cooperation activities with beneficiary countries and funding) seems to have contributed to a greater acceptance and conviction that *probation organisations* are needed to *implement alternative sanctions*, and that they should have a rehabilitative character.

8   There are signs that some *candidate countries* (for instance Albania, North Macedonia and Kosovo) will be influenced to assimilate *the intensified European guidance on probation* (for instance because of the greater availability of courses in alternative sanction, e.g., the Horizontal

Facility[94] and the HELP Programme[95]). However, this will depend on the extent they are willing to embrace this guidance, although they are signatories to the recommendations of the Council of Europe.

9   The CEP is perceived of as a family of probation to which countries want to belong, especially when there is a clear will in a country to give probation a more influential position in the national penal framework.

10 The growing interest of the academic world in probation helps to raise the profile of probation organisations and to support the methodological basis for effective probation work. Examples are that an academic member sits on the CEP Board, and that universities participate alongside national services and NGOs in EU-funded projects to develop probation policy and practice through international research and cooperation.[96]

11 The *international research-informed evidence base of probation work* has continued to evolve significantly since the early days of the services we studied. Services drew on good practices from, for example, Canada (in the case of Latvia) as well as European leaders in effective practice. Whilst much work at that time was based on RNR[97] principles, approaches are now able to draw on practice and research informed by desistance[98] whilst understanding of a wide range of work is enlightened by the insights of practitioners and stakeholders including with lived experience. International developments such as the World Congress on Probation and Parole increase opportunities to learn globally.

12 *Outside Europe*, the practice guides on capacity development made by *global organisations* (UN-bodies) in between the years 2000-2015 are focussed on capacity building in general, not on the development of the justice sector. They contain however practice experiences that are for a large part applicable also to the justice and probation field. It is surprising that these publications seem to have had no influence on the capacity building projects carried out in Europe.
The work of the Bureau of International Narcotics and Law Enforcement Affairs (INL) of the United States of America, is especially important for regions on the borders of Europe, and in other parts of the world. INL published the *Guide to Corrections Assistance (2014).* Although this

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94 The Horizontal Facility for the Western Balkans and Turkey (Horizontal Facility II) 2019-2022 is a co-operation initiative of the European Union and Council of Europe for the Western Balkans region and Turkey.

95 The Online Help courses of the Council of Europe offer high quality content on Human Rights and Council of Europe standards. They support the effective implementation of those standards. (https://publicsearch.coe.int/?lang=en#k=help%20courses#f=%5B%5D)

96 For instance, STARR: Strengthening Transnational Approaches to Reduce Reoffending (https://www.cep-probation.org/wp-content/uploads/2018/10/STARR-final-report.pdf). The EU funding programme was Prevention of and Fight against Crime.

97 Risk, Needs, Responsivity

98 See field studies chapter for additional information regarding findings on the development of practice.

report is not part of our European study, it contributes to the global picture of capacity building practice (helping also to make a bridge between our European project and global good practice - including to apply and adapt our findings to fragile and poorer states).

13 Also, *outside Europe*, both as a consequence of Rules, Handbooks and Projects on capacity building, ánd the activities of professional organisations on Corrections (for example the ICPA), the attention for capacity building in probation has grown. In the future this might have effect on European countries who have the wish to (further) develop probation. It is an auspicious sign that the *UNODC* is, at the time of drafting of this report, laying the groundwork for a Handbook on the establishment and sound operation of probation services.[99] Cooperation world-wide in information exchange via several bodies (for example the World Congress on Probation and Parole, and the ICPA) may be expected to lead to increased opportunity for Europe to benefit from experiences elsewhere.

14 Overviewing the period of the last 20 years, it is striking that the body of *research- informed knowledge and practice*, of recommendations on probation, of insight into the benefits of probation, of funds to support - and experience and insight into the process of - probation development, *has grown enormously* and become much richer. These are significant supporting factors for countries wanting to introduce or extend their provision of alternative sanctions and probation measures. In this sense countries starting to develop probation now are in a better information position than countries that began 20 years ago.

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[99]   See: Job opening no 22 – UNODC-192093-Consultant (October 2022)

Chapter 5 Findings and Implications – Literature Review

Introduction

At the start of the project, later supplemented by further sources, we carried out a scan of literature on capacity building relevant to the probation field. Although clear at an early stage that literature on capacity building specific to the probation field is comparatively rare (certainly relative to some other fields, for example health or security) a picture emerged of other literature which, although not probation-specific, is in our opinion nonetheless able to shed significant light on the probation field. Furthermore, this literature reinforced our initial hypotheses regarding the multi-layered and complex nature of capacity building, a complexity which we are certain applies in the probation field.

5.1. Literature Approach

Putting these considerations together, we identified that literature of potential value to the project consisted of several interrelated categories.

We therefore consider:

- General literature on policy transfer and capacity building
- Literature on the typology of justice systems in different countries
- Literature on policy transfer and capacity building in probation

The literature study is presented in the main report in three sections (each including the three categories above):

- A concise **overview (*5.2*)** which introduces the literature reviewed.
- A **summary table (*Table 3*, located at *5.3*)** in which key points from the literature and implications for probation capacity building are drawn together in table form.
- A summary **(*5.4*)** of **main implications** from the literature for capacity building, and **(*5.5*) missteps to avoid.**

  We note considerable congruence between the various articles and conclusions we can draw from each, despite their very different perspectives which we find ultimately complementary.

Additionally, in the **Annexes** we include a **detailed literature review (*Annex D*)**. This provides a deeper examination of individual articles summarised in 5.2, and further discussion of potential implications for probation capacity building.

5.2. Overview of the literature studied

We first offer a concise overview of materials in each of the three literature categories.

i) General literature on policy transfer and capacity building.

Whilst not specific to probation, we have no hesitation in including this literature in our review. Several texts are seminal in the field. Taken together, they illustrate complexity whilst providing explanatory structures, explore factors influencing success or failure including frequent areas of resistance such as public opinion, highlight the interplay of globalizing and local forces (whilst noting that transfer is not always entirely voluntary), draw attention to the inter-connectedness of systems and how one part may react unpredictably to change in another, and the advisability of *identifying* and then responding *flexibly* to actual need.

We begin this category with an influential analysis by *Dolowitz and Marsh (1996, 2000)* who offer a framework for understanding policy transfer. Their framework is not sector specific but is in our opinion clearly relevant to the probation field. It addresses such central considerations as why transfer, who is involved, what is transferred and to what degree, voluntaryism versus coercion, and factors contributing to transfer success or failure.

Next, *Evans (2017)* aims to provide *"an understanding of the relationship between systemic globalizing forces* (we identify several in the probation field at the European or global level) *and the increasing scope and intensity of policy transfer activity.*" He also identifies three broad areas of resistance – cognitive, environmental and public opinion. We have no difficulty relating all three areas to the probation field.

Leroux-Martin and O'Connor (2017) reflect on their peace building and rule of law reform in various regions of the world. Asking themselves why they get stuck so often in their projects, they point to the complexity, interconnectedness, and unpredictability of systems ("clouds" rather than "clocks"). They propose realistic expectations, feedback and "self-correction" to *"effectively manage reform processes as messy journeys requiring many readjustments."*

Finally in this section, *Andrews, Pritchett, and Woolcock (2012)* consider the issue of what they term (beneficiary) "capability traps" which they advise

"escaping" … "Through Problem Driven Iterative Adaptation (PDIA)", a process which minimizes "solution" transfer in favour of identifying local problems and building flexibly on local solutions to resolve them, albeit stimulated or informed by international experience.

ii) Literature on the typology of justice systems in different countries.

This second group of papers illuminates the significance of penal culture, its relationship with political economy and other factors not related directly to crime rates yet having an often strong and enduring influence on sentencing and punitiveness. Other papers describe an East-West European "penal divide" and "penal nationalism." We find all have clear relevance to probation development in Europe and, with variation, in other areas of the world.

We begin this category with an important paper by *Cavadino and Dignan (2006)* which argues the strong relationship between political economy and penal policy. They study 12 countries, placing each in one of four typological categories, with what seem clear implications for the impact of globalizing influences (we include here influences on probation development) and how we conduct probation "transfer."

We then consider two papers which explore specific factors that may influence penal policy:

Tonry (2007) proposes several "risk" and "protective" factors that may bear on penal policy, including national levels of punitiveness, and which help to explain differences in policy between countries that may have similar rates of crime. Whilst some factors are aspects of the legal system, others are far broader in nature, such as inequality and weak welfare provision.

Like Cavadino and Dignan, and Tonry, *Lappi-Seppälä (2008)* points to deeply embedded characteristics which influence penal policy, such as public sentiment, welfare provision, income equality, political structure, and legal culture. He concludes *"that what happens in particular countries" (or country groups) "turns on distinctive social, cultural, and political features."* The implications for probation transfer, including pace and content, seem clear.

Krajewski (2007), based on a comparative analysis of sentencing patterns in Europe, points to a "penal divide" which still splits the continent into two "penal climates", Western and Eastern. He contends that the leaders in the use of imprisonment (and suspended imprisonment) are almost exclusively the post-communist countries. Again, there seem obvious implications for probation capacity building.

Haney (2016) also considers penal culture. Based on analysis in Hungary, Poland, Slovakia, and the Czech Republic, her conclusions regarding "penal

nationalism" and the "politics of punishment" include that they reflect contemporary concerns and reactions to uncertainties stimulated by the process of democratization and influence of supra-national bodies, points we argue also need to be considered in any work on probation capacity building.

Drápal (2021) studied penal nationalism in the Czech Republic. In his analysis Czech politicians did not employ "law and order" rhetoric. However, many suspended sentences are ordered on the same individuals. If those sentences are breached, then Czech prisoners are incarcerated for long periods of time. The large Czech prison population thus in this sense seems to be the result of state actors' "negligence", rather than penal populism or penal nationalism.

iii) Literature on policy transfer and capacity building in probation

In this third section we consider literature specific to probation capacity building, first literature not particular to any individual country or countries, then second, country-specific literature. The last two countries in the second group are also included in our field study.

The three papers in the first group explore practical challenges in introducing or strengthening "alternatives." These include political acceptance, confronting "punitive populist" pressures, and other factors influencing probation "nourishment" and survival in an "ecological niche." The last paper in this group proposes seven steps in developing "alternatives".

The six papers in the second (final) group elaborate similar questions but in the context of specific countries. Papers test the practical application of capacity building models advanced in papers considered earlier and explore approaches – practical and "soft" – supportive of success (or otherwise) in probation capacity building. Whilst most papers are based on the authors' in-country experience, the first in this second group is more theoretical, warning that resistance may result if transferred policies or practices conflict with the history and culture of a country, a point also experienced to varying degrees and recounted by other authors.

a) Literature on probation capacity building not particular to an individual country or countries

We begin this section with a second article by *Lappi-Seppälä*. In *"Enhancing the Community Alternatives: Getting the Measures Accepted and Implemented"* (2003) he writes convincingly about issues that must be worked on to reduce the number of detainees. He highlights three: how to get the laws accepted on the political level, how to get them implemented on a practical level, and how to confront the punitive populist pressure from the politicians and the media.

In *"Taking probation abroad - the Ecological Niche"*, Canton observes a move (at time of writing) from knowledge exchange to policy transfer and considers circumstances and influences that help shape transfer success (or transfer failure or "corruption") including framework of law, politics, context such as criminal justice institutions and practices, technology, research, pressure groups and networks, cost, public opinion, ethical environment and culture. Evaluation is, he argues, usually insufficiently discussed: however, "the enhancement of human rights is the single most important criterion for evaluating transfer."

Joutsen considers Community Sentences alongside the Sustainable Development Goals (SDGs), noting that whilst all UN-states agree on the need to reduce imprisonment and to expand the use of effective community-based sentences, in many countries they are not available, rarely used, or substitute for other alternatives, so "widening the net". He points out constraints and describes 7 development steps, urging attention to the cross-cutting SDGs as an agenda for global change that support effective work with victims, offenders and the community. Safer societies in turn contribute to sustainable development.

b) Literature *on probation development or capacity building in specific countries*

In *The Social construction of probation and its impact on Transferability*, Phillips studies the different forms in which probation has evolved in the United States and the United Kingdom. This evolution reflects early differences such as stronger belief in the former that crime stems from (albeit constrained) free-choice and in the latter more from godlessness from which people may be "saved". He warns that the enduring nature of the social construction of probation exemplified in these two countries[100] (he offers several examples) means that the top-down introduction of policies and practices developed or determined elsewhere can lead to resistance if they conflict with the history and culture of a country. There should be flexibility in matching the shape that the probation service has already taken, assuming this does not conflict with probation values expressed in international guidance.[101]

In *Penal Policy Transfer: A Case Study from Ukraine*, Canton (2006) provides an account of a project to develop the community supervision of offenders in

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[100] We choose this point to highlight issues that we believe need further exploration, namely the impact of colonialism on penal policy and the social construction of probation, in particular the "transfer" of established values, practices and other features from the coloniser to the colonised, and its effect today.

[101] In our opinion this highlights several other issues we consider need further exploration, not least the impact of colonialism on penal policy and the social construction of probation in many countries today, and the interplay between a country's current penal approaches (influenced or not by colonialism), development aspirations, prevailing approaches of those providing advice or services, and the adopted international guidance.

Ukraine. Employing the framework of Dolowitz and Marsh, he considers factors such as "why" "who" "what" and the extent of transfer and tries to *"identify ... influences that shape penal policy and practice and that must, therefore, be taken into account by any transfer endeavour."* Points include institutional and cultural fit and financial circumstances. He also considers success evaluation.

In *Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers*, (2014) the editors, Mary Anne McFarlane and Rob Canton, introduce a project to assist and influence the Turkish Probation Service in developing its probation policies and practices. They remark on transfer complexity, draw, as do we, on Cavadino and Dignan (2006) to illustrate aspects of national context, discuss globalisation, and utilise the framework of Dolowitz and Marsh (1999, 2000), again as we do, to help explore important parameters of transfer such as *why* transfer (including voluntaryism or coercion), *who* is involved, *what* is transferred and to *what degree*, and *from where* transfer takes place. Individual chapters (we review two) examine aspects of transfer, for example regional historical and current influences, the nature of institutions, understanding legislative differences, and contracting and project planning for success. The Editors conclude with influences on the character and development of criminal justice in a country, practice insights on making transfer happen (including concerning differences in important factors such as language, and experts' skills), and the significance of mutual learning.

Špero (2020) describes the successful development of the Probation Service in Croatia over about two decades. The new service works in all four probation "domains". Attention was paid to all "enablers" including practice, staff, partnerships and infrastructure. Important has been communication with the public and political and justice system stakeholders, such as about probation benefits. Capacity building has involved regular international partnerships.

Finally, turning to literature on probation capacity building in countries which form part of our field study, we review writings about establishing probation in Latvia and in Romania.

In *After the Spring*: *Probation, Justice Reform and Democratization from the Baltics to Beirut Wheeldon* (2012) describes a case study of how probation developed and thrived in Latvia, a former Soviet country. A 3-tier development model comprising context, organisation and individual is, he suggests, transferable. He highlights factors that appear to have contributed to success, such as a bilateral process of constructive, not proscriptive, interaction. Relevance and realism were assisted by local pilots and a national coordinating council. Sustainable reform must be voluntary, participatory, pragmatic and build the human capacity to further develop the probation system independently. Development processes can matter as much as technical tools. Relational attitudes and skills of those involved, including consultants, count.

Finally, in *Probation in Romania, Archaeology of a Partnership*, Durnescu and Haines (2012) provide an "inside story" on the beginnings of probation in the country. Drawing also on the framework of Dolowitz and Marsh, they emphasise the importance of the philosophy of transfer, especially equivalence, partnership and knowledge exchange. *"Romanian colleagues were enabled to build up a Romanian probation model in line with Romanian traditions, institutions, culture or legislation."*

5.3. Brief conclusions on capacity building based on the literature.

We find there is considerable agreement in the literature about several matters. We highlight first in table form (Table 3) what we consider to be some of the most important points from the literature and our conclusions from the perspective of informing good practice in (probation) capacity building. Practice implications are not necessarily related to individual key points in each literature source, but to points in that source as a whole.

Following the table we conclude with a short summary, based on the literature, of our most significant conclusions for probation capacity building.

As noted earlier, fuller literature reviews on which the table and findings are based are available at Annex D, providing further detail, insight, and discussion of implications.

Literature on Policy Transfer and Capacity Building in General	
Key Points from the Literature	**Capacity Building Practice Implications**
Dolowitz and Marsh (1996, 2000)	
1 Offer a persuasive conceptual framework for policy transfer (why, who, what, from where)? "Why transfer" encompasses a continuum from voluntary (lesson drawing) to coercive. 2 Propose "degrees of transfer" embracing copying, emulation, combinations, and inspiration. 3 Ask what restricts or facilitates policy transfer? Suggest that greater complexity equates with harder to transfer.	Why, who, what, and from where, are critical early questions to ask in a probation capacity building initiative: To what extent is probation an internal conviction (or perhaps driven by broader external factors or bodies such as EU membership)? Who are the main actors, and who are supportive and/or have influence? Who/what are likely resistances to transfer?

Policy failure may also be equated with: Uninformed transfer Incomplete transfer Inappropriate transfer	What is it proposed to transfer, what degree of complexity is advisable, and where on the "copy-to-inspire continuum"? Are proposals (even when developed closely with a beneficiary) sufficiently well-informed on detail and implications, likely to be completable, and appropriate (e.g., economically, politically, ideologically)?
Evans (2017)	
1 Reinforces and expands the conceptual framework of *Dolowitz and Marsh*. 2 Explores relationship between systemic globalizing forces and increasing policy transfer activity. 3 Different forms of policy transfer: band-wagoning, convergence, diffusion (especially between countries sharing similarities such as culture), emulation, policy learning, social learning, lesson-drawing and transnationalisation. 4 Voluntary transfer more typical of developed countries, coercive of developing countries, e.g., conditional on investment. Negotiated transfer may occur in developed or transitional economies (e.g., EU "Acquis"). 5 Approaches may be issues/ideas-led, or a process based on policy transfer (ideally with careful step-by-step consideration). 6 Barriers to successful transfer include: - 'cognitive' (especially organisational or national cultural) in the pre-decision phase, - 'environmental' in the implementation phase and, increasingly, -domestic public opinion."	Policy transfer is not a straightforward concept! Context matters! When starting probation development, consider extent to which systemic globalising forces (such as supra-national bodies) provide context, encourage probation development, and/or contribute to "negotiated" or coercive change, especially in developing or transitional economies. Professional networks and regional factors may also encourage participation and desire not to be left behind, and support transfer of both "ideas" and programmes or processes. Consider approaches most likely to "strike a chord" ("why, who and what")? Transfer success is more likely between countries sharing characteristics. Policy or programme transfer supported by step-by-step approach including good understanding of purpose and suitability, scanning alternatives, study visits, generalising lessons, abstracting, adapting and simplifying. Identify transfer barriers from the outset (preferably pre-project) and address them, e.g., cultural fit, economic and absorption capacity, and public opinion.

Leroux-Martin and O'Connor (2017)	
1 Postulate capacity building more often takes place in (very) complex (rather than simple, complicated, or chaotic) systems. **2** When a change happens to or within such a system, it sets off a chain reaction between the parts of the system and its environment. **3** Failures (should be) interpreted ... as signals through which deeply inter-connected systems invite us to self-correct. **4** Complex and chaotic systems cannot be managed by linear, strategic planning or by the application of technical best practices	Take time early to really understand a situation and systems, including problems, complexities, networks, power structures, and relevant actors. A linear "clockwork" approach may serve some situations, others will require "cloud thinking" including anticipating potential "chain" reaction and resistance (e.g., from other parts of justice system). Where possible, involve stakeholders early, developing shared principles or values. View resistances as helpful feedback, contributing to "correction". Be open to change plan (e.g., year 2 and 3 flexibility where project constraints permit)!
Andrews, Pritchett, and Woolcock (2017)	
1 Reform initiatives often fail to achieve sustained improvements in performance... because of capability traps (trying to perform tasks before capable – "premature load bearing"). **2** Problem Driven Iterative Adaptation (PDIA) addresses locally identified problems, encourages experimentation and rapid evaluation or adaptation, and involving a wide group of stakeholders.	Identify and address justice problems. Involve a wide group of justice and other stakeholders, including service users. Encourage ideas and inspiration from elsewhere, especially places sharing similarities. But avoid "solutions looking for problems" or "doing it this way because it's the way we do it"! Instead, pilot and nurture iterative development. Avoid taking on more than can be managed (the "capability trap").

Literature on the Typology of Justice Systems in different Countries	
Key Points from the Literature	**Capacity Building Practice Implications**
Cavadino and Dignan (2006)	
1 Argue that "forces of globalization" have not led, and are unlikely to lead, to a global homogenization of penal policies / practices. **2** Instead contemporary societies (in their study) fall into one of 4 "families"- - neo-liberal -conservative corporatist -social democratic, or -oriental corporatist Each is strongly related to punitiveness of penal culture and imprisonment rates. **3** This association is in part due to attitudes to inclusion or exclusion of those seen as deviant.	Change in criminal justice policy, if tethered to political economy, may be slowed. On the other hand, we see increasing regional and global influences (e.g., UN, Council of Europe guidance, expert networks such as CEP, including digital). Understanding differences in penal policy and culture between international parties to transfer appears a vital early or even "pre-step" in successful transfer, supporting realism, and helping to identify resistances. Probation stakeholders, including other parts of the justice system, also influenced by penal culture and may be at different points in relation to global trends. Involvement / communication are essential. Penal culture including punitiveness may extend to probation work e.g., control/ rehabilitation balance, "mass supervision". Further research e.g., Central and Eastern Europe, other world regions, would provide insight into political economy, penal policy, and implications for capacity building.
Tonry (2007)	
1 Factors other than crime determine penal policy including imprisonment rates. **2** National "Risk" factors for punitiveness include conflict political systems, elected judges	"Interplay" between national characteristics and penal policy is complex and further interacts with regional/international factors. Characteristics outside of penal policy (such as trust, welfare and political

	and prosecutors, sensationalist journalism, Anglo-Saxon political cultures, view that penal policy falls within province of public opinion and partisan politics...	culture) may influence penal policy / punitiveness, and capacity building speed, direction, success. Probation capacity building is one influence among many!
3	"Protective" factors include consensus political systems, nonpartisan judges and prosecutors, Francophonic political cultures, predominant view that criminal justice policy falls within the province of expert knowledge and professional experience.	These papers emphasise the importance of laying the groundwork for probation (e.g., realism through understanding characteristics, clarifying expectations, piloting and iterative adaptation, strong communications with stakeholders including judiciary, senior political figures, public, and training staff).
4	Factors are continuums containing a range of possibilities rather than opposites.	Probation development does not mean other parts of the justice system will develop in "synch", nor will other services including welfare that may be important to probation users.

Lappi-Seppälä (2008)

1	Trends in use of prison largely unaffected by levels and trends in crime	These and other characteristics may be historical, national or regional in nature, and powerful. They may influence (hinder) probation development; however, success stories demonstrate they can be mitigated.
2	Imprisonment more influenced by fear of crime (media related), wealth and welfare orientation (more wealth tends to equate with less punishment, more inequality with more use of prison), citizens' trust in one another and the state, and perceptions of the legitimacy of state institutions."	

Krajewski (2007, 2016)

1	Points to a European "Penal Divide" with harsher penalties largely among former post-communist countries, not related to higher crime.	Punitiveness may not disappear as countries join the broad European "family"; punitiveness is influenced by politicians and may be used to obscure the social vulnerability and insecurity that goes along with the process of democratization.
2	This inheritance includes high prevalence of suspended sentences, lack of alternatives to imprisonment, (comparative) underdevelopment of probation systems, and high caseloads of probation officers (so unable to effectively supervise offenders).	Upheaval at times of economic and political change may work in the reverse way, making it politically harder to liberalise penal policy – although ironically it may be at just such times that the governments of transitional

3 A firmer position required on diversion, community service, probation, and fines. **4** Conditional sentences may be a legacy of "totalitarian" states efforts to exert control.	democracies feel the need to accept policy transfer. These insights help inform discussions about the "why" of transfer and potential ambivalences or resistances, (especially political and public) to international influences.
Haney (2016)	Because the influence of penal culture (and the factors that contribute) may be strong, the impact of CSM on prison populations is uncertain; no country should be encouraged to think that the introduction of probation / CSM will help them to reduce the prison population quickly or even perhaps at all.
1 Focusses on Hungary, Poland, Slovakia, and the Czech Republic. Argues a link between punitiveness, national sovereignty protection, and societal transformation in the region; whilst transnational forces reduce politicians' power, and populations distrust the state, penal nationalism appears to solve these dilemmas.	
Drápal (2021)	Contexts and circumstances, such as those described, need to be considered when contemplating capacity building projects; expectations may need to be adjusted, resistances identified, whilst planning and communications need to be developed for the range of stakeholders.
1 Despite little political drive for harsh sentences in the Czech Republic, the total length of prison sentences was not correctly understood because of (a) consecutive prison sentences, and (b) the number of conditional sentences, which if breached resulted in consecutive implementation of actual prison sentences. **2** High use of prison therefore contributed to by "negligence".	

Literature on Policy Transfer and Capacity Building in Probation	
Key Points from the Literature (not country-specific)	**Capacity Building Practice Implications**
Lappi-Seppälä (2003)	
1 Discusses three issues to work on to reduce the number of detainees: how to - - get the (community sentence) laws accepted on the political level - get them implemented on a practical level - confront the punitive populist pressure from the politicians and the media.	Influence the political sphere and public opinion, establish partnerships with justice partners, based on accurate information about the realities of prisons and benefits of alternative sanctions. Encourage Governments to invest in public education and information regarding the benefits of non-custodial sanctions.
Canton (2009)	
1 Highlights trends and differences between policy transfer and knowledge exchange. **2** Metaphor of an "ecological niche" (e.g., climate, soil and nutrients, competitors and predators) identifies inter-related "vectors" that help create an environment in which a transferred probation policy or practice may thrive (or fail). **3** Vectors include "penal practices" and their context, framework of law, criminal justice institutions and practices, politics, technology, research, pressure groups and networks, public opinion, cost, ethical environment and culture. **4** Externally the Council of Europe also informs measures of "success", e.g., a developed or adapted new service. "Failure" might be a corrupted version e.g., that uses community service to benefit the rich or powerful whilst others continue to receive	The metaphor of an ecological niche helps identify success vectors to consider and perhaps address, during capacity building. The number and range of "vectors" indicates potential complexity and challenge. Canton identifies a key capacity building dilemma: on the one hand the aspiration for a country to develop probation in a form that it can "own", on the other that probation cannot be meaningfully something other than is expressed in the guidelines of the CoE. "Success" needs better evaluation, including criteria definition and measurement.

Key Points from the Literature	Capacity Building Practice Implications
imprisonment. Improved Human Rights is the most important measure of success.	
Joutsen (2020)	
1 Points to a discrepancy: Whilst all UN-states agree need to reduce imprisonment and expand effective community-based sentences, in many countries they are not available, used far less than they might be, or are used as substitutes for other community-based sentences and not for imprisonment (the so-called net-widening effect). 2 Reasons for the inconsistency between stated goals and practice are, he suggests, "found in law, sentencing constraints, policy, resources, and attitudes. These cannot be dealt with in isolation from one another. The use of community-based sentences can be expanded effectively only if all the problems are recognized and dealt with". 3 Proposes a 6-step approach to expand use of community sentences. 4 Views community sentences in the context of the Sustainable Development Goals, arguing that "Promoting a greater role for community-based sentences is part of sustainable development."	Address the 6 steps to expand community sentences, e.g., legislation, communications and involvement of major stakeholders, including public, and sufficient resources for staff, training and infrastructure, review. (As noted earlier), countries contemplating community sentences should understand they will not necessarily lead to less use of imprisonment, at least in the shorter term, other factors need to align: conducive penal climate, sentencing practices, resources. The replacement of prison sentences by alternative sanctions contributes to SDG's as long as they address offender needs, contribute to rehabilitation and desistance, so leading to safer communities, and being therefore less damaging to society. Sentences such as community service are reparative, can build skills, and may include environmentally friendly activities which directly help to address community needs and achievement of a range of SDGs.
Key Points from the Literature (country-specific)	**Capacity Building Practice Implications**
Phillips (2010)	
1 Compares historical development of probation services in the UK (England and Wales) and the USA, noting how, despite similarities, differences endure, including in	To maximise the possibility of successful development of probation, newly introduced practices should correspond as much as possible with (or at least take good account of) those developed to

	relation to who is the "client" (offender or society).	date, and what is acceptable to society at that time.
2	Argues that the history and culture of a country in which the probation service operates strongly determines whether standardized forms of probation activities (on which international agreement has been reached, and perhaps developed by "elite networks") are easy to implement.	A "top-down" approach is likely to encounter resistance, especially if insensitive to socio-history and culture.
3	States: "A top-down approach for organisational change may therefore be doomed to fail if the sociohistorical and cultural values of practice are not taken into account because it can elide and delegitimise previously important forms of practice and beliefs."	European countries should determine for themselves which order will be followed in the implementation of, for example, the CoE European Probation Rules (EPR) and, within those broad boundaries, determine the form taken when implementing the various probation tasks.

Former colonies may reflect colonial, pre-existing and more recent approaches. |

Canton (2006)

1	Employs the framework of Dolowitz and Marsh to examine the experience of a Ukrainian probation development project (why, who is involved, what is transferred, degree of transfer, constraints, and possible policy failure).	Complexity of capacity building means results are unpredictable and demands time to scope a project, to understand the environment, and identify likely challenges.
2	Motivation of critical actors may be ambivalent and may also change over time. He suggests "Initial enthusiasm can give way to disenchantment when the project turns out to be different from what was anticipated". Moreover, "Motivations of the principal actors are likely to be different – what weighs with politicians, civil servants and criminal justice practitioners may well not be the same").	The "why" of a project must be understood, including degree of voluntarism, and in relation to international standards.

The "who" of a project is a vital too: Project leaders should aim to be in direct personal contact with ministers, and judicial and prosecutorial meetings should be organised. |
| **3** | Judicial support is critical to success. | Probation tasks should be prioritised and formulated in such a way that they strike a chord with political leaders, stakeholders and the population. Build where possible on existing policy and practices. The latter may lead to the former. |
| **4** | Probation development may be welcomed, but grants may be conditional and therefore also represent a form of coercion. | Institutional and cultural fit are vital considerations. Emulation in probation work will generally be more realistic, and successful, than imitation, and inspiration is also valuable. A desire to support (perhaps more rapid) change should also |

5	Innovation may encounter resistance; it may be better to build on existing practice.	be recognised, including by copying (although with caution and with adaptation).
6	Practice pilots can inform and help ensure policy is relevant (but risk marginalization): Consultants can put shape to existing practice and so help to "validate".	Attend to organisational "enablers" legislation, leadership and governance, resources and infrastructure, staff including managers, and communications.
7	Emulation preferable to imitation (self-defeating and complacent) but may still be less realistic than inspiration.	Probation development may take time, particularly where there are resistances to overcome. Aspirations should be realistic, but future work can be indicated.
8	Constraints: limited financial resources to invest in a new organization (it takes time to realise the financial benefits of a probation service), lack of legal basis to allow for innovation, insufficient experienced and managerial staff, and "institutional and cultural fit" in the present network of criminal justice agencies.	The Dolowitz and Marsh framework helps to scope and evaluate a project. Evaluation (which is underused) can help understand complexity and success factors in capacity building.
9	Culture should be respected, (also avoiding "imperialist" tendencies). On the other hand, culture is subject to change: penal practices have often been shaped by foreign influences; many Ukrainians themselves expressed the need for change.	
10	Policy and practice transfer or development are complex, shaped by inter-related factors, which may be antagonistic, so that outcomes are contingent and unpredictable. "Complexity confounds policy making and implementation".	
11	Project evaluation could contribute to "a more complete specification of the complex network of influences that shape the institutions & practices of punishment."	

McFarlane and Canton (Editors) (2014)

Draw together experiences of stakeholders in probation capacity building in Turkey:

1. Confirm capacity building complexity.
2. Confirm the importance of context, national and international. Also-
3. International context can support development, including the influence of globalisation, desire to modernise, and international standards and protocols.
4. Political economy and historical factors (including Soviet legacy) may influence public and political punitiveness.
5. The utility of the framework of Dolowitz et al (1999; 2000) in understanding probation transfer is further validated.
6. Clarity regarding requirements may take time to establish... sometimes revealed once the project is being implemented:
7. There may be tension between plans agreed in advance and what turns out to needed.
8. Cultural difference should be respected, but principles should not be compromised.
9. Principles should be checked to ensure they are not (just) Western custom and practice.
10. The motivation of stakeholders can vary over time, positively or negatively.
11. Capacity is essential, including staff and infrastructure, and to sustain. Approaches to human resources may hinder development.
12. Limited resources, especially in developing countries, may mean large caseloads with limited scope

Dolowitz and Marsh's framework is (again) helpful to understand project scope and evaluation.

Project success factors include –

Getting to know the beneficiary pre-contract, testing assumptions, helping to ensure core values, ideas and requirements are identified and planned for (where possible building in further contract review in the light of experience).

Clarifying probation purpose and utilising the support of international guidance and networks to support the case for probation.

Identifying and involving reform-minded stakeholders, preferably from the planning stage, to support relevance and acceptability.

Clarifying agreed principles and values and drawing on international guidance and case examples to support them (including in preference to "political correctness").

Ensuring timely legislation changes.

Addressing and building capacity with a plan for all "enablers" including staffing (recruitment, training, supervision and support), infrastructure, methods, and communications.

Utilising pilots as a cost-effective way to test new approaches.

Ensuring time and resource for translation and interpretation, including of meaning.

Aiming to minimize or avoid direct technical transfer (although practitioners may be keen to update skills).

Bywords should include empowerment, ideas, and inspiration. Building ability to

	for impact. "Demonstration" pilots may be realistic and assist.	respond to problems, build institutions, develop practices...
13	Legal tradition matters, including prescription vs flexibility.	Selecting experts who have good interpersonal skills and can work with ambiguity, as well as technical skills.
14	Inspiration is preferable to copying or emulation (although the latter can work with some methods and with adaptation).	Attending to evaluation (although ideas, concepts, ways of thinking ... will be harder to evaluate than, for example, method transfer).
15	Ideas may ultimately be more influential than specific technologies or techniques.	
16	Capacity building is more important than transfer of a product or foreign model - "*developing a beneficiary's ability to respond to problems and develop new skills, ... institutions ... practice ... and to help them take the new practice forward.*"	
17	Plans should be comprehensive, addressing all aspects of the organisation's development over time.	
18	Language difference should not be underestimated. Good interpretation can help understand meaning.	
19	Interaction quality can be as important as technical content.	
20	Experts who return and/or are longer term are better prepared to understand and work well with differences.	
21	Timely review should be incorporated.	

Špero (2020)

1	Croatia successfully tackled prison overcrowding.	Probation capacity building can succeed in a relatively short time, including achieving less use of custody.
2	An early project included review of a range of European practices and experiences. This enabled Croatia to consider a wide variety of options in the strategic planning process."	Success factors include –
-Reaching out to several countries to inform development
-Continuity of international support, and

3	Croatia has successfully sought continuity of support through international probation projects.	-Alignment with CEP and CoE
4	Service development has been informed by Council of Europe guidance and by membership of the CEP European probation network.	Other conditions for success appear to include focused attention to development in all domains and to the enablers.
5	Over time all domains have been addressed, and most enablers: strategy, legislation, cost analysis, human resources including staff recruitment and training, human rights, increasing the number of persons supervised in the community, decreasing the prison population, decreasing recidivism, standards and professional guidance, database and probation information system, a management framework, communications, equipment.	Moreover, communication is a key enabler (and in the case of the judiciary appears to have influenced and supported a move towards community sentencing without the provision of adult pre-sentence reports to court).
6	Challenges: First, communication to key decisionmakers and to the general population about why a new system was needed. Second, ensure understanding of the system by prosecutors and judges. Third: infrastructure of the future service (e.g., buildings, cars, and IT needs,) and staff (including proper education and training). Furthermore, data on costs and reconviction.	

Wheeldon (2012)

1	Describes how probation developed and thrived in a former Soviet country.	In a relatively short time probation gained an important place in Latvia, supported by, especially younger peoples' desire to make a break with the past.
2	Reform based on a bilateral process of constructive, and not proscriptive, interaction; sustainable reform must be voluntary, participatory, pragmatic and building the human capacity	Involving the NGO-sector stimulated new approaches in how to cope with criminality.

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to further develop the probation system independently. 3 Country-relevant reform emerged via pilot projects, based on locally defined needs, in cooperation with local NGO's. 4 Development then coordinated by a national coordination council with wide membership. 5 Supported by the diaspora (mainly in Canada), and a new generation of younger Latvian people eager for change who were provided space to play an essential role. 6 The Canadian trainers learned to understand the importance of professional modesty and relying on local experts through mutual learning. 7 Furthermore, the author notes that probation was successful in Latvia in part because it offered a means to reduce incarceration rates while retaining a state role in the control of offenders.	Bringing parties together locally via pilots encouraged and tested ideas, and supported ownership. It also helped to stimulate a national probation coordinating group of key stakeholders which in turn aided probation development, "buy in" and successful implementation. The country was assisted especially by the diaspora, and near-neighbours, who share elements of commonality with Latvia. Projects proceeded on a basis of knowledge exchange, stimulating national experts and staff to find out how their system could best be served by which steps. Projects would not have worked so successfully were it not for the "working with" approaches and strong interpersonal skills of those involved, including consultants.

Durnescu and Haines (2012)

Review probation development in Romania: 1 Probation development reflected craving for Human Rights reform. 2 The key success of an extensive British-Romanian project was the notion of equivalence: in every project activity a British expert and a Romanian partner were equally involved. This was the expression of the transfer philosophy: Partnership and knowledge exchange – 3 Authors note "Romanian colleagues were enabled to build up a Romanian probation model in line with Romanian traditions, institutions, culture or legislation." 4 In every aspect and phase Romanians had the lead. The	NGO involvement helped ensure "on the ground" appropriateness and addressing identified need. An important success factor was a partnership approach and knowledge exchange (within which relational skills were an important factor). Romanian partners were in the lead, supported in formulating their own strategy and models that fitted the Romanian culture. Choice was assisted by facilitating access to a range of countries from which to draw. Significant attention was paid to a range of enablers, not least communication with stakeholders including the judiciary.

	authors argued against copying from the Western practice, instead using emulation, hybridization, synthesis, and inspiration.	
5	Knowledge transfer enabled Romanian partners to make their own choices.	
6	Also important was involvement of NGO's, courts and public prosecutors…	
7	…and the advantages of study visits to established probation systems from which Romanian's could learn from a range of possibilities.	

Table 3: Summary Table of key points from the literature and implications for Probation Capacity Building Practice.

5.4 Summary of Key Conclusions and Implications from the literature

We end this chapter with a summary of the most significant conclusions for probation capacity building, based on the literature review, along with (in Section 5.5.) implications and "missteps" to avoid:

Capacity Building is complex, and much more than a linear "technical" process:
- o Success is however possible, as several examples demonstrate.
- o Every recipient, provider and funder is different. No two capacity building initiatives are the same.
- o Nonetheless good practices may be identified.

Implications:
- o Because of the complexity, a strategy of change needs to be expressed in a plan that fits the specific context of this specific country and is based on learning points from other successful projects. Realistic timeframes should be allowed, whilst variations and need for flexibility should be anticipated.

Context is paramount:

o The "why", "who", "what" and "where from" of probation transfer matter. Those questions help to understand context.

o National context may include historical, political, cultural, and economic factors, among many others. "Political economy", together with other characteristics such as trust, adversarial justice or politics, income inequality and welfare provision, may bear on penal policy including punitiveness (their opposites can "protect" against punitiveness).

o A more punitive context can manifest, for example, as a reluctance to develop probation in a form close to international guidance and/or in a form which has limited impact on prison numbers and/or leads to net-widening.

o Nations may also be inspired to "break with the past", especially the young.

o The deep-seated nature of contextual factors may hinder or at least slow "globalizing" forces. Regional factors (for instance common histories such as that of the Soviet Union or contact with successful probation development in a neighbouring country) and global (international guidance - the Council of Europe and United Nations - and expert networks (such as the CEP) are significant influences too.

o Probation organisation, policy and practice do not develop in isolation! Other justice partners (and beyond) are impacted in ways which may be unpredictable.

Implications:

o For these and other reasons it is important to get to know a beneficiary country well, very preferably before developing a plan, to test assumptions, identify requirements, and to involve stakeholders widely from the outset to support common values, understanding and rationale. Identify and involve stakeholders who favour change.

o Potential obstacles and resistances, and means of mitigation, should also be identified so far as possible. They may include cognitive, environmental, and public attitudes, as well as more technical matters such as legislation, staffing, and infrastructure. Resistances may also occur within other parts of a justice system, which may be required to change practices or responsibilities in the light of the new service.

o Consider approaches most likely to "strike a chord" ("why, who and what")?

Strategy, planning and implementation:

o **Strategic vision** embracing the range of probation tasks is desirable. However, approaching implementation on a step-by-step basis is likely to be manageable and successful.

o **Good planning** is a virtual pre-condition of success, based on stakeholder involvement to help ensure appropriateness and acceptability.

  ▪ Strong and early planning, employment of successful approaches, and identification and mitigation of risks (among other factors), assist!

  ▪ The unpredictability of capacity building, including political changes, the effect of other projects, and what will constitute "success", means that flexibility in planning is desirable to allow responsiveness.

  ▪ Donors, as well as providers and beneficiaries, therefore, need to be involved.

  ▪ Pilots allow for learning, adaptation, and iterative development.

  ▪ Probation "enablers" (legislation, infrastructure, recruitment, training etc.) should all be planned, and implemented as tasks are adopted.

  ▪ Communication is critical, especially at the political, judicial, and public levels.

  ▪ Legislative differences, including degree of "prescription" required to implement, should be considered. Any necessary legislation development should be timed to precede implementation initiatives. However, legislation should take account of the anticipated value-base, purpose, and strategic priorities of the service.

  ▪ Capacity building projects can contribute greatly to a country's efforts to establish probation. Seeking follow-on projects without long gaps appears especially beneficial.

Implications:

o For future capacity building projects, it is important to develop a strategic vision on which probation tasks will be given prominence in the first phases of probation development and which will be implemented in later ones. The strategic vision should as far as possible be developed with the stakeholders and should pay

attention to a range of factors such as risks of transfer, and of enablers, among which legislation.

Policy and Practice Transfer:

o Early discussion about legislation, policy and practice should aim to identify and mitigate risks of uninformed, incomplete or inappropriate transfer.

o What is transferred can embrace policy or practice and vary in "degree"; it may be in the form of copying, emulation or even ideas, knowledge and inspiration. The latter may often be more successful, enabling developments to build on existing policy and practice, to address need, and to support ownership and local expertise.

o Clarifying risks and degree of transfer are especially important when transfer is between countries or parties that differ from each other in important areas such as history, penal philosophy, institutional structure, or finance.

o Beneficiary countries are likely to benefit from study visits to a range of countries, and variety of policy and practices from which to select.

Implications:

o Identify risks and degree of transfer; involve and build staff capacity to build institutions, practices, and sustainability, rather than transfer products or a foreign model.

Style and approach:

o Capacity building is an "art" as well as science. "Soft" relational skills and technical skills both matter, as does a partnership approach based on knowledge exchange in which the beneficiary is in the "driving seat."

o Experts who return, or are medium or long term, support understanding and delivery.

o Good language and "ideas" interpretation is important to fully understand meaning.

Implications:

o For future projects success of capacity building can be greatly enhanced if (a) a partnership approach is used in the relationship of beneficiary country and the donor country, placing the beneficiary in the driving seat and (b) if the experts from abroad are committed to a longer time involvement and are strong in soft relational skills.

Evaluation:
- o Definition and evaluation of "success" is often lacking and should be considered wherever possible.
- o Evaluation should be timely to inform follow-on projects and knowledge of capacity building.

Implications:
- o For future projects it is essential that the definition of success of the project is formulated at the start and that evaluation is taking place to measure progress and to contribute to the evidence base of capacity building in general.

5.5. Missteps to avoid

What does the literature study teach us about what missteps could be avoided? Of course, every good practice or hint that is not heeded might lead to a misstep. But we want to highlight some of the missteps that for us stand out particularly in the literature.

Paying insufficient attention to context and the penal culture

The national context of a country and its penal culture has a great influence on how and whether capacity building succeeds. Therefore, it is essential that project leaders understand context and the penal culture: if not, then a project might fail as the connection with culture and penal practice is poorly made, and probation may then not be fully used. Awareness will also provide a basis for discussion - for finding emphasis or accent in probation practice that strike a chord with stakeholders and wider society.

We also observe that culture, and the approach of persons involved in justice, may change, including through exchanges about matters such as international recommendations and their background and international probation practice. Early discussions with the beneficiary country may help to clarify agreed principles and values, drawing on international guidance.
It may be helpful to take head of a frequent key capacity building dilemma: on the one hand the aspiration of a country to develop probation in a form that it can "own", on the other that probation cannot meaningfully be something substantially other than expressed in international guidelines such as those of

the CoE. Even within international guidelines there is real room for a beneficiary country to choose and develop its own priorities and accents.

Paying insufficient attention to risks and reasons for policy failure

Literature describes how risks may arise due to a combination of uninformed, incomplete, and inappropriate transfer:

- uninformed transfer (insufficient information on the part of the borrowing country about the policy-institution and how it operates in the country from which it is transferred), for example under-appreciating the person-centred rehabilitation-inclusion focus of probation work, that operates alongside control, in most western European jurisdictions.

- incomplete transfer (crucial elements of what made the policy or institutional structure a success in the originating country may not be transferred), for example over-focus on risk assessment at the expense of needs and strengths, and/or without the means to collate or address identified needs.
- inappropriate transfer (insufficient attention to the differences between the economic, social, political, and ideological contexts in the borrowing and transferring country), for example training focus on motivational or cognitive-behavioural work whilst the predominant service desire may be to extend control in the community and/or the resources to support intensive 1:1 work are lacking at the time.

Not being sufficiently sensitive to possible resistances

Resistances may be difficult to identify, as individual representatives of stakeholders may not be openly critical of a project that has been approved or perhaps initiated by the beneficiary country. Also, the preparation phase of a project is often too short to develop a real understanding of differences in opinions or attitudes.

The literature points to several likely areas of resistance including at the legislative, implementation including resources, and public levels. Resistance may be identified and addressed (including through strategies we discuss elsewhere including involving stakeholders broadly from an early stage and clear communication). Or it may be decided to "work around" resistances in the expectation that in a later phase they will diminish (for example, key individuals

may change their minds, or pressure accumulates to adapt stance). It is preferable anticipate and plan to deal with resistance than to underplay it.

Unawareness or avoidance of possible net-widening

A side effect of introducing probation is often that more people will end up under the control of the penal system: prison sentences or probation supervision. We interpret this phenomenon mostly not as the outcome of conscious decisions but as the result of not having created sufficient clarity regarding the potential role of probation including in relation to other sentences – the target groups for prison and probation sanctions.

Furthermore, stakeholders are not always regularly informed about whether the new probation sanctions really replace prison sentences, even when this is a stated aim of introducing a service or legislation. It is important that in the process of implementing a probation system regular information is given to, and debated with, stakeholders on the *changing statistics of the number of people in prison and under probation.*

Aiming too high (rather than "keeping it simple")

Although probation capacity building is complex, it is a task of those responsible for introducing probation to help ensure steps are commensurate with current and anticipated capacity to absorb (or in this sense "keeping it simple" and manageable.) Literature highlights how, if too much is introduced or implemented in a short period of time, chances are higher that a country or its professionals may be at least partly overwhelmed or unable to fully absorb and implement planned developments. When "premature loadbearing" occurs, professionals run the risk of falling into the "capability trap", in some cases leading to increased adverse pressure on already stretched institutions.

The "domains" of probation work help to provide a framework for strategic planning and step by step implementation, especially if linked well to probation purpose and resources. It is also necessary to ensure that required organisational enablers are in place to support probation activity (such as legislation, offices and equipment, basic job descriptions, agreements with stakeholders regarding which cases probation is going to work with, core training of staff and management). It can be a "balancing act" for managers to shape this environment, as a precursor to successful work with the first probation cases.

We suggest it is also a responsibility of change managers to convey to staff and stakeholders, and to attend in policy and practice, to the "essence" of probation work and role of probation officers (taking cues from, for example the international guidance and evidence base). Only then are more complex systems of probation work likely to be successful when introduced, such as cognitive-behavioural interventions, restorative justice, or mediation processes.

Not placing the beneficiary country in the lead

Policy failure can be caused by the beneficiary country not having the feeling or conviction of leading the change process, or that it is their own system that they are building and will own. Whilst experts can bring knowledge (and existing policies or practices for consideration and adaptation), inspiration, support, and encouragement in finding solutions matter too.

This requires a participatory style and approach in which the beneficiary is clearly in the lead in deciding preferred and prioritised policies, practices, and steps in implementation.

Chapter 6. Conclusions and Recommendations

Introduction

Conclusions and recommendations are based on main findings from the three project research strands set out in Chapters 3, 4 and 5. Source materials and additional detail are available in the linked Annexes (C, D and F) noted in Table 4.

Annex E summarises and consolidates key findings.

Chapter	Project Research Strand	Linked Annexes
3	Field Studies	*Full country studies* F1. Albania F2. Georgia F3. Latvia F4. Poland F5. Romania *Additional Sources Material* F6. Serbia
4	European and International Influences	C. European and International Influences
5	Literature Review (Overview, Table of Key Points)	D. Literature Review
6	Conclusions and Recommendations	E. Summary and Consolidation of Key Findings

Table 4: Report Research Findings Chapters and Linked Annexes.

Research Questions and Methodology

Research Questions

Conclusions and Recommendations address three principal research questions:

First, the feasibility of designing a model or framework to support probation capacity building. The tested and refined model addresses both the "domains" or areas of probation responsibility and the "enablers" that contribute to a successful probation organisation.

Second, turning to implementation, whether we could identify "success factors" - promising practices in probation capacity building? The often-positive story of probation development in Europe, supplemented by literature, revealed useful insights. We also highlight factors hindering probation development and several issues to be addressed.

Finally, during the study, it became increasingly clear that the international probation community, together with related bodies, has untapped potential to progress the contribution of probation work globally. We sought therefore –

Third, to identify steps that the international community and bodies could take to support probation development and further probation work at the global level. We consider the extent to which European experiences may inform probation development in other parts of the world, notwithstanding significant differences in, for example, history, culture, religion, economy, or the legacy of colonialism.

Research Methodology

The methodology has comprised, in brief, three main research strands –

- Field research in five European countries (supplemented by insights from two further European countries, and knowledge of capacity building in other world regions)
- A Literature Review
- Enquiries of Supra-national bodies and review of other European and international influences on probation development

The three research strands were preceded by preparation of an outline model of capacity building, providing an initial framework with which to structure enquiries. The model was refined in the light of project research and validated in a broader framework of good practices in capacity building implementation, based on our three research strands.

For more information on development of the initial and refined model, see Chapter 2 (Methodological Overview) and Annex A.

We are additionally very grateful for the insightful support to our research provided by an international academic advisory board.

6.0 Project Conclusions and Recommendations

Conclusions and recommendations are considered in relation to three research areas - the *capacity building model*, recommendations for *implementation* at the national or project level, and recommendations for the *international community* to help advance probation work at a global level.

These follow a brief overview. Main conclusions and recommendations are then drawn together in a final summary.

> **6.1.** Project Conclusions - Overview

> **6.2.** Main Implications, Conclusions, and Recommendations regarding:

>> **(6.2.1.)** The Probation Capacity Building Model

>> **(6.2.2.)** Implementation: Characteristics of Effective Capacity Building Projects (see also Table 5), potential Hindrances (see also Table 6) and 10 Success Factors (see also Table 7).

>> **(6.2.3.)** Implications and Recommendations for Probation Development Globally (see also Table 8)

> **6.3.** Summary of Conclusions and Recommendations

6.1 Project Conclusions - Overview

We conclude –

First - that the **"Domains and Enablers" Model** provides a succinct and user-friendly tool with which, when developing probation capacity, to –

- o   explore and clarify probation concept and purpose
- o   identify potential areas of competence ("domains") and supporting probation "enablers" on which to focus development, and
- o   gauge existing provision (where present).

The model provides a framework or "language" to support clarity of communication about the "essence" of probation between parties to capacity building – donors, providers, beneficiaries, and stakeholders – and to support, clarify, and coordinate planning and delivery between multiple parties or programmes - in parallel or over time.

A strong probation contribution to justice requires both strength of role (domains) and organisation (enablers); the model helps to clarify the need for a

strategic and balanced approach to probation development, involving extending the work of probation to all domains, supported appropriately by enablers. This may extend often over a period of years, recognising that establishing a "successful" probation organization and delivery requires an enduring investment of time and resources. Further, we see no reason why the model should not have universal value – in other words international application in different world regions.

Second - that **implementation "success"**[102] is built on several key factors which we summarise here and expand on in the full conclusions.

- A collaborative, partnership approach
- Creating a shared vision or aspiration regarding probation's potential contribution
- Recognising and working with complexity and context – international and national
- Building a network – engaging, involving, and harnessing the expertise of critical stakeholders and partners
- Technical and soft skills – an inspiring, individualised, knowledge and tools-based approach, building on strengths to foster organisational and personnel capacity and sustainability
- Achieving the vision - planning and implementing through challenging steps, piloting, and review, with flexibility
- Drawing on the supportive and sustaining role of supra-national organisations and professional bodies, including through standards, data, finance, research, and knowledge sharing

Third – that the **European experience of probation capacity building and development is relevant in other regions of the world**, notwithstanding significant differences in matters such as income, religion, culture, (including political and economic culture), and histories of colonialism.

As well as the value of the core capacity building model, and transferability of the success factors headlined above, we recognise the stimulating role played by supra-national organisations and professional bodies in Europe whose influence extends to include standard setting, delivery data, development finance, research, and knowledge sharing. Whilst literature on these topics currently appears scarce (a point we would like to see addressed), the nature of

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[102] The concept of success in probation work is explored in the introduction to the main report. We note there is no universally accepted definition. Our model provides a helpful tool in assessing progress in establishing a probation organisation, for example the competencies addressed and the required supporting structures such as sufficient and well-trained staff. However, it is an insufficient definition, as we discuss.

the factors and our own experience of capacity building in probation beyond Europe gives us no reason to doubt that supra-national organisations have a similar key role to play in generating direction and motivation within a wider international probation family.

Accordingly, we conclude with recommendations for the international community.

Each of these three areas of conclusion is discussed next in greater detail.

6.2. Main Conclusions, and Recommendations

6.2.1. The Probation Capacity Building Model

The Probation Capacity Building model, tested and refined during the project, consists of two main elements which we refer to as "Domains" and "Enablers".

Probation Domains

Probation work or "competencies" are placed in one of four **"domains"** (Figure 7) corresponding to possible stages in a person's "journey" through the justice system. The four domains are:

- pre-trial to pre-sentence
- community (court ordered) penalties, sentences, or measures (which may be in the form of suspended prison sentences)
- institutional stage (e.g., prison pre-release), and
- post-institutional stage (e.g., prison post-release)

The model is inspired and informed by international guidance including the Council of Europe Guidelines on Community Sentences and Measures ("Probation Rules") and the United Nations "Tokyo" Rules. Our experience of sharing the model in several jurisdictions demonstrates that it is widely seen as helpful[103].

We see a general trend for the number of *domains* worked in to *increase* as services gain experience and maturity. We also see the range of tasks or

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[103] Nonetheless it is a simplified model; whilst we emphasise the importance of work pre-release by distinguishing it from post-release, we recognise that some may prefer to combine domains three and four. Some jurisdictions may add facilities such as half-way houses. One country we are aware of, Kenya, has suggested a fifth domain to represent community-based crime prevention work: this may take place independently of any one individual's journey, be delivered alongside the traditional justice system and/or other community stakeholders, and include awareness raising, crime mapping, alternative dispute resolution, partnership building, and community "sensitisation" to a person's reintegration.

responsibilities within each domain increase. Services active in all domains have potential to *leverage greater impact* on objectives[104] including desistance; they support appropriate diversion, mediation, bail, community sentencing, community rehabilitation, pre-release planning, public protection, reintegration, and community links, and more.

European nations in which services are active in all domains also tend, although there are exceptions, to have a low number of prisoners (see for example Scandinavian countries and the Netherlands). It seems logical that the availability of diversionary programmes, advice on risk, needs and sentencing, a range of community disposals (some at least with a rehabilitative component), and mechanisms for supervised early release will all serve to reduce rates of incarceration - other things being equal. We recognise however that the whole picture in relation to prison use is far more complex, probation provision - and how it is used - being elements amongst several others (see for example Allen, 2012).[105]

The more domains that are addressed by probation organisations, and the more activities within them, the stronger the potential probation role and contribution and more visible the probation service is to all stakeholders in different phases of the justice process. In this sense the service follows and contributes actively to the journey of the offender from the beginning to the end of the justice process.

For instance, if the probation service is active in the pre-trial phase, then the service might advise the court about suitable alternative sentencing options. The results of the report, including the assessment or risks and needs, might be used to either contribute to sentence planning if the offender is sentenced to a prison term or, in case of a non-custodial sanction being considered or imposed may help to formulate the conditions and priorities of probation supervision. By being active in all phases, the probation service acquires knowledge of those it works with including their wide range of circumstances, needs and different levels of risk of reoffending. This experience can be beneficial to the whole "justice chain".

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[104] Service aims and objectives vary considerably, see for example Durnescu (2008)
[105] Allen describes 10 policy themes that may impact on rates of imprisonment: age at which criminal proceedings should be used against children; role played by Prosecuting authorities in settling cases before they reach court; sentence length; provision of measures for dealing with people with mental health and addiction problems outside mainstream justice or prison systems; restraining use of custody at the remand stage; the way community sentences are used as alternatives to prison; higher thresholds which apply to breaches of suspended sentences and recalls to prison; climate of public and political opinion and its impact on decision-making; greater role played by academic and other non-governmental expert organisations in the formulation of policy.

Figure 7: Four Probation Domains of Areas of Responsibility (simplified form)

Exploration through the lens of the four domains provides insight into the extent of probation activity variation between jurisdictions. In general terms, we see that more activity occurs in Domain 2, and relatively limited activity in Domain 1. Many services are active in Domain 4, but few in Domain 3.

Variations may reflect many factors, ranging from services being at different *stages in development* (which may ultimately involve all domains), to differing emphasis on and within domains resulting from differences in responsibilities of justice system partners (for example variations, perhaps reflecting Common Law or Roman Law traditions, in the role of prosecutors in delivering advice on sentencing impacting on the probation role in preparing pre-sentence reports, or variations between countries in the roles of prison staff influencing the probation role in custodial institutions).

Nonetheless we believe there is a *global picture* too; again, in general we observe more attention in *international guidance, policy and practice research* in Domain 2 than Domain 1. *We suggest that enhanced attention is required especially to the first domain* (in relation to, for example, diversion from trial, less use of custodial remand as default, restorative practices,) whilst *the third and fourth domains would benefit from more concerted attention embracing both domains to address seemingly almost intractable issues such as effective or "seamless" reintegration*.

Probation Enablers (what needs to be in place to support success)

If domains describe the "what" of our work, then **enablers** may be said to describe the *"how"* of probation work, embracing the potential contribution of *a strong probation organisation*.

Effective work in all domains is supported by the right agency "enablers". Our approach is informed by:

- international guidance such as the Council of Europe "Probation Rules" or United Nations "Tokyo Rules"
- "quality" models, for instance, the European "Excellence" Model (EEM)
- effectiveness research - embracing the views of stakeholders

Enablers were then refined in the light of field country studies which highlighted factors especially valued or supportive of a probation organisation during its development stages.

The value of other important enablers was reinforced by the literature review, in particular literature directly referencing probation development projects.

Like the four domains, enablers can be configured in different combinations (Figure 8). Less important than the precise grouping is that all enablers are present. The four areas we suggest are, we believe, a pragmatic representation of a complex picture:

Legislation and Leadership, representing the statutory responsibilities and status of the service, aspects of relations with other stakeholders and their focus when reflected in statute (such as to address specific needs, risks, or public protection), strategy and direction of travel including priorities, and clearly communicated mission and vision.

Community and Partnerships, embracing justice chain, relationships with municipalities, neighbourhoods and private organisations, the involvement of civil society and volunteers including with lived experience, the public including media communications, and on occasion crime prevention or restoration.

The Organisation, reflecting features such as staff, their competencies and training, well-being, and active involvement in the organisation, enabling management, and a range of essential resources such as sufficient budget, infrastructure including transport means, ICT equipment, and internal communication. Structure and accountability may be included here or be viewed as "sitting above" or outside of the enablers' framework.

Processes and Practices refer to activity across the four domains, probation service work such as assessment, court or parole reports, case management,

signposting and referral, attention to evidence of effectiveness, including responsivity to identified needs, risks and diverse groups, broadly informed by stakeholders, staff and persons with lived experience, and implementation standards or guidance when not addressed by legislation.

We observe that the most established and successful services pay rigorous attention to all enablers. However, during the process of establishing a probation organisation it is important to ensure priority is given to those enablers that directly support prioritised domains and the specific competencies adopted first within those domains.

Legislative Framework & Leadership
- ☐ Clarity of Probation Role in Justice System including Sentencing Framework
- ☐ Work in 4 Domains
- - Pre-trial/diversion from prosecution, from pre-trial detention/Pre-sentence
- - Community Sanctions and Measures
- - Work in prisons
- - Work post-release
- ☐ Probation Organisation Legislation
- ☐ Related legislation e.g. for social inclusion inclusion housing
- ☐ Strategy and Priorities
- ☐ Communication of Mission, Vision and Values

The Organisation
- ☐ Budget / Resources
- ☐ Staff including competencies, training, numbers, proportion to caseload
- ☐ Enabling management and support
- ☐ Infrastructure (physical facilities, ICT, transport?)
- ☐ Internal Communications and Staff involvement
- ☐ Evaluation capacity
- ☐ Implementation Plans
- ☐ Standards, Operating Procedures, protocols, guidance

Community & Partnerships
(in 4 Domains)
- ☐ Types of Partnership (e.g. Justice Chain, Statutory bodies, Municipalities, Private, NGOs)?
- ☐ Structural partnerships (protocols)?
- ☐ Partnership aims (e.g. solutions for life problems/integration, public safety?)
- ☐ Practices regularly involving partnerships
- ☐ Civil Society and neighbourhood engagement
- ☐ Public sensitisation/participation incl. Volunteers
- ☐ Crime Prevention
- ☐ Media Communications

Processes & Practices
- ☐ Implementation in the four domains
- - What? Which practices? Scale?
- - Assessment
- - Individualised case management
- - Reports
- - Referrals
- - Diversity centred and Responsive to all groups
- - Evidence-informed to meet objectives
- - Informed by staff, stakeholders / service users

Results

Figure 8: Probation Enablers or Conditions for Success
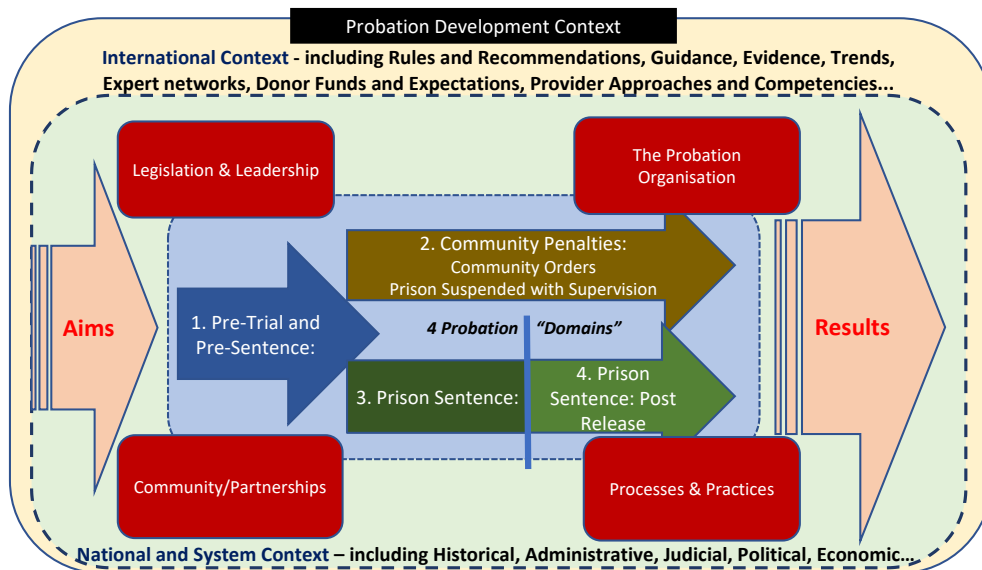
Figure 9: Illustrates aspects of international, and national/justice system context in relation to probation aims, domains and enablers, and results.

The Domains and Enablers in Context, Objectives and Result

Finally, whilst the domains and enablers are distinct core conceptual and practical elements of a strong probation contribution, we later combined them (whilst maintaining their separate essences), whilst clarifying their place within system, national and international context, and probation aims, objectives and results (see Figure 9).

Figure 10 illustrates the domains and enablers in the form of a simplified infographic.
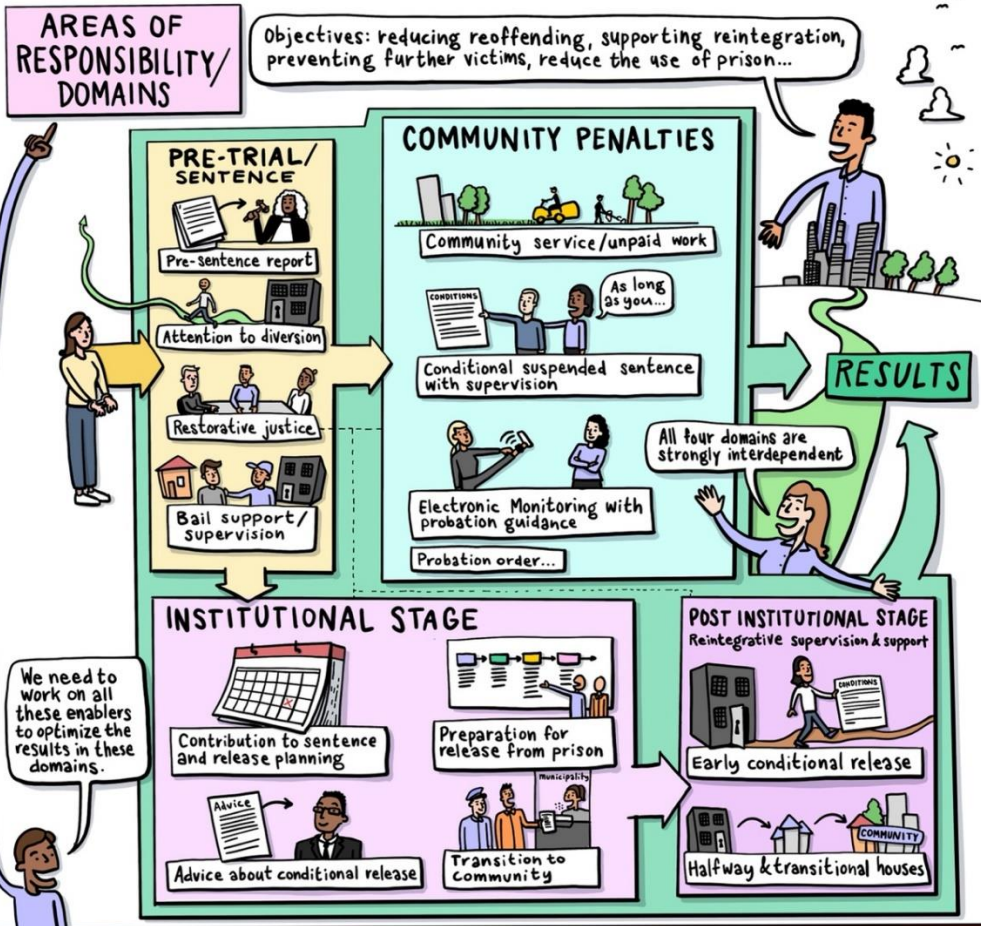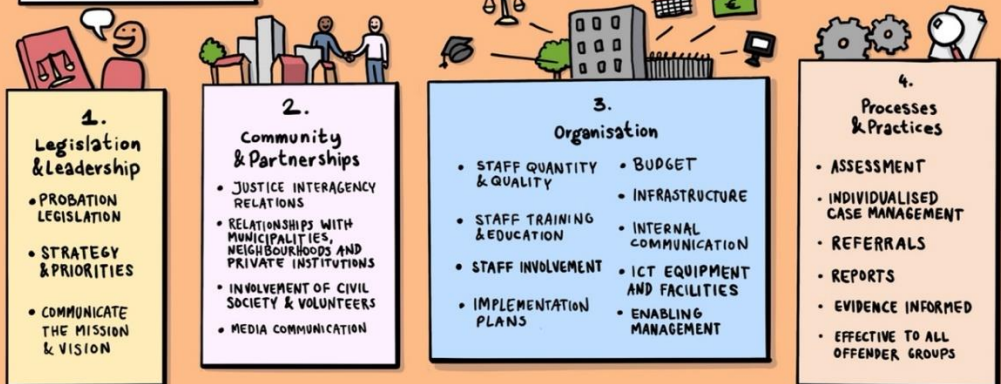
Figure 10: Probation Capacity Building Infographic

In conclusion

We conclude that by combining the two core components of domains and enablers, the model provides a tool to:

1 Express the essence of the International Guidance.
2 Understand the probation systems of countries in Europe (and beyond).
3 Analyse the present state of play in beneficiary countries.
4 Support discussion and drafting of a joint plan or plans regarding the next stages of development of probation (both domains and enablers).
5 Review the changes over time (base-line study/evaluation at the end of the projects).
6 Identify which chain partners (police, prison, judiciary municipalities) and stakeholders in the wider society (public opinion, the political environment) need to be involved to build up the probation service(s) and system.
7 Assist coordination between various parties to capacity building, including donors, to support effective and efficient use of resource, identify gaps, and reduce duplication.

In terms of a "bigger picture" of the potential contribution of probation or community corrections to humane and effective criminal justice, we conclude that the model and language of domains and enablers help to illustrate the necessity and nature of both a strong probation role (the "Domains") and a strong probation organisation (the "Enablers") (Figure 11) in clarifying and developing probation role, objectives, and achieving results.
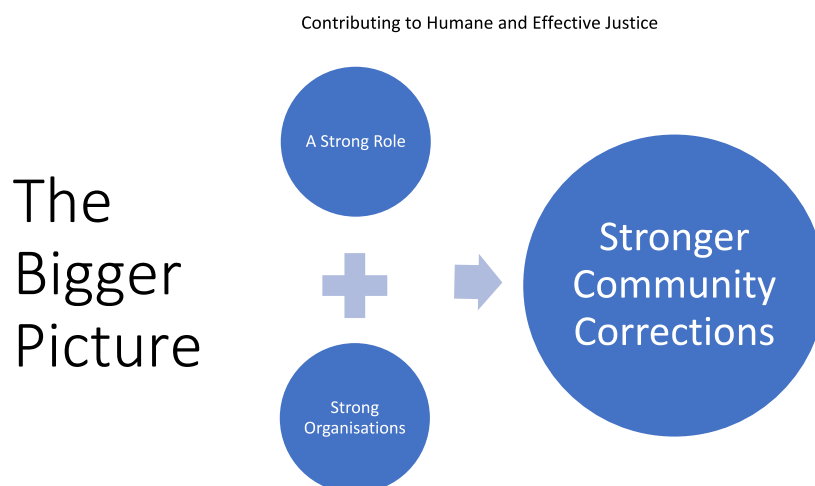
Figure 11: The Bigger Picture, a stronger probation role and stronger organisations

6.2.2 Implementation

Characteristics of Effective Capacity Building Projects and Potential Hindrances

Turning to implementation, and considering findings from the field studies, literature review, and consideration of European and International influences, we propose ten major success factors or characteristics of effective probation capacity building projects (Table 5).

1 A collaborative partnership with the beneficiary in the driving seat
2 Creating and communicating a shared probation vision
3 Recognising and working with context, complexity, and duration
4 Identifying and addressing potential resistances, risks, and barriers
5 Building an active network – engaging, involving stakeholders and partners
6 Achieving the vision – a holistic approach balancing domains and enablers
7 Project Management – step by step, responsive, anticipating flexibility
8 Professional skills - technical and "soft"
9 Drawing on and collaborating with supra-national organisations and professional bodies
10 Building in evaluation, research and reporting

Table 5: Ten "Success Factors" or Characteristics of Effective Probation Capacity Building Projects.

Each is described in turn.

1 A collaborative, international partnership approach[106] with the beneficiary in the driving seat.

A partnership approach. It is advantageous when the lending and beneficiary country work in partnership and horizontality, both committed -with *mutual* regard - to identifying the best solutions to foster probation in the culture and tradition of the beneficiary country, addressing the needs and challenges of the country's justice system, and building on strengths whilst taking account of international evidence, practice, and guidance. A collaborative partnership

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[106] We observe that early projects in Latvia and Romania were funded by donor countries whose own experts were also then involved in project delivery (as opposed to experts or countries joining delivery once planning is complete). This appears to have contributed to extended and successful joint development and delivery of work (see Wheeldon (2012), Durnescu & Haines (2012))) and a partnership approach from the outset in which knowledge exchange, inspiration and policy or practice transfer can be appropriately balanced.

approach helps ensure appropriate development rather than "import" of solutions (especially assumed transfer of a provider system's approach) and assists the beneficiary country to "own" results and build sustainability based on developing experience, knowledge, and skills.

Inform and build foundations through knowledge exchange and inspiration rather than policy or practice transfer. Aim for an approach founded first on knowledge exchange and inspiration rather than policy or practice "transfer"[107] or copying. "Hard" products or systems (such as assessment systems or training models) have undoubted and often long-lasting value, and help to avoid "reinventing the wheel", but may be better sustained when based on initial partnership and knowledge exchange (which may lead to a strategic plan involving harder products) to ensure "fit" with context and capacity. When transferring, ensure a process of testing and any required adaptation.

Infrastructure support, such as IT hardware or vehicles, is infrequently included in capacity building transfer by most donors, but when available appears to be strongly valued. Depending on contractual arrangement, provision may involve a fuller percentage of resource transfer to the beneficiary than work based more heavily on remunerated provider time.

2 Create a shared vision regarding probation's potential contribution.

Take stock and explore possibilities - Clarifying drivers, aims, needs and potential benefits. Clarify what has prompted and motivated the initial interest in probation? It is important to connect with the initial thoughts and first drivers for the introduction of probation in the beneficiary country.

Ensure a clear understanding of what probation is about, and its potential contribution. If a clear understanding of what probation is about (drivers, aims, activities, needs, benefits..), and the anticipated role(s) of probation including in the sentencing framework[108] (for example as an alternative to custody, avoiding net widening), can be reached then this will contribute significantly to creation of an efficient implementation plan and probation organisation.

Build on existing delivery and strengths. Build on existing delivery and strengths to reduce "up-front" costs of a new organisation, to fit with culture, to support and validate existing staff and their experience, and enhance ownership[109].

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[107] See for example Dolowitz and Marsh (1996, 2000) who describe "degrees" of transfer ranging from copying, through emulation and a combination, to inspiration.
[108] For a succinct description of rationale and how to establish probation, see Bosker et al, 2021.
[109] See for example Canton (2006) description of probation development in Ukraine. (p514)

Employ an integral model of probation. Employing a model that sheds light on the essence of probation - its domains and enablers - helps to explain probation, to clarify which domains and enablers will be prioritised, whilst informing integral perspectives on development over time, and supporting measurement of progress.

3 Recognise and work with context and complexity, anticipating duration.

Political economy and societal constraints. It is critical to understand, grasp and to work with political economy and the societal context, which may also be related to regional or national history and culture, and its influence - including on justice and penal system context and policy - which in turn may hinder, or sometimes assist, probation development, including observance of international guidance.

In countries we studied, and others we know well, we also saw the impact on probation work of economic struggle, high unemployment, weak welfare support, and attitudes towards crime and punishment that were often influenced by an over-sensationalist press. Understanding context (combined with a partnership approach suggested above) helps to build a mutually agreed approach that takes account of ambitions, needs and potential hindrances. It also informs and helps to reduce risks of "net-widening" where a high prison population rate is sustained or only partly moderated accompanied by expansion of probation population rate.

Probation development: External pressure, free decision, or a combination?
An important question is the extent to which a decision to implement probation is based on conviction that probation is beneficial to the society, is influenced by pressure or a pull from the international community (for example in Europe, the European Commission or Union), or a combination - a phenomena we have experienced in European "neighbourhood" countries and is reflected (in non-probation specific terms) in the literature.

It is our impression, for which we find some support in the literature (see for example Evans, 2017, who remarks that negotiated and direct coercive transfer are common in developing countries) that poorer economies may feel greater pressures, including financial, to comply with international expectations. This is compounded by the fact that those countries may often find it hardest to have the financial means to invest in a new system and may possibly find it most difficult politically or culturally to implement (apparently or actually) more liberal penal approaches. Views may also differ on degree of voluntaryism between departments, stakeholders, or even within the justice sector.

Awareness of capacity and capability, and that the development process may take time. There is a danger of countries falling into the "capability trap":

wishing to perform tasks before they have sufficient capability to do so, diverting limited resources in the process. Probation examples include introducing complex assessment instruments before staff resources are sufficient to undertake them (or for assessment results to be applied in a rehabilitative framework), or training staff in interventions when the agency is not ready to support delivery with "integrity" – completely and as designed.

Capability needs to be in place both for the activity of probation implementation and for beneficiary engagement in project management of the capacity building process. In some cases, this role is additional to an already over-busy "day job".

Furthermore, establishing a probation agency effective in all or most "domains" may take years, perhaps decades. This does not need to be problematic if it is recognised that earlier steps are fundamental, helping to create institutional and individual experience and willingness to develop further. Timescale recognition also illuminates the value of sustained stakeholder involvement - and indeed coordination.

4   Identify and address potential resistances, challenges, risks, or barriers.

Identifying and addressing a range of potential **resistances** (such as political, system, organisational, public) **and risks**, including net-widening, or over-reliance on training at the expense of wider organisation, can be an invaluable contribution to future success.

Investment in a preparatory phase (as we discuss later) allows potential resistances, challenges, risks, or barriers[110] to be identified at an early stage. Examples include how widely aims and motivation[111] are shared within a new service or amongst stakeholders, similarities or differences between provider and beneficiary in penal philosophy (especially the roles of punishment and rehabilitation)[112], whether a legal foundation is in place or planned in time to

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[110] Evans (2017), based on a meta-analysis, identifies cognitive barriers at the "pre-decision" stage, environmental during implementation, and domestic public opinion. Lappi-Seppälä (2003) names three issues in establishing alternatives: how to get laws accepted on the political level, implemented on a practical level, and how to confront punitive-populist pressure from politicians and media. Dolowitz and Marsh (1996, 2000) identify risks of uninformed, incomplete and inappropriate transfer. Also see Canton, 2006, p. 512.

[111] Dolowitz and Marsh (1996, 2000) and Evans (2017) describe how decisions to engage in policy transfer can occur on a continuum from voluntary to coercive. "Bounded voluntary transfer" may also occur, especially in less well-off countries for whom funds or membership of a body may be conditional on change, or there is desire not to be "left behind".

[112] Canton (2009) identifies a potential dilemma - on the one hand aspiration to develop probation in a form that can be owned by the borrowing country, on the other hand, the outcome cannot be one in which probation is meaningfully something other than expressed in international guidelines. Furthermore (in private communication, 2022) he points out that, perhaps ironically, upheaval at times of economic and political change may make it politically harder to liberalise penal policy – even though it may be at just such times that the governments of transitional democracies feel the need to accept policy transfer.

support implementation[113], relationship (or congruence) between legislation, purpose, and values, impact on related justice or other systems that may be resisted, resources (human, practical or financial) limitations, and joint steps for their mitigation.

We consider some of the more common risks here and expand further (see Table 6) at the end of this section 6.2.2.

Net-widening. In the last decade net widening has become a recognised phenomenon as we discuss elsewhere in the report (see for example statistical data - Aebi et al, 2019) and is in our opinion deserving of specific attention. This issue plays a role in many countries - not only those where the probation service has built up over the past 20 years. It is, however, highly prevalent in several of those countries. For this reason, it is important to recognise the risk of net widening from the outset in capacity development projects. This means that attention must be paid to, for example, the question of whether there is agreement in a jurisdiction that probationary sanctions should lead to a replacement of custodial sentences. Subsequently, it is important to discuss statistical data on the use of prison sentences and probation sentences periodically with all relevant stakeholders.

Over-reliance on training. Although training is not synonymous with capacity building, its place and value is clearly of central. There is however a risk that more work is done on this enabler than on the other enablers within the wider probation service. We speculate that one reason may be the comparative political "neutrality" of training which does not appear directly to confront political, stakeholder or public views on crime or punishment. However other development needs may receive comparatively less attention; investment in, and the "transfer" and learning value of training may wane if not applied or supported by practice development, management support or by, for example, service ethos.

Other risks. Numerous other risks may be identified. These include a focus on Electronic Monitoring or other technologies without commensurate attention to addressing needs through rehabilitation or practices to support social inclusion, limited activity in Domain 1 (for example advice to courts or alternatives to pre-trial detention), limited attention to the needs (and sometimes risks) of diverse groups, or to stakeholder engagement and feedback including the voiced experience of service-users, and over-high caseloads.

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[113] McFarlane, 2014, pg. 310/311

Many of these risks have a *resource* dimension; ensuring sufficient resource is of course important to success, while insufficient resources are a frequent risk factor. Mitigation may be assisted by steps we discuss next.

> **5 Build an active network** – engaging and involving critical stakeholders and partners.

Nurture a committed core. Identify, bring together and nurture those (who may be from different fields) who may be the inspiration, initiators, and leaders of probation development, and may help "to make the case".

Early political buy in and active involvement. Early political buy in, and endorsement of probation values, are important. Weak understanding and political backing of the value and benefits of probation hinders development including adequate resource. Continuous engagement and involvement of political leaders assists, whilst ongoing, accessible explanation of the potential (and, once occurring, actual) contribution and benefits of probation may be required.

Stakeholders in the justice field should be involved right from the start.
Stakeholders in the justice field should be involved right from the outset[114]; preferably including involvement in design of the new service. Without their support, cooperation, and willingness to allow a new partner in the justice chain, development of processes (especially where they cross service boundaries such as between probation organisation and court responsibilities or processes), and an appropriate caseload in terms of volume and suitability, may be compromised, and potential support at political level reduced.[115] Whenever possible, consider bringing justice stakeholder representatives together as part of a probation development strategic or steering group.[116]

Embrace initiatives of NGOs and citizens. NGO's and the public also need information regarding options other than prison sentences, and that they are both needed and successful. Furthermore, embracing the initiatives of NGOs

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[114] In Romania, the judiciary were involved at an early stage in meetings with the new probation service, helping to develop mutual understanding and agreement about the probation contribution, including pre-sentence.

[115] In all five countries studied, and in other countries we know, at least an "accommodation" by stakeholders such as the prison service, the public prosecutor's service or the judiciary has taken place to acknowledge the value and position of probation as "the new kid on the block". Even so, in some cases the new service may be seen as a competitor or as reducing the competence of existing stakeholders. See also: Canton who writes about the introduction of probation in Ukraine (2006) and later more generally about resistances (2009).

[116] In Latvia a steering group including Government representatives, the Judiciary, NGOs and academics formed a nucleus to develop and implement a structured plan for probation over several years.

and citizens can be highly productive, as we have seen in several countries.[117] NGOs have, for example, often been at the forefront of probation pilot initiatives and non-discriminatory practice, helping ensure services address the requirements of vulnerable and minority groups including Roma.

Include academic perspectives. Academics, who may act as critical friends, often add breadth and depth to understanding of probation and its potential, frequently including the additional benefit of international perspectives. They may also add weight and data to the case for development.

6 Achieving the vision - a holistic and integral strategy and implementation plan that coordinates work in the domains and enablers.

Invest in the preparatory phase. Investing in the preparatory phase is effective, but often underplayed. This phase allows better understanding of context, and the respective positions and interests of the diverse stakeholders including politicians and justice chain partners as we describe earlier. Coalitions can be built and foundations for a project plan laid. We see that due to limited budgets and reticence of donors to spend time "scoping", the preparatory phase is often under pressure. However, time invested more than pays for itself, helping providers develop understanding of beneficiary needs, aims, and constraints, ensure parties are "on the same page", avoid "dead ends", identify stakeholders, and create the mutual "partnerships" which often characterise successful projects. Coordination with other donors, providers and projects can be addressed.

A step-by-step approach: Prioritising domain activities that strike a chord (others may follow). As not all domains or enablers can be implemented in a short period, it is wise to prioritise activities in the domains (and therefore supporting enablers) that strike a chord with the justice system and wider society. Often, they are alternatives to custodial options (for instance a community sentence or the suspension of prison sentence under probation supervision), or less commonly, early release.

An Incremental Approach to Enablers: Most established and successful services attend carefully to all enablers. Although this may appear challenging for newer services, we know several that have excelled, usually adopting a step-by-step incremental approach over several years as the service's mandated competencies and reputation have grown, building staff and skills, partnerships,

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[117] Both Latvia and Romania built on the early probation experience of NGOs, incorporating lessons into statutory development. Early experiences were also in effect pilots of later activity. Civil engagement continues, Latvia for example has recently adopted additional approaches to community involvement, whilst Poland has an established system of community volunteer involvement.

evidence, communications, infrastructure, and other enablers as resources allow.

Balanced attention to prioritised domains and required enablers: In all cases it is necessary to ensure enablers are developed to support priority domains. For instance, if a country wishes to start with a pilot of community service, it is important to identify conditions for pilot success: a limited legal framework (without necessarily overhauling the totality of the Criminal Penal - and Procedure - Code), information to, and cooperation with, the judiciary focused on this probation practice, locating places where offenders can carry out work, training staff in this type of work. On the other hand, it may be advisable to de-prioritise, for instance, training probation professionals in complex work for which, for example, legislation or resources are not yet in place for professionals to practice learning.

Implementation of the Domains and Enablers

Achieving the vision is supported by a planned step-by-step process of implementation which addresses all four domain areas and all four groups of enablers*. Domains and enablers are discussed earlier and noted in brief here.

> **i) Domains (the WHAT of probation)**
> 1. Pre-sentence
> 2. Community Sanctions
> 3. Involvement in individual sentence planning
> 4. Execution of conditional release
>
> **ii) Enablers (the HOW of probation)**
> 1. Legislation & Leadership
> 2. Community & Partnerships
> 3. Organisation
> 4. Processes and practices

A detailed discussion of supporting steps within each enabler is contained within <u>Annex B</u>.

> **7 Project Management** –a step by step approach, involving piloting, review, iterative and flexible development, continuous and coordinated across time and donors.

Take account of other relevant initiatives. Build on any previous projects or initiatives relevant to probation development, and integrate with others underway or in the pipeline, a point related also to "donor coordination" which we note blow.

Build in flexibility. Building in the possibility of flexibility, where possible, in the project plan can often prove valuable. Although, in a project plan, assumptions

are made regarding how policy and practice will be developed and progress made, the unpredictable detail of development, emergence of resistance, or idiosyncrasies of individual national contexts, can require flexibility in response. Moreover, unexpected change may offer opportunity to local project leaders and organisations to identify local solutions to local circumstances.

Clarity of project budget. It is helpful to establish early clarity of project budget, extending beyond the more obvious costs of international development partnership such as a percentage beneficiary contribution to overall budget: for example, when staff are not able to interrupt usual work to invest in training, or to implement learned working procedures following training, progress will be compromised. The same holds true for other aspects such as budget availability for travelling in the country or for training and meeting facilities. Importantly, the availability of project follow-up budgets (on the part of donor/s and beneficiary) can significantly influence the important possibility of follow-on within a reasonable timescale, supporting continuity and on occasion sustainability of results.

Pilot and Review. Pilots (to be carried out in certain regions or on a limited scale) provide a useful test of new practices and approaches and help the new service and its environment adjust and become accustomed to change. Pilots also help to establish conditions and identify adaptations needed for successful change on a wider scale and (especially when they build on local practices) support fit and ownership.

Avoid a policy to implementation gap. Much is written in Western Europe about the difficulties of turning policy into practice. A gap between plans, policy and implementation is quite common. Perhaps understandably, the probability of this gap occurring in, for example, former Soviet Republics may be greater, prompted by factors such as fast-changing discontinuity in political leaders, or traditional "top down" management style less focused on connecting *"actors vertically and horizontally in a process of collaboration and joint deliberation."*[118] Probation service managers may also have a high turnover rate (we observe that where this did not occur, the probation service has developed steadily!).

Another difficulty we have noted is that managers may carry a more traditional culture of management (and belief about offenders and sanctioning) than younger colleagues, on occasion hindering new staff from turning new training into practice. Whenever possible, steps should be taken to mitigate this eventuality, including of course involvement in training.

Support donor coordination. Multiple capacity building activities may be planned or delivered in parallel, in probation or related fields (for instance

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[118] See: Hudson et al, 2019

prisons). It is important to invest in donor coordination to see how projects and activities can build on each other, gaps be identified, and how resources can be best spent "mindfully"[119].

Build sustainability. Creation of sustainability - organizational and individual - should be considered from the outset. This can be supported by a knowledge-based approach, building on strengths to foster choices, future organisational and individual capacity, and hence sustainability – rather than a focus on, for example, programme transfer. Collaboration involving academia can also help to build a body of knowledge in the beneficiary country.

Consider material as well as knowledge-based support. Whilst many donors focus on knowledge-based support, we found (as noted earlier) that material support[120] is strongly appreciated, for example computer hardware, and technology-based supervision tools (an area of need likely to grow). In all cases the importance of coordination applies, whether between instances of knowledge-based provision and/or when materials are being provided.

Aim for follow-up projects without (long) interruption. As probation development takes time, it is important that capacity building projects follow each other up without (long) interruption, and that there is a logical flow of content in each project. In some countries the "dyad" between consultants and local project and/or probation leaders was highly productive, contributing to a longer period of involvement than the usual 1, 2, or perhaps 3 years.

Encourage long-term local project (and service) leaders when possible. We have seen how, where possible, longer-term consultants (as well as beneficiary leaders and counterparts) support success – "never change a winning team"! They are better able to understand needs and to develop and deliver the technical skills appropriate to the specific requirements of the setting and deliver with appropriate soft skills we discuss next.

8   Professional technical and "soft" skills.

Experienced, committed, skilled and relational experts/consultants:
Successful capacity building is a technical *and* a relational business! A project is unlikely to be fully successful without committed and experienced consultants who bring strong technical skills, have a warm style of listening and communication, get alongside and "into the space of" the beneficiary, can understand, balance, and work with international and national context, are

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[119] In Georgia, a donor coordination group has helped to ensure that the contribution and resources of projects in related fields are "mindfully managed".
[120] We distinguish material support (such as computer hardware) from knowledge-based support which may include specific "products" such as assessment systems or training programmes.

sensitive and adaptable to political and stakeholder environment, and can inspire a beneficiary to build their own probation system that strikes a chord with the national context.

Language and Culture. Experts should at the same time be aware of, and equipped to address, differences of culture and language, whilst interpreters should be able to translate the meaning and values behind words[121]. Understanding cultural difference requires constant effort by international team members, who should be selected and supported accordingly.

9 **Recognising and engaging the stimulating, supporting, and sustaining role and contribution of supra-national organisations and professional bodies** in probation development (including through standards, data, finance, research, and knowledge sharing).

Draw on the influence and support of the international community. It is valuable to support the beneficiary to identify and embrace opportunities offered by supra-national organisations and professional bodies in stimulating and sustaining probation development, whenever possible and desired by the beneficiary, seeking continuity of international support with minimal interruption.

We refer to the "triangle" of standard setting, guidance, monitoring, and co-operation of the Council of Europe, European Commission interest in encouraging probation development (offering financial support to capacity building projects), and the role of professional "epistemic communities" including through knowledge-sharing and a growing evidence base.

Support exposure/awareness of the beneficiary country to different probation systems. Exposure of the beneficiary country to different probation systems (not only those of the international project provider(s) or leader(s) leads to better understanding of variations and similarities of probation practice and can help the beneficiary country to shape probation in a way fitting to various aspects of national context including resources, stakeholders, and changing penal culture.

Involve experts from, and encourage field studies to, a range of countries. Just as in earlier stages when a vision is being developed, involving a range of countries, their experts, and field studies to different jurisdictions, supports perspective and beneficiary choice, and helps the beneficiary to shape probation in a way fitting to national context.

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[121] Good interpreters and language assistance are "vital members of the team" (McFarlane, 2014, p 312), helping to bridge language and cultural barriers.

Involve countries with a related history or experience. Involving countries with a related history or experience can ease issues of cultural misunderstanding, and bring others' experience of political, economic, and penal transition, obstacles to implementation, and how they have been overcome[122].

Encourage the participation of the beneficiary country in professional organisations such as the CEP. In Europe, the value of the CEP to established and newer members is evident in its wide membership and engagement including in international practice sharing, research, and the probation development "journey". CEP acts a motivator, learning source, and "companion on the journey."

10 Build in evaluation, reporting, and research.

Capacity building in probation could benefit greatly from systematic reviews and audits of capacity building projects. Process and outcome evaluation could not only inform the immediate circle of involved individuals and stakeholders, but also be a valuable source of information for future projects in other jurisdictions.

Project evaluation should include project capacity building "lessons learned" as well as a direct focus on project results. We suggest that the domains and enablers model provides a means to place developments within a "whole system" context, whilst factors such as those described in this chapter provide a flavour of success factors, risks and hindrances which shed light on factors such as the organisation and its staff, the impact of change on persons supervised and other stakeholders (such as their perceptions and motivation towards probation), and impact on the wider justice system and society as a whole.

European and global standards and practice – tension or convergence? We sometimes found an actual or potential tension between European Guidelines and a country's wish to find solutions in keeping with national sentencing traditions (resulting in, for example, net-widening as discussed elsewhere, and growing mass supervision, or Electronic Monitoring without attention to rehabilitation). As we note later, we speculate (perhaps hope!) that such practices may be a *passing phase* in European probation development in which prison sentences are replaced by alternative options in which intrusive measures gradually ease in conformity with European guidance, facilitated perhaps also by progress in economic transition.

Nonetheless, we are aware too of the risks of a form of *"justice colonialism"* in which it would be narrow to assume that western policy, practice, or the

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[122] For example, Latvia is supporting probation development in Ukraine, whilst Romania has supported Croatia and Moldova.

evidence base, is necessarily "right" in every setting. True knowledge-exchange and inspiration should be seen progressively as exchange between equals.

Questions of this sort highlight issues such as the interplay of international context (including standards, evidence base, and the roles of supra-national or international organisations and professional associations) with national and system context, regional variations in how probation does or may look, the impact of colonialism (which may have shaped legislation, combined with, overlain, or replaced traditional approaches), and implications for knowledge exchange and capacity building, particularly with a global "north-south" component.

These and similar issues deserve far more attention. We raise them again in the following concluding section of this report on implications for the global community.

Potential Hindrances - What gets in the way of Successful Capacity Building?

Probation capacity building can be a difficult and often zig zag process towards success (or sometimes failure). Hindrances and issues are often in effect an absence of supporting factors such as those described earlier (for example, insufficient planning, poor advance development of mutual understanding, limited involvement of justice stakeholders, underestimating complexity and time requirements, or insufficient attention to diversity).

Table 6 illustrates issues we observed that should, amongst others, be considered and mitigated, working, when necessary, with other institutions and stakeholders.

1 **Net-widening and mass supervision.** Recent years have seen increased understanding of concepts of net-widening and mass supervision. These point to increasing popularity of non-custodial sanctions bringing more offenders within the net of justice. Aebi et al., analysing the evolution of imprisonment and community sanctions in Europe from 1990 to 2010, show that both the number of persons serving community sanctions and the number of inmates has increased continuously in most European countries during the period studied.
Comparison with evolving crime rates reveals the latter cannot explain such trends; instead of being alternatives to imprisonment, community sanctions have contributed to widening the net of the European criminal justice systems. Analyses also show wide variation in the use of community sanctions across Europe. Many countries that have, or are aspiring to, become EU members, have a high number of prisoners and a high number of people under probation supervision (Aebi, M.,

Delgrande, N. and Marguet, Y. (2015),), a phenomenon that appears to reflect a persistent influence of political economy, culture, and penal tradition.

2 **High caseloads, but insufficient time for rehabilitation.** A reasonable caseload is important to success in influencing probationers positively. For effective probation work, the size of client base per officer should not exceed about 50 persons; above this limit, the effectiveness of the probation work drops sharply.[123] [124]

Although the number of probation offices and officers has increased over the years in countries studied in this research, caseloads remain high to very high. Caseload size is due partly to increased probation referral which might be seen as proof of stakeholder trust in probation organisations to work well. It remains questionable whether staff numbers always tend to lag behind growing case influx, or whether high caseloads reflect government doubt concerning whether probation investment should be prioritised.

3 **Technology: Preference for Electronic Monitoring and reporting.** In some of the countries researched, we observe a reticence to use Electronic Monitoring on a significant scale. Instead, those countries focus on probation supervision that has at its core, a positive relationship between the offender and the probation officer. This is in line with a 2010 formulation by the Council of Europe: "Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice."[125] [126]

On the other hand, we have observed countries with a preference for Electronic Monitoring on a large scale, but lacking the meaningful contacts that allow for a working relationship to be developed. In one country we know of, the Electronic Monitoring caseload (without meaningful offender – officer contact) has in effect prevented focus and resource development of other probation activities (for instance, suspension of prison sentence on condition of probation supervision, or

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[123] Academic evidence suggests that reducing probation caseloads is associated with improved compliance and reductions in reoffending. See: Caseloads, workloads and staffing levels in probation services, HM Inspectorate of Probation Research & Analysis Bulletin 2021/02

[124] Rule 29 of the European Probation Rules formulates: "Probation staff shall be sufficiently numerous to carry out their work effectively."

[125] Basic principle 1, European Probation Rules, 2010.

[126] Later, in its Recommendation on Electronic Monitoring in 2014, the Council of Europe stressed a need for meaningful contacts in the framework of Electronic Monitoring. "Electronic monitoring may be used as a stand alone measure in order to ensure supervision and reduce crime over the specific period of its execution. In order to seek longer term desistance from crime it should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders." (Basic Principle 8, Recommendation on Electronic Monitoring, 2014)

conditional release with probation supervision). In short, the opportunities of technology should be harnessed to support all probation aims, extending beyond monitoring to include rehabilitation, inclusion, and the desistance journey.

4 **Minor role of probation in the pre-sentence domain.** It is striking that in most countries researched, the role of probation in the pre-sentence domain is limited. The number of pre-sentence reports is small, and often reserved mainly for vulnerable groups such as juveniles or females. Research sometimes revealed a tension between judiciary and probation. Although in some countries the judiciary has made good use of non-custodial and probation sanctions, it was in the main not based on probation advice in individual cases. One apparent explanation may be desire on the part of the judiciary to be perceived as fully independent. It is also clear that probation reports on a more regular basis would complicate working processes between the judiciary and the probation services and require agreement. A further significant factor is the varying role of prosecutors in relation to sentence recommendations. Low report use may also reflect in part the Council of Europe having not yet made comprehensive recommendations on this topic. We also note the minor role of probation organisations, in most European jurisdictions, in advising on or facilitating alternatives to custodial remand - or indeed diversionary measures including restorative approaches. This area too could be addressed in more depth by bodies responsible for standards or guidance.

5 **Tension between European standards and practice – a changing picture?** We noted earlier a potential tension between European Guidelines and a country's wish to find solutions in keeping with national sentencing traditions (leading for example to mass supervision, or to electronic monitoring without attention to rehabilitation). We speculate whether such practices may, at least in some cases, be a passing phase of probation development in which prison sentences are first replaced by alternative options in which more intrusive measures gradually ease in conformity with European guidance, facilitated perhaps also by progress in economic transition and changes in media and public attitudes.

6 **Poverty and exclusion are criminalized** in many countries around the world, affecting the poorest and most marginalised members of society and leading to their over-representation in prisons and criminal justice systems. Laws are enforced (sometimes dating from colonial eras) that lead to imprisonment for acts associated with poverty and survival with little connection to public safety.[127] In Europe many prisoners have

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[127] See: Penal Reform International https://www.penalreform.org/global-prison-trends-2022/laws-that-criminalise-poverty/

mental health issues or are otherwise from disadvantaged, vulnerable or marginalised groups. Imprisonment (especially in crowded conditions) is unlikely to assist and may increase exclusion and/or poverty.[128] Whilst alternatives should offer a preferable solution, they may do so with a high risk of mass supervision (as discussed above), or limited attention to need, both of which also militate against opportunity to address poverty or exclusion.

7 **Limited progress in building a global picture of probation.** There remains limited progress at the global level in building a comprehensive picture of developments in the probation / community corrections field. Despite encouraging initiatives such the World Congress on Probation and Parole, in collecting data on provision, practice and research, and by the United Nations[129], this still very incomplete picture hampers understanding of what is in place, how well it works, and the kind of exchanges and actions that could help to speed up the use of non-custodial options and their effectiveness.

As PRI reports "Two years after the adoption of the Kyoto Declaration and the UN Common Position on Incarceration, … little progress has been made in moving away from using imprisonment as the 'default' response and towards improved proportionality in sentencing."[130] Furthermore, data, when available (as through work of the Council of Europe),[131] provides insight into risks such as net-widening and mass supervision. Limited progress in building a global picture of probation was an important motivator for undertaking the present research and contributes to our final set of conclusions on implications for probation development globally.

Table 6: Potential Hindrances in Probation Capacity Building.

6.2.3. Implications for Probation Development Globally

Globally, as we have discussed earlier in this report, international bodies including the United Nations argue for, and support, efforts to deliver "alternatives" more widely and convincingly. Yet, as we also remark, in many world regions the numbers in custody continue to increase, particularly pre-trial

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[128] Most of the research into the link between poverty and criminality or between poverty and penal reaction has been carried out in the United States. See for instance DeFina, R., & Hannon, L. (2013): "The evidence indicates that growing incarceration has significantly increased poverty." And in Europe (University of Coimbra, 2022): "……experts agree that circumstances such as homelessness, unemployment or being a foreign national may in practice constitute barriers to the choice for a non-custodial penalty." (p.102)

[129] For example, the UNODC Handbook on the Establishment and Sound Operation of Probation Services (publication expected 2023)

[130] Global Prison Trends (2023)

[131] For example, SPACE 11 data on Persons under supervision of probation agencies - https://wp.unil.ch/space/files/2022/06/SPACE-II_2021_Final_report_220614.pdf

and in the case of women,[132] whilst alternatives are either not in place, limited in scope, or not fully utilised.

Although capacity building is often complex, European experience points to several success factors (as well as hindrances and points to avoid). This experience leads us to consider potentially transferable lessons and implications for probation development globally - important differences between (and often within) regions notwithstanding. One important lesson is that significant global progress in building probation work requires action on the part of global and regional communities and organisations as well as jurisdictions or nations.

We consider –

- the role (at global and regional level) of professional or epistemic communities and supra-national bodies
- international research, including regarding context
- the legacy and impact of colonialism
- the transferability of European lessons on probation development
- the richness of probation work globally, with potential benefit to us all.

Based on these considerations we offer recommendations for the international community (see Table 8).

The global and regional context of Probation Development

a) The role of Professional Epistemic Communities

We have remarked on the valued contribution of the CEP to exchange, collaboration, and cooperation on probation advancement in Europe. We have also welcomed the promising occurrence every two years of the World Congress on Probation and Parole[133] which first took place in 2013. Informed by the contributions of these development we believe –

- it could be highly profitable for probation development globally if **international probation organisations** like the CEP[134], and other networks such as APPA[135] and PACCOA[136] **could be inspired in other regions**

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132 See: https://www.penalreform.org/global-prison-trends-2022/women/
133 The World Congress on Probation is also known as the World Congress on Probation and Parole or World Congress on Community Corrections depending on where it takes place.
134 The Confederation of European Probation. We are greatly encouraged by discussions on the potential establishment of networks in the ASEAN region and Africa.
135 The American Probation and Parole Association.
136 Probation and Community Corrections Officer's Association (Australia)

- even better if these probation organisations or networks could be accompanied by a **world-wide probation network or organisation**, possibly building on the World Congress on Probation and Parole, connecting, and cooperating regularly together and with other like-minded networks in the criminal justice field such as the ICPA[137]
- enriching perspectives through regular intensive exchange and cooperation on probation policy, practice, and research on an equal and inclusive basis, supporting probation organisations established, new, or planned, involving voice and perspectives of stakeholders including practitioners, service leaders and service users, and furthering cooperation with international bodies (such as UNODC).[138]

b) The role of Supra-national bodies

In Europe the influence of regional supra-national bodies is difficult to under-estimate.

The Council of Europe has focused progressively on probation for several decades, notably agreements on **"soft law" recommendations and guidelines.** Furthermore, understanding developments, trends, and issues such as mass supervision has been greatly strengthened in Europe since 1992 by the introduction of SPACE II statistics.

We have also observed the significant influence of the European Union on probation matters, notably in the framework of the accession process during which candidate countries are urged to avoid prison overcrowding and improve conditions, and the value of EU **budgets to support probation capacity building.**[139]

Despite obvious differences from the Council of Europe and EU, and between organisations in different world regions arising from their specific remits and other factors, we would –

- encourage existing inter-governmental cooperation networks in other regions to **extend and increase attention to probation development.**

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[137] The International Corrections and Prisons Association

[138] As we wrote in 2021, looking forward to 2030 "Stronger than at present, probation umbrella organisations coordinate, or become more integrated, with branches in different part of the world. The aim is to increase bonds, give impetus to research, build, and share knowledge, generate compelling messages for communication at large, and to support services - established and new." Pitts and Tigges, 2021

[139] Availability of budgets extends sometimes outside of Europe also, including to Central Asia and Africa; see for example, the "PLEAD" project in East Africa funded by the European Union and implemented by UNODC.

UNODC has recently observed that the Council of Europe has developed guidelines that are not replicated at global level: "The UN standards and norms in crime prevention and criminal justice currently do not encompass more specific normative guidance on probation"[140].

We are therefore pleased that UNODC has undertaken in 2023 to develop a handbook on the establishment and sound operation of probation services. This will build on the probation focus incorporated in the Kyoto Declaration and work of an expert group on reducing reoffending (both 2021), and on the long-established "Tokyo Rules"[141]. The handbook will cover probation work in all of what we refer to as the "four domains".

With these points in mind, we also believe it would be helpful if supra-national bodies–

- **revisit and update existing recommendations and guidance** on probation / community-based work, with attention to all domains and measures, particularly those that have received less focus such as pre-trial work, reintegration, and use of technology including digital, informed by attention to regional differences and need.
- could focus **budgets** at the disposal of the UN and other supra-national organisations more directly on the development of probation agencies and their work. Funding of capacity building would provide practical expression to the forthcoming handbook on the establishment and sound operation of probation services.[142]

Turning to the acute **lack of data** on probation work globally, we note comparison with prisons which have benefitted for many years from the World Prison Brief[143]. We welcome developments such as the GLOBCCI[144] with focus on both data and practice, and the SAW[145] project. However, in our opinion -

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[140] See: Job opening no 22 – UNODC-192093-Consultant (October 2022)

[141] United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990

[142] We note that some Programme Network Institutes (PNIs) of the United Nations, such as the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) already play an active role in their region (and beyond) in supporting development of probation organisations, as part of work to support inclusion and reduce reoffending. They offer a powerful example of the opportunity for PNIs in other regions to take similar steps, which could be supported by the recent development of PNI inter-regional cooperation in this field which follows the 2021 UN Congress on Crime Prevention and Criminal Justice, held in Kyoto.

[143] World Prison Brief, hosted by the Institute for Crime and Justice Policy Research at Birkbeck College, University of London - https://www.prisonstudies.org

[144] GLOBCCI - The Global Community Corrections Initiative - https://globcci.org

[145] SAW – Supervision Around the World - https://sawproject.org/community-based-supervision/

- the **availability of data** could be greatly strengthened by support from a global organization such as the United Nations, comparable to the SPACE data of the Council of Europe.

The significance of Research

The potential contribution of probation professional communities and networks to research is significant, and in Europe strongly supported by academic involvement.

At global level, much probation research has, as we see it, historically tended towards a Eurocentric, American or Anglo-Saxon emphasis. However, this is far from the whole picture, as contributions to events including World Congresses, ICPA forums (especially Research symposiums), and the UN Kyoto Congress increasingly demonstrate. We are more and more aware, in large part through these and similar events, websites, and publications, of similarities and differences between (and within) regions in probation matters - and in stages of probation development.

This is also true of context, regional and national, including culture, economy, and the many and varied challenges addressed by governments and penal systems. We have seen in Europe the critical influence of national context on priorities and practice in new probation agencies, and a potential for tension between national context, justice system context, and international context such as rules or guidance. Examples include rate of custodial use, degree of prison overcrowding, and contributing factors for instance, sentencing policy, how drug, mental health or poverty-related factors are addressed.

Our assumption is that findings such as those of Cavadino and Dignan (2006), Tonry (2007), and Lappi-Seppälä (2008) regarding the influence of national context on penal policy, may be relevant in other world regions, and influenced by additional factors including the history and legacy of colonialism (as we consider next).

With these points in mind, we would encourage -

- continued increased emphasis on **research and evaluation** and **sharing results on a collaborative, inclusive, and equal basis**, by networks, (international) organisations, academics and universities, and service providers, to inform **development, impact**, and **communication** about the contribution of community-based work to fair and effective justice and safer societies
- comparative attention to regional and national factors including the **global north and south**, exploring similarities, differences, and transferability of approaches

- including focus on **context** for instance political economy and penal/justice system, colonialism, associations between justice and social policy, S.D.G.s, reduced crime, and safer societies (research, such as that by Cavadino and Dignan (2006), Tonry (2007), or Lappi-Seppälä (2008) could help improve understanding of relationships between **political economy and penal policy** in regions of the world beyond Europe)
- stronger **academic links** between regions, including where probation research is less or more developed[146]
- support to sharing through, preferably linked, international **databases**. A model such as domains and enablers could support structure and accessibility.

The impact of Colonialism

The impact of colonialism on justice is, we believe, too little considered or understood; we have seen that colonialism has helped shape legislation, justice systems, and probation work – for example policy and practices - today in many countries. Impacts may include, for instance, ambiguity regarding the contribution of traditional approaches in a modern context.

Not surprisingly, the influence and legacy of colonial powers may differ, even within one region: Tonry (2007), for example, points to differences in French and Anglo-Saxon attitudes to justice, including the effect of adversarial political and judicial systems on punitiveness.

Other influences and effects of colonialism we are aware of may include -

- overlay on, or disappearance of, traditional approaches to justice
- a tension between traditional and modern justice systems
- legislation which may continue to reflect colonial era values, such as harsh response to theft of low value property
- a complex legacy of more than one colonial power, and
- legacy and influence which cuts across important historical boundaries

Furthermore, practices of indigenous communities which may have a long tradition are becoming better recognized and valued internationally.[147] We also note with interest the "restorative" story of indigenous Americans who insisted

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[146] The UN PNIs are also well-placed in relation to inter-regional (collaborative) research including in under-researched areas such as pre-trial alternatives, restorative justice, community engagement, technology potential and risks, and the universality of core skills and desistance approaches. As we note above, we would also advocate more attention to "regional" criminology and criminology of the "global south".

[147] For example, restorative practices, such as what we now term Family Group Conferencing, practiced traditionally in New Zealand, now recognised internationally for several decades.

"no more harm" be done by European settlers in response to a violent crime, even when the indigenous population were themselves victim of the crime committed by settlers. Reparation was valued above retribution.[148]

With these and other considerations in mind we would encourage –

- more focused attention on the influences and legacies of colonialism, and on traditional practices (which may have been impacted).

Success factors in Probation Capacity Building and Development

Success factors in probation development *project delivery* in Europe may help inform success in other regions, differences between regions notwithstanding.

Recognising a potential for greater *differences between parties* to capacity building delivered inter-regionally, we highlight the following –

- pre-project liaison, so that parties can fully get to know each other, assumptions based on own systems tested, political and stakeholder ownership developed, and project preparation conducted to address locally informed need and priorities, building on strengths.
- Priority domain competencies and supporting enablers should be selected taking account of aims and needs (recognising probation development may not bring immediate prison cost saving), financial feasibility and capacity, relationship with wider development objectives, and ability to "strike a chord" with politicians, media and public.
- Donor coordination in the interests of projects being complementary in philosophy and content, avoiding duplication, and providing continuity in beneficiary support.

We saw, in the European context, potential **tension between international standards and national practice**. In a global context, we suggest that international standards are historically more likely to have been influenced by experts from the "global north" than "global south".
At the same time, pressure to adopt international standards may be amplified in the case of poorer countries, including, or perhaps especially, if linked to

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[148] The Treaty of 1722 is the oldest treaty recognized by the U.S. State Department. It follows a conflict between indigenous people and new settlers that resulted in a murder. "What's distinctive ……is the alternative approach it offered to creating a fair society, one in which people who commit crimes can later be integrated into the community – and one in which a crisis of violence can be resolved without inflicting further harm. The treaty provided a working model of restorative justice, demonstrating how communities of the victims and perpetrators of a crime can come together to repair social relationships through economic, emotional, and spiritual offerings." Eustace, 2022.
https://www.nytimes.com/2022/11/30/opinion/native-american-treaty-justice.html

international funds, whilst beneficiaries may of course also be strongly motivated to adopt international standards and be looking for support in doing so. Further, as European experience has demonstrated, it should be recognised that views on change may vary within a country and over time.[149]

We only touch on this complex subject here, but suggest that helpful approaches we saw in Europe may assist –

- Capability should be built through knowledge exchange and partnership, with beneficiaries in the lead, informed whenever possible by local and regional knowledge and experience (especially by countries with a similar trajectory of development) and networks, based when possible, on pilots and staged roll out.
- International practices, when drawn on, should not assume primacy of donor or provider experience, with consideration with the beneficiary of the best balance of lesson drawing, emulation, or inspiration. "Copying" should be used with attention to suitability and any necessary adaptation.
- Donors and providers based in the "global north", whilst having international rules and standards in mind, should be aware of any legacies of colonialism, not assume an automatic western world view or practice "answer"[150], and support a beneficiary in determining steps and aspirations building on strengths and addressing need.
- As always, project leaders and experts should be experienced in probation and able to place this in an international and national context, not least of the beneficiary, be objective regarding their own experience, demonstrate commitment, be available preferably for a period of time, be warm in style, sensitive to history and culture, and open to local traditions and solutions.

The richness of probation work globally

Just as between nations and jurisdictions within Europe, Europe and other world regions have (of course) so much to learn from each other. Equal and inclusive cooperation and exchange offers opportunity to challenge, augment, and enrich perspectives, established values, policy, and practice, and (from a European standpoint) European interpretations of how probation "should be done."

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[149] As Canton (2006) argues, "sound ethical concerns" to avoid imposition must also take into account the non-static nature of culture - something we have observed often when supporting probation development in Europe and other regions.

[150] It should be recognized, for example, that international standards may be resisted because they simply do not fully reflect preferred custom, an example from prison development being a preference in some jurisdictions for shared rather than single cells.

By way of example, we finish with just a few of the many stimulating and motivating exemplars of work globally that have caught our own imaginations –

- the extent of Japanese community engagement in support of (re)integration, especially through the work of community volunteers
- community, family, employer, and media communication and engagement in Singapore, including through the "Yellow Ribbon" project
- in Kenya, "sensitisation" of communities in support of (re)integration, and support in achieving Sustainable Development Goals on behalf of, and by, service-users such as by "green" community service projects and empowerment projects for women
- understanding and addressing needs of indigenous populations through intensive involvement in service review and development, for example in Australia, Canada, New Zealand, and the USA.

Stronger inclusive collaboration - enhancing roles, organisations, and a richer contribution!

6.3. Summary of Conclusions and Recommendations

We hope this study will contribute to the growth of knowledge about capacity building and spread of probation activity internationally. We conclude –

First - that the "Domains and Enablers" model provides a straightforward and user-friendly tool with which to explore and clarify probation concept and purpose. The framework or "language" supports communication between parties to capacity building about the "essence" of probation and helps to clarify and coordinate planning and delivery over the time periods required to develop a successful service, reflective of international standards.

We believe the model has wide international application. Nonetheless we also hope our study will increase awareness of need to focus more sharply on evaluation of probation and development activity, as we noted a common lack of understanding of what supports success in probation capacity building, and in probation work and development more generally.

Second, applying the consolidated field study results, the findings of enquiries concerning European and international influences on capacity building, and the literature findings, we identify **10 implementation success factors** supportive of building probation capacity.

The 10 factors provide discussion points which are, we believe, helpful to all parties to probation capacity building, in particular donors, beneficiaries, and service providers. The 10 factors are set out in the following Table 7.

Third, we suggest there is scope for more, and better coordinated, collective action at global level to support probation development. We are richer together! We therefore offer **5 recommendations for the international community** to support probation development globally.

Very significant in the European context has been the motivating, connecting, and supportive role played by, for example, supra-national organisations and professional bodies including in standard setting, data, development finance, research, and knowledge sharing.

International differences in factors such as income or political and economic culture notwithstanding, in our opinion stronger collaboration involving such organisations and associations, alongside other stakeholders and voices, similarly have a vital role to play in the generation of future direction and impact within a wider international probation family.

The 5 recommendations for the international community are set out in the following Table 8.

10 Success Factors when building Probation Capacity

Based on our research, we have sought to identify the most important success factors in building probation capacity. These factors can be distinguished but are interrelated. For this reason, there is a degree of overlap in their descriptions, which in our opinion supports understanding of the relationship between them.

1. A collaborative, partnership approach – based on knowledge exchange and equality, empowering the beneficiary country to build capacity by addressing identified needs, drawing on a range of international policy and practice, and on national policy, practice, and strengths, to create a tailored approach.
2. Creating and communicating a shared vision or aspiration regarding probation's potential contribution, that strikes a chord.
3. Recognising and working with context and complexity: the influence of international, regional, and national social/economic environment or context on penal and justice system culture, drivers for change and direction, capacities, capabilities, budget, resources; the complex, multi-layered, unpredictable nature of change; consequently, potential duration of change and support.
4. Identifying and addressing a range of potential resistances (such as political, system, organisational, public) and risks, including net-widening, over-reliance on training at the expense of wider organisation and system needs.
5. Building a network – engaging and involving critical stakeholders and partners, placing probation's vision and contribution within the context of wider justice system evolution.
6. Achieving the vision – by devising a holistic and widely understood and communicated integral strategy (preferably incorporating benefits analysis) and implementation plan that balances work in domains and enablers.
7. Project Management – allowing for preparation time, development of mutual understanding, a step-by-step approach, piloting, review, iterative and flexible development, continuous and coordinated across time and donors.
8. Professional technical and "soft" skills – involving experienced, knowledgeable, long-term, committed, inspiring, technically skilled and relational experts/consultants, "getting into the space of" the nation or jurisdiction, balancing international and national context - sensitive and adaptable to culture and language.
9. Drawing on and collaborating with supra-national organisations and professional bodies in probation development (including through standards, data, finance, research and knowledge and practice sharing).
10. Building in evaluation, research, and reporting.

Table 7: 10 Success Factors when building Probation Capacity.

5 Points for consideration by the International Community to support development globally, attending to all four probation domains

1 Build a world-wide probation network, platform, or organisation:
- linked to regional networks and able to support their development, and to relevant regional and global trans- and international bodies, NGOs, and other organisations
- encouraging regular intensive exchange and cooperation on an equal basis on probation policy, on research, and on evidenced and promising practice, learning from and enriching probation's global diversity
- supporting accessible communication of the societal and economic advantages of probation and how to introduce and strengthen probation systems
- assisting capacity development initiatives, globally and regionally informed, including facilitating access to knowledge and collaboration with experts and countries with a similar background or trajectory.

2 Revisit and update existing recommendations and guidance on probation / community-based work, ensuring attention to all domains and measures (for instance pre-trial work, reintegration, Electronic Monitoring), informed progressively by attention to regional differences and learning.

3 Ensure that **budgets** at the disposal of the UN and potential donor organisations have a **direct focus on the development of probation** agencies and their work. Improve **donor coordination** in the interests of helping ensure projects are complementary, avoid duplication, and provide continuity in beneficiary support.

4 Strengthen the **availability of data**, comparable to the SPACE data of the Council of Europe, addressing development in all four domains of probation.

5 Promote **research and evaluation** to inform development and **communication** about the contribution of community-based work to fair and effective justice and safer societies
- to improve stakeholder-informed understanding and evidence on effectiveness in achieving probation aims, for example reducing reoffending
- to ensure attention to regional and national factors (such as relationships between national political economy and penal/justice system context, policy and practice, the influences of colonialism, relationship between justice policy, practice, and sustainability including S.D.G.s, and exchange between the global south and north, supporting learning from both)
- to improve understanding of effectiveness in building capacity, and knowledge and practice exchange, between jurisdictions and regions.

Table 8: Five Points for consideration by the International Community to support development globally, attending to all four probation domains.

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Annex A – Methodological Overview

The study was progressed in 5 delivery phases. These were preceded by a concept stage, application for funding, and establishment of an Academic Advisory Board (the "Board").

The original concept corresponded closely with the arguments set out in Chapter 1 "Introduction: Why a project on probation capacity building?" The aims of developing an analytical model or "language" to support international capacity building and enquire into apparent success factors in this area of work, were put to a Dutch Probation Charity, NRA, who have part-funded the study, whilst the Dutch Helsinki Committee has contributed assistance including the handling of budget and practical arrangements, together with constructive advice and sustaining encouragement. The Academic Board is comprised of probation experts from the Netherlands, Romania and the United Kingdom and has advised on the project and provided valuable guidance including on sources of literature.

The 5 delivery stages were:

- Phase 1: literature review and developing the analytical model
- Phase 2: selecting the 5 focus countries and undertaking field work
- Phase 3: meetings with European Institutions
- Phase 4: developing the 5 country reports
- Phase 5: drafting, receiving feedback from the Academic Board, and finalising the main report

We were also assisted by feedback received during presentations of the project at several international workshops and conferences including those hosted by the Confederation of European Probation, World Congress on Probation and Parole 2022, and International Corrections and Prisons Association 2023.

Whilst project division into 5 phases may suggest that when one phase was closed, we progressed to the next phase, some activities in the different phases overlapped or were returned to. For instance, we started with a brief general literature review, but whilst carrying out the visits to the selected countries, were signposted to country-specific literature. And during all phases we continued to test and refine the analytical model and develop our understanding of the major influences on successful capacity building in each country and what therefore should be emphasized in the country and main reports.

Phase 1: Literature review and developing the initial analytical model

Literature review: As noted earlier, probation practice in Europe is informed and guided by the Council of Europe Probation Rules. Whilst individual countries or jurisdictions vary in the explicit influence they ascribe to the rules (see for example Canton, 2020[151]), the rules are very widely respected and accepted in Europe as principled and well-informed, not least because they have been developed and updated by well-respected academics and others well-grounded in probation policy and practice. The rules do not describe the process(es) of capacity building but do describe "end-results", in other words what a well-developed probation service should look like in terms of its competencies and organisation. We therefore drew on the European Probation Rules as a starting point for consideration of a framework for exploring and understanding the current stage of development of a service, possible further goals, and by implication the steps it might take to achieve maturity.

We note that a similar function is delivered at a global level by the "Tokyo Rules" produced by the United Nations, and that both the European and global rules are supported by other guidance regarding prisons and to address specific areas or aspects of probation practice such as (in the case of Europe) electronic monitoring or training or (globally) work with women offenders (the "Bangkok Rules").

We then expanded the review of literature, supported by guidance from the Board. Nonetheless it was noted that general literature on capacity building in probation is scarce. There are however sources relating to work in individual countries including formal project progress reports to donors such as the European Union and papers written by academics, consultants and others who have been directly involved in capacity building. During the project these were supplemented by materials suggested by national experts in the countries studied.

A further source is literature on capacity building *per se,* and in related fields including prisons, the justice field generally, and in wider social and related development. Whilst the literature examined adopted many different frames of reference and areas of focus, and offered a wide range of insights, we were struck by the general congruence in main findings across fields and authors, an observation which emphasises the potential value of these findings being better known and drawn on to inform capacity building.

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[151] The European Probation Rules: A Celebration and a Reflection - https://www.cep-probation.org/wp-content/uploads/2020/11/The-European-Probation-Rules-for-CEP39669.pdf

We were also involved in several conferences on capacity building organised by the Confederation of European Probation (CEP), on occasion taking the initiative in their organization. As a result, we were able to draw on probation development country case studies presented to conferences, and related discourse. As the project developed to the point we could present "work in hand", we also benefitted from feedback on project progress. (We note that the model could contribute to a framework for future conferences, supporting exchange of experience on domains, enablers, and the capacity building process).

We present the literature in three categories:

(i)   General literature on policy transfer and capacity building.
(ii)   Literature on the typology of justice systems in different countries.
(iii)   Literature on policy transfer and capacity building in probation.

Finally, we identified international practice guidance on capacity building, published by for example, the United Nations Office on Drugs and Crime ("Evaluation-based analysis of good practices in UNODC's approach to capacity building", 2017) and Guide to Corrections Assistance work of the Bureau of International Narcotics and Law Enforcement Affairs (INL. 2014). We were surprised to find these to be apparently little known in Europe, (at least in the probation development field). Nonetheless, we believe they are insightful. In view of their intended direct influence on practice) we refer to these and other sources in Chapter 4 on European and International Influences.

Developing the analytical model: As noted earlier, we have worked together in several probation capacity building projects, for instance in Kazakhstan, Azerbaijan, and Armenia, and separately in several other countries and jurisdictions.[152]

In all those instances in which we have been involved, one of the essential tasks was to explain the concept and the value of probation and what needed to be organized to start probation activities (in other words the "why", the "what" and the "how" of probation). To support this work, we consulted (among other sources) the European Probation Rules simplifying, for the purposes of clarity, the essence of content in 2 diagrams: one on four areas of competence or "domains" of probation (pre-sentence work, non-custodial options, custodial

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[152] Including: as Residential Twinning Advisor in Bulgaria (Pitts), as participants in CEP conferences on Capacity Building and as strategic advisors and lecturers in several capacity building projects including Kazakhstan, Azerbaijan, Armenia, Montenegro, and North Macedonia (both), in several countries in south-east Asia and in Africa (Pitts) and as strategic advisor to Dutch organizations that carry out capacity building projects (Tigges)

options, early and post-release) and a second on what needs to be in place to support probation (probation "enablers").

Development of the enablers was further informed by the application of elements drawn from quality management approaches such as the European Quality Model. We noted that presenting the essence of probation in this way worked well as an aid to communication. The structure later formed the basis of the first draft of the analytical model and was utilized in the project concept and application for a subsidy.

A model of Capacity Building in Probation

In practice the structure is in effect an initial **Model of Capacity Building in Probation.**

The model consists therefore of two core components, both of which have, as noted, a basis in recognized international guidance or approaches. The two core components are in summary–

- a framework of four Probation **"Domains"**, based on international guidance, in particular the European Probation Rules, and
- an inventory of supporting probation system elements, or **"Enablers"**, informed by and extrapolated from the European Probation Rules and European Quality Model.

Whilst the domains deal with the work of the probation service in the different phases of the journey of the offender through the criminal justice system, the enablers deal with the terms and conditions that must be in place to make the work of the probation service in these different phases effective.

During more recent international capacity building experience (additional to the 5 countries which form the study reported on here), we have gained experience in using the capacity building framework as the basis on which we could:

- explain the essence of probation to the beneficiary countries
- analyse the present state of play of probation in those countries
- help the beneficiary countries to gain insight in what needs to be done to enter the next stage of development and what this entails in terms of resources and conditions.
- assist the countries to measure changes over time

The model is intended to assist equally throughout a country's experience of development, and during the lifecycle of individual capacity building projects.

By combining these two core components of domains and enablers, the model therefore provides a tool to:

1. Express the essence of the International Guidance.
2. Understand the probation systems of countries in Europe (and beyond).
3. Analyse the present state of play in the beneficiary countries.
4. Support discussion and drafting of a joint plan regarding the next stages of development of probation (both domains and enablers).
5. Identify which chain partners (police, prison, judiciary municipalities) and stakeholders in the wider society (public opinion, the political environment) need to be involved to build up the probation service(s) and system.
6. Assist coordination between various parties to capacity building, including donors, to support effective and efficient use of resource, identify gaps, and reduce duplication.
7. Review the changes over time (base-line study/evaluation at the end of the projects)

The domains and enablers were represented in their *earlier form* by the following diagrams: Figure B-1 illustrates the domains and enablers in outline, whilst Figure B-2 illustrates a developing picture of probation enablers.

4 Probation "Domains" (Areas of Responsibility) and "Enablers" or Conditions
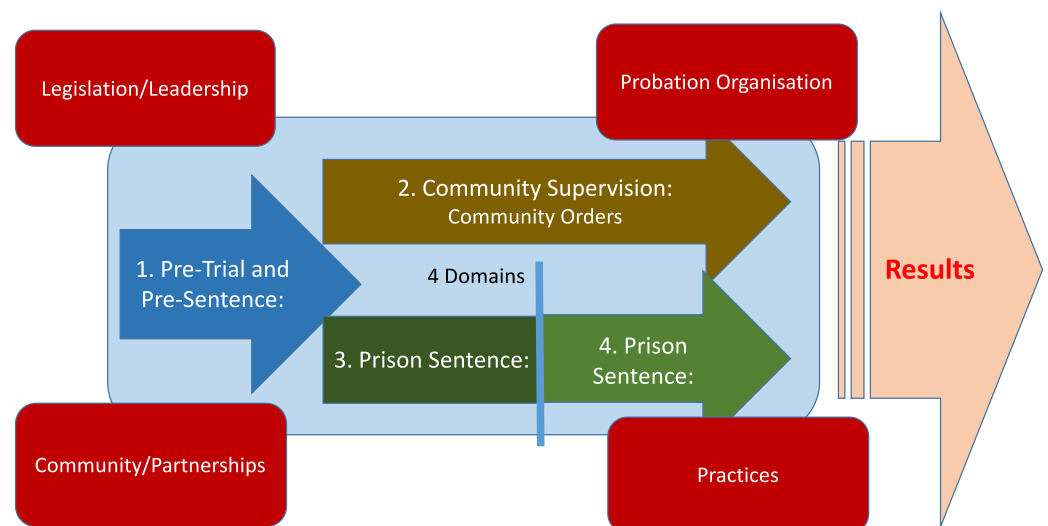
Figure B-1: Probation Domains and Enablers - Headings

Legislation/Leadership	The Organisation

• In 4 Domains
  - Pre-trial/diversion from prosecution, from pre-trial detention/Pre-sentence
  - Community Sanctions and Measures
  - Work in prisons
  - Work post-release
• Related legislation e.g., for social inclusion such as housing
	• Is there probation organisation legislation?
	• Mission/values
	• Priorities/Principles
	• Standards and Guidance
	• Resources
	• Staff including training, numbers, proportion to caseload
	• Infrastructure
	• Communication

Community/Partnerships
 	
(in 4 Domains)
 	
• Types of Partnership (e.g., Justice Chain, Statutory bodies, NGOs)?
• Structural partnerships (protocols)?
• Partnership aims (e.g., solutions for life problems/integration, public safety?)
• Practices regularly involving partnerships
• Civil Society engagement
	Processes/Practices
	
	• Implementation in the four domains
	  - What? Which practices? Scale?
	  - Diversity appropriate?
	  - Research-informed?

Figure B-2: Probation Domains – Detail (early form)

Further development of the tool

The applicability of the initial tool was then tested, and the tool enhanced in order to become an accepted framework for the joint (beneficiary, funder, and provider) analysis, planning, delivery, and review of probation capacity building. The methodology involved conducting case studies, 5 over a period of 12 months, in countries where the build-up of probation had been begun within the previous 15 years. This learning was supplemented by our experience of capacity building in other jurisdictions, in Europe, with European "near-neighbours", and in other regions of the world.

Furthermore, as well as testing, refining, and validating the tool, in each case we were able to use the tool to support analysis of what worked well in capacity building, supplementing desk research and interviews with many of the people involved. This field work is described next in Phase 2.

In terms of the "bigger picture" of the probation or community corrections contribution to humane and effective criminal justice (Figure B-3), we conclude that the Domains and Enablers model helps to illustrate the necessity and nature of both a strong probation role and a strong organisation.

Contributing to Humane and Effective Justice
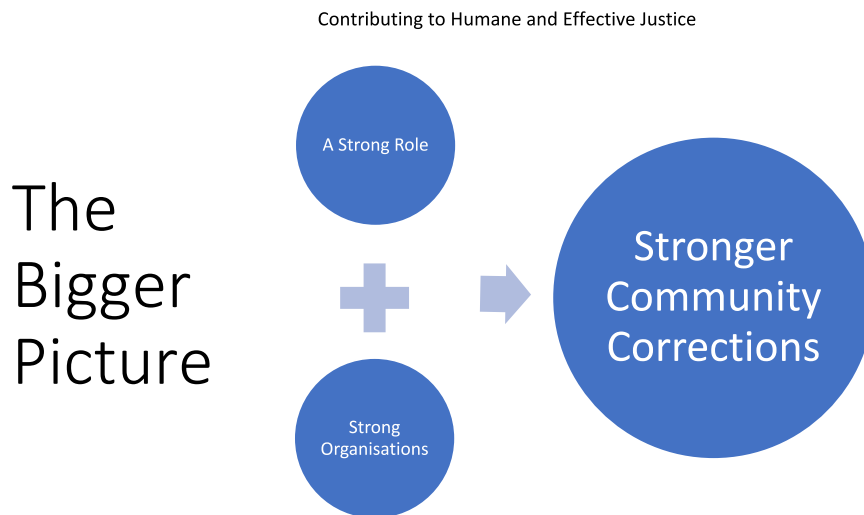
Figure B-3: Probation Role and Organisation

Phase 2: Selecting the 5 focus countries, field work, and learning from additional countries

In this field research phase, we carried out the following activities:

- **A.** Selecting the 5 focus countries.
- **B.** Construction of a questionnaire.
- **C.** Visits to, and field work in, the 5 countries.
- **D.** Analysing data of other (additional) countries.

A. Selecting the 5 focus countries

We needed to make a choice regarding field focus countries, bearing in mind the budget was limited to visit 5 countries for a maximum of 3 days each.

We developed the following criteria:

- European regional spread (Northeastern Europe, Southeastern Europe, Mid-eastern Europe)
- differences in the number of years ago that capacity building started (e.g., 15 years ago to 3 years ago); the effect of external capacity building assistance could only be observed if the probation systems had already existed for several years in order to enable a degree of stabilisation and to assess sustainability.
- differences in the coverage of the 4 domains of probation
- differences in the proximity of the prison institution towards probation (extent to which probation is integrated with or within the prison system)
- practical considerations (e.g., travel times, likely access to relevant actors)

Based on these criteria the following 8 countries were deemed appropriate to "short-list": Estonia, Latvia, Romania, Croatia, Bulgaria, Hungary, Czech Republic, Georgia.

The scientific advisory board however signaled that it would also be important to include a country that had not, or not greatly, participated in capacity building, to make a comparison with countries with more experience of capacity building. Despite the fact our own contacts (and indeed CEP) with Poland were very limited, we decided to follow the advice and to include Poland. Also, on the advice of the advisory board, it was decided to include Albania, taking account of geography and as a further country in which probation projects are taking place currently.

The countries finally selected were Latvia, Romania, Georgia, Albania and Poland.

We initially drew on existing contacts or were referred to interviewees via the CEP. In turn we were introduced to others previously or currently involved in probation development. Especially in Latvia and Romania we received great help from colleagues who had played or continue to play a large role in the CEP.

Although the countries to be visited were limited to the 5 selected countries, we made use of knowledge and experience gained from working in Azerbaijan, Kazakhstan, Montenegro, Serbia, and Armenia. Also, to a lesser extent from experience in south-east Asia, Africa, and South America, with the main aim of testing the model's relevance further afield.

B. Construction of the questionnaire

We constructed a questionnaire to be used in the interviews. The topics to be raised in the interviews and study of documents can, for large part, be categorised in the framework of domains of probation and "enablers". These were supplemented in the light of early experience, as we describe later, by attention to other factors we found to be important (such as historical context, drivers of development, and the people involved). These factors are reflected in our findings and conclusions.

C. Country Visits

Although it was intended to prepare for the country visits by reading as much material as possible, it became apparent that in most cases only limited literature was available on probation development (the main exception being the, sometimes not fully current, chapters on those countries in the publication "Probation in Europe").

We planned to speak with a range of probation service personal and representatives of key stakeholders from the ministry of justice, courts, academics, and the probation organization for each country.

In each case relevant persons were identified. They included:

- initiative-takers in the early days of probation (from involved NGOs, relevant ministries - in particular justice, and academics)
- present leaders of the probation service
- persons that were involved in delivering capacity building activities (for instance: Residential Twinning Advisors)
- former and present CEP Board Members

We were dependent on direct and indirect contacts. In the case for instance of Poland, our contacts were comparatively limited – we were unable for example to manage to speak to representatives of the Ministry of Justice, nor a judge. On the other hand, in the case of Latvia and Romania it was possible to contact a much wider circle, in particular because of the active role of former CEP board members from those countries. In each country report an overview is provided of the persons interviewed.

The first country visited was Latvia. Although we had intended to use the questionnaire in the order it was constructed, it quickly became apparent that that questionnaire hampered a natural flow of the conversation and thus risked missing important insights. It also became clear that there was not sufficient time to cover all topics in the same interview. As a result, we decided to use the questionnaire as a framework for a semi-structured interview and to focus on topics in each interview in accordance with the background or the position of the interviewee. Furthermore, if certain topics were not addressed in one interview, opportunities were sought to raise that topic in a later interview or with another appropriate person.

As noted earlier regarding the literature review, we sought materials relating to the development of probation in each country studied, in addition to more general literature on probation (and in some cases) capacity building. We were therefore appreciative of signposts, during the visits, to additional relevant literature. This was supplemented by further materials suggested after we had returned home. Other sources were identified when draft reports were discussed with persons not initially interviewed. Sources are noted in the country reports.

D. Analysing data from other countries

We drew also from experience and knowledge of countries where we had been, or are still, involved in capacity building projects. Those countries include Kazakhstan, Azerbaijan, Armenia, Montenegro, Ukraine and Serbia together with, as noted earlier, some experience of probation capacity building in other world regions including south-east Asia, Africa and South America. The reporting of these experiences, and the learning from them, is presented in combined form rather than linked to specific countries, except for some limited highlight information in table form. This is used primarily to validate the tool, test its relevance in diverse probation settings, and add to the body of experience and knowledge on capacity building practice contained in the report.

Phase 3: Visits to the European Institutions

Although in the initial project plan no visits to the European Institutions were foreseen, during the country visits it became increasingly clear that information from "Brussels" and "Strasbourg" was needed to complement the picture of learning from individual countries. We also wanted to understand more fully the past and present policy of both institutions regarding the need to develop probation in the EU accession countries and in the member states of the Council of Europe.

As a result, we asked the Probation Charity NRA to grant a small sum to visit relevant institutions in Brussels and Strasbourg to interview key personnel. As it was not possible to meet every relevant directorate of the European Commission on the same day, we visited Brussels on two occasions. A power point presentation on each occasion provided an overview of the project and emerging finding and posed specific questions appropriate to the role of the institution in relation to probation development. Insights from these meetings were then combined with knowledge gained about the role and influence of other international bodies such as the CEP and the United Nations. The results inform the section of this report on European and International Influences.

Phase 4: Developing the country reports

We revised the structure of the country reports several times as project findings emerged, in particular in the light of helpful comments to draft country reports made by interviewees in the countries studied. The country reports include accounts of the historical development of probation and probation at the present time (to illustrate the use and potential of the model as a descriptive tool) and explore and summarise our learning regarding best practices in capacity building from the experience of each of the 5 countries studied.

Phase 5: Drafting the main report, receiving feedback from Academic Board, and finalising the report

In our main report we describe, then draw together, the findings of the major parts of the research – the five country studies, literature review, and meetings with European institutions. To these we add insights on capacity building from our knowledge and experience of probation development in two other countries (Croatia and Serbia), and of significant international influences and developments in Europe and globally, for instance the growth of professional

networks and research, and work of the United Nations, not least stemming from the 14th UN Congress on Crime Prevention and Criminal Justice 2021.

We are grateful as always, to the feedback and advice of the Academic Board on early drafts of this report, including pointing us to important additional research and academic references to enrich our understanding of capacity building and factors influencing its degree of success.

As noted earlier, we have also received and incorporated feedback during project presentations at international events.

We conclude the main report with reflection on the utility of the model, recommendations on success factors (and points to avoid) in capacity building, together with comment on what we believe are clear implications of the European experience of probation capacity building for the development of probation work globally.

Annex B – Observations and Success Factors in implementing Domains and Enablers

Research findings shed light on what approaches within the four domains and the four enablers appear to support success.

Work within the four probation domains (Competencies)

Domain 1: Pre-sentence

- Before introducing pre-sentence advice reports there needs to be at least an initial understanding by justice partners of their value; attend to feelings of independence or autonomy and stress that probation reports are no more than well-thought-out advice.
- Facts, especially during early stages of report provision, are more likely to be accepted by the judiciary than sentencing advice.
- Advice on more vulnerable groups (especially youngsters and women) is more likely to be welcome, especially during early phases of probation delivery.
- A clear and readable report structure helps the judiciary to understand the essence of a report. The probation organisation should find a balance between succinct text and ample facts and reasoning.
- Pre-sentence alternatives to custody are often not widely applied or considered; this task has received little attention, except for Electronic Monitoring as a stand-alone measure in certain countries. If considering early introduction of pre-sentence alternatives to custody, be aware that this task is more likely to succeed when the probation organisation is sufficiently mature and experienced, and has developed credibility, in the domain of Community Sanctions.
- The availability of international guidance on this domain is limited.

Domain 2: Community Sanctions

Understandably the major focus new probation organisations is on the provision of this domain as, in most cases, it forms the core probation service product.

Community Service:

- Strikes a chord with justice partners, politicians and the public and can readily be adapted to penal culture (for example by awarding higher number of hours)
- Requires reliable selection of suitable offenders (who have a higher chance of finalising the required terms).
- Requires varied work and placement settings to match individual characteristics (the potential and limitations) of offenders.
- Less potential in terms of behaviour change than conditional sentences (with imposed conditions) but may be accompanied by activity to develop pro-social and work-related attitudes and skills and enhance specific work skills.
- The delivery of this task is complex in the sense that it requires cooperation with service providers and municipalities (but has the advantage of reaching out to them and, in the process offering publicity and insight about probation).

Conditional sentences

- Require behaviour changing skills on the part of the probation service.
- Should be applied after careful consideration whether the conditions for the individual person are pertinent to limit risks and increase potential.
- Risks leading to execution of the prison sentence if selection of the offender for this sentence type is arbitrary and/or the probation service lacks sufficient time (perhaps due to caseload) or skills to support the change process.

Electronic Monitoring

- Can be an efficient supporting tool, with a conditional sentence, to control the imposed conditions.
- Often used as an alternative to pre-trial detention or as an alternative to prison sentence as a stand-alone measure; in this context it may strike a chord with justice partners, politicians, and the public.
- Can consume considerable time and energy of the probation service, hindering investment in other activities that may be more supportive of rehabilitation and reintegration.

- Successful integration of this task in a probation organisation is more likely to be achieved when introduced with care once the service has acquired experience with conditional sentences.

Domain 3: Involvement in execution of prison sentence

Involvement in individual sentence planning

- Not extensively practiced (combination of the natural territory of the prison service and the priority given to develop alternatives to prison sentences).
- Preparation for conditional release: a limited probation service activity – for reasons similar to the preceding, although a more "natural" activity.
- Advice on conditional release: not frequent and/or extensive in most countries (again for similar reasons to the preceding, although in this case and even more "natural" activity).
- Transfer from prison to probation is in most cases not "warm" (reflecting a multitude of reasons addressed in international discourse on (re)integration).

Domain 4: Execution of conditional release

- This task may strike a chord with stakeholders and the wider public.
- Can have a direct impact on custodial population.
- Can be considered as the first introduction of probation activities in a jurisdiction.
- Requires behaviour changing skills on the part of probation if behaviour influencing conditions are imposed.
- As conditional release may involve working with ex-prisoners, probation services can develop competency working with offenders who have previously committed more serious crimes.

Work within the four probation enabler areas

Note: attention to enablers should match chosen domain priorities, and activities within them. Not all enablers can be achieved simultaneously, so prioritisation is necessary.

Legislation and Leadership

Legislation

- The development of legislation can take time – requiring political buy-in, decisions on the content of probation activity, and the promise of openness towards probation activity on the part of stakeholders including judiciary.
- Legislation is (of course) insufficient on its own but a (usually) necessary step preceding an implementation strategy and action – particularly in probation domains.
- For this reason, it is important to allow sufficient time for the legislative process (which may extend longer than expected) before scheduled legislation-dependent activity.
- On occasion it may be possible to be less constrained by the legislative timetable - probation activities e.g., via pilots may be possible in advance of legislation, and help to inform legislation development.

Leadership and Strategy

- Leadership should ideally be charismatic and inspiring, have political credibility, whilst also managing, controlling, and adapting service implementation. Leaders also need to set direction whilst managing ambiguity that may arise from working in a changing penal landscape (in which not all parties move in tandem).
- Longer-term leader involvement in probation development appears to be a real advantage, bringing knowledge, stability, and continuity to the development process - including during ministerial or government-level change.
- Leaders should in a strategic plan prioritise what can and needs to be done in a step-by-step process of introducing probation tasks and activities while attending to enabling conditions.
- Leaders should be able to establish strong and enduring relations with international experts and with academics.
- Communication skills are paramount, with accessible messages to key audiences.

Mission, Vision, and Communication

- Aim to develop a mission and vision for probation which includes clarity on the place of probation in the sentencing framework – including its place as an alternative to custody.
- Whilst it may be advisable to work with lower-risk offenders initially (to help build trust and experience), risks of net-widening should be kept in mind.

- Communication with core stakeholders is a priority, especially prosecutors and judges; aim for clear and **accessible** communication on both the "why" (informed by benefits of probation including cost relative to custody and value, and the evidence-base, embracing outcomes such as in rehabilitation and inclusion) and the "what" of probation (competency options) and the "how" (enablers).
- If possible, build partnerships and a **shared vision**. External communication to the public and society can follow.
- Communication is naturally not a one-off activity but should be continued regularly.

Community and Partnerships

Justice Interagency Relations

- Aim to involve justice partners from an early stage; consider a standing probation preparatory and inter-agency liaison group.
- Evaluate probation developments regularly against steps in the project plan.

Relationships with other government departments, municipalities, neighbourhoods, and private institution, and involvement of civil society & volunteers

- Relationships with other government departments should benefit opportunities to refer probation service-users (and preferably in time develop joint protocols or other arrangements) in areas important to reintegration and desistance, such as housing, education and employment, and health - including mental health and addictions.
- NGO's can helpfully take initiatives to introduce probation or to work with offenders and their needs differently; they are also able to reach out to other institutions and municipalities and play an important role in communication.
- As building up and sustaining external relationships and relations with volunteers can be time-consuming, priority is more often given to the justice stakeholders and the political level instead of external relationships and volunteers.
- However, in the long run relations with municipalities, other institutions, and with volunteers is paramount for the success of probation, not least promoting opportunities for (re)integration and rehabilitation.

Media-communication

- External communication via media may be most effective based on acquired results in the jurisdiction, informed by delivery experience (especially delivery and results that may resonate with the public, including community service).

The Organisation

Staff quantity, quality, and care

- Sufficient suitable, competent, staff is an important component of success. Leadership should ensure a reasonable caseload (reflecting staff numbers and avoidance of net-widening), and attention to health and safety/wellbeing – psychological and physical.
- It is not always possible to select new staff as countries may need to integrate staff from existing security organisations (for instance bailiff service, or on occasion custodial institutions) or continue to employ existing community/probation staff who worked whilst the service had security and control as more primary functions. Tensions may arise, for example with a rehabilitative ethos, values and practices expressed in international guidance, or with staff keen to adopt international practices.
- On occasion existing senior staff, who may have a security orientation, are placed in local or regional managerial positions, differences in emphasis and approach may then occur with more recently recruited or trained staff.
- Awareness of the potential for these and other tensions is important and should be reflected in attention to training and delivery support.

Staff involvement

- In shaping probation organisations, their priorities and delivery, two-way communication on a regular basis between staff and leadership can help ensure execution of probation tasks is according to that which is intended and planned, that issues in daily practice are signalled and followed-up, and that probation staff as representatives of the organisation in contact with stakeholders help to communicate the organisation's mission and vision.

Staff training and Education

- Training is (of course) important for both existing and new staff. Training should go hand in hand with opportunity to apply learning in real life situations (which means that work should provide sufficient probation activities in which core correctional skills, for example, are useful).
- Prevent a situation in which acquired knowledge and skills cannot be practiced - for example, because of a too high caseload, or learning not matching most current probation tasks (for instance substantial training in "change skills" in services in which Electronic Monitoring or Community Service are dominant, and probation supervision cases low). This situation also risks staff disillusionment and turnover resulting in loss of investment and learning taught.
- Training and education should be focused on understanding the "essence" of probation and core correctional skills, before introducing sophisticated instruments (for instance complex assessment systems) or techniques (behavioural interventions).
- Training may be a politically acceptable activity, not in itself requiring potentially visible or controversial change on the ground. However, training is not synonymous with capacity building (to state perhaps the obvious) and is more likely to succeed, and investment to be returned, when part of wider Human Relations strategy and elaboration, including recruitment criteria and selection processes and ongoing practice support (including for newly acquired skills), and attention to other conditions noted above.
- Nonetheless training if often a central and one of the most rewarding aspects of capacity development - for all parties. In capacity building projects training is a two-way process; relationships that are developed are significant in building mutual understanding between the lending and the beneficiary country, conveying knowledge and ideas, and sometimes values, as much as specific practices.

Implementation and Evaluation

- Provider and beneficiary should reach satisfactory mutual understanding regarding project content. There is particular value in sufficient planning (a "getting to know" phase ideally before project plan finalisation), agreement of expectations, flexibility, and ensuring a demand-resource match. Pilots can assist appropriateness and flexibility in delivery.
- There is a balance to be struck between on the one hand a relatively comprehensive approach to service development (which supports clarity and the involvement and role of stakeholders), and a progressive step by step approach.

- The risks of the "capability trap" - excessive early "load bearing" - should be recognised, in terms of both service ability to develop and deliver and the capacity of the organisation's staff for involvement in the international process itself, especially if still heavily involved with their "day job".
- Identify, review, and attend to - during preparation and implementation - resistances, challenges, risks, or barriers which may occur, including in understanding, resourcing, and delivery.
- Data, review, and evaluation should not be neglected, including extent to which implementation plan steps have been delivered and probation service processes and results relative to aims (for instance numbers of community orders, reduced custodial use, reintegration, reoffending) delivered. These support communications and future investment and may be in addition to formal project reporting requirements.

Budget

- Sufficient beneficiary resources should be available to support planned development, for example staff (and release for training), training facilities, staff travel, information systems.
- Development of a strategic plan should include implementation budgets. When based on a step-by-step approach, with budgets tailored to implementation, supports clarity for current and future development and delivery.
- Clarity of international budget, including what is "in" and "out" – especially in relation to material items – should be achieved with funding bodies.

Infrastructure

- Requires real effort on the part of countries building their services, including competition with other departments, and should not be underestimated.
- Accommodation is often a primary challenge (sometimes resolved on a temporary or longer-term basis by sharing with related services such as courts or police) although attention needed for probation-related facilities including confidentiality.
- IT hardware, software and other aspects of registration, recording and reporting systems are also resource demanding.
- Some donors rarely contribute to the costs of probation infrastructure. However, material support is usually very welcome and may sometimes be provided by (other) international donors which should be considered, sought, and coordinated with knowledge-based support.

Structure, Governance and Accountability

- Little or limited attention in most capacity building projects, perhaps because often effectively determined in advance by existing departmental structures.
- In practice, position in structure, governance, and accountability may change over time, reflecting issues such as political and organisational. These includes whether probation is positioned alongside prisons, a "subsidiary", and is justice or "interior" located.
- Significant questions may rise on these issues when a probation service is established "from scratch."
- More attention might be beneficial, including regarding balance of, and arrangements for, central and local governance and accountability, and relationships with judiciary.

Internal Communication

- All the staff should remain on the same page; so regular communication is necessary.
- Communication is a two-sided process (listening and learning from experiences).

ICT equipment and facilities

- An ICT-network needs to be built, to support registration activities (for example assessment, progress in supervision), for internal messaging (colleagues and managers) and for external contacts (for instance sending advice reports to the judiciary and the prison service); this requires a significant investment in time and money; "keeping it simple" and a step-by-step development is the adage.

Processes and Practices

Practices

- Early introduction of more complex processes (for example some assessment systems and behaviour changing techniques) should be considered with care and paced: "foundation" skills and processes (perhaps based on other priorities such as relationship forming, managing tension between "care and control", referral management and work with partners, "core correctional skills", and professional responsibility and accountability) may be more appropriate places to begin training in skills supportive of (re)integration and desistence.
- An individualised approach taking account of needs, risks, and strengths, including a forward-looking "future-orientation", will help to

reflect current international understandings of effectiveness in desistance-orientated work, and guidance[153].

- Internal processes and practices should be developed to give staff support and direction in daily work in individualised case management. Examples include for assessment, interventions, referrals, and report writing, which should be described in standards, operating procedures, or other guidance, preferably developed in conjunction with delivery staff.
- New technologies should be considered "in the round" from a range of perspectives including cost-benefit, direct benefits such as public protection, alternatives to incarceration, rehabilitation, easier access to services remotely and reduced travel time, costs and stigmatisation, and the potential risks such as unequal use and impact on users from diverse populations or according to gender, reduced influence on desistance from a less personal and personalised approach, and the possible impact on other service provision due to resource demand – for example of electronic monitoring.
- Practices and processes should reflect awareness of the diversity of clients and client groups from the outset, such as gender, age, culture and ethnicity, mental and physical health and other specific characteristics and needs. It is good practice to consult and involve representatives in the development of suitable services.
- Practices can and should progressively be informed and tailored by local (as well as international) research.

Research and Development

- Whilst research and development capacity are unlikely to be an early priority, capacity over time will help to ensure transferred and adapted, and new, practices are suited to purpose. Important sources for information may include staff, external stakeholders, and service users as well as more "traditional" data / outcome research measures. Consider whether and how to involve these groups from an early point in development.

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[153] For example, UNODC work on model strategies to reduce reoffending, following the UNODC Crime and Justice "Kyoto" Congress, 2021.

Annex C – European and International Influences

Steps in the European Integration Process[154]

In this Annex the steps in the European Integration Process are described, mainly regarding aspects of the rule of law, human rights, and justice.

1992: Maastricht Treaty

Article 49 of the Maastricht Treaty says that any European state that respects the "principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law", may apply to join the Union.

The Treaty proposes "further steps to be taken in order to advance European integration" under three pillars:

1. The European Communities pillar handled economic, social, and environmental policies
2. The Common Foreign and Security Policy pillar took care of foreign policy and military matters.
3. Police and Judicial Co-operation in Criminal Matters brought together co-operation in the fight against crime. This pillar was originally named Justice and Home Affairs (JHA). Under this pillar Europol was created in 1995 and the European Judicial Network in criminal matters was established in 1998.

1993: The Copenhagen Criteria

During the meeting of the European Council the Copenhagen criteria were established: several democratic, economic, and political conditions for countries who want to join the EU:

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[154] This section is mainly based on several pages of Wikipedia: Enlargement of the European Union; Police and Judicial Co-operation in Criminal Matters; Stockholm Programme; Three pillars of the European Union; Copenhagen criteria.

- *Stable institutions* guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.
- *A functioning market economy* and the capacity to cope with competition and market forces in the EU
- The ability to take on and effectively *implement* the obligations of membership, including adherence to the aims of political, economic, and monetary union.

1995: Madrid European Council

The Madrid European Council revised the membership criteria to include conditions for member country integration through the appropriate adjustment of its administrative and judicial structures. All prospective members must enact legislation to bring their laws into line with the body of European law, the acquis Communautaire.

1997: Treaty of Amsterdam

In Amsterdam, member states agreed to transfer certain powers from national governments to the European Parliament across diverse areas, including legislation on immigration, adopting civil and criminal laws. The pillar Justice and Home was renamed "Police and Judicial Co-operation in Criminal Matters". The Treaty stated that that the EU must "maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime." The Treaty created the instrument of Framework decisions.

2009: The Stockholm Programme

The Stockholm Programme was a five-year plan with guidelines for justice and home affairs of the member states of the European Union for the years 2010-2015. It contained guidelines for a common politics on for instance the topics of protection of fundamental rights.

The priority set was to focus on the interests and needs of citizens and mechanisms needed to be created that facilitate access to justice, so that people can enforce their rights throughout the Union.

Mutual trust between authorities and services in the different Member States as well as decisionmakers was seen as the basis for efficient cooperation in this area.

Contacts between senior officials of the Member States in areas covered by Justice and Home Affairs should be promoted by the Union (for instance senior

police chiefs or prosecutors, heads of training institutes, heads of prison administrations). The European Commission was asked to ensure the sharing of information by developing handbooks or national facts sheets on the use of mutual recognition instruments. Efforts were to be undertaken to strengthen mutual trust and render more efficient the principle of mutual recognition in the area of detention. Cooperation was intensified with the work of the Council of Europe. Implementation of the European Prison Rules was supported and issues such as alternatives to imprisonment, pilot projects on detention and best practices in prison management could be addressed. Pilot schemes were to be financed testing alternatives to imprisonment. A genuine European law enforcement culture should be developed through exchange of experiences and good practice as well as the organisation of joint training courses and exercises.

2019 Council conclusions on alternative measures to detention[155]

The topic of alternative measures to detention had previously been on the agenda of the European Council, but in 2019 it received greater focus as it was observed that prison overcrowding and bad prison conditions in some EU Member States had undermined mutual trust and thus had hampered judicial cooperation between the EU Member States. As a result of the meeting of the Council the ministers for justice encouraged the *Member States* to:

- explore the opportunities to enhance the use of non-custodial sanctions and measures, such as a suspended prison sentence, community service, financial penalties and electronic monitoring
- consider enabling the use of different forms of early or conditional release
- consider the scope for and benefits of using restorative justice
- provide for the possibility to apply non-custodial measures also in the pre-trial stage of criminal proceedings
- ensure that information concerning the legislation on non-custodial sanctions and measures is easily available for practitioners throughout criminal proceedings
- provide adequate legal training to practitioners; Improve practical training notably as regards the use of EU instruments designed to prevent detention in cross-border situations, i.e., Framework Decision on

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[155] This section is based on: Wahl, T. (2020), Council Conclusions on Alternative Measures to Detention, (https://eucrim.eu/news/council-conclusions-alternative-measures-detention/)

probation and alternative sanctions (2008/947/JHA) and Framework Decision on European supervision order (2009/829/JHA)
- improve capacity for probation services
- share best practices

The European Commission was invited to:

- increase awareness of the benefits of non-custodial sanctions and measures among policymakers and practitioners
- carry out a comparative study to analyse the use of non-custodial sanctions and measures in all Member States to support the dissemination of national best practices
- enhance the implementation of the Framework Decisions
- develop training for judges and prosecutors (the European Judicial Training Network), as well as for prison and probation staff (the European Penitentiary Training Academies)
- launch regular experts' meetings on detention and non-custodial sanctions and measures

The importance of close cooperation with the Council of Europe was emphasized. The Commission and the Member States should consider ways in which to promote the dissemination of the Council of Europe standard-setting texts, the relevant ECtHR case-law and the CPT recommendations regarding detention and the use of non-custodial sanctions and measures.

The acquis and new negotiation chapters

The Community acquis is the accumulated legislation, legal acts and court decisions that constitute the body of European Union law.

During the process of the enlargement of the European Union, the acquis was divided into 31 chapters for the purpose of negotiation between the EU and the candidate member states for the enlargement in 2004 and in 2007. Chapter 24 was devoted to Cooperation in the field of Justice and Home Affairs. For the negotiations with Croatia, Turkey and the Western Balkan countries, the acquis has been split up into 35 chapters instead. The former number 24: Cooperation in the field of Justice and Home Affairs, is from 2009 divided in: 23. Judiciary and fundamental rights; and 24. Justice, freedom, and security.

Wolfgang Nozar wrote an interesting article on "The 100% Union: the rise of Chapters 23 and 24"[156]

"*Accession negotiations with Bulgaria and Romania revealed that shortcomings in key areas such as reform of the judiciary and the fight against organised crime and corruption had not been fully overcome. The creation of chapter 23 and the use of opening and closing benchmarks in the accession negotiations have proved to be a powerful tool to push reforms within the enlargement process and throughout the whole pre-accession period.*"

"*The elements compiled under chapter 23 are closely linked to the political criteria, which need to be met for overall negotiations to begin. They include four main headings - judiciary, fight against corruption, fundamental rights, and EU citizens' rights. Due to the limited amount of "hard acquis" in many of these areas, the requirements to be met are mainly to be found in general principles and European standards.*"

"*Chapter 24 covers the fight against all types of organised crime and terrorism, the Schengen rules, border control and visas, as well as migration, asylum, judicial cooperation in criminal and civil matters and police and customs cooperation.*"

The European Commission proposed a new approach to chapters 23 and 24 (Enlargement Strategy 2011).

"*This would focus on extending the timeframe of negotiations on the two chapters and would strengthen the use of benchmarks trough the introduction of interim benchmarks. The two chapters would be among the first to be opened and the last to be closed. In order to implement this, the screening, i.e.; the presentation of the acquis under these chapters (explanatory screening meeting) and the country's reporting on meeting the acquis (bilateral screening meeting) would be conducted as early as possible.*

As a second step, Action Plans would be drawn up by the candidate country. These Action Plans should be in the ownership of the candidate country but would be based on clear guidance arising from the screening. The screening reports should provide substantial input, setting out in a clear and structured way the framework for negotiations and the tasks to be addressed by the candidates in the Action Plans. In order to help candidate countries fulfil their commitments made in the Action Plans, specific incentives and support measures would be

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[156] Nozar, W. (2012), *The 100% Union: the rise of Chapters 23 and 24"*, Clingendael Magazine, (https://www.clingendael.org/publication/100-union-rise-chapters-23-and-24)

put in place (financial assistance under the Instrument for Pre-accession Assistance (IPA)).

The new approach leads to a stronger focus on rule of law issues in enlargement countries at earlier stages of the process. "

"Prioritisation of chapters 23 and 24 has triggered some criticism that the EU is requiring higher standards from the current enlargement countries than in previous accessions or than the EU Member States meet themselves. With increasing integration of the Union, it is important to strengthen trust between the Member States and to ensure a high level of protection of citizens' rights. Where shortcomings exist, Member States must take the necessary measure to improve the situation. For newcomers, this can result in higher benchmarks for accession."

Enhancing the accession process – A credible EU perspective for the Western Balkans [157]

In 2020 the European Commission published concrete proposals for strengthening the whole accession process.

"A core objective of the European Union's engagement with the Western Balkans is to prepare them to meet all the requirements of membership. This includes supporting fundamental democratic, rule of law and economic reforms and alignment with core European values. This will in turn foster solid and accelerated economic growth and social convergence."

The European Commission describes how the accession process might be reinvigorated:

"For the accession process to regain credibility on both sides and deliver to its full potential, it needs to rest on solid trust, mutual confidence and clear commitments on both sides.

It means the Western Balkans leaders must deliver more credibly on their commitment to implement the fundamental reforms required, whether on rule of law, fighting corruption, the economy or ensuring the proper functioning of democratic institutions and public administration, and foreign policy alignment. …… When partner countries meet the objective criteria and the established

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[157] European Commission (2020), *Enhancing the accession process – A credible EU perspective for the Western Balkans,* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0057&from=EN

objective conditions, the Member States shall agree to move forward to the next stage of the process. ……Credibility should be reinforced through an even stronger focus on the fundamental reforms essential for success on the EU path. These fundamentals will become even more central in the accession negotiations. Negotiations on the fundamentals will be opened first and closed last and progress on these will determine the overall pace of negotiations."
Under "Fundamental" *chapter 23-* Judiciary and 24: fundamental rights and 24- Justice, Freedom and Security are on top of the list.[158]

The -what is termed- "Fundamental" consist of the following negotiating chapters:

23 Judiciary and fundamental rights
24 Justice, Freedom, and Security

Under the heading of a more dynamic process, the following is mentioned:

"Clustering chapters will allow a stronger focus on core sectors in the political dialogue and provide an improved framing for higher level political engagement. It will allow the most important and urgent reforms per sector to be identified."

In the paragraph of "Predictability, positive and negative conditionality" the Commission describes how it *"will use the enlargement package to check the compliance of the candidates with the acquis and provide clearer guidance on specific reform priorities and alignment criteria as well as expectations for next steps in the process."…It is important that candidate countries know the benchmarks against which their performance will be measured and that Member States share a clear understanding of what exactly is requested from the candidates. The Commission will better define the conditions set for candidates to progress, in particular through its annual reports……..If countries move on reform priorities agreed in the negotiations sufficiently, this should lead to:*

- closer integration of the country with the European Union, work for accelerated integration and "phasing-in" to individual EU policies, the EU market and EU programmes, while ensuring a level playing field
- increased funding and investments – including through a performance-based and reform-oriented Instrument for Pre-accession support and closer cooperation with IFIs to leverage support."

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[158] The other chapters are: Economic criteria, Functioning of democratic institutions, public administration reform, 5 - Public procurement, 18 – Statistics, 32 - Financial control.

"There is equally a need for more decisive measures proportionally sanctioning any serious or prolonged stagnation or even backsliding in reform implementation and meeting the requirements of the accession process."

The EU as a Promoter of 'Stabilitocracy' in the Western Balkans[159]

The Clingendael Institute published an important article about the pitfalls in the Western Balkans enlargement. We quote from this report:

"Through its enlargement policy, the EU seeks to foster democratisation in the so-called Western Balkans six (WB6). Despite years of efforts, the EU's policies have not brought about the expected change. The enlargement process has lost both efficacy and political momentum. Instead of experiencing decisive democratic reform, the WB6 have slowly developed into 'stabilitocracies': countries with obvious democratic shortcomings that at the same time claim to work towards democratic reform and offer stability."

Stabilitocracy formation in the Western Balkans suggests that the EU's asserted transformative power is limited. Internal developments and a lack of political will in the WB6 are a significant factor in stabilitocracy formation. Several sources, however, assert that the EU's policies contribute to the entrenchment of autocratic tendencies in the region.

The report identifies eight flaws in the EU's strategies, policies and their implementation that are believed to contribute to stabilitocracy formation:

The EU's overly technical approach to enlargement fails to foster deep political and societal transformation.

A lack of clarity in rule of law definitions hinders the adequate transposal of EU values.

1. Inadequate reporting on reform progress dilutes actual political realities in the WB6.
2. The EU often fails to speak out against and act upon standstill or backlash, implicitly
   - offering tacit support to autocratic tendencies instead.
3. The EU regularly proves unable to reward progress because it is unable to find

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[159] Zweers, W., Cretti, G., De Boon, M., Dafa, A., Subotić, S., Muk, M., Fetahu, A., Abazi Imeri, A., Kuhinja, E., Kujraković, H. (2022), *The EU as a Promoter of 'Stabilitocracy' in the Western Balkans*, Clingendael report

- common understanding among its member states, thereby harming its credibility.
4 An overly leader-oriented approach towards the WB6 reinforces and legitimises the
    - position of Western Balkan political elites who use the EU's public endorsement to
    - reinforce their grip on society.
5 Party political relations between political families in the EU and their WB6
    - counterparts lead to undue support for WB6 parties even when they display
    - non-democratic behaviour.
6 A lack of interim timelines leaves the EU unable to monitor reform progress and hold
    - governments of the region accountable for not carrying out necessary democratic reforms."

EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persist [160]

The European Court of Auditors published in 2022 an audit report on the current process of the Western Balkans. We quote from its summary the following:

"The main question in the audit: whether EU support for the rule of law in the Western Balkans during 2014-2020 has been effective? We covered the rule of law components of justice and the judiciary, anti-corruption, and human rights, namely access to justice and freedom of expression.

Overall findings: while EU action has contributed to reforms in technical and operational areas, such as improving the efficiency of the judiciary and the development of relevant legislation, it has had little overall impact on fundamental rule of law reforms in the region. A key reason for this is the insufficient domestic political will to drive the necessary reforms.

The Commission's rule of law priorities are shared by other international organisations, think tanks and civil society organisations. Despite this, the EU's incountry support for civil society action on the rule of law is insufficient in meeting the needs of the sector and its impact is not thoroughly monitored. The

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[160] European Court of Auditors (2022), *EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persist,* Special Report,
(https://www.eca.europa.eu/Lists/ECADocuments/SR22_01/SR_ROL-Balkans_EN.pdf)

methodology for accession negotiations in place since 2020 is a step in the right direction. However, the new methodology is too recent for any visible results.

On the basis of these conclusions, it is recommended that the Commission.

- *strengthen the mechanism for promoting rule of law reforms in the enlargement process;*
- *intensify support for civil society engaged in rule of law reforms and media independence;*
- *reinforce the use of conditionality in the current financial programme;*
- *strengthen project reporting and monitoring."*

UNODC - Evaluation-based analysis of good practices in UNODC's approach to capacity building (2017) (extract from Executive Summary).

On subject of conditions for successful capacity building:

(a) full commitment from participating countries, (b) availability of necessary human resources, (c) forward looking selection of officials to ensure the completion of curriculum and minimum tenure in the unit, (d) motivated staff supported by senior managers, and (e) training methodology that emphasizes needs assessment, continuous follow-up, and mentoring visits.

Also:

"*CD takes place in a larger environment of a multitude of organizations, individuals, teams, networks, sectors and countries. There are no development results that are produced by any single actor in isolation. Thus, CD shapes and is shaped by its environment, which also implies that it is political in nature. It is about a system's ability to harmonize interests and power asymmetries among various actors.*"

Also:

"*CD programmes work best when (1) combined with follow-ups activities (e.g., mentoring, observations, etc.), (2) conducted after identification of local infrastructure and support resources to sustain learnings, (3) are aware of the interrelationships among various organizations, (4) involve local organizations for multiplier effects, and (5) are mindful of constantly changing environment that presents new opportunities and poses new threats.*"

"*CD programmes need to track and measure changes in capacity levels over time, which is necessary for learning as well as demonstrating their results to key stakeholders. The programmes need to be aware of differences in time frames*

for multiple stakeholders and how these impact various initiatives. For this purpose, results can be defined at various levels using models such as the Kirkpatrick model that considers the timeframe when defining outcomes."

INL Guide to Corrections Assistance (2014)

Although it is mainly focused on the custodial system, it has nevertheless relevance for our study as INL makes clear that fundamental changes can only be accomplished if the whole system of corrections picture is taken into account and worked upon at the same time: "*INL promotes a holistic approach to criminal justice system reform. Ideally, corrections reform would take place in coordination with reforms in the other two pillars of the criminal justice system, the police, and the courts (including prosecutors and the defense bar). Effective investigations, courts, and sentencing laws work together to prevent overcrowding in correctional systems.*" (page 1)

The brochure does not refer to evaluated and published capacity building in corrections, but this guide is built on experience the INL has in carrying out projects all over the world.

Standard Minimum Rules for the Treatment of Prisoners (Minimum Rules) are the foundations for INL's work.

In planning and implementing a project several **issues and points of attention** are also relevant for probation capacity building.

Issue 1: Authoritarian regimes: *Assistance to countries under repressive or authoritarian rule can be difficult. It is highly unlikely that these governments will be genuinely interested in real reform.*

Approaches: *Corrections assistance activities can focus on constituency and coalition building to create pressure for compliance with international standards and norms. The strategic focus is to broaden and deepen the obligations of a government to operate safe, secure, and humane correctional institutions, and encourage key groups to mobilize constituencies for reform. Partnership initiatives would likely take the shape of pilot programs, possibly in collaboration with local or regional NGOs or international organizations.*

Issue 2: Fragile states and emerging democracies: *Assistance may require long-term engagements aimed at reforming or replacing the existing corrections apparatus. The existing institutional culture often lacks transparency and resists change. While there may be a temptation to develop full-blown programmatic activities, careful consideration should be given before pursuing this course of action during the initial stages of the program, at a minimum.*"

Approaches: *"Get to know the key stakeholders and the emerging power structures to assess whether – and how – they can be brought into the reform effort. More targeted capacity building and training, rather than large-scale institution building, may be appropriate due to limited absorptive and sustainability capacity."*

Issue 3: Economic situation: *"A nation's economic situation is one of the keys to understanding the nature of the prisoner population, the types of crimes, and the ability of the government to properly fund and sustain the system. An economy without a stable revenue base is incapable of providing adequate resources to a corrections system."*

Approaches: *"It is important to determine the economic realities of the partner nation before initiating a program for reform. The host nation must be capable of sustaining the type and scale of reforms selected."*

An assessment framework

INL has developed an assessment framework that evaluates corrections systems in five core areas: *"security operations, administrative operations, staffing and resources, alternatives to incarceration, and transparency. An assessment will rate the five core functions to enable the targeting and prioritization of effort in areas of greatest opportunity."*

An assessment should contain the following elements: pre-assessment, desk study, field study, analysing the assessment and final assessment report.

When conducting an assessment, several problems are found regularly:

- overuse of imprisonment prior to conviction and prolonged pre-trial detention
- insufficient use of non-custodial measures
- limited budget and fundings
- insufficient staffing and training of personnel
- corruption and mismanagement

Program Design and Implementation

"INL officers should consult with partner country decision-makers and stakeholders during the program design stage and throughout implementation to ensure host country buy-in and their ability to sustain reforms beyond the duration of the program. Prior to initiating any assistance, INL officers should consider the following:

- *Entry points for engagement*

Relationships with national authorities, institutions, and actors involved in corrections reform (e.g., line ministries and government agencies, corrections administrators and actors, civil society organizations) could serve as starting points for intervention."

- *Types of assistance*

INL officers should consider the comparative advantages of mentoring, training, advising, providing material support, and offering grants to NGOs."

- *Sustainability*

Correctional systems are expensive. If a system is plagued by poor pay, infrastructure and staffing, sanitation problems, and other maladies, it could reflect greater economic malaise. Program interventions need to be consistent with the partner nation's ability and willingness to sustain them."

- *Absorption*

How much and what types of assistance can the partner absorb?

- *Periods of performance*

Each activity should include a set period of performance, including a plan to measure performance, so that activities are properly executed and tracked in a timely fashion.

- *International donor community*

Coordinating with other international donors that support criminal justice reform will help avoid duplication of efforts."

Program Activities

"Corrections-system assistance spans a broad spectrum of technical, material, and financial support. Examples of these activities include study tours, mentoring, training, equipping, and advising activities that aim to establish a well-functioning, professional, and corrections system."

Hereunder is a selection of activities that are also relevant to the probation sector.

- Successful corrections systems rely on properly trained and resourced staff.
- Managing pre-trial detention: Reducing pre-trial detention will require coordinating reform efforts with justice sector institutions, law enforcement agencies, and other stakeholders to increase the use of alternatives to incarceration during investigation and trial.
- Exploring the use of non-custodial sanctions and alternatives to incarceration.
- Facilitating community reintegration and after-care.
- Strengthening administrative capacities. Possible activities include:
    - strengthening executive and organisational leadership

o   improving coordination with other criminal justice actors
o   developing inmate assessment and classification systems
o   providing guidance on budget and financial management
o   developing practices for recruitment, staffing, and training
o   establishing oversight and accountability mechanisms
o   formalizing codes of conduct and disciplinary procedures
o   providing training on public affairs and outreach

Some Lessons Learned:

- **Consultations and national ownership:** Consultations with national authorities and stakeholders assist in identifying the conditions, needs, and priorities that should inform the nature and scope of corrections assistance is important as it contributes to national ownership and long-term sustainability of assistance programs.
- **Coordinating assistance:** Collaborating with other assistance providers including intergovernmental organizations, and civil society organizations that fund or implement criminal justice reform initiatives improves the effectiveness and efficiency of the programs. The involvement and actions of other donors must be taken into consideration to prevent duplication of efforts and contradictory training approaches.
- **Professional organizations and academic institutions:** Professional organizations such as the International Corrections and Prisons Association, and academic institutions, such as the International Centre for Prison Studies at Kings College in London, have served as leaders in the field of corrections. These organizations develop and distribute outstanding research and training material on a wide variety of corrections issues.
- **Civil society:** Local and international nongovernmental organizations may gather and publicize information about prison conditions in partner countries. They may also be available to provide training, goods, and services including education, vocational training.

Annex D - Review of Literature and Discussion of Implications

Steve Pitts (lead author), Leo Tigges

The literature review[161] adopts the same structure as outlined in section 5.1 of the main report:

1 general literature on policy transfer and capacity building
2 literature on the typology of justice systems in different countries, and
3 literature on policy transfer and capacity building in probation.

Papers in each category are summarised. Key points are highlighted, and potential implications of each paper for good practice in probation capacity building are discussed.

General Literature on Policy Transfer and Capacity Building

A framework for the analysis of policy transfer

Dolowitz, D. and Marsh, D. (1996), 'Who Learns What from Whom? A Review of the Policy Transfer Literature', *Political Studies*, 44: 343–57.

Dolowitz, D. and Marsh, D (2000), 'Learning from Abroad: The Role of Policy Transfer in Contemporary Policymaking', *Governance*, **13** (1): 5-23.

We begin with a review of general (non-justice) literature in the area of policy transfer and capacity building and a consideration of its relevance to the justice and probation fields.

Dolowitz and Marsh (2000)[162] describe how in recent years there has been a growing body of literature that directly and indirectly uses, discusses and analyzes the "*processes involved in lesson-drawing, policy convergence, policy diffusion and policy transfer*".

Noting that terminology may vary, they describe how these studies are concerned with a similar process in which "*knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting*".

Pointing out that policymakers appear to be increasingly relying upon policy transfer (for reasons we come to shortly) this is, they argue, a phenomenon anyone interested in, or studying, public policy needs to consider.

Dolowitz and Marsh, in their 2000 analysis, explore four main themes. Each is, we suggest, relevant to the study of transfer in the probation field. They –

- **first** consider the extent of, and reasons for, the growth of policy transfer.
- **second,** offer a framework, revised, and developed from their 1996 analysis, for the analysis of transfer. This is in our opinion a very useful framework which we utilise at several points in this study.
- **third,** present "*a continuum for distinguishing among different types of policy transfer*".
- **fourth,** address the "*relationship between policy transfer and policy failure*".

Considering first **the growth of policy transfer,** they point to global economic forces, and increasing communications facilitating the exchange of ideas and knowledge. Furthermore, they note that "*international organizations, such as the European Union (EU), the International Monetary Fund (IMF) and the World Bank, advocate, and at times enforce, similar policies across diverse countries*". The combination of similar pressures and expanding availability of information has meant "*that policymakers increasingly look to other political systems for knowledge and ideas about institutions, programs and policies and about how they work in other jurisdictions*".

These are arguments we have no difficulty in recognising in our own field in which the European Union, for example, has a significant influence on justice

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[162] Learning from Abroad: The Role of Policy Transfer in Contemporary Policymaking, DAVID P. DOLOWITZ AND DAVID MARSH. Governance: An International Journal of Policy and Administration, Vol. 13, No. 1, January 2000 (pp. 5–24). © 2000 Blackwell Publishers, 350 Main St., Malden MA02148, USA, and 108 Cowley Road, Oxford, OX4 1JF, UK. ISSN 0952-1895.

policy in current and potential Member States, and where information about probation practices in Europe are readily available including through the CEP and the Council of Europe.

Turning to **a framework for the analysis of transfer,** their 2000 article builds on a previous article (Dolowitz and Marsh, 1996)[163] in which they first set out a broad conceptual framework with the aim of helping to examine the process of policy transfer.

Their analytical framework is organized around six questions:

Why do actors engage in policy transfer?

- Who are the key actors involved in the policy transfer process?
- What is transferred?
- From where are lessons drawn?
- What are the different degrees of transfer?
- What restricts or facilitates the policy transfer process?

In addressing the sixth question, Dolowitz and Marsh then add a new question: "*How is the process of policy transfer related to policy 'success' or policy 'failure'*"?

Looking briefly at each question in turn, they amplify the *"why"* of policy transfer with an examination of a continuum between what they term voluntary and coercive transfer. Voluntary transfer occurs mainly in response to a need or problem identified by the recipient country. Possible solutions are sought from others. However, choice of policy is not always "*value neutral*"; rather solutions can be sought that further the pre-dispositions or wider aims of the political actors with influence, and policy use or success in the originating location may be used to justify the transfer. A second reason, coercive transfer is, they suggest, rare in a direct sense between states. However, the influence of supra-national bodies, such as the European Union, can be important and direct to the extent of requiring policy transfer (and of course its implementation into practice), particularly in the case of newer members. They however qualify their view on the extent of coercion by supra-national bodies, pointing out that countries may choose to join a body (such as the EU) thereby accepting direction as a condition of membership. Once joined, members can also influence policy. This is therefore in reality often a point between voluntary and

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[163] Dolowitz, D. and D. Marsh. 1996. "Who Learns What from Whom? A Review of the Policy Transfer Literature." Political Studies 44:343–357.

coercive - a form that might sometimes be described as *"obligated"* or *"negotiated"* transfer.

A third category is what they term indirect coercive transfer which occurs when countries with degrees of interdependence seek to solve common problems by drawing on common policies and technologies, particularly when an international consensus emerges on ways forward. Transfer can also be influenced when actors perceive they may be falling behind in their adoption of internationally recognized policy or practice.

Dolowitz and Marsh turn then to *who* is involved in the policy transfer process, pointing out that who is involved may also impact directly or indirectly on the voluntary-coercive continuum (for example consultants and IGOs can act to support both ends and any point along the continuum).

Dolowitz and Marsh identify nine main categories of political actors engaged in the policy transfer process: elected officials, political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs and experts, transnational corporations, think tanks, supra-national governmental and nongovernmental institutions and consultants. Paying special attention to the latter groups of actors they draw two important conclusions:

First, that policymakers, at both the national and international levels, are relying increasingly *"on the advice of consultants, whether individuals or firms, who act as policy experts in the development of new programs, policies and institutional structures"*. In their view *"their role is particularly important because they tend to offer advice based upon what they regard as the "best practice" elsewhere, often paying little attention to the particular context in the borrowing political system."*

Second, they conclude that *"international governing organizations (IGOs), such as the OECD, G-7, IMF and the UN and its various agencies, are increasingly playing a role in the spread of ideas, programs and institutions around the globe"*. Further, *"these organizations influence national policymakers directly, through their policies and loan conditions, and indirectly, through the information and policies spread at their conferences and through reports. In addition, international nongovernmental organizations (NGOs) are also increasing their influence over global public policy through their ability to spread ideas and information on an international level"*.

Regarding *what* is transferred, they distinguish between policies *"which are seen as broader statements of intention and which generally denote the direction policymakers wish to take"* and *"programs, which are the specific means of the course of action used to implement policies"* – *"each policy can have multiple programs, while a program is a complete course of action in and of itself"*.

Whilst this is perhaps a fairly obvious distinction it is in our opinion an important one, pointing as it does towards two quite different categories of transfer that might occur together or separately, each to a differing degree, a point Dolowitz and Marsh address following consideration of the range of sources from where lessons are drawn. These include from within (their) country, from (a part or all of) another country, or "*drawn from, or forced upon a political system by, the international level.*"

Dolowitz and Marsh suggest that policy transfer is not an "*all-or-nothing*" process. Rather, "*while any particular case can involve a combination of processes and agents, there are basically* **four different gradations, or degrees of transfer** *(bulletin added)*:

- *copying, which involves direct and complete transfer*
- *emulation, which involves transfer of the ideas behind the policy or program*
- *combinations, which involve mixtures of several different policies, and*
- *inspiration, where policy in another jurisdiction may inspire a policy change, but where the final outcome does not actually draw upon the original.*"

Finally, turning to an aspect of transfer especially critical to the purpose of our own study, Dolowitz and Marsh consider **what restricts or facilitates policy transfer** and the degree of success or failure.

"*The majority of the studies using policy transfer either implicitly or explicitly take it for granted that the process has led, or will lead, to the successful implementation of a policy, program or institution. However, it is becoming increasingly apparent that policy transfer can, and often does, lead to policy failure*".

As a result, they argue there is a need to explore the relationship between transfer and policy success or failure. Observing that "I*n cases of lesson-drawing at least, governments borrow policies, institutions, etc., with the expectation that this transfer will lead to policy 'success' rather than policy 'failure,'* they note "*the underlying assumption is that policies that have been successful in one country will be successful in another*".

Exploring why this is "*clearly*" not always the case, Dolowitz and Marsh suggest "*that at least three factors have a significant effect on policy failure.*"

- First, the borrowing country may have insufficient information about the policy/institution and how it operates in the country from which it is transferred, a process they call uninformed transfer.

- Second, although transfer has occurred, crucial elements of what made the policy or institutional structure a success in the originating country may not be transferred, leading to failure. They call this incomplete transfer.
- Third, insufficient attention may be paid to the differences between the economic, social, political and ideological contexts in the transferring and the borrowing country. They call this "*inappropriate transfer*", in which for example "*different values lead to different, contradictory aims*."

Concluding that "*while transfer may shape policy change, it may also lead to implementation failure*" they suggest their analysis means that "*even if we can regard policy transfer as a key explanatory variable in the development of many policies, we must also recognize that it is important to follow each policy through to see whether uninformed, incomplete or inappropriate transfer leads to policy failure*".

Arguing the value of a framework such as their own to better understand the complexities involved in transfer, they also emphasise this complex reality, pointing to the interplay of factors such as the motivations to transfer, who is involved, and the degree of voluntaryism or coercion. These may vary between actors even in the same receiving country, and over time.

Implications of the framework for transfer in the probation field

Examining the framework in the context of the probation field we have no hesitation in arguing its relevance: why transfer (including motivations and degree of coercion involved) and who is involved (noting the different roles and possibly different motivations of the varied actors) seem applicable and fundamental questions to us, as do questions regarding what is transferred and from where. Just as relevant is the concept of degree of transfer, and the questions which follow including what restricts or facilitates transfer and the extent of success or failure. The challenge is to understand how these apply in the probation field.

Is it the case, for example, that politicians may want to solve a problem (such as prison overcrowding) and look voluntarily for a solution (community sentences) from another country? Might this also be encouraged by a general regional or global move in this direction (a form of bounded voluntarism), or desire to join an international body such as the EU (closer then to negotiated transfer)? However, detailed knowledge of how a policy (or practice) operates in the source country may not be fully considered, or differences in the economic, social, political, and ideological contexts in the transferring and the borrowing country not fully considered. The same might be true, or may vary, for other actors in the borrowing country who may have different exposure to the detail

of international policy and practices and different motivations for change (for example through exposure to an organisation such as the CEP).

The picture may be further complicated or influenced by the prevailing policies and practice in a specific "twinned" transferring country (because it is the twinning country and/or has a strong reputation), or the "evidence-informed international best practices" of consultants or recommendations of supra-national bodies such as the Council of Europe or United Nations. And all may vary over time!

Finally, what does an examination of Dolowitz and Marsh tell us about good practices, or at least questions to ask, in policy (or practice) transfer in the probation field?

Certainly, the experts of transferring countries (or attached to international bodies) need to pay attention to motivation, the "why" of transfer, including the extent to which transfer is voluntary, negotiated or bounded, coercive, or a combination of these. They should also attend to context in the borrowing system - the risks otherwise of inappropriate or short-lived transfer mount. We also need to consider the influence of international organisations such as the CEP and of supra-national bodies such as the EU and Council of Europe on motivation, who is involved, and what is transferred. Furthermore, how do these and other factors influence the *degree* of transfer from copying to inspiration, and success or failure in the probation field? And how do we know when success has been achieved, what are the benchmarks, to what extent are they shared, and are there unintended consequences (such as net widening) in the probation field that parties need to be aware of?

In summary:

- The framework can help inform good practices (or at least questions to ask) on the part of donor country or international body experts, and others.
- In so doing they support clarity and awareness of critical "success" factors such as "why probation?" motivation of key actors, degree of voluntaryism attached to the probation "project", varied expectations (for instance of politicians, managers and practitioners, public prosecutors), key actor involvement, and potential resistances.
- Furthermore, attention to what is transferred, degree of transfer (from direct copying to inspiration), and likely contributors to success or failure can help to identify and address difficulties from the outset, and to maximise success. Here we note especially differences in context (such as ideological and resource) between lending and benefiting countries, depth of understanding of issues such as resource demand and impact on related services (especially the "justice chain"), and differences in

penal attitudes and values which may be reflected by stakeholders, wider media and public.

- Questions of transfer "source(s)", and ensuring sufficient attention to issues of cultural, political, or ideological compatibility or economic cost, also prompt consideration of matters of source appropriateness, adaptation, and perhaps the advisability of expanding options by drawing from a range of sources.

- In short, the more clarity created from the outset, and the richer the communication with stakeholders, the better the likelihood a project can be successfully formulated and implemented.

The Impact of Globalisation on Policy Transfer

Evans, M. (2017); International Policy Transfer: Between Global and Sovereign and Between Global and Local. In: Stone, D. and Moloney, D. (ed) *Oxford Handbook on Global Policy and Transnational Administration.* Oxford University Press.

The impact on transfer of international and supra-national bodies is considered further by Evans[164] (2017) who aims to provide "*an understanding of the relationship between systemic globalizing forces and the increasing scope and intensity of policy transfer activity*".

Evans considers four central research questions: what is studied when policy transfer is studied? How is policy transfer studied? Why do public organisations engage in policy transfer? In what ways can the policy transfer approach be improved? Evans, reviewing the policy transfer literature, notes a variety of forms of transfer including band-wagoning, convergence, emulation, policy learning, social learning, lesson-drawing and trans-nationalisation. Importantly, he notes that much of the study of policy transfer has focussed on the study of policy transfer between developed countries "*as a process in which policies implemented elsewhere are examined by rational political actors for their potential utilisation within another political system*" (quoting Dolowitz and Marsh, 2000).

With the proviso that -

"*The study of policy transfer analysis should be restricted to action-oriented intentional learning: that which takes place consciously and results in policy*

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[164] International Policy Transfer: Between Global and Sovereign and Between Global and Local.

action… The element of intentionality in this definition of policy transfer makes an agent essential to both voluntary and coercive processes"

and that *"Intentionality may be ascribed to the originating state/institution/actor, to the transferee state/institution/actor, to both or to a third-party state/institution/actor".*

he then suggests (developing the analysis of Dolowitz and Marsh) that -

"Policy analysts deploy the policy transfer approach as a generic concept that encompasses quite different claims about why public organizations engage in policy learning. Typically, policy transfer analysts refer to three different processes of transfer: voluntary transfer, lesson-drawing or policy learning (three concepts that can be used interchangeably); negotiated transfer, and direct coercive transfer".

The first group (voluntary transfer, lesson-drawing or policy learning) are *"a rational, action-oriented approach to dealing with public policy problems……."* whilst *"The second and third processes of transfer involve varying degrees of coercion and are common in developing countries. Negotiated policy transfer refers to a process in which governments are compelled by, for example, influential donor countries, global financial institutions, supra-national institutions, international organizations or transnational corporations, to introduce policy change to secure grants, loans or other forms of inward investment. Although an exchange process does occur, it remains a coercive activity because the recipient country is denied freedom of choice……. Another form of indirect policy transfer can be identified when governments introduce institutional or policy changes due to a fear of falling behind neighbouring countries* - the "band-wagoning" (John Ikenberry) referred to earlier.

Of clear relevance to our study, Evans then quotes Wallace et al., (2015) -

"In developed countries, the majority of policy transfer activity centres on voluntary transfer or lesson-drawing. Negotiated processes of transfer can be identified with regard to majority decision-making in the European Union ….and conditionalities associated with the acquis and European Union enlargement …but such forms of transfer tend to be the exception rather than the rule.

Drawing on the framework of Dolowitz and Marsh, Evans addresses processes of learning:

"The first and rarest form of policy-oriented learning is **copying** *where a governmental organization adopts a policy, programme, or institution without modification… Second, there is* **emulation** *where a governmental organization accepts that a policy, programme, or institution overseas provides the best*

standard for designing a policy, programme, or institution at home. ………. **Hybridization** *is the third and most typical form of policy-oriented learning. This is where a governmental organization combines elements of programmes found in several settings to develop a policy that is culturally sensitive to the needs of the recipient. ….. Fourth, there is* **inspiration** *where an idea inspires fresh thinking about the treatment of a policy problem and helps to facilitate policy change..."*

Proposing that the *"proof of policy transfer lies in its implementation",* Evans also asks which factors *"can constrain policy transfer and learning in the process of implementation"?* Linking suggestions to stages of implementation, he identifies (from a meta-analysis of the case study literature) *"three broad sets of variables"* …

- *'cognitive' barriers in the pre-decision phase,*
- *'environmental' barriers in the implementation phase and, increasingly,*
- *domestic public opinion".*

Evans suggests that the most significant cognitive barriers *"for agents of policy transfer to overcome ……. are normally issues arising from the prevailing organizational culture and the need for effective cultural assimilation of policy alternatives."*

'Environmental' obstacles, on the other hand require, for removal, development of a good implementation strategy: *"an adequate causal theory of policy development from idea to impact; the sensible allocation of financial resources; hierarchical integration within and among implementing organizations; clear decision rules underpinning the operation of implementing agencies; the recruitment of programme officers with adequate skills/training; sufficient technical support; and the use of effective monitoring and evaluation systems including formal access by outsiders".*

Evans then uses Peter Hall's (1993) terminology to describe three categories of policy transfer: *"first order change in the precise settings of the policy instruments used to attain policy goal (marginal adjustments to the status quo); second order change to the policy instruments themselves such as the development of new institutions and delivery systems; and third order change to the actual goals that guide policy in a particular field (ideas, attitudes and concepts)".* In relation to the measurement of success, he quotes Marsh and McConnell (2010) who distinguish between process success, programmatic success and political success. Evans notes however the "obvious" question of 'success for whom?

"An understanding of what is a policy 'success' or 'failure' is crucial. At the same time, it is important to appreciate that a policy can 'succeed' on one dimension,

or for one set of people, while 'failing' on another dimension, or for another set of people. Yet, more evidence of the complexity of the policy transfer process".

Evans then examines how policy transfer is studied. He distinguishes between process-centred and ideational approaches.

Process-centred approaches *"focus on the process of policy transfer directly in order to explain the voluntary or coercively negotiated importation of ideas, policies or institutions". "Policy learning is based largely on the interpersonal interaction between agents of transfer, bureaucrats and politicians within inter-organizational decision settings…… In these decision settings there exists a pattern of common kinship expressed through culture, rules and values."
………It is evident…. that practitioners value the process-centred approach to policy transfer highly as (in their view) it can provide a guide to rational action in policy development."*

Process-centred approaches may include ten sequential steps (Rose) recommended to practitioners *"in order to evaluate whether or not a non-indigenous programme should be applied domestically"*:

1 *Learn the key concepts: what a programme is, and what a lesson is and is not.*
2 *Catch the attention of policymakers.*
3 *Scan alternatives and decide where to look for lessons.*
4 *Learn by going abroad.*
5 *Abstract from what you observe a generalized model of how a foreign programme works.*
6 *Turn the model into a lesson fitting your own national context.*
7 *Decide whether the lesson should be adopted.*
8 *Decide whether the lesson can be applied.*
9 *Simplify the means and ends of a lesson to increase its chances of success.*
10 *Evaluate a lesson's outcome prospectively and, if it is adopted, as it evolves over time*

Ideational approaches, on the other hand, are *"systems of ideas which influence how politicians and policy-makers learn how to learn… the policy-making process (falls) into three dimensions: the overarching goals that guide policy in a particular field (third order change); the techniques or policy instruments used to attain these goals (second order change); and the precise settings of these instruments (first order change)".*

Furthermore, ideational approaches may be encouraged by epistemic communities *"comprised of natural and social scientists or individuals from any discipline or profession with authoritative claims to policy relevant knowledge*

that reside in national, transnational and international organizations. The function of these communities is to facilitate the emergence of policy learning that may lead to policy convergence".

Evans penultimately considers studies of policy diffusion, noting that Peters (1997) "*argues that policy learning in public management is a common activity for governments around the world, but that there are differences in the rates at which countries are able to learn and adapt*". Peters "*attributes these differences to structural factors such as economic, ideological, cultural and institutional similarities. Those states that share common features are more likely to engage in policy transfer with one another*".

Finally, Evans considers institutional memory. He quotes Christopher Pollitt (2000) who *"argues very forcefully that institutional memory has declined significantly in liberal democracies"* and identifies four dimensions of this decline: *"a failure to record data and decisions; a loss of material once recorded; inadequate processes for retrieving data; and, most importantly, a failure to take past experience seriously……… this may explain some cases of policy failure, because new policies are tried, which may have been tried before and found wanting, for reasons which still pertain"*.

Implications for transfer between global and sovereign or global and local in the probation field

As with the framework for analysing policy transfer advanced by Dolowitz and Marsh, we have little difficulty in relating the concepts quoted or advanced by Evans to the probation field. Indeed, we find several examples which help shed light on or confirm our experience.

In terms of processes of transfer, it appears to us that most probation developments within EU countries stem from a mix of processes (*voluntary transfer, lesson-drawing or policy learning, negotiated transfer and, perhaps less so, direct coercive transfer.*) Drivers are many: of desire to become a member of the EU and achieve its benefits, to transfer and implement in a short time-frame current approaches from an experienced partner, not to "fall behind" neighbours in the justice arena – but with negotiation to varying degrees to fit with local culture and their own development. We can also see the influence of international and supra-national bodies including the CEP and Council of Europe but note that rules and guidance such as the Council of Europe Probation Rules, Tokyo Rules or Bangkok Rules are far from universally implemented. As with the EU, membership of the Council of Europe and United Nations implies rules, and therefore, perhaps depending on the wishes of individual countries, the possibility of some form of "negotiated voluntaryism" or even coercion. What is without doubt interesting is the flexibility of individual countries to deviate, in the shorter, medium or longer terms.

It is interesting to speculate on the extent to which position on a continuum of voluntary to coercive transfer contributes to failure or success, but we note that "success" in the probation field may be interpreted differently by various actors in the process including the lending, receiving and "commissioning" parties. The value base here matters: where, for example, do we place a country that reduces its custodial population but drastically widens the net of community sentences, or whose main or only community provision is electronic monitoring?

We see all four transfer processes in action, for example copying EM or the assessment instruments of other countries with little adaptation, emulation (adapting or reimagining assessment instruments or employability initiatives), a hybrid of these, and inspiration (for example thanks to the thrust of European Probation Rules, or as a result of study visits or CEP membership).

Turning to resistances, we recognize cognitive factors, for example a lack of information on the part of politicians, ministers, judges and other key stakeholders on the benefits and delivery of probation. We have seen resistances arising from the prevailing organizational culture (a point we return to) and the need for effective cultural assimilation of policy alternatives. It follows that probation leaders (and international donors and experts) need to involve and have an eye to which ideas could strike a chord with other leaders, stakeholders and the public (for example Community Service as a sentence understood by the public and others including media because it is felt as a real sentence, and with societal benefits).

Environmental obstacles we have seen frequently include resource and capacity issues, and sometimes the reality of internal stakeholders including some staff and managers moving at a different pace from leaders and others who may be better connected internationally. These we think are issues which are a joint responsibility of the beneficiary country, experts and donors to consider and around which to develop clear strategy helped by planning and a careful step by step approach to implementation over time. Domestic public opinion matters too: not everybody in the public is happy with the changes; reaching the public is important to successful transfer. Attempts to encourage a beneficiary country to do something just because it is done in the "lending" country are highly unlikely to succeed!

We also recognize process-centred approaches, in particular the importance of interpersonal interaction and the "*pattern of common kinship expressed through culture, rules and values.*" In our view this has been a factor in at least two of our study countries where senior leaders were inspired and influenced by senior peers from other countries, sharing aspects of culture or understanding of the value base and purposes of probation.

We note that whilst this bond may help to establish and build probation it does not in itself necessarily overcome the three areas of resistance: cognitive, environmental and public. These need to be addressed explicitly too, or they may endure or return, extending the time taken for the new service to stabilize and mature. We also see examples of keenness and constraint co-existing - energetic and committed leaders, practitioners, and others, yet dealing with all three areas of resistance. Transferring countries, funders and international experts need to be alert to the three areas of resistance and work with beneficiaries to address them.

The 10-step process model described appears to offer a helpful way forward, allowing for context and national adaptation. We believe this model has in effect been followed to good effect in at least two of the countries in our study, even if not necessarily explicitly, indicating its applicability in the probation field.

We are struck too by the three dimensions of the ideational approach: the *overarching goal (third order change); the techniques or policy instruments used to attain these goals (second order change); and the precise settings of these instruments (first order change).* Applying this distinction to the probation field, we note the importance of overarching goals, ("why probation"), an aspect of probation transfer we feel is often neglected and needs considerably more focus to help ensure success, including when engaging stakeholders.

We also support the notion of *epistemic communities* and their contribution to policy convergence. We would argue the CEP is an excellent example of such a community, thanks to its website, conferences and other activities - a "think tank" that acts as an agent of policy transfer, as are organisations at global level such as the World Congress on Probation and Parole and the ICPA.

Whilst we see examples in our study of *"states that share common features (being) more likely to engage in policy transfer with one another"* (as with Latvia and Scandinavian countries, and to some extent with Canada), this is less obviously the case in some other examples such as Romania's work with the United Kingdom or the Netherlands. Other factors, including ones we have noted such as the importance of personal contacts who share a value base, may be at play – further proving the complexity of the study of transfer!

Finally, we argue that a study such as this is helping to make the case to address the deficit in institutional memory. We make a plea for more external reporting and evaluation of probation transfer!

In conclusion:

Considered together, the works of Dolowitz & Marsh and Evans bring us to an initial view that probation capacity building projects may benefit from

awareness of and attention to (at least) the following factors during preparation and implementation:

- Why is Probation sought? What are the drivers or perceived aims and benefits?
- Clarification of modes of transfer, in particular the extent of voluntaryism (*voluntary transfer, lesson-drawing or policy learning, negotiated transfer and direct coercive transfer)* and their implications, including external pressures, which may stem from or be reinforced by globalization (or "regionalization") and how they are internalized.
- Sufficient attention to areas of resistance during the phases of project formulation and implementation - "*issues arising from the prevailing organizational culture and the need for effective cultural assimilation of policy alternatives.*" ... *"'cognitive' barriers in the pre-decision and implementation phases, 'environmental' barriers in the implementation phase and, increasingly, domestic public opinion.*"
- The early involvement of stakeholders to explore and clarify aims, gain support, and to identify and reduce resistances.
- An early clarification of intended processes: copying, emulation, hybridization, and inspiration, and implications for potential resistances and implementation.
- In formulating aims, the encouragement of international and supra-national bodies and broad perspectives contained within their standard setting.
- The value of learning from countries with "*economic, ideological, cultural and institutional similarities*".
- The supportive role played by international bodies (for example funding and courses of the CoE, membership of CEP).
- If the source and nature of resistances are clear, which aspects (domain or probation task) might meet with support in the environment (politicians, the public, the justice stakeholders)? If a project can start here, hesitancy in relation to other aspects of probation might diminish.
- Openness and attention to the positive effect of a national accent on the way work within the domains are formulated (but also to times when the individual accent of a nation might not be compatible with the international guidance).
- If the receiving country wishes to borrow a specific way of organising a probation task from another country, or to copy a tool (such as an assessment system), then consider the 10-step process model to help identify the extent it may be helpful to copy this model from abroad, other possible options (including countries with similarity), and steps such as adaptation.

- The importance of external reporting and review.

Reform and Systems Thinking in probation transfer – "Clocks and Clouds"

Leroux-Martin, P. and O'Connor, V. (2017), Systems Thinking for Peacebuilding and Rule of Law: Supporting Complex Reforms in Conflict-Affected Environments. United States Institute of Peace, Washington.

We turn now to another source of material on policy transfer and consider systems theory. Leroux-Martin and O'Connor (2017) have been involved in several projects in the field of peace building and rule of law reform in various regions of the world. Drawing on systems theory they have asked themselves the question: why do we get stuck so often in our projects? Their essential proposition is that their work takes place in extremely complex systems in which simple success should not necessarily be expected, nor the non-immediate achievement of goals be seen as failure. Rather they ask:

"*What if instead of viewing failures as something to be expunged or reframed, we interpreted them as signals through which deeply inter-connected systems invite us to self-correct? What if we were not overly worried about getting stuck and found ways to effectively manage reform processes as messy journeys requiring many readjustments?*"

In arriving at their proposition, the authors distinguish four types of systems:

1 Simple systems (for example bicycles)
2 Complicated Systems (for example car engines)
3 Complex Systems (for example, human bodies); distinguished by their ambiguity; *"people at all levels of knowledge will disagree about what makes such a system work and how to manage it."*
4 Chaotic Systems (for example, a country in the midst of conflict). Chaotic systems *"take the level of ambiguity even further. In such systems, no clear cause-and-effect relationships exist among system parts. These relationships shift all the time; the only constant is turbulence."*

We suggest that for the purpose of our study, the characteristics of the complex system appear most relevant. We are familiar with the many discussions in countries in which we have worked regarding the best ways forward in developing probation work, such as which laws to introduce or adapt, who to involve, or where to start. In our experience, countries where probation capacity building takes place already have an existing stability and way of doing things. But, to quote Leroux-Martin and O'Connor again -

"When a change happens to or within such a system, it sets off a chain reaction between the parts of the system and its environment".

They suggest that the "standard mode" of operating is by applying the "lens" of the clock system: development is expected to be linear, orderly, regular, predictable. Clock thinking is well fitted to solve technical problems. However, for more complex problems, the lens of Cloud thinking is more appropriated. Cloud systems can be characterized by being disorderly, irregular and unpredictable. The authors describe what they assumed to be working with clocks in their earlier stages of engagement…

"…with rule of law reform in conflict-affected environments…… Another way to describe our mindset is what we have termed the closed-system illusion. Looking back, we realized that when working on draft legislation establishing courts and police services, or when drafting model criminal codes, we subconsciously assumed we were designing closed systems that were inoculated from the surrounding society and capable of evolving autonomously. This assumption led us to simplify many problems by framing them as clock systems impervious to external dynamics." The authors came to realize that *"complex and chaotic systems cannot be managed by linear, strategic planning or by the application of technical best practices."*

When applying linear thinking to complex systems, the authors have had the experience of not creating truly successful and sustainable results. One of the reasons is that the clock approach has the effect of putting themselves at the center of the problem, *"hereby skewing our capacity to think and act from a more context-sensitive perspective."* They contend that -

"…sometimes we will need to look at problems through a linear, technical lens. Other times we will need to use a broader lens focused on the complexity of the larger system. And often we will need to use both lenses as we manage different components of a reform effort at the same time".

The authors recommend applying system thinking to complex and chaotic systems. *"Systems thinking is a way of viewing the world, not in discrete parts but as systems of relationships. It focuses on interactions, on links between parts or subsystems. ….. "Systems thinking does not in itself solve problems. It is, rather, a tool that informs strategy."*

The authors suggest that systems thinking:

"…can help us see more clearly and engage more effectively. Understanding how complex systems work also increases our opportunities for success… once we have clarified which system we are dealing with, we can use the right lens to examine what is really going on. Then we can find the coveted high leverage

points: opportunities where a relatively small action can cause a large and positive change."

They propose the following orientation to practice*:*

- *a willingness to engage deeply with the system, its people, and its problems rather than superficially examining or acting on them;*
- *if we are external actors, a commitment to listening to the answers that stakeholders already have and helping them if they have not yet found answers;*
- *a willingness to support stakeholders as they deal with the emotional elements of change.*

They recommend mapping the system with the stakeholders, building up good relationships with and between them, to foster learning and to share meaningful information.

"At its core, systems thinking requires a shift in power away from international actors and toward local agents who are feeling the need for change most acutely. If this shift can occur, our field can more effectively grapple with forces that either slow down or stall reform".

Implications for probation transfer of systems thinking

Before turning to literature from the criminal justice and then probation fields, we take forward several significant insights from this source:

First there seems no doubt to us that we work with complex systems. Probation services exist in (or are introduced into) systems that include politicians, laws, police, judiciary, prosecutors, courts, prisons, media, NGOs, and the public, to name just some. As external players, we need to take time to really understand the situation, the real problems, and to become informed about power structures, actors involved (or who need to be involved); in short, we need to try to understand (or map) the system.

It follows that donors should be encouraged to provide time and opportunity to prepare the project, and that a project that describes in concrete terms what needs to be done in all the years of the running of project, will probably not be fully effective. The implication is that flexibility may be required by all, including donors, regarding what is going to take place in any subsequent years, (although we note separately the benefits of continuity in team members including the growth in trust). A further inference is that involving and working to support the relationships between all the stakeholders, including developing shared principles or values, is likely to be helpful.

In the world of probation development, we believe in **summary:**

- As external players the time needs to be taken to understand a situation, problems, complexities, networks and power structures, and relevant actors.
- A linear "clockwork" approach may serve some situations, others will require "cloud thinking": appreciation of complexity including potential "chain" reaction and resistance.
- Resistances should be seen as helpful feedback, contributing to "correction".
- A detailed plan of actions for the second and third years of a project might prove less effective than expected - required actions might differ from actions envisaged at the time of project application.
- Involving and working to support the relationships between all stakeholders, including developing shared principles or values, might be a good way forward.

Building State Capability and Problem Driven Iterative Adaptation

Andrews, M., Pritchett, L., and Woolcock, M. (2012). Escaping Capability Traps through Problem Driven Iterative Adaptation (PDIA). *Center for International Development Working Paper 239.* Cambridge, MA.: Center for International Development.

In "Building State Capability: Evidence, Analysis, Action"[165] Andrews, Pritchett, and Woolcock write about how to bring about sustainable change in developing countries. Many reform initiatives fail to achieve sustained improvements in performance.

According to the authors, many "*countries find themselves in* **capability traps** *because they try to perform tasks before they are actually capable of doing so. This can create too much pressure on the organization and its agents and lead to the collapse even of what small capability might have been built. When such processes are consistently repeated,* **premature load bearing** *reinforces capability traps—by asking too much of too little too soon too often ………, the very possibility and legitimacy of reform and capability building is compromised*".

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[165] Building State Capability: Evidence, Analysis, Action Matt Andrews, Lant Pritchett, and Michael Woolcock Published to Oxford Scholarship Online: February 2017.

They contend that to build capability, one "*should focus on solving problems rather than importing solutions… "You cannot juggle without the struggle - capability cannot simply be imported; the contextually workable wheel has to be reinvented by those who will use it. In this sense, building capability to implement is the organizational equivalent of learning a language, a sport or a musical instrument: it is acquired by doing, by persistent practice, not by imitating others." … "success builds capability, and not vice versa. Institutions and organizations and state capability are the result of success—they are the consolidation and reification of successful practices.*"

They go on to explain how success can be produced "*by solving pressing problems the society faces in ways that can be consolidated into organizations and institutions*". The authors propose "*problem-driven iterative adaptation (PDIA): a process of nominating local problems, authorizing and pushing positive deviations and innovation to solve problems, iterating with feedback to identify solutions, and the eventual diffusion of solutions through horizontal and interlinked non-organizational networks.*"

The authors also describe (we quote here from an earlier article by the same authors) how "*This approach* (PDIA) *is based on four core principles*[166], *each of which stands in sharp contrast with the standard approaches.*

- *PDIA focuses on solving locally nominated and defined problems in performance (as opposed to transplanting pre-conceived and packaged 'best practice' solutions).*
- *It seeks to create an 'authorizing environment' for decision-making that encourages 'positive deviance' and experimentation (as opposed to designing projects and programmes and then requiring agents to implement them exactly as designed).*
- *It embeds this experimentation in tight feedback loops that facilitate rapid experiential learning (as opposed to enduring long lag times in learning from post 'evaluation').*
- *It actively engages broad sets of agents to ensure that reforms are viable, legitimate, relevant and supportable (as opposed to a narrow set of external experts promoting the 'top down' diffusion of innovation)*"

Implications for probation transfer of a consideration of state capability

In our opinion the articles by Andrews, Pritchett, and Woolcock transfer very usefully to the probation field. The PDIA approach they advocate strongly reinforces the idea that countries will often be better off not just copying the

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[166] From: Abstract. Andrews, M., Pritchett, L. & Woolcock, M. (2012) Escaping Capability Traps Through Problem Driven Iterative Adaptation (PDIA). WIDER Working Paper 2012/064. Helsinki: UNU-WIDER.

practices and solutions of other countries. It is better first to consider which particular problem(s) they seek to resolve and how it (or they) might be solved. Then, once they have identified one or more possible solution(s), which may be either home grown or inspired from abroad, they should first try out the solutions - in other words "experiment". In turn rapid evaluation may lead preferably to comparatively early results and further adaptation, a cycle of trial and learning in the national context.

A further value of incremental change is that every change builds on previous results; this can lead to increasing support from politicians and stakeholders, for example prisons and the judiciary, for next steps in the process of development. We have seen these principles applied in part or full, with generally more favourable results, and less resistance, when a PDIA approach is more in evidence. One or two specific examples are set out in the country studies.

In describing the capability trap, the authors also point to the important and interrelated questions of capacity, capability, and resource in general, on the part of a receiving country. Elsewhere we consider the many drivers for change when introducing probation services and (as we have seen from the general literature on policy transfer) how there may be a spectrum of voluntary to coercive motivation, variations in expectation and reality over time, and different degrees of transfer. We see readily the possibility of how the more coercive end of the spectrum can easily lead to pressure to take on more than can be managed.

However, states may also voluntarily want to adopt and develop rapidly (for a variety of reasons we consider), with the potential to over-extend, sometimes complicated by a lack of full understanding of the imported practices or likely hindrances – political, cultural, financial, organizational and others identified in the literature. We have seen examples of all these scenarios to some extent in one or more countries our study, and in others with which we are familiar but that are not discussed here.

At the same time as we make these cautionary notes, it is important to recognise that nowadays in the probation field powerful practice-informed guidance is at hand, together with evidence-proven processes and tools. These can be used as sources of inspiration and emulation, whilst taking proper account of the range of local factors - political, cultural, and others – already noted. If countries can in this way speed up their development instead of constantly reinventing the wheel, then that path will also bring benefits.

Finally, and importantly, we emphasise that receiving countries may already have established (even if not necessarily well-funded or evaluated) community-based approaches. These may be well-suited to the location; it may be very appropriate to build on these approaches (perhaps "blending" with imported approaches). In addition, approaches, insights and lessons may be relevant to the "lending" countries and for the wider international community, an overall

process that may therefore more properly be termed "policy or practice exchange".

In summary:

- Before "jumping" to copy practices from abroad, offer support in identifying which problems require solving; in this sense help clarify the "why" of probation and of development in individual domains or of measures.
- Approaches should address identified problems (rather than be "solutions looking for a problem").
- Before nationwide roll out, experiment and pilot, learning from local practice.
- Help nurture a culture of trial and incremental iterative learning or "self-correction", thereby also supporting ownership including of the benefits of success.
- Be aware of the absorption capability of a country or system, trying to avoid the "capability trap" (taking on more than can be managed).
- On the other hand, do make use of successful examples in other countries as a source of inspiration.

2. The typology of justice systems in different countries

We have so far considered policy transfer in a thematically broad (that is non-justice or probation) sense, including attention to reasons for transfer and who is involved, also noting the complexity of receiving systems, types and degrees of transfer, and possible success factors or hindrances including converging influences and the greater likelihood of transfer between states that share common features and with proper attention to capability.

We next take a step closer to the probation world to consider a collection of papers which deal with variations between states in matters such as penal policy, political economy, and penal culture, and several specific factors that may contribute to differences in penal policy. We also consider the potential impact of these factors on probation transfer.

The relationship between penal policy and political economy

Cavadino, M. and Dignan, J. (2006), Penal Systems: A Comparative Approach. London: Sage.

Cavadino, M. and Dignan, J. (2006), 'Penal Policy and Political Economy', *Criminology and Criminal Justice*, **6** (4): 435-456.

Cavadino and Dignan (in their book and paper, 2006) argue that the forces of globalization have not led, and are unlikely to lead, to a global homogenization of penal policies and practices. Based on a study of 12 contemporary societies they instead seek to demonstrate that punishment varies between different societies regarding the modes of punishment (the methods employed) and the severity of punishment.

Cavadino and Dignan categorise the 12 countries studied into four "family" groups which they label neo-liberal, conservative corporatist, social democratic, or oriental corporatist, categories which they reason are strongly related to the punitiveness of penal culture and rates of imprisonment. They also suggest that an important factor underpinning this association between political economy and penal policy, including extent of punitiveness, may be the degree to which different societies are inclusive or exclusive towards members who are seen as deviant.

The 12 countries studied are the United States of America, England and Wales, Australia, New Zealand, South Africa, Germany, the Netherlands, France, Italy, Sweden, Finland and Japan. Whilst these are all contemporary capitalist countries, the four family groups *"exhibit significant differences in the relationships that exist between the State, citizens and interest groups".* These differences in effect work against or counter the forces of convergence which we might otherwise expect to result from globalization.

We offer a brief summary of each of their four categories before turning to the possible implications for capacity building in the field of probation.

Neo-liberalism: Cavadino and Dignan describe the United States as an "archetypal" neo-liberal country. Whilst the other "Anglo-Saxon" countries studied (The United Kingdom, Australia and New Zealand) exhibit similar features these are tempered by, for example, some history of social democracy in the United Kingdom during the last century. None-the-less *"the attenuated nature of the social rights possessed by their citizens also makes them highly dependent on the market for their status and well-being".* The general ethos is one of individualism rather than communitarianism or collectivism, an economic system that -

"…results in extremely marked (and currently still widening) income differentials. This material inequality, combined with a lack of social entitlements afforded to individuals as of right, results in the social exclusion of many who find themselves marginalized by the markets in which they cannot compete effectively or afford to operate, particularly the labour and housing markets. The term 'social exclusion' is not merely a synonym for poverty but is used to refer to the denial of

full effective rights of citizenship and participation in civil, political, and social life".

The conservative corporatist welfare state: In this category, Cavadino and Dignan point to the example of the Federal Republic of Germany. Describing the importance of national interest groups (notably organizations representing employers and workers) who are *"integrated with the national state and granted a degree of control over those they represent on condition that this control is exercised in line with a consensual 'national interest'"*, they explain that:

"In return, members of those national interest groups enjoy welfare benefits that are more generous than those associated with neo-liberal states. The overall philosophy and ethos of conservative corporatism is a communitarian one which seeks to include and integrate all citizens within the nation".

Placing France and Italy in the same group, they argue that the conservative corporatist model *"tends to generate significantly less inequality than does neo-liberalism"*. According to Cavadino and Dignan, the Netherlands has elements of conservative corporatist and of the social democratic model which is described next.

Social democratic corporatism: Cavadino and Dignan's third arrangement (here on the political left) is the 'social democratic' version of corporatism. This is both more egalitarian and more secular than Christian Democracy. Proposing the prime example of Sweden, they describe how social policy has developed by a powerful trade union movement committed to the principle of 'universalism' working with employers and a state committed to each of full employment, profit, and the funding of generous welfare provision, an approach that *"combines corporatism with an egalitarian ethos and generous universal welfare benefits"*.

The oriental corporatist state: Cavadino and Dignan's fourth category is another variant of the corporatist approach. Japanese capitalism offers, for the core labour force employed by the larger private-sector corporations, a high degree of job security and a hierarchical but progressive career structure. Wages and critical benefits (such as company housing and medical, educational and leisure facilities) are related to an employee's age and increasing social responsibilities (including family commitments) and … *"for their part employees are both dependent on and loyal to their employers"*.

Cavadino and Dignan conclude that the *"rates of imprisonment for the 12 countries surveyed suggests a significant association between these different types of political economy and penality"*. Pointing out that at the beginning of the 21st century *"there are almost watertight dividing lines between the different types of political economy as regards imprisonment rates in these countries"*, they note that it is the neo-liberal states that are the most punitive:

"It seems likely that the association of different kinds of political economy with differing rates of imprisonment is more to do with the cultural attitudes towards our deviant and marginalized fellow citizens".

In neo-liberal states *"Crime is likewise seen as entirely the responsibility of the offending individual. The social soil is fertile ground for a harsh 'law and order ideology'"*. Indeed, in general, neo-liberal societies are particularly prone to nurture the 'culture of control', an ethos they contrast with corporatist societies such as Germany, and even more so social democratic countries such as Sweden, which possess a communitarian ethos …

"…which also finds expression in a less individualistic attitude towards the offender, who is regarded not as an isolated culpable individual who must be rejected and excluded from law-abiding society, but as a social being who should still be included in society but who needs rehabilitation and resocialization, which is the responsibility of the community as a whole."

Turning to Japan, Cavadino and Dignan write -

"…the significant role of the apology, both within Japanese society at large, and also as one of the most salient characteristics of the criminal justice system... The willingness of Japanese wrongdoers to confess and voluntarily apologize for what they have done springs from a desire to maintain or restore positive relations not only with the individual victim of the offence, but perhaps more importantly with the collectivity".

Noting that in Japan 99 per cent of all juvenile offenders under the age of 20 are diverted from formal prosecution, they point out that apology facilitates the taking of no formal action, even in the case of relatively serious wrongdoing, and that Japan's broadly 'inclusionary' approach including to criminal justice contrasts strongly with the 'exclusionary' approach associated with neo-liberal countries in general, and the United States in particular. The result, they note,

"…is an imprisonment rate that even undercuts those of social democracies such as Sweden and Finland".

Implications for probation transfer of a relationship between penal policy and political economy

Cavadino and Dignan's paper makes in our view a persuasive case for the relationship between penal policy and political economy. It is a case that resonates with our own experience and knowledge of many of the countries they studied and others we have worked in which we can align broadly with their categories.

The implications of such a relationship for probation policy, and in particular its transfer, are in our opinion significant.

First, the relationship between political economy and penal policy does suggest that the converging impact of globalisation is, at the very least, slowed, or moderated. It must surely and inevitably take longer to modify criminal justice policy tethered to the major force (and further inertia) of political economy, and what is transferred is likely to be influenced as well.

We certainly however would not rule out, indeed we acknowledge, change encouraged by greater international awareness of policies and practices around the world. What is more, international communication in the probation field has continued to expand in the decade and a half since Cavadino and Dignan's paper (for example new Council of Europe guidance, several World Congresses on Probation, United Nations guidance including the "Bangkok Rules", preparation for and follow up of the United Nations Congress on Crime Prevention and Criminal Justice, Kyoto 2021, and other new international digital communications).

There is also without doubt (as remarked in earlier sections of this report) a global trend towards recognition of overuse of imprisonment. The justice approaches (and lower imprisonment rates) of countries such as Sweden, Finland and Japan are featured regularly in international probation and prison forums. The Japanese Voluntary Probation Officer (VPO) programme has opened eyes in the West to the benefits of stronger community involvement in (and contribution to) crime prevention, rehabilitation and inclusion.

A balanced view may be therefore that there is at least the possibility of tension between the "forces of globalization" and a state's existing political economy with its implications for penal policy including attitude to punitiveness and inclusion. In probation capacity building projects, the abovementioned trends and policy and practice examples might be used in discussions with political leaders and stakeholders, thereby helping to generate positive understanding and enthusiasm about the possibilities of change.

Second, taking into account earlier considerations in this review including of the impact of differences in organizational culture and the need for effective cultural assimilation of policy alternatives if transfer is to be successful rather than resisted (and of the less than fully voluntary nature of some transfers), it would appear that a good understanding of differences in penal policy culture between the international parties to transfer (such as between lender, receiver, and the "promoting" or donor organization) is a vital early or even pre-step in transfer. Such understanding could inform several aspects of transfer, especially of preparation, including the importance of full analysis of the situation on the ground and potential differences including expectations of key players.

Both considerations will also help to inform realistic appraisals of goals and speed of transfer or timeframes. We have seen several examples of apparent difference in penal culture between the main parties (referring here again to lending and receiving jurisdictions and donor body) to a project or programme; differences in for example expectations regarding punishment and future use of prison, in attitudes towards exclusion or inclusion of people who offend, and in the balance of care and control in probation work. To state a perhaps obvious point, we also note that differences may occur within these parties (do experts, for example, necessarily fully share the justice ethos of their own current national government(s) or prevailing penal culture, thereby introducing further variables into the mix of expectations)?

Furthermore, it is clear that supra-national bodies that offer guidance and expectation such as the Council of Europe and United Nations (sometimes in return for membership, such as the European Union) have their own "penal philosophy" which, whilst drawn from wide international expertise and endorsed by members, is neither value nor "penal philosophy" free. We later consider questions of differences in penal culture and expectation between supra-national membership bodies and individual states, for example in emphasis on rehabilitation and social inclusion on the one hand or monitoring on the other.

In our opinion, consideration of differences in penal culture helps to ensure greater realism in probation transfer, emphasizing the value of steps (such as understanding the beneficiary country, clarifying expectations, inspiring rather than telling, piloting and iterative development, strong communications with stakeholders/public, and other steps we identify) to help reduce resistances and build success. Existing staff culture (and changes that may be sought) including of managers, is also an important consideration in successful change.

We note too that probation work does not exist in a vacuum: even when key stakeholders are "on board" in relation to probation, penal culture may still influence other parts of the system including prisons and the police, including their interactions with offenders.

Finally, we are aware that none of the 5 countries in our own study are included in Cavadino and Dignan's study. This begs the question to which of the 4 "types" of country they "belong" (if indeed any). In our opinion all countries in our study have aspects of the neo-liberal economic group: high income differentials and limited social protection. Prison rates are high by international standards, and in most cases so are probation rates, in several cases including emphasis on monitoring. On the other hand, policy and practice in support of rehabilitation and social inclusion are developing. Another possibility is that they form a distinct group, at least in justice terms, having a former Soviet influence which in general terms may act to retain a stronger emphasis on control than in most western European states. Of course, there may be other

factors at work to which politicians respond such as the stresses of a transition economy and uncertainties among some (especially older) citizens compared to former times.

We therefore ask ourselves what an analysis such as that of Cavadino and Dignan would conclude on the matter of penal policy and political economy in countries formerly in the Soviet orbit. We would also extend our point globally to ask what insights might be gained regarding other apparently very different political economies (taking for example China, Singapore, and many other nations in Asia, Africa, or other world regions), countries that may vary in level of democratization or wealth (and changes in wealth including distribution), and the relationship of their political economies to penal policy? We would favour such studies which would add to the knowledge base of justice and capacity building. They may also, in the process, inform and elaborate some of the points we consider in the following papers by Tonry and Lappi-Seppälä regarding relationships between social and economic security, welfare provision, and penal policy including punitiveness[167].

For the moment we note the countries in our study, and others in Central and Eastern Europe, are at various points in economic transition: is there then a relationship between penal policy and penal transition and if so, how might this interact with other influences including globalization (and perhaps regionalization)? In the countries in our study, and others we know well, we see divergence from the Soviet period and divergence from each other, sometimes even when they are geographical neighbours. What are the different "penal

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167 The challenge of adapting existing models or creating new ones to explain how penal policy is determined in emerging economies and transitional systems, such as those of South America, South Africa, and Eastern Europe, or in the mixed market economies of Southern Europe, is also noted by Lacey, Soskice, and Hope (2018). Reflecting on determinants of penal policy, they point out (as do the authors we consider next) that crime provides insufficient explanation of policy difference including punitiveness. The offer instead four main explanatory paradigms ‐ crime, cultural dynamics, economic structures and interests, and institutional differences in the organization of different political systems and economies, as key determinants of penal policy. Considering "Nordic Exceptionalism", they describe how interdependence in small communities fosters a culture of solidarity and mutual responsibility as well as high levels of trust... which help to legitimize and stabilize ... penal moderation as opposed to punishment as "social degradation". Notwithstanding globalisation and increasing interdependence, countries with differing political economies have maintained their strong differences (countries with lower levels of inequality, more generous welfare states, and higher levels of unionization and social trust - all factors likely to have been shaped by the political economy as broadly understood - show consistently lower rates of imprisonment. An important distinction occurs between liberal economies (which may include first-past-the-post elections and a law and order populist "arms race", also where – in the USA case study described - voters are more likely to be invested in their own property and immediate neighbourhood concerns rather than integrative or redistributive policies) and coordinated market economies which favour inclusion rather than exclusion. The latter are also less tolerant of "surplus labour", and candidates and parties are more able to take a longer-term view. These differences are perpetuated by the greater tendency in liberal economies to maintain socio-economic "segregation" and disadvantage, including of racial groups, in the relative absence of state or other broad initiatives to alleviate poverty and address difficulties in moving from poor education and disadvantage to long-term work, especially at times of economic downturn. (This is a point we can relate to imprisoned persons, including disproportionately of racial groups, and often inadequate education and employment opportunities pre and post release to support integration).

trajectories", what causes them, and how do they influence, or are they influenced by, probation capacity building?

In summary:

We **conclude** with the following **observations** on political economy, penal policy and probation capacity building:

- Modifying criminal justice policy tethered to the major force of political economy may take time, including establishing fully developed probation functions.
- On the other hand, political economy will vary, even among neighbouring countries, and not always be decisive in restraining change (we consider later the example of Croatia); other national factors, and greater awareness of policies and practices regionally and around the world may pull in other directions.
- However, understanding differences in penal policy and culture between the international parties (such as between lender, receiver, and the "promoting" or donor organization) appears a vital early or even "pre-step" in successful transfer.
- Consideration of differences in penal culture helps to ensure realism in probation transfer, emphasizing the value of steps to reduce resistances and build success.
- Communication with key probation stakeholders (including prosecution, judiciary, prisons, and the public) is essential. Staff culture (and changes that may be sought), including of managers, is also an important consideration.
- Probation does not exist in a vacuum: even when key stakeholders are "on board" in relation to probation, penal culture may still influence other parts of the system.
- Further research such as that of Cavadino and Dignan, including countries in Central and Eastern Europe, and if possible other world regions, would provide insight into the range of political economies, relationships with penal policy, and implications for capacity building.

Determinants of Penal Policy

We next consider two papers that explore more deeply those specific factors that may help to shape penal policy.

Tonry, M. (2007), 'Determinants of penal policies', *Crime and Justice*, **36** (1): 1-48.

In the first of these papers Tonry (2007), writing therefore a year later than Cavadino and Dignan, investigates what he sees as the many failures academics and politicians make when explaining higher prison population rate as the effect of rising crime rates (Determinants of Penal Policies, 2007). Tonry, writing about Western countries, shows clearly that countries experiencing similar developments in crime rates do not experience rising prison populations.

"Any assumption or hypothesis… that there is a simple, common, or invariant relationship between the crime patterns that befall a country and the number of people it confines is wrong. Faced with similar crime trends, different countries react in different ways."

Incidentally, Tonry also critiques the use of prison population as the sole or major measure of punitiveness, pointing out that the number of prison *admissions* can provide a very different picture. Countries that might be considered less punitive (including Sweden at the time he wrote) based on prison population are high in terms of admissions. Other considerations such as procedural and other human rights improvements should be considered, whilst legislation as an indication of punitiveness should also be viewed with caution; legislation may not always be implemented or applied and may even be "expressive" in intent.

Tonry considers what he terms risk and protective factors (an analogy he borrows from individual assessment of those in conflict with the law) in determining penal policy. However, he also describes what he terms "nonfactors" which are found in most Western countries, and which (because countries vary despite these factors) are "necessary but not sufficient" causes of punitiveness. Nonfactors include (rising) crime rates, harsher public attitudes, cynical politicians, ethnic tensions, rapid social and economic change, postmodernist angst, and "penal populism", which includes an increasingly global and sensationalist media.

Tonry cites two sources of knowledge about risk factors:

"The first is the growing number of case studies of the development of crime control and punishment policies in individual countries. The most prominent national risk factors include conflict political systems, elected judges and prosecutors, particular forms of sensationalist journalism, Anglo-Saxon political cultures, and a predominant view that criminal justice policy falls appropriately within the province of public opinion and partisan politics…

The second is a small number of statistical analyses that test hypotheses about correlations between punitiveness and national characteristics and policies not directly associated with crime and punishment. Comparative risk factors they identify are income inequality, weak social welfare systems, and low levels of

perceived legitimacy of governmental institutions. Lesser punitiveness is associated with lower levels of income inequality, generous social welfare systems, and high levels of trust in fellow citizens and in government."

Prominent protective factors, on the other hand, include consensus political systems, nonpartisan judges and prosecutors, Francophonic political cultures, and a predominant view that criminal justice policy falls appropriately within the province of expert knowledge and professional experience. Tonry points out that these factors are not necessarily opposites but are rather continuums containing a range of possibilities.

Later in the article Tonry concludes:

"If we want to understand why particular policies and practices emerge in particular places at particular times, we will need much more nuanced accounts of what has happened and much more imaginative efforts to explain why (……). Explanations will not be found in rising crime rates, globalization, ontological insecurity, late modernity, or postmodernist angst. They explain too much and therefore too little. Adequate explanations will need to look at a wide range of developments that need explaining (………). When a wide range of factors is taken into account, differences between countries become clearer…. A new generation of comparative studies will have to go deeper in trying to explain why countries differ in important respects that seem to shape their penal policies."

"Distributions of political power and governmental authority, constitutional structure, media characteristics, career professionals, and deference to expert knowledge do not produce particular results. They make them more or less likely. We could understand a good bit more about these things than we now do."

Trust, Welfare, and Political Culture: Explaining differences in National Penal Policies

Lappi-Seppälä T. (2008), Trust, welfare, and political culture: explaining differences in national penal policies. In: Tonry M (ed) *Crime and Justice, 37(1),* 313–387.

In the second paper, Lappi-Seppälä (2008) explores explanations for differences in penal severity in industrialized countries. Like Cavadino and Dignan, and Tonry, Lappi-Seppälä points to characteristics which influence penal policy, and which may be deeply embedded in a nation's history, culture, and way of doing things. Arguing that differences in imprisonment rates cannot be explained by differences in crime, he instead points to several associations such as public sentiments (fears, levels of trust, and punitiveness), the extent of

welfare provision, differences in income equality, political structures, and legal cultures.

Furthermore-

"Structures of the political economy and their effects and interactions with public sentiment are of fundamental importance in shaping penal policies, but other factors need to be taken into consideration. These include differences in media culture and in the responsiveness of the political system to the media."

Beginning with an analysis of use of prison, Lappi-Seppälä argues that extensive use of prison (measured by imprisonment rates) coincides often with less frequent use of other sanctions, is unrelated to victimization rates or to reported crime, and is largely unaffected by levels and trends in criminality; in short crime is not the explanation for differences or for trends in the use of imprisonment.

However, even if the level of crime is unrelated to the use of imprisonment, <u>fear of crime</u> may still explain imprisonment rates through the public's perceptions and reactions and through media representations. The higher the fear of crime, the higher the number of prisoners (and by proxy, the higher the level of punitiveness).

Turning to consider the <u>welfare state</u> and <u>income inequality</u>, he argues that, for instance in Scandinavian countries, the welfare state *"has made it possible to develop workable alternatives to imprisonment"*. Wealthy nations seem to be less punitive; there is connection between a country's welfare orientation and its penal culture. Drawing on the association between the emergence of punitive policies and the scaling down of the welfare state in the United States and in the United Kingdom (a phenomena he remarks has been noted by several commentators e.g., Garland 2001; Cavadino and Dignan 2006), he argues that -

"…factors such as high levels of social and economic security, equality in welfare resources, and generous welfare provision should contribute to lower levels of punitiveness and repression."

On the other hand, pointing to a strong positive correlation between income distribution and imprisonment rates among the western European countries, he argues that increased income inequality seems to produce more prisoners. There is in effect *"an inverse relation between commitment to welfare and the scale of imprisonment"*. Moreover (and also impacting attitudes to crime), "*countries that increase levels of trust seem associated with more generous welfare provision"*.

Turning to <u>political structure</u>, Lappi-Seppälä contends that whilst majority-driven politics are usually based on two-party competition and confrontation; consensus-driven policy seeks compromises. In turn, consensus democracies

and neo-corporatism are associated with more restrained penal policies. Discussing specific countries, he says that the Scandinavian countries rank high in legitimacy scales and low in fear of crime and imprisonment rates. (In contrast) *"the Anglo-Saxon, former socialist, and Mediterranean countries rank high on fear, low on trust, and high on prison"*. Countries of high trust and strong welfare (Scandinavia and Switzerland) he describes as producing fewer prisoners and lower severity, as contrasted with countries of low trust and weaker welfare states. Similarly, consensus democracies and strong welfare states are associated with low imprisonment rates.

Lappi-Seppälä then discusses why trust, social expenditures, income inequality, fears, and political culture affect penal severity. Quoting the "old slogan" "Good social policy is the best criminal justice policy", he notes *"this was a way of saying that society will do better investing in schools, social work, and families than in prisons"*. He advances several interrelated explanations as to why welfare affects penal severity. In relation to the risk balancing between offender, victim and society inherent in parole, probation and juvenile justice systems, he suggests that -

"…the material resources and economic security of an affluent welfare state may make it easier for citizens to express tolerance and empathy, when their own positions are secure".

Social trust (promoted by the welfare state) … *"produces lower levels of fear, resulting in less punitive policies."* Furthermore,

"Strong welfare states contribute to lower levels of repression by providing safeguards against social marginalization. In a generous welfare state, other and better alternatives to imprisonment are usually at hand (a functional community corrections system demands resources and proper infrastructure).

Regarding political structure, he argues that *"while the consensus model is based on bargaining and compromise, majoritarian democracies are based on competition and confrontation that sharpen distinctions, heighten controversies, and encourage conflicts."* … *"The political rhetoric of conflict democracy, constant crisis talk, and political posturing about crime have adverse effects on trust, fears, and feelings of security."*

Furthermore, a *"sensationalist media feed public fears and distrust"* reinforcing *"pressures from the punitive public"*.

Lappi-Seppälä considers also what he calls *"deep-rooted differences in judicial culture regarding the balance of powers and the extent to which judicial processes are affected by political pressures"*. He contends how some common-law jurisdictions share features that make them more vulnerable to populist and political pressures. Judges and prosecutors may also differ individually and in

different jurisdictions in important respects such their criminological knowledge:

"…countries with trained professional judges and in which criminology is included in the curricula of law faculties may expect to have judges and prosecutors who have broader and deeper understanding of crime and criminal justice."

Lappi-Seppälä contends that *"probably the strongest conclusion to emerge from this essay is that penal policies and practices are inexorably related to other social policies and practices and to deep cultural characteristics such as citizens' trust in one another and the state, and citizens' perceptions of the legitimacy of state institutions."*

He concludes that the case study literature has shown *"that what happens in particular countries turns on distinctive social, cultural, and political features"* and that *"analyses reported in this essay, however, show that we can generalize about some of these features in ways that help explain why groups of countries—and not just individual ones—develop the policies and practices that they do."*

Implications for probation transfer of the role of "risk" and "protective" factors and characteristics such as trust, welfare and political culture in explaining national penal policies.

As we noted earlier, Tonry and Lappi-Seppälä point, like Cavadino and Dignan, to characteristics outside of penal policy that influence it and that may be deeply embedded in a nation's history, culture, and way of doing things. These considerations reinforce how penal policy does not exist in a vacuum, but rather in a complex system as described by Leroux-Martin and O'Connor (2017).

Considering these characteristics in the context of countries in our study, we see in varying degrees (and in comparison with some European countries with well and long-established probation services): a traditional reliance on prison sentences, that the welfare state has not yet reached maturity, that the financial means for good social policy (and for financing alternative sanctions, including a good-working probation organization) is still wanting, mainly majority driven politics, little or absence of neo-corporatism, and low levels of trust (we note that it may even be that after the collapse of the Soviet period, the insecurity for many inhabitants has grown, impacting on trust and future confidence).

Further, in some cases a culture of judicial independence has not yet fully developed; many judges may possibly not have the same level of understanding of criminality as in some Western-Europe countries, and political influences are stronger. Judges may also be wary of admitting newcomers (such as probation) to the penal process as this might increase uncertainty leading to hard-to-predict changes in the "balance of power."

Like the relationship between political economy and penal policy, these further explanations for penal policy also suggest that the converging impact of globalization (on penal policy) is likely to be slowed. However, whilst globalization is seen most often as a force to reduce penal punitiveness, we also note an opposing possibility: that on occasion global influences (such as aspects of media) might work to reinforce punitiveness. Presumably risk and protective factors will again be at play, countering or reinforcing globalising influences. Furthermore, at a regional (or even "sub-regional") level, differences between countries in their individual risk and protective factors may influence neighbours in ways that are in tune with, or opposed to, the wider influences of supra-national bodies and other global forces, thereby helping to shed some light on significant differences that may occur between them.

Importantly in terms of probation capacity building, it is clearly the case that the relationships and explanations described by Cavadino and Dignan, Tonry, and Lappi-Seppälä are generally well outside the scope of probation capacity building initiatives. They do however again point to the importance, for international parties to transfer, of a good understanding of differences in penal policy, and of other national differences such as those discussed here, in order better to inform aspects of transfer such as preparation (including a full analysis of the situation on the ground), potential differences including expectations of key players, and other considerations such as regarding speed of policy transfer.

Also importantly, they may inform understanding of supporting factors and resistances and how some of these might be targeted, mitigated, or at least moderated, within the constraints of probation capacity initiatives, or conceivably through activities in related fields.

We draw some initial possible conclusions regarding the development of probation in newer democracies:

First, developing probation is often, and probably always, likely to be much more than a "technical" process.

Second, consequently it may take time and not always be easy to see success in the sense of a fully developed service in the shorter term.

Third, we would argue that we should extend our understanding of punitiveness beyond the extent of use of imprisonment by a country or jurisdiction to also include the field of probation and how it is applied. Thus "mass supervision" and "net-widening" are valid areas of potential concern when introducing and developing probation capacity.

A clear implication is that because the influence of penal culture (and the many factors that contribute) may be strong, the impact of CSM on prison populations

is uncertain; no country should be encouraged to think that the introduction of probation / CSM will help them to reduce the prison population quickly or even perhaps at all.

Fourth, there are nonetheless *steps that can be taken to support the introduction and strengthening of probation work*: These include contributing to influencing the judiciary including information about probation work and its benefits, about the causes of crime and what could be done about it, and perhaps influence in the longer-term the independence of the judiciary. Similarly, senior political figures can be informed, most importantly ministers of justice (perhaps also providing information with which to influence those responsible for financial matters), and Director Generals regarding why probation is important. And consideration can be given to how best those committed to probation can engage with other stakeholders including the public. Of course, provision of insight for consideration into legislation and probation approaches, and technical assistance in organisation building such as well-informed and well-trained staff, may be very useful. Through these and other steps the basis may be laid for a developing probation culture within which, in the longer term, the aims of probation can be better fulfilled.

In summary:

We conclude with the following **observations in brief** on trust, welfare, and political culture:

- Characteristics outside of penal policy (such as trust, welfare, and political culture) may exert real influence on penal policy including punitiveness, and therefore the speed with which capacity building can be successful - and its direction.
- Punitiveness to the field of probation should be understood alongside imprisonment. The introduction of probation my not necessarily reduce prison use; "mass supervision" may occur instead (possibly with continued high use of prison).
- To make realistic change plans it is important to understand characteristics and to see which countervailing influences can be identified, perhaps "planted", and organised.
- Because of characteristics outside of penal policy, it may take time to see a fully developed service (although there are exceptions).
- The importance of approaches outlined earlier in this literature review may, in the light of papers by Tonry and Lappi-Seppälä, be even more important, for example clarifying expectations, developing pilots with ongoing iterative adaptation, and strong communications with stakeholders including the public.

- Steps to lay the groundwork for development of a probation culture may be especially important: influencing the judiciary, senior political figures, informing the public, and training staff.
- Success in these steps does not ensure supportive change in related institutions.
- The "interplay" between national characteristics and penal policy does appear complex, influenced also by international influences, (sub)-regional and global, of which probation capacity building is only one!

Sentencing Patterns in Central and Eastern Europe

Finally in this section on the typology of justice systems in different countries, we consider literature on sentencing patterns in Central and Eastern Europe and implications for the development of non-custodial sentencing.

Krajewski, K. (2007), 'Too Many Suspended Sentences? Polish or Central and Eastern European Problem?', *Kriminologija*, (2), 109–21.

Krajewski, K. (2016), "Sentencing in Poland: Failed Attempts to Reduce Punitiveness"; *The University of Chicago Press Journals,* Online June 21, 2016 (with a short summary in English) https://www.journals.uchicago.edu/doi/abs/10.1086/685539?af=R&mobili=0

Krajewski (2007), based on a comparative analysis of sentencing patterns in Europe, points to a certain "penal divide" in Europe which still splits the continent into two "penal climates": Western and Eastern. He contends that the leaders of the use of imprisonment are almost exclusively the post-communist countries. At the same time, there is a high prevalence of suspended sentences in those countries.

"The broad use of suspended sentence and its role in sentencing policies appears to be an inheritance of the communist system and the isolation of the Eastern and Central European countries from penal developments in the Western part of the continent. This inheritance is a result of the……lack of alternatives to imprisonment. In this part of the continent, 10 years after the fall of the Berlin wall, it was still customary to send people to prison, for offences that would never get an imprisonment verdict in most West European countries. Similarly, lawbreakers who in Western European countries would be given community service, probation orders or fines, in Eastern and Central Europe were given mostly traditional suspended sentence."

Taking the example of Poland, Krajewski then points to "the problem" with the use of suspended sentences being that, there at least, the probation system is underdeveloped. The caseloads of probation offices are "*so big, that probation officers are not able to effectively supervise probationers' behaviour.*

Consequently, a probation order accompanies a minority of suspended sentences imposed by the courts, meaning in most of such cases a defendant is left completely alone during the test period."

Krajewski draws two conclusions. First, whilst *"Western European legal systems and courts have turned towards alternatives to imprisonment. … In Central and Eastern Europe, due to years of neglect, courts facing similar cases and similar types of offenders are left with limited possibilities. As a matter of fact, in most cases when a judge does not want to incarcerate the offender, the only alternative left is a suspended sentence".*

The second conclusion is that *"the new members of the EU have to work hard in the near future to establish a firm position for such measures as diversion, community service, probation, and fines in their crime-control policies. Only success of these measures may diminish the role in the criminal justice system of a simple suspended sentence."*

Writing later (2016) on "Different Penal Climates in Europe", the same author explores sentencing further. Pointing to "consistent" and "well documented" differences including between 'old' EU member states in Western Europe and 'new' EU member states, in Central and Eastern Europe, he says -

"……much data suggests that twenty-five years after the end of the cold war, the fall of the Berlin wall, and the collapse of the communist regimes in Central and Eastern Europe, two different climatic zones persist. The European continent remains divided, with a mild or moderate western zone and a severe central and eastern zone."

"……The two different zones of European penal climate differ not only in the severity of sanctions imposed (as measured by imprisonment rate, average length of prison sentences, and average time spent in prison), but also in other characteristics of sentencing patterns, including types of sanctions used and their structure."

In relation to penal severity, he argues that *"……countries of Central and Eastern … were known for extremely high levels of punitiveness before 1989, which was understandable considering their authoritarian political systems imposed by Soviet dominance. But it seems that, despite political changes in 1989, the situation did not alter substantially. This may be illustrated by data regarding the imprisonment rate in European countries, the indicator most commonly used for the purpose of comparative analysis of punitiveness. … almost all countries of the* (Eastern and Mid European) *region lead in the ranking of European countries in terms of imprisonment rate."*

Krajewski continues, in arguments which resonate with those of Lappi-Seppälä discussed earlier -

"Moreover, this is obviously the consequence of highly punitive penal law and criminal justice systems and not of the situation regarding crime. Public opinion, media, and politicians in the region are often deeply convinced that just the opposite is true: that criminal justice systems in the region are excessively lenient, and crime is getting out of

control …. Therefore, there is a widespread belief that increasing punishment for crimes and increasing the number of offenders sent to prison constitute the panacea for crime."

Turning to the use of alternatives, he contends that "*Equally substantial differences seem to exist in use of alternatives for imprisonment, particularly suspended sentences and fines.*" Furthermore "*in the year 2007, in 11 countries of Western Europe fines averaged to 63.2 percent of all sentences imposed, whereas in Central and Eastern Europe this proportion averaged to 14.7 percent.*"

The frequent use "or even abuse" of the suspended sentence is not endorsed by Krajewski who asserts -

"*Although in the legal orders of many countries of the region a suspended sentence is considered to be a kind of probationary measure, in fact, it often differs from probation in most western European countries. Even in cases in which a suspended sentence is accompanied by some sort of supervision by a probation officer………., this sentence hardly amounts to anything similar to 'community corrections.'* Turning then to consequences, he continues "*In many cases, because offenders violate the conditions attached to their suspended sentence, or because they commit a new offence during the trial period, courts revoke the suspension of the imprisonment sentence and order its execution.*" Noting this may be one of the important factors contributing to Poland's enormous prison population, he continues "*Original decisions of the criminal justice system may not send too many offenders behind bars. But subsequent decisions regarding suspended sentences may change this situation completely…….*"

Summing up the two separate zones of "penal climate" in Europe, he concludes

"*…. it seems that the most important causal factors are the region's communist past and the persisting influence of Soviet-imposed thinking about crime and punishment. This thinking was permeated by rigorist and punitive attitudes, with the deeply rooted belief that harsh sanctions constitute a panacea for all social problems, and that imprisonment is the most important and effective sanction.*"

Writing two years later, in 2016, Krajewski explores the international political and historical factors at play which influence sentencing in Central and Eastern European countries -

"*During the 1990s, all … implemented broad reforms of criminal justice systems to comply with Western standards, primarily as reflected in the European Convention on Human Rights and other conventions, recommendations, standards, and guidelines of the Council of Europe… The EU accession process during the 2000s intensified these changes……. Former communist countries were eager to return to Europe and to become more like the established democracies. They also brought, inevitably and understandably, their historical experiences, which before World War II were not always liberal and democratic. Moreover, they were burdened by 50 years of Soviet domination and authoritarian national regimes, which left deep traces on those societies.*"

Krajewski contends that *"During the past 25 years of reform, criminal justice systems in those countries were changed almost beyond recognition..... (however) substantial differences persist... (and) it is legitimate to ask why."*

"Possibly political, economic, and social transformation brought with it substantial negative collateral consequences, including rapid growth in crime... This must have had at least some impact on crime control policies and made its patterns different from those in western Europe, which were not confronted at that time by similar phenomena. However, it is equally legitimate to wonder whether criminal justice policies in the region remain burdened by extremely punitive crime control policies of the communist past (Krajewski 2013) and cultural transmission of certain professional ideologies that were dominant before 1990.

The author then turns specifically to Poland (one of the countries in our own study). He comments that suspended sentences *"may result from well-intentioned efforts by judges to keep as many offenders as possible out of prison, but they are often imposed without adequate information on an offender's background and other problems. Most are unsupervised and do not involve meaningful treatment, educational, or preventive obligations. Many ... are left alone with their alcohol, drug, mental health, and other problems. Even when the court orders supervision by a probation officer, overcommitted officers with huge caseloads have difficulty providing reasonable assistance* (Wójcik 2015).*"*

He concludes: *"The overuse of simple suspended prison sentences results in a small proportion of offenders being initially incarcerated. However, the comparative absence of supervision, conditions, and treatment results in many winding up behind bars. The Polish criminal justice system is paralyzed by a catch-22: the more offenders sentenced to alternatives, the higher the imprisonment rate."*

Mycka, K. and Kozłowski, T. (2013), "O Paradoksy Polskiej Polityki Karnej, Czyli Jak Zapełniamy Więzienia Nadużywając Środków Probacji"

An interesting observation comes from compatriots of Krajewski (Mycka & Kozłowski, 2017)[168]: *"...the abuse of the institution of conditional suspension of imprisonment in the criminal policy was characteristic of almost all post-communist countries and was a reminiscence of the criminal policy pursued by the authorities of a totalitarian state, in which the suspension, linked to the*

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168 Krzysztof Mycka, Tomasz Kozłowski, Zarys Aktualnych Tendencji W Polskiej Polityce Karnej W Oparciu O Dane Statystyczne, in: „Probacja"; 2017
https://www.arch.ms.gov.pl/pl/probacja/2017/download,3579,2.html; Translated via Google Translate: Outline Of Current Trends In Polish Penalty Policy Based On Statistical Data.

possibility of its revocation at any time, was a convenient tool of control and blackmail against one's own citizens."

Drápal, J. (2021) 'Punitive by negligence? The myths and reality of penal nationalism in the Czech Republic', *European Journal of Criminology*,

Before leaving the specific issue of the use of the suspended sentence, we refer also to Drapal (2021). In *"Punitive by negligence: The myths and reality of penal nationalism in the Czech Republic"*, Drapal refers to the use of suspended prison sentence as an option that can be employed relatively quickly without the need for a report from a probation officer or other information about the offender. He continues -

"When the non-suspended prison sentence is imposed, the offender is found in breach of the previous three unserved sentences and he/she is therefore ordered to serve them consecutively after the non-suspended one, resulting in a very long sentence even for low-level offences."

The result therefore appears to be a higher use of imprisonment than intended by the original legislation.

Penal nationalism and the politics of punishment in Central Europe

Haney, L. (2016). Prisons of the past: Penal nationalism and the politics of punishment in Central Europe. *Punishment & Society*, *18*(3), 346–368.

Haney (2016) also considers penal culture, in this case the politics of punishment in contemporary Central Europe. The paper is based on an analysis of penal policies and discourses in Hungary, Poland, Slovakia, and the Czech Republic (including again therefore one of the countries in our own study). The study -

"…reveals how Central European politicians and state actors used tough, law and order rhetoric to reimagine the post-socialist community and to redraw the lines of social inclusion and exclusion, thus developing a uniquely East European penal nationalism that equates punitiveness with national sovereignty and protection."

The author writes:

"While overlapping with the penal populism we see in other national contexts, the East European version differs in key respects, particularly in the ways it appeals to the nation as it defines transgression and equates punitiveness with national sovereignty and protection."

She further argues that:

"…penal nationalism is intricately linked to the dilemmas of societal transformation in the region…… on the one hand, it is a political response to the challenge of forging new solidarities amid rapidly changing social boundaries. Yet it is also a politically opportunistic response of state and political actors facing a legitimacy crisis–actors who now operate on a political landscape in which much of their power has been taken over by transnational forces, while the populations that elect them harbor deep and persistent distrust of the state. Penal nationalism appears to solve all of these dilemmas at once."

Referring to a usual "rough" correlation between high rates of imprisonment and high rates of crime, she points out this is not the case in Central and Eastern Europe. Instead

"…data point to one conclusion: something is happening to play up social uncertainty in the region. And to direct people's social fears into a concern about criminal transgression… So it was in Central Europe, where a punishment discourse took genuine problems of social insecurity and fed them with anxieties about safety. This discourse was articulated by politicians who promised to deal with the former by being vigorous about the latter. …the Central European politics of fear look similar to … the US impulse to govern through crime."

By way of further explanation, Haney offers several arguments that chime with influences on penal culture described in literature discussed earlier in this review, and on processes of transfer including the role of experts, politicians and supranational bodies.

"One of the ironies of the politicization of punishment in Central Europe is that it emerged somewhat late in the transition period when crime rates were leveling off and even declining. …….. Reforms to the penal system were left primarily to legal experts and social scientists…… As the 1990s progressed, however, crime and punishment began to seep out of expert reform circles and into political culture………. By the early 2000s, punitive rhetoric had become a mainstay in East European politics–a central way to redraw the lines of social inclusion and exclusion and to reestablish order in a world that seemed increasingly disorderly".

Citing struggles between both the Czechs and Slovaks and the Council of Europe over several of their penal policies (and reflecting another point we discuss earlier in this review regarding degree of voluntaryism in transfer), she continues:

"Deepening the Central European backlash against expertise are the dynamics of Europeanization… the conflicts between national and supranational actors often take the form of struggles over expertise and who has the right to "know" what is best for a particular country."

These struggles are then related to penal nationalism and punishment: *"Penal nationalists talk about both the "people" and the "nation" ... a matter of national protection. Getting tough on crime means securing national well-being; punishing criminals is essential to national welfare".*

Haney next discusses the work of Cavadino and Dignan (2005), noting *"Their work has revealed how penal systems fall into regime clusters that mirror the political economies of welfare capitalism."* Then, referring to Lappi-Seppälä (2008) *"it has unearthed how welfare systems matter, as entitlement-based, redistributive welfare regimes breed more solidarity and are thus associated with more inclusionary penal policies."*

Haney then points out the *"striking similarity"* between the countries on which these comparative models are based: *"they are all long-standing constitutional, liberal democracies with some form of (social) market economy. Yet much of the world does not live in these political and economic systems—or, if they do, such systems are relatively new to them."*

She then considers a subject we raised earlier in this review: application of a comparative analysis such as that offered by Cavadino and Dignan to a wider range of countries, in particular in Central and Eastern Europe (including therefore the five countries in our study).

"Post-totalitarian and/or newly democratizing states, like those of Central Europe, thus offer a chance to broaden our comparative understanding of punishment. These states raise questions that are often left unexplored: what happens to penal systems when political structures democratize? When patterns of decision-making reconfigure and diffuse? Why do some penal discourses rise to the fore in this context?"

Haney proposes three distinct *"challenges of democratization experienced in the region—dilemmas for which nationalism in general and penal nationalism in particular seemed to offer solutions."*

She first describes political dilemmas faced by post-socialist states - *"... political and state officials inherited legitimacy problems, from populations used to questioning anything and everything the state did."*

Second, and connected to the first, *"Central European democratization occurred in the unique context of Europeanization.* This she argues *"had a further constraining effect on states in the region: it took many key social, political, and economic issues off the table."*

Haney describes how *"The EU came to Central Europe with a long list of things to be fixed before they could join the European club. The EU had a model and was willing to travel—offering up, and even imposing, its toolkit to resolve all*

kinds of national problems in the region. …….. it provoked a fear of losing control, once again, of national interests–perhaps only deepening the distrust in public figures and state officials. Moreover……. Europeanization further limited national states by restricting the……terms of the national political debate: with the framework for accession spelled out and nonnegotiable, the debate shifted to other areas, other terrains."

Describing the third challenge, Haney articulates that *"it is critical to remember that the post-socialist democratization process occurred amid profound social insecurity. Central Europeans experienced a ''triple'' transformation: political, economic, and social change occurred all at once. It is hard to overstate how unsettling this simultaneous transformation was to so many. ….. it was not always clear to people what was causing what. The result was a generalized sense of anxiety and fear–the sense that so many lives have been turned upside down in a very short period of time."*

Haney's conclusion is that *"given the many external constraints now placed on these states' ability to control economic and political development, penal nationalists have found one arena in which governments still have considerable influence: punishment."*

Implications for probation policy transfer of sentencing patterns, penal nationalism and the politics of punishment

The possible implications for policy transfer of the sentencing patterns and development of penal nationalism and politics of punishment discussed here appear significant. If, as Haney explains, punitiveness is not *"simply a pull from the past"* but *"has more to do with the social and political dynamics of the present–the dilemmas of democratization and Europeanization"* then the potential impact of these insights on probation transfer certainly need to be considered. At the very least they are likely to influence discussions about the "why" of transfer and possible resistances, especially at the political and public levels. Penal populism and punitiveness, and in turn penal nationalism, become a current and ongoing reality for involved parties rather than primarily a "legacy". Furthermore, they are a reality to which democratization can contribute. As Haney says

"... democratization, while opening up room for political accountability and expression, can also breed social vulnerability and insecurity. And it suggests that if the dilemmas of democratization are not resolved responsibly, they can end up creating fertile ground for a renewed criminalization of the other and the penalization of transgression as they have in contemporary Central Europe."

Perhaps ironically, upheaval at times of economic and political change may make it politically harder to liberalise penal policy – even though it may be at just such times that the governments of transitional democracies feel the need

to accept (often liberalising) policy transfer (a point made by Canton 2022, in private communication).

We note here also relevance of these points to the earlier discussions of policy transfer in general, including questions of degree of transfer, the voluntary to coercive continuum (the notion of "bounded voluntaryism" seems especially pertinent here), the impacts of globalization and of complexity (not least the number of stakeholders in what is clearly not a "clockwork" process of probation building), and of course the vital questions of constraints and how they may be overcome. We also add consideration of what may be unintended consequences (including on rates of imprisonment) of the use of suspended sentences as a main alternative to immediate imprisonment.

Finally, before moving on to consider probation-specific literature, we remark on further insights relating to the fundamental aim of this study, to improve understanding of good practices in capacity building. Frameworks discussed earlier, such as those advanced by Dolowitz and Marsh and Evans, appear even more important when the additional complexities of sentencing patterns, penal nationalism and the politics of punishment are factored in. Given the main focus of our field study on five countries in Central and Eastern Europe, Haney's analysis appears especially relevant to our study of good practices in transfer, in particular (as noted above). the importance of discussions about the "why" of transfer and of possible resistances, especially at the political and public levels.

To expand our understanding of success we next consider probation-specific literature in the area of policy transfer, including sources that concern capacity building in two of the countries in our study. Together with the findings of our own field study, which we report on elsewhere in the main report, we hope to shed further light on *differences* in the penal "trajectories" of the countries we study, on good practices in probation capacity building, and if possible, on the nature of the relationships between the two.

In summary we observe:

- In some countries punitiveness will not disappear on joining the broad European "family"; punitiveness is influenced by politicians and may be used to obscure the social vulnerability and insecurity that goes along with the process of democratisation.
- Indeed, upheaval at times of economic and political change may work in the reverse way, making it politically harder to liberalise penal policy – even though ironically it may be at just such times that the governments of transitional democracies feel the need to accept policy transfer.
- This has an influence on discussions about the "why" of transfer and possible resistances, especially at the political and public levels, to international influences.

- Because the influence of penal culture (and the factors that contribute) may be strong, the impact of CSM on prison populations is uncertain; no country should be encouraged to think that the introduction of probation / CSM will help them to reduce the prison population quickly or even perhaps at all.
- Such circumstances need to be considered when contemplating capacity building projects; expectations may need to be adjusted, whilst planning and communications need to be developed for the range of stakeholders.

3. Probation-specific literature on policy transfer, divergence, and capacity building

We turn next to probation-specific literature. We first consider (3.1) (largely) non-country specific material on probation policy transfer and capacity building, before (3.2) examples of country-specific literature concerning countries (the United Kingdom and United States, Ukraine, and Croatia) not included in our study. As noted above, we then conclude (3.3) with two countries that are included in our study, Latvia, and Romania, both of which were the focus of contemporary accounts of the capacity building process by involved actors.

We also consider application in the probation realm of the general insights into capacity building from the literature discussed so far, and what lessons we learn about what may hinder or contribute to success in capacity building.

3.1. Non-country specific literature on probation development, policy transfer and capacity building

Enhancing Community Alternatives

Lappi-Seppälä, T. (2003), Enhancing the Community Alternatives - Getting the Measures Accepted and Implemented. UNAFEI 121st International Training Course Visiting Experts' Papers <www.unafei.or.jp/english/pages/RMS/No61.htm> (published 2003, based on 2002 lecture)[169] pre-dates the 2008 article by the same author (reviewed above) on trust, welfare, and political culture and explaining national penal policies. This 2003 article (which refers to a small extent on the experience of Finland) focusses more specifically than the

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[169] Enhancing the Community Alternatives: Getting the Measures Accepted and Implemented (From Annual Report for 2002 and Resource Material Series No. 61, P 88-97, 2003, -- See NCJ-205803). Published 2003.

2008 article on community alternatives. It is therefore a useful introduction to this section in which we review probation-specific literature.

In this paper the author first sets out what steps need to be taken to implement measures to reduce the prison population -

"To get these measures accepted it is necessary to convince all the key players in the criminal justice world. The policy makers (including government ministers) and legislators must be convinced; so must the judiciary and the police and prosecutors. And it is vitally important to convince the media and the general public.

He continues: *Critical issues, thus, remain:*

1 *how to get the laws accepted on the political level,*
2 *how to get them implemented on a practical level,*
3 *how to confront the punitive-populist pressure from the politicians and the media"*

The author elaborates on these issues, considering five key points. In so doing he explicitly links decarceration policy to the availability and use of community sanctions:

1 **Political will:** *"The essential step in the process is, thus, to define prison overcrowding on a political level as a problem that should and can be solved."* The author provides the example of Finland where a *"political will and consensus" (to bring down the prison rate) was "formulated by a group of key individuals"* who produced a range of measures to address prison over-use including reforms to legislation, sentencing practice and *"low-level day to day decisions."*
2 **The role of criminal justice practitioners:** *"A successful decarceration policy requires that all key actors* -for instance the police, prosecutors, judges, the prison agencies, community corrections- *have committed themselves to this aim…. One has to bring the key people together to promote policy discussions, leading to decisions as to the direction in which policy ought to move."* Noting that *"collaboration with and assistance from judges was clearly a necessary prerequisite for change"* he offers the example of sentencing seminars for judges and concludes on the importance of *"the exchange of information and cooperation between different agencies and actors"*.
3 **Information and education.** This pertains to the society in general and the view of politicians and state officials *"on the magnitude of criminality and the nature of the crime problem." ……" Basic criminological facts should be communicated to politicians, decisions makers, state officials and criminal justice practitioners*.

4 **Public opinion and the role of the media.** On this aspect, Lappi-Seppälä writes *"As crime policy becomes more and more politicized, the role of public opinion presumably only increases in the future. Therefore, one should be more and more concerned whether and how well informed these views are. The perceptions of the public are heavily influenced by the biased picture of crime reality offered by the media. Governments should, therefore, invest more in public education and information in these matters."*

5 **Constructive crime-prevention alternatives.** On this matter the author states *"Crime is a problem and politicians are responsible for offering solutions to this problem*." He goes on to make clear that these solutions may rest outside the domain of criminal law.

In the remainder of the article the author elaborates several detailed steps to further the development of community alternatives.

Steps at the practical level include providing basic facts and practical education on factors including the reality of prison, criminality, assumptions on the effectiveness of criminal sanctions, the benefits of community sanctions, and the functioning of other services which is *"especially important in countries where the roles and responsibilities are divided between social welfare authorities and criminal justice agencies."*

Also important are legal conferences and professional training, and *"extra efforts in sustaining the credibility of community sanctions."* On the latter he notes that the variety of aims is both a strength and a weakness, a point which should be considered in evaluation where a lack of success in one area does not mean in all areas. He refers too to professional training and informing communities -

"The success of many community sanctions depends to a large extent on the interaction between the community and the offender. Therefore, special measures should be adopted to communicate to the community the benefits and crime control potential of community sanctions.

Examples of such measures include information on the true content of these sanctions and their implementation as well as on the positive reintegrating effects, the situation of offenders and the use and existence of mediation or dispute settlement mechanisms in the community. The value of volunteer work and the citizens' associations role in the implementation of community sanctions deserves clear recognition – also to be publicly announced by the governmental officials."

Lappi-Seppälä also addresses what he terms *"confronting penal populism."* He argues that *"in many cases this policy is based on "harmless ignorance" on*

crucial criminological facts. But the worst forms are examples of sheer political calculation based on the insecurity and fears of the general public. And in the most appalling cases, these movements do not only exploit but also <u>increase and strengthen</u> the fears and prejudices of the public against racial and ethnic minorities. In this respect, confronting the penal populism becomes, not only a matter of more rational penal policy, but also an issue of better democracy and social justice."

Implications for policy transfer in the probation field

We conclude:

- That influencing the political sphere and public opinion, establishing partnerships with justice partners, and doing so based on accurate information about the realities of prisons and benefits of alternative sanctions, is important when considering a probation capacity building project.
- Partnerships with communities are needed to support a probation system, to use its energy and societal basis to help the establishment of a vibrant probation organization (and, we add, to help communicate and demystify probation work and its benefits).
- Capacity building will often be a long-term process. It should be planned for as such.

Taking probation abroad – the "Ecological Niche"

Canton, R. (2009), 'Taking Probation Abroad', *European Journal of Probation*, 1: 66–78, available online at www.ejprob.ro

Canton (2009)[170] is interested in identifying those circumstances and influences that will shape the character of a new policy or practice in probation policy transfer. He first identifies a move that has taken place (at the time of writing) from *"knowledge exchange to policy transfer"* stimulated by factors including a desire to reduce prison populations (about which he expresses caution in relation to impact), and aspiration to improve the human rights of offenders. Noting that *"a repertoire of community sanctions and measures characterises modern penality in many countries and developing probation appears to be a modernizing approach"*, there has *"been a move beyond the informal exchange of ideas about policy and practice and an active search for specific organisational models and practice methods to adopt in their own jurisdictions"*, a process he says can be understood as "*penal policy transfer.*"

Noting the importance of issues of context and culture in successful transfer, he uses - in the footsteps of other researchers - the illuminating metaphor of an "*ecological niche*" (Hacking 1999).

"*This metaphor of an ecological niche has considerable explanatory potential for an understanding of penal policy and practices*".

Canton describes several vectors – *"those circumstances and influences that will shape the character of a new policy or practice"* – in probation policy transfer: the framework of law, politics, context such as criminal justice institutions and practices, technology and commerce, research, pressure groups and networks, public opinion, ethical environment, and culture.

To these he adds some important international vectors such as the Council of Europe and the European Court; they "*can be seen as another (transnational) vector supporting the practical realisation of the ethical aspirations of the European Convention on Human Rights and Fundamental Freedoms itself. The Convention stands as an ethical foundation to appraise the success of policy and practice transfer by reference to its influence on the protection and enhancement of human rights – of victims, of offenders and of the community.*"

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[170] Canton, R. Taking probation abroad. European Journal of Probation University of Bucharest www.ejprob.ro Vol. 1, No. 1, 2009, pp 66 - *(PDF) Taking Probation Abroad*.
Available from: https://www.researchgate.net/publication/268273664_Taking_Probation_Abroad

Having earlier referred to Worrall (2000) who he says *"makes the point vividly in her account of an 'export' that showed limited sympathy to history and culture, so that policy transfer came close to imperialism – or at least imposition,* he also describes how context can lead to resistances (for example the introduction of social enquiry reports which are actually intended to change how other justice agencies carry out their work). Canton writes on the success or failure of policy transfer:

"The aspiration, presumably, is to enable each country to introduce and develop probation practices that they can recognise and value as their own, even if modelled on the organisation, policies and practices of others. Yet this cannot mean that a transfer can be allowed to take any form: there are……….. corruptions in transfer as well as failures. …………… the principles that should guide the transfer of policy and set the parameters of success are ethical values, grounded in the European Convention on Human Rights and Fundamental Freedoms. Since almost all European states are members of the Council of Europe, using the Convention to shape policy transfer ensures its legitimacy and avoids any imputation of imposition: these are common standards that belong to all Europeans."

Implication from Taking probation abroad – the "Ecological Niche"

The identification of a shift from *"knowledge exchange to policy transfer"* and the metaphor of the "ecological niche" are helpful insights in understanding capacity building. They help us to make sense and apply, in the probation arena, the (non-probation specific) sources we have referred to earlier: the transfer framework of Dolowitz and Marsh including descriptions of voluntary, bounded, or coercive transfer, and (although they post-date Canton's paper) the relationship between globalisation and policy transfer described by Evans, and the "clocks or clouds" complexity of systems described by Leroux-Martin and O'Connor (and the "chain reaction" that may result from the introduction of a new policy or practice).

They also provide "probation context" to the work of Cavadino and Dignan on penal policy and political economy, and on trust, welfare, and political culture of Lappi-Seppälä, both of which illustrate considerations, and potential resistances, in working towards successful transfer.

In **summary,** the relevance of Canton's paper to our research is, we believe, evident:

- The metaphor of an ecological niche is helpful in describing influences that determine whether a borrowed organisational model or practice may be successful, also factors to keep in mind, and perhaps address, during capacity building.

- The number and range of "vectors" described indicate that bringing about change will often a daunting task.
- We note that "policy transfer" may be giving way again to "knowledge exchange". Canton identifies the dilemma: on the one hand the aspiration for a country to develop probation in a form that can be owned by the borrowing country, on the other hand that the outcome cannot be one in which probation might be meaningfully something other than is expressed in the guidelines of the CoE.
- "Success" needs better evaluation, including criteria definition and measurement.

Community Sentences and the Sustainable Development Goals

Joutsen, M. (2019), 'Re-Assessing the Role of Community-Based Sentences in the Context of the Sustainable Development Goals', in: Unafei, prevention of crime and treatment of offenders, pp. 66-102, Annual Report for 2019 and resource material, Tokyo (2020).

Before focussing on country-specific writing on probation transfer, we turn to a recent source on the role of community-based sentences which embraces an important focus on probation in the context of the United Nations Sustainable Development Goals (SDGs).

Joutsen (2020) first explores data on community sanctions and measures (CSM). He looks worldwide but notes the comparatively detailed data available in Europe thanks to the Council of Europe (SPACE 11 statistics). He notes that the proportion of prisoners sentenced to short custodial terms (less than one-year) has not decreased at all; in fact, it seemed that there was an overuse of CSM. This is *called the "net-widening" effect of new community-based sentences.[171] Often, new sentences are developed specifically to replace short terms of imprisonment, but in practice they may replace less restrictive sentences."* However, in Europe *"the use of probation is expanding, as is the range of*

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[171] Net-widening is discussed in detail in, for example Aebi, M., Delgrande, N. and Marguet, Y. (2015) who analyse the evolution of imprisonment and community sanctions in Europe from 1990 to 2010. Testing whether community sanctions have been used as alternatives to imprisonment or as supplementary sanctions, they show that both the number of persons serving community sanctions and the number of inmates have continuously increased in almost all European countries during the period studied. The evolution of crime rates shows that the latter cannot explain such trends and suggests that, instead of being alternatives to imprisonment, community sanctions have contributed to widening the net of the European criminal justice systems. The analyses also show a wide diversity in the use of community sanctions across Europe where, in 2010, the ratio between inmates and persons serving community sanctions varied from 2:1 to 1:3.

functions that probation agencies fulfil"[172] ... *"in particular, community service orders are in wide use".[173]*

Joutsen then addresses considerations in relation to the use of community-based sentences including their cost-effectiveness and public attitudes. *"The conclusion is that, when the public sense of justice is assessed, community-based sentences do find wide support as a response to a broad range of offences. The ability of the public to understand and accept such sentences should not be underestimated."[174]* In relation to finance, Joutsen further concludes *"from a costs-benefits perspective, community-based sentences can be implemented at lower costs-per-sentence than imprisonment."[175]* In relation to attitudes, he further notes changes in the stated functions of Community Service Orders (CSOs) which are *"becoming more narrowly defined as reduction of risk of reoffending and retributive"... "in an effort to garner public and judicial support"(Melvor),* and comments on the use of Electronic Monitoring (EM): *"the more effective programmes and approaches, in Europe in particular, are those where EM is not a stand-alone measure."[176]*

Having set out these and other trends and issues in the use of community-based sentences, Joutsen then goes on to address the question of promotion of their wider use. Whilst all UN-states agree on the need to reduce imprisonment and to expand the use of effective community-based sentences, in many countries appropriate community-based sentences are simply not available, or *"available community-based sentences are used far less than they might be or, when used, are used as substitutes for other community-based sentences and not for imprisonment (the so-called net-widening effect)."[177]*

He examines the reasons for the inconsistency between stated goals and actual practice which *"are to be found in law, sentencing constraints, policy, resources and attitudes. These problems cannot be dealt with in isolation from one another. The use of community-based sentences can be expanded effectively only if all the problems are recognized and dealt with."*

Joutsen sets out *"steps that should be taken on different levels and by the different stakeholders involved"[178]* The steps, in headline form, are:

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[177] Page 87
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1 *Ensure that the law clearly provides an adequate range of community-based sentences.*
2 *Review substantive criminal law to ensure that it is in line with the fundamental values of society.*
3 *Key stakeholder groups should be provided with information and training on the functions and use of community-based sentences.*
4 *Criminal justice decision-makers and representatives of community-based service agencies should work in closer cooperation in order to identify and respond to the needs of offenders, in particular members of vulnerable populations, such as racial and ethnic minorities, alcohol, and drug users, the homeless and foreigners.*
5 *Secure a steady resource base for personnel, training, and facilities.*
6 *Ensure a continuous research component in planning.*

Joutsen concludes by considering the cross-cutting nature of the SDGs: *"We should see Goal 16, and the operation of the criminal justice system in the wide sense, in the broader context of the 2030 Agenda. This means in practice that we should take into consideration how the decisions that criminal justice practitioners make could have an impact on the different aspects of the life of the victim, the offender and the community – on physical and mental health, on education, on employment and economic survival, on the rural or urban environment, and so on"[179], and finally "Promoting a greater role for community-based sentences is part of sustainable development."[180]*

Implications of Community Sentences and the Sustainable Development Goals

The implications for capacity building are in our view important:

This is a wide-ranging paper that addresses and reinforces several points in the more general literature we have reviewed, and in line with our own experience, not least steps likely to support the successful transfer of probation policy or practice such as –

- Address the 6-steps: legislation, clear communications with and involvement of major stakeholders, including public, and sufficient resources for staff, training, and infrastructure.

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[180] Page 95

Joutsen also reinforces caution regarding the often-expected benefit of community sentences that they will reduce the use of imprisonment. Instead, the phenomena of net-widening lead us to state that –

- Countries contemplating the introduction of community sentences should not be encouraged to think that they will necessarily lead to a reduction in the use of imprisonment, at least in the shorter term. For this to occur, a number of other factors need to align, not least a conducive penal climate, sentencing practices, and resources.

The paper goes further in considering the role of probation in relation to the SDGs, providing a rationale for inter-agency work in support of goals such as social inclusion of (ex) offenders that we believe is also likely to resonate with other agencies. The line of thought might be extended to consideration of how sentencing and probation activity can support others actively in the context of the SDGs, such as victims and the wider community, for example through reparative work which if well-designed can also support community (re)acceptance and the desistance journey.

Joutsen concludes that if criminal justice practitioners work on having an impact on the life of offenders, taking into account victims, and the community, then community-based sentences are contributing to sustainable development.

- Most importantly, the replacement of prison sentences by alternative sanctions contributes to SDG's as they are more likely to address offender needs, contribute to rehabilitation and desistance, and so lead to safer communities, and therefore be less damaging to society.
- Furthermore, in our view sentences such as community service are reparative, can build skills, and may include environmentally friendly and change activities which directly help to address community needs and achievement of a range of SDGs.

3.2 Country specific literature on probation policy transfer and capacity building

Implications of the social construction of probation for transferability; the United States and United Kingdom

Phillips, Jake (2010). The social construction of probation in England and Wales, and the United States: implications for the transferability of probation practice. *British journal of community justice*, 8 (1).

We begin this section with consideration of a paper on the transferability of probation practice based on the experience of the United Kingdom (specifically England and Wales) and the United States (US). Phillips (2010) provides an account of the social construction of probation in the two locations, and of resulting implications for the transferability of probation practice.

Phillips first notes similarities in the 19th century development of probation in the USA and the United Kingdom (England and Wales) -

"*The legal origins of probation in both jurisdictions are …. similar, voting from common law traditions of releasing offenders on recognizance, judicial reprieve and bindovers. These concepts allowed judges the possibility to suspend a sentence or punishment, in favor of supervision by a legal guardian …….). Probation in both countries, therefore, had antecedents in the form of judicial reprieve, and, arguably, in the kind of humanization of punishment….*"

At the same time, there are major differences arising from the role of religion, from the political climate, from the connection with the police (USA) or with the courts (United Kingdom, England and Wales) –

Phillips notes the stronger influence of religion in Britain where missionaries took on the early probation role –

This distinction between work informed more by godlessness (and hence salvation) rather than oversight of individual decision-making (albeit limited by circumstance) found on-going expression -

"*I suggest therefore, that probation in the US began with a more pronounced neo-classical criminological focus, described by Garland as the ability to make 'choices within social constraints' (1985b: 113), whereas the missionaries in the UK saw their clients as able to be saved with their behaviour stemming more from godlessness than poor decision-making.*"

Furthermore -

"*After the 1907 Act (in England and Wales) probation officers were to monitor offender compliance as well as to 'advise, assist and befriend' them, whereas US probation was still focused on the monitoring of the offender mainly for the purpose of reporting to court.*"

Also noting substantial differences between the US and UK (England and Wales) in average caseloads, Phillips describes the probation service in England and Wales as more "client centered" than in the USA, noting –

"*The word 'client' means offender in the British context but means the community, the judge and the police in the US*".

Also, in the US -

"… *it was always possible for a judge to impose probation on an unwilling defendant. Until 1991 in Britain, however, offenders had to consent to probation*."

"*The US system…… can be seen to have a more coercive approach to offender compliance when compared to Britain's more voluntaristic approach*."

Commenting also on an enduring "client-centredness" on the part of (the 2010) National Probation Service officers he suggests –

"… *that the stronger historical focus on the offender in England and Wales and the focus on accountability to the wider public in the US can be seen to have persisted to this day.*"

Phillips points out that in the USA, many early probation officers were in fact serving or retired police officers, whilst this was not permitted in England and Wales. Today in many states the probation officer can carry a weapon and re-arrest non-compliant probationers.

Noting other differences such as varying expectations regarding training between US states, he points to differences between the US states leading to "*fragmentation*" while in England and Wales there is "*unity*". He provides the example of evidence-based practice, which he describes as "sporadic" in implementation in the USA but "more uniform" in England and Wales.

Phillips argues that differences between countries in shared professionalism and identity have consequences for the introduction of a top-down approach to (international) standardized practices or uniformity of probation tasks (as is assumed, at least to an extent, in Europe in the European Framework Decisions to allow the transfer of sanctions). Furthermore, the history and culture of a country in which the probation service operates strongly determines whether standardized forms of probation activities (on which international agreement has been reached, and perhaps developed by "elite networks") are easy to implement. In that implementation, the specific development of each country must be considered, and there must be scope in the implementation to match the form that the probation service has already taken.

"*A top-down approach for organisational change may therefore be doomed to fail if the sociohistorical and cultural values of practice are not taken into account because it can elide and delegitimise previously important forms of practice and beliefs.*"

Implications for probation capacity building

The importance of history and culture in probation policy and practice expressed by Phillips echoes and reinforces the views of other writers whose (non-probation focused) work we have discussed. He provides a clear example of the enduring nature of probation values and their impact on policy and practice today, for example differences, in general, in a rehabilitative or monitoring/compliance emphasis.

We have no doubt that the social construction of probation, like penal policy as a whole, does indeed impact on the nature and speed of transfer.[181] As we have suggested earlier in this literature, we do however believe that globalization may be increasing in influence in recent years; we have pointed to the growth of "epistemic communities" such as the World Congress on Probation and growing international interest in concepts such as desistence.

Furthermore, in Europe, the Council of Europe, of which almost all countries are members, determines standards (we note incidentally there is no such body in the USA), and in addition Canton (see the next paper in this study) argues that culture is changeable and the member states themselves would like, to a greater or lesser extent, to undergo a change or further professionalisation, or to apply standardisation.

On the other hand, we are certain that desistance theory and practice (to take further the same example) is, despite wide interest, much slower to reflect in practice in some countries than others. There may be several reasons, but it is indisputable for us in our experience that countries are strongly influenced by the social construction of probation or the values underpinning penal policy and attitude to offenders and reoffending.

We concur with Phillips's view that –

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[181] We choose this discussion of differences in, and often enduring nature of, national penal policy (also described by Cavadino and Dignan's 2006 paper reviewed earlier), to highlight an issue of impact and legacy we believe needs significant further exploration, namely colonialism. See for example Moore (2014) who in *"Is the empire coming home? Liberalism, exclusion and the punitiveness of the British state"*, discusses how colonialism provided a means to sustain a comparatively punitive British penal approach overseas even during periods of more liberal policy in the "metropole". Moore also discusses issues of "exceptionalism" which he argues supported this approach and are still evident today in attitudes to race (and resulting practice). Moreover, it seems clear to us (and is evident from our own capacity building experience in countries that have been formerly colonised) that colonised countries may reflect to varying degrees the approach(es) of their coloniser(s) with a range of implications for current practice and aspirations, and relationship with pre-existing approaches - which may incidentally be less adversarial and more centred on restoration. All are aspects which should be considered in present day capacity building, perhaps not least by those who represent former colonial powers, heeding an evolving understanding of decolonising development.

- to maximise the possibility of successful development of probation, newly introduced practices should correspond as much as possible with (or at least take good account of) those developed to date and what is acceptable to society at that time.

To put this in a current practical context, European countries (including therefore all of those in our study) should, whilst being members of the Council of Europe (CoE), of course determine for themselves which order will be followed in the implementation of, for example, the CoE European Probation Rules (EPR) and, within the broad boundaries set by the EPR, determine the form taken with regard to the implementation of the various probation tasks.

Penal Policy Transfer: A Case Study from Ukraine

Canton, R. (2006), 'Penal Policy Transfer: A Case Study from Ukraine', *Howard Journal of Criminal Justice*, 45: 502–20.

Canton (2006) provides an account of a project to develop the community supervision of offenders in Ukraine undertaken by himself and colleagues between 2000 and 2003. In the account he sets out the context and describes the project before considering how the activity might be understood as an example, or case study, of penal policy transfer, using the framework of Dolowitz and Marsh that we have discussed earlier. He tries to

"…*identify some of the influences that shape penal policy and practice and that must, therefore, be taken into account by any transfer endeavour. Questions are raised about how such initiatives might be evaluated*."

Canton describes how Ukraine, established in 1991 after the collapse of the Soviet Union, experienced an increase in crime and (although the *proportion* of offenders sentenced to prison fell) an increase of 170% in the *number* of people sent to prison in the period to 1997. This had the effect of increasing feelings of hostility towards offenders, and furthermore:

"*As well as contributing to a climate of anxiety and straining tolerance, this increase in recorded crime has put colossal pressure on the institutions of criminal justice.*"

However, in November 1995, Ukraine became a member of the Council of Europe and a signatory to the European Convention on Human Rights, an involvement he terms -

"*a stimulus to beginning to see the prison population* as a problem *rather than merely a state of affairs.*"

Canton also comments *"that the possibility of creating a probation service was under consideration as part of an attempt to reduce the prison population",* but goes on to remark (in comments prescient of our own experience a few years later and in this research study) that -

"… experience from other transitional democracies stood as a caution: limited financial resources, the uncertainty of a secure legal basis for such an innovation, the inexperience of practitioner and managerial staff, and doubts about the relationship of such a service to other criminal justice agencies all militated against the successful creation of a probation service de novo (Canton 2000; Stern 2002)."

The project, established at the request of the Ukrainian Government with the support of the British Embassy, included a small number of demonstration pilot studies, including one that aimed to build on an existing practice of suspended sentence with supervisory contact. Canton notes (in a comment perhaps reflected in the previously discussed conclusions of Phillips)-

"… many of the supervisory methods presented by the consultants sometimes did not do much more than put shape upon the inspectors' current practices, undertaken on the basis of good sense and experience, and often without theoretical self-consciousness. In this way the training process validated the inspectors' skills and experience".

Canton also notes the importance of communication with the judiciary –

"Since part of the rationale was to persuade courts to consider community sanctions in cases when custody might otherwise have been imposed and to expedite early release, the support and under-standing of the judiciary was essential, and a series of meetings and seminars was convened to promote the work of the projects."

Regarding questions of policy transfer, and noting the "*many-layered character of punishment*", Canton remarks on the complexity of transfer-

"Policy and practice, then, are shaped by an indeterminate number of inter-related factors, which may be antagonistic, so that outcomes are contingent and unpredictable. Complexity confounds policy making and implementation, while grand theory struggles to frame explanations."

Before turning to the framework of Dolowitz and Marsh, Canton refers to Garland (1985, 1990) *"As Garland shows, it is easy – perhaps banal – to say that political, social and economic developments influence penal practice: the challenge is to explain how these influences find effect and lead to specific penal consequences."*

Canton then seeks to address the challenge of understanding transfer by employing the framework of Dolowitz and Marsh (discussed earlier in our literature review) to examine the experience of the Ukrainian project. He considers therefore especially questions of why, who is involved, what is transferred, degree of transfer, constraints, and finally how transfer leads to policy failure.

Looking at the question of <u>why transfer</u> (in keeping with the general focus of Dolowitz and Marsh's article, this is primarily an emphasis on *why transfer*, rather than *why probation*, although applied to the latter), Canton refers to several factors including the size of the prison population and international pressure to address this, particularly on the part of the CoE. He notes also the lack of home-grown expertise, and that the *"introduction of models from Europe gives a modernising and legitimate feel to policy reform."* Regarding who to transfer from, Canton speculates about the reputation of the English criminal justice institutions, and notes the strong support of the British Embassy.

Canton also observes that motivation of many of the critical actors was ambivalent and labile; recognition of the need for change does not equate to clarity about what to do. He also considers the question of voluntary or coercive transfer, suggesting that the notion of a continuum can be too "*one-dimensional.*" Whilst some of the human rights standards that probation would help address were already in Ukrainian law, the "*social, political and economic pressures cannot honourably be overlooked here*" and "*foreign investment is contingent on certain human rights standards*"; can international standards be seen as coercive? He also notes that *"initial enthusiasm can give way to disenchantment when the project turns out to be different from what was anticipated"*, a factor that highlights the importance to transfer of ongoing as well as initial support, and that the *"motivations of the principal actors are likely to be different – what weighs with politicians, civil servants and criminal justice practitioners may well not be the same".*

Turning then to who is involved, Canton refers to *"academics and senior civil servants, managers and practitioners"* in the probation organization, as well as the judiciary and procuracy; furthermore *"the dynamics of exchange of ideas and practices among such a diverse group, with so many differences and priorities, are extremely hard to untangle, but obviously represent a critical variable in the transfer".*

Turning to **what is transferred**, Canton makes an important distinction from the focus of Dolowitz and Marsh on *policy* transfer. He describes instead how *"the demonstration projects sought to change practice directly and through this to influence policy, rather than beginning with policy itself."* Whilst the *"drawback, of course, is that changes in practice achieved in the manner of this project risk being purely local and ephemeral and may fail to become established*

nationally", on the other hand *"a practice project can demonstrate what may be possible and act as a stimulus and a guide to policy development, ensuring that the evolving policy is relevant and realistic".*

In considering **degree of transfer**, Canton suggests that *"Practice depends on so many specific circumstances and organisational arrangements that it would be both self-defeating and complacent to enjoin mere imitation.* Instead, the projects mostly aimed at emulation. However, inspiration was always important and, in some cases, *"even emulation seemed unrealistic"* and *"Inspiration was certainly among the objectives.* Canton concludes with what seems to us the important observation that *"The projects offered alternative ways of thinking about responses to offending and effecting change that might be inspirational, regardless of the extent to which any particular practices were adopted."*

Penultimately, in considering Dolowitz and Marsh's analytical framework, Canton turns to the question of **constraints on transfer**. He focusses on four areas of constraint that he considers most relevant to the Ukraine analyses.

First, *institutional and cultural 'fit'*. Noting that transformation of the character of practice in one place will, and should, make a difference to practices in another *"or else the innovation will be insulated (and thus probably ineffectual) or neutralised",* he argues that *"an innovation is likely to encounter 'competition', where other affected individuals or organisations reject and resist the change."*

Canton considers the examples of pre-sentence reporting which "assumes a particular process and a particular relationship between probation and court, neither of which exists in Ukraine". He goes on to describe the position of the procuracy which has a major influence on sentencing and *"any attempt to enhance the contribution of the inspectors here would impinge upon this influence"* … *"the potential for conflict must be recognised."* Indeed, *"the procuracy has a general responsibility to oversee the practice of the inspectors and may choose to support or to resist the changes they perceive."*

Canton also addresses *"the complex matter of culture"*. Quoting Worrall (2000) he notes that *"sound ethical concerns to avoid imperialism or (neo-) colonialism and to show sensitivity to history and cultural legacy"* must also take into account *"that culture is not static or discrete or one-dimensional"*. Culture in fact evolves, does not necessarily change in step with wider structural or cultural features, and criminal justice practices *"have often been shaped"* by influences from elsewhere voluntarily or by coercion. Indeed, he concludes that *"…many Ukrainians are themselves keen to change aspects of (culture)."*

Canton then describes the variable of *"centralization and decentralization"*. Observing structural changes prompted in the post-Soviet period by the Council of Europe (for example transfer of responsibility to a Justice

Department), a new Non-Custodial Division asserting itself, and a lack of clarity regarding central and regional direction, he states that *"In the transitional period of the projects, structural and political tensions and rivalries were being played out, especially the dynamics among the Executive, the Ministry of Justice, the Ministry of Internal Affairs and the procuracy – and the internal politics of the Executive itself."*

Canton turns then to the fourth area of constraint, *financial feasibility*. Whilst imprisonment is expensive, the marginal costs of an individual's imprisonment are relatively low. Thus *"even if community sentences were to succeed in checking or reducing the prison population, the financial benefit would not be felt for some time. Meanwhile, the creation of new agencies and systems to implement noncustodial penalties requires new money – at least and certainly in the short term."* He describes how *"this was part of the reason why the preference of the project was to shape and build on existing practice rather than to attempt to create new institutions"*, whilst noting *"At the same time, there is plainly a risk that innovation can be assimilated to current practices and change effectively neutralised."*

Finally, in drawing on Dolowitz and Marsh's framework, Canton turns to the question of **how transfer leads to policy failure**.

- First, in relation to *uninformed or 'unknowledgeable'* transfer, he describes how although this is explained (by Dolowitz and Marsh) in terms of an incomplete understanding of the character of the policy in the originating system on the 'borrowing system's' part, *"the challenge for this project was to reach a sufficient understanding of Ukrainian practice."* Canton sees that local experts, who are essential in adding legitimacy and credibility to development, may disagree amongst themselves.
- *"So, experts, without whom no project could start, must be seen as part of the complex nexus of criminal justice institutions and the broader framework of 'penality' that we are endeavouring to understand, and not as detached observers. A challenge for the consultants was to try to understand what was happening when local experts disagreed."*
- Secondly, in relation to whether transfer may be *incomplete*, Canton makes the point that *"this partly depends on whether copying, emulation or inspiration is the objective,"* and *"that different actors may have different aspirations here."*
- Thirdly, in relation to *inappropriate transfers* (which in the framework of Dolowitz and Marsh may fail because "insufficient attention may be paid to the differences between the economic, social, political and ideological contexts in the transferring and borrowing systems") Canton suggests that *"this hazard is minimised by developing current practice*

and institutions rather than importing new ones, but the challenge of appropriate transfer remains." Quoting Newburn 2002 *"Successful transfer seems most likely to occur where there is social and political affinity and/or ideological proximity between the originating and borrowing systems"* he points out significant differences in the framing of criminal justice problems and responses between England and Germany and concludes *"How much more problematic, then, might be a transfer from England to Ukraine?"*

Canton concludes by considering **implications for policy transfer**, noting that *"any transfer endeavour encounters a complex network of inter-related influences, which shape penal policy and practice."* He describes *"broad political, economic, social and cultural influences"* which may act as a stimulus to reform (as in the Ukraine case study), but which *"as the transfer develops – and unanticipated implications become apparent – ... may turn out to be a source of resistance and will certainly constrain the direction and pace of change".* Furthermore, these *"macro factors",* do not all exert their influence in the same direction and may be mutually antagonistic."

Like Dolowitz and Marsh, he considers the question of evaluation, about which he reflects *"in a force field of such complexity, it is rarely possible to track relationships of cause and effect."* In fact, *"it is very hard to determine what difference, if any, an innovation might be making".*

Complicated by the lack of statistical information (which might be hard to obtain quickly in any jurisdiction) and other contemporary changes (such as to the legislative framework or how statistics are presented), he asks what counts as a successful transfer? Drawing on the example of an attempt to introduce community service as part of a strategy to provide alternative measures to custody, he suggests –

"The attempt would count as unsuccessful, presumably, if no community service orders were made. But what if some orders were indeed made, but, instead of displacing prisoners from a burdened prison estate, simply added to the overall penal weight imposed upon quite minor offenders: would this count as a successful transfer? Or again what if orders were made in respect only of defendants who were powerful or privileged, with custody remaining for the poor? Or if orders involved undertaking tasks which brought personal profit to individuals rather than a wider community?"

He concludes that *"a social trend might be associated with a penal development, but the relationship will often be unclear".* However, insight might be gained: *"The attempt to transfer ... could test the significance of different factors and contribute to a more complete specification of the complex network of influences that shape the institutions and practices of punishment".*

Significance for development of a model of probation capacity building:

Canton, in drawing on the case example of Ukraine and applying the framework of Dolowitz and Marsh, confirms how difficult policy transfer can be; it may be even more difficult to assess the *impact* of a probation capacity building project.

The experience he describes in Ukraine demonstrates the usefulness of the framework, confirming our own impression of its application in the probation field. Several of the issues highlighted by Canton reflect our own observations on capacity building we describe earlier following our account of the Dolowitz and Marsh articles, for example drivers of change including the influence of supra-national bodies, degree of transfer, and resistances including the possibility that initial keenness to import a practice is later tempered as the full nature of the practice, and perhaps its fit with existing culture, becomes clearer. Examples from the authors' work in other countries might include transfer of practice with a strong rehabilitative focus, and training, delivered ahead of a wide acceptance of a move from more controlling practice and availability of sufficient delivery capacity.

Furthermore, drawing on recent experience of one of the authors, also in Ukraine, we are of the opinion that what was encountered some 15 years later[182], is in some respects not greatly different. Factors hindering probation development continued to include the size of the country and attendant issues of decentralisation working against implementation of centrally defined policies, whilst "power struggles" continued between the public prosecutor's service and the probation service. Other issues included the relatively low pay and status of probation officers within the hierarchy of the justice system.

On the other hand, changes may be seen: the probation service is an independent organisation from the prison system and has grown considerably, its leadership having become more outspoken (perhaps a form of "social trend" as described by Canton, delivered in the context of probation)? And although it is impossible to be sure of success in advance, this is therefore perhaps an example of success occurring in the long run?

In summary, what does the Ukraine country study (and application of Dolowitz and Marsh's framework) tell us about considerations, and perhaps possible good practices (although Canton is cautious regarding results), when developing a probation capacity building model?

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182 It is important to note these comments refer to a period shortly before the commencement of conflict between Russia and the Ukraine in 2022.

- First, it confirms the complexity of factors involved, especially cultural and historical aspects on which probation projects have little or no influence; because culture and organisation of the penal system are so complex, sufficient time is needed to scope the project, to understand the environment, and identify the likely challenging factors or persons or stakeholders.

- Second, the "why" of a project must be understood, including the degree of voluntarism, and extent to which these drivers are shared. Giving the Council of Europe regulations a prominent place in the formulation of the project aims should aid clarity of purpose and goal and improve clarity in relation to voluntarism or coercion.

- Third, the "who" of a project is a vital consideration too; in particular as political support is so important, the project leaders really need to be in direct personal contact with ministers, and judicial and prosecutorial meetings should also be held.

- Fourth, probation tasks should be formulated in such a way that it strikes a chord with political leaders, stakeholders, and the population: if Community Service is appealing to a country, then work on it. The same is true for conditional release or for pre-sentence reports.

- Fifth, a realistic view should be taken about the possibility of change in aspects such as understanding and motivation as a project, policy, and practice become more "real" over time (including resource demands), and that differences may emerge between different stakeholders. Conversely, motivation may increase as the benefits of probation work become more apparent.

- Sixth, attention needs to be paid to organisational "enablers" including governance, infrastructure, and staff.

- Seventh, probation development takes time, particularly where there are resistances to overcome. Aspirations should be realistic over time, for example in achieving levels as set out in the European Probation Rules, but it is also possible to indicate what further work needs to be done in the period after the project has been completed (possibly in a follow-up process).

- Finally, the Dolowitz and Marsh framework (which we are partly drawing on in this summary) appears useful in scoping a project and following through the process of implementation and wherever possible its evaluation.

Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers

McFarlane, M.A. and Canton, R., Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers.

This is an extensive and, in our opinion, very helpful book about probation policy transfer between two jurisdictions, England and Wales (the delivery agency or "lending" jurisdiction) and Turkey (the "beneficiary"). It reflects on a "Twinning Project" funded by the European Union (EU). In 2005, England and Wales had assisted Turkey in establishing a probation service. The book discusses a second project, from January 2009 until October 2010, focused on juvenile offenders and on victim support.

The editors, Mary Anne McFarlane and Rob Canton (2014), explain in their introduction that this book is both an account of a project to assist and influence the Turkish Probation Service in developing its policies and its practices, and a case study which, whilst a detailed account of one project, also helps illuminate activities undertaken in other countries and in different areas of professional activity. In seeking to draw general lessons about policy transfer and doing so in the area of probation service development, it is therefore especially pertinent to our own study.

We include here a review of those sections that appear especially useful in helping to answer our own questions regarding good practice in probation capacity building, that is first the introduction, then two chapters by two different authors, Seddon and Barrows, both especially experienced in transfer, and finally the conclusion in which various themes are identified.

The Introduction

The editors point out early on the complexity of transfer, remarking that work in no two countries is the same –

"Every country has its own language, culture, traditions, institutions and practices and to that extent working in one country is never quite the same as working in another."

They go on to note that Turkey's history and contemporary politics, including its relationship with the European Union (who funded and supported the project), made the project unique and with a particular significance (commented on by contributors of chapters to the book).

The editors then quote Cavadino and Dignan (whose work we discuss earlier in this literature review) in order further to emphasise national difference and the complexity of influences on the character of criminal justice (2006: 452): *"… however many factors we incorporate into our theory, it will still not give us the whole story. Individual nations, and their cultures, histories and politics, can be just as quirky and esoteric as individual human beings."*

McFarlane and Canton also make the point that policy transfer is *"never merely a technical matter of transplanting knowledge and skills (although it includes this)."* Moreover,

"…any project that sets out to influence policy and practice in another country must create its own way of undertaking its work and establish its own character: there can be no one best way of going about such an undertaking."

Having set out this complex background of context and variation, not least on the part of a beneficiary country, they draw attention to other aspects of criminal justice transfer, pointing out also variation in, and the influence of, international context including of international parties to transfer and broader trends in globalisation, and how these may impact on transfer including motivation.

Briefly exploring the history of transfer, they write:

"In the past twenty years or so, there has been a marked increase in activities of this type and a more deliberate and strategic attempt to take lessons from aboard and to 'import' policies and practices. Influences of globalisation and aspirations to modernise have been a stimulus here, strengthened by the development of international conventions, treaties and protocols with which signatories are expected to comply. One way of demonstrating a commitment to best practice is by emulating countries where standards are recognised to be high."

They then refer to the "seminal" work (as we also do earlier) of David Dolowitz and colleagues who they describe as having provided a *"conceptual framework and a language in which these activities may usefully be discussed (Dolowitz and Marsh 1999; Dolowitz et al. 2000)."*

Drawing on this framework, McFarlane and Canton address in turn *why transfer, who is involved, what is transferred, and to what degree?*

Concerning *why transfer*, they suggest it can be motivated by a *"requirement to conform with international requirements (notably, human rights conventions)"* which can *"call for countries to introduce policies even with a degree of reluctance or misgiving."* They note however that countries may well have chosen to subscribe to conventions *"which often reflect their own avowed aspirations, as articulated in their Constitutions."* As such *"there is no simple answer to the question whether these changes are voluntary or externally imposed."*

They also point out that motivations may change, with more or less enthusiasm (or perhaps resistance) as implications of transfer (and knowledge of advisors) becomes clearer over time. Furthermore, advisors themselves will have perspectives on how transfer should proceed.

Turning to the related question of *who is involved*, they note the number and range of people involved who may have different levels of enthusiasm (or choice) and *may try to "mould the innovation in line with their own interests or even try to block it."*

On *what is transferred*, they draw an important distinction between *"specific technologies, methods and techniques,"* and *"new concepts and meanings, ideas, ways of thinking and talking about crime and punishment."* On the latter they suggest that examples *"include the perception that criminal justice interventions should be evaluated in terms of their success in reducing reconvictions, the priority increasingly given to the concept of risk and ideas about the proper place of 'the market' in security or corrections and, reciprocally, the role of the state."* Stating that *"...anglophone nations ... have worked energetically to extend these ideas,"* they distinguish between practitioners who may be keen to update skills through the former whilst *"meanings and ideas can turn out to be the most influential aspect of change."*

Discussing *to what degree,* the editors suggest that in practice it can be difficult to distinguish different degrees of transfer – copying, emulation, a mixture of these, and inspiration – described by *Dolowitz and Marsh.* They are however clear that *"intention should be to enable the receiving country to develop its own institutions and practices, not to seek to transplant a foreign model",* an approach they however suggest leads to special difficulty in evaluating success. Noting that evaluation is relatively neglected in the literature, they also distinguish between transfer of policy and practice, arguing that whilst policy is, for many reasons, not always turned into practice, practice may struggle to be picked up and sustained through policy.

McFarlane and Canton then make what seems an important point regarding those most often in receipt of transfer (developing states and those in transition to democracy) and the "massive" political and economic influence of America on direction of travel. An association between "Americanisation" and globalisation means that democratisation and free market capitalism are most often part of the direction of travel, the latter risking exploitation and profound social injustice without development of trustworthy and robust civil institutions.

"Although all civil institutions... must be soundly constructed and managed with integrity, it could be argued that criminal justice has a special place. The coercive powers of the state are nearest to the surface and often manifest in the practices of criminal justice and punishment. It is here that human rights are most at risk and most in need of vigilant safeguarding."

With this imperative in mind, McFarlane and Canton then describe parameters that influence the character and development of criminal justice in any country. They suggest these include:

- *Criminal Law*, which may need substantive or procedural change to allow transferred practices.
- *Criminal justice institutions and practices*, within which transferred practices must find a place yet not promote unhelpful "moulding" or resistance.
- *Pressure groups, networks, public opinion*, which can be critical or even decisive *"to the acceptance of a new idea, as can its representation in the mass media."*
- *Political economy* which (as we note elsewhere) is discussed by Cavadino and Dignan (2006) who link it closely to penal policy, one factor in the linkage being attitude to inclusion of those seen as deviating from social norms. McFarlane and Canton suggest *"the prospects of transfer are powerfully shaped by socio-economic structures, as well as by the specific politics of crime and punishment"*. In turn, opportunity, social capital such as access to employment and accommodation, and desistance research lead them to conclude "political economy" influences the availability of social resources as well as their accessibility by offenders and ex-offenders," and that social inclusion (and therefore political economy) is fundamental to rehabilitation.
- *Research,* about which they note effectiveness in another country can lend support to transfer, although they caution *"the extent to which practices – assessment instruments, offending behaviour programmes - can be modified and adapted without prejudice to their integrity is insufficiently understood and may not be taken for granted."*

The editors conclude their introduction with several points, many of which may be pertinent to work with a range of countries, explored by Chapter contributors, on "making transfer happen."

- Difficulties in **language**, especially the translation of meaning (which is more than a technical word-for -word process), can lead to a deeper shared understanding.
- Differences in **culture**, which can be profound, may impact on probation practice (the editors provide the example of violence against women and sexual violence). The editors suggest that *"Ways must be found of working with integrity – affirming one's own values, but at the same time recognising that changing the views of others is always a complex business."*
- Perhaps similarly, **diversity**, which in England and Wales is seen as a strength, may in some countries be unfamiliar or threatening, or it may be the case that "sameness" is instead affirmed: *"Wisdom and sensitivity are called for in responding to these differences of attitude and approach and exploring their implications for practice."*

- In relation to **training**, the editors point out that whilst *"Training in Western Europe typically seeks to engage trainees actively, valuing their existing knowledge and experience and building from there"* ... *"the tradition in other countries may be quite different. There may be diffidence about active participation and deference to the trainers, so that challenge and disagreement may be seen as disrespectful."* Furthermore, *"Trainers must also try to balance their own willingness to respect and validate the knowledge that participants have gained through their own experiences against the participants' reasonable expectations that the trainers do indeed have expertise to impart."*

- **Influencing and facilitating policy**. On this subject the editors discuss inter-agency working. Making the distinction between English tradition where this has become the norm (albeit after some considerable time of trying) and Turkey, they point out there may be underpinning principles involved in inter-agency work (for example that *"offenders and victims are as entitled as other citizens to the services of civil society, and social inclusion requires the active participation of agencies well beyond the agencies of criminal justice)"*. Discussion may be required between prospective stakeholders and partners, who may also argue *"that unless an activity was prescribed in law as their duty they could not cooperate."*

- Finally in relation to making transfer happen, the editors discuss **Mutual learning and legacy**. They note that their *"project aspired to both a mixture of copying and emulation (both adopting specific methods and techniques and adapting them), but also to inspiration - encouraging the beneficiaries to imagine how their work with victims and with young offenders might be enhanced and to devise their own policies and practices accordingly."* They suggest grounds for optimism regarding some approaches such as cognitive-behavioural *"an appreciation of the intimate and dynamic relationship between thoughts, feelings and behaviour – may have universal application."* Referring to a (then) recent project "Strengthening Transnational Approaches to Reducing Reoffending ("STARR" – an England and Wales-led project which included attempts to evaluate performance of specific programmes in other countries, a project which one of the two authors of this research project and paper happened to lead), they note various European countries adopted and then adapted a cognitive Aggression Replacement Training programme *"Putting their own unique stamp on it."* Some values, however, (such as in relation to reducing revictimization) cannot be "compromised".

They conclude with an acknowledgement *"that the experience of working in countries where things are done differently can lead us to understanding our own work 'at home' in a new way."* They provide the example of a stronger emphasis in Turkey on families and community, and possibility of drawing on this in probation developments in England and Wales. They also consider the

possibility of Turkey going on to transfer policy or practice to other nations, helping to change the usual pattern of "export" from affluent nations with long traditions of probation, a development they point out is already happening in Central and Eastern Europe.

Martin Seddon (275-289), Not far from Europe – But how can we make our penal reform messages relevant?

We turn now to the first of two chapters on specific aspects of transfer. The author, Seddon, a British expert, has extensive experience of working in states in transition to democracy, as well as experience in Turkey. In this contribution he offers a reflective account of his experience.

He points out that the former Soviet countries have inherited a prison system whose goals were intentionally tough. Punitive concepts remain ingrained in popular culture and maintain a grip that limits the scope for the penitentiary leadership to make changes. He highlights the importance of the networking through the Council of Europe Regional Conferences. Informal networks that develop during those conferences and the ensuing informal peer pressure can be more effective than direct challenge or confrontation. He is surprised and reassured by the respect and interest in the states in transition for the two sets of rules -for prison and probation- developed by the CoE:

"*The Rules are becoming the benchmark for penal reform projects in the region. The major donor in the region – the European Union- will normally insist that progress towards relevant CoE recommendations are included in the objectives of the projects it is funding.*"

Seddon stresses the benefits of study tours, provided that visitors show a good range of practical activities before getting into discussions about the policy implications.

Building wider support for probation reforms is dependent on understanding and support by parliamentarians and other stakeholders. "*Fear of political unrest and terrorist activity can lead governments to maintain the authoritarian stance on crime and punishment that most have inherited.*" He goes on to say that "*in taking action to build a receptive audience for these changes they* (meaning government ministers) *face the electorally damaging charge to be 'weak on crime'.*" The author proposes to make use of an independent advisory council "*involving respected people who are known for their interest in public administration but are not considered to be biased through currently holding positions in the penal system.*"

One of the most important challenges of capacity building projects is to identify which of the government officials are most likely to support enlightened policy goals. He mentions that "*the most frequent problem that affects sustainability is*

the sudden but all-too-familiar removal of officials resulting from shifting political fortunes of individuals of a more senior level…"

Another challenge is formed by the fact that agencies implementing alternative sanctions in developing countries must function on limited resources. A consequence is that probation officers *"are usually working with large caseloads. This results in limited opportunities to make an impact in each case."*

He mentions the advantages of demonstration projects: small pilots that are properly monitored. But these projects require good leadership. *"Many of the countries that are in the process of establishing probation services are struggling against a tradition of overly bureaucratic public administration that does not respond well to new challenges or reward innovation."*

The author at the end of this article suggests key priorities of sustainability:

1. Sense of purpose: explanatory commentaries showing how the good practices in probation can be implied and the evidence for its effectiveness.
2. Support from key stakeholders: identify reform-minded officials and finding ways to draw top judges, prosecutors and lawmakers into informal discussions.
3. Operational methods: introducing new methods by demonstrating them in pilots, and involving selected local staff, to be trained for these pilots.
4. Effective delivery agencies: to counteract the consequences of *"arcane management systems" "demonstration projects offer an opportunity to incorporate management and training methods that may attract interest of wider application"*.

Randel Barrows (290-303), Towards a Clearer Vision – Reflections on Policy Transfer in Penal Reform.

In his contribution, the second chapter we review, Randel Barrows, also a British expert, reflects on his extensive experience with (mainly) probation capacity building in 10 different jurisdictions. He reminds us of genuine *"desire among some politicians and policy makers to break with the past and to create a justice system that serves its people."*

This desire can also be generated by the Recommendations of the Council of Europe and the active role of the EU Commission: *"Although the* acquis communautaire *does not actually mention probation, the EU Commission has actively supported the establishment of probation services in almost every Accession or pre-Accession state and Partnership Agreement."* His analysis of experienced challenges led him to advise that any capacity building project should start with the specification of the contract between the funding body, the

beneficiary and the delivery agency. According to him the key elements to scope or determine at the outset are the following:

- An understanding of existing laws and the potential for and timing of further changes in the law. Will it be possible to align the Criminal Code with the Criminal Procedure Code, the Law on the Execution of Penalties and the required regulations and standards for any CSM development? As Roman Statutary Law (that applies in most countries in Eastern Europe) is less flexible and enjoys more primacy than Anglo-Saxon Law, new policy or practice developments require changes to more than one of the codes may never be fully implemented or at best after a long delay.

- An understanding of the beneficiary's intention. Are there any serious intentions to reform? Are the senior managers and leaders willing to include themselves in the plans for reforms that are part of an international project? If the project has to limit itself to only practitioner staff, then the sustainability of project outcomes can be hindered.

- A realistic assessment of existing and projected capacity; including resources, the organisational culture and the wider cultural context. What is the resource commitment by the beneficiary (counterpart project management, availability of staff for training, working groups, study visits, training or working group facilities; what is the organisation's ability to sustain and further develop project activities and products)?

- Public perception of the justice system in general and the penal system in particular in the context of experience or perception of corruption. In some jurisdictions "*staff is appointed to key posts on a political basis rather than merit. There may also be aspects of corruption that affect organisational culture. …Citizens are conditioned to the idea that nothing -from planning permission for a building to a place at a favoured school- will get done without the appropriate inducement to the right official……If policy transfer includes the introduction of more questioning and challenge at all levels in the beneficiary organisations a more progressive culture can be encouraged.*"

- The organisational structure within the Ministry of Justice or a separate ministry, and the extent of centralised or devolved decision making. Will probation be part of the prison administration or a directorate within the ministry or part of the Courts or of a Bailiffs' department? To which extent is decision making central or devolved? This is important as on the one hand approaches need to be introduced based on national or international best practice, but on the other hand for effective community re-integration and rehabilitation of offenders, that involves other local agencies, effective decentralised decision making is necessary.

Finally, Barrows lists some building blocks for the development of probation. We recognised similar building blocks especially in the Georgian case study, where the author worked for a considerable time:

- A statement of vision aims and objectives for a probation organization.
- An implementation or development plan, including an estimate of costs and determination of staffing requirements.
- A model for staff recruitment, selection, training and appraisal.
- A communication plan for courts, other institutions, other stakeholders and the public.
- Some basis models for methodology, linked to evidence of achievements of aims and objectives.
- Public awareness and understanding of CSMs.

Drawing on extensive personal experience and observations the author highlights the above-mentioned considerations that "*might help lead to sustainable change or at the very least a reduction in avoidable mistakes*."

The Conclusion

One of the two editors, Mary Anne McFarlane, concludes the book (Chapter 17) with a summary of main themes contributed by all the book's individual chapter authors.

Beginning with **"How are the beneficiaries needs defined and met?"**, she explains that in the circumstances of a European Union funded project *"there is very little opportunity, in project management terms, to undertake comprehensive consultation before the fiche is drafted, or to test the underlying assumptions and requirements of those that commission the work, at different stages."* There can also be *"a wide range of views of the project from all stakeholders,"* adding *"if they know about it at all, that is." (p 304).*

She goes on to argue that *"an essential preliminary to any policy transfer initiative should be the articulation, garnering and collation of the core values and ideas of national stakeholders" (p 305).*

She describes how in practice the real needs of practitioners may not be discovered until part way through a training session after an intervention programme has been developed. She recounts the experience, of one of the book editors, of a Jordanian project which allowed a substantial period of consultation about the model of community sanction in Jordan:

"Interviews were conducted with around 40 individuals, and 150 stakeholders in focus groups and seminars. The resultant set of recommendations to start

building the model in Jordan was accepted by the senior officials in the Ministry of Justice. This period of understanding greatly improved our understanding of what might work in Jordan."

Moreover, it was *"more acceptable to the beneficiary as we could demonstrate that it was truly Jordanian, within an international human rights framework." (p 305)*

McFarlane closes consideration of this first question with a statement that *"the ability to develop a project plan that is relevant to the beneficiary is one of the key features of success and needs to have more attention within the twinning and other guidelines."* Pointing out a tension between a specific and measurable contract and flexibility she adds *"A consultation period before the detailed contract discussions would be a step in the right direction."*

Key issues to address that she identifies at this stage are the –

- *"Political and social context of development of, for example, community sanctions or victim services*
- *Capacity, including delivery structures and commitment of beneficiary.*
- *Consider consortia or involve more than one country's experts.*
- *Realistic, paced and measurable activities and outcomes, including ability to make legal changes necessary.*
- *Identification of key stakeholders and early consultation activities.*
- *Sufficient resources from beneficiary to support development such as development staff, training facilities and information systems.*
- *Develop professional relationships that will outlast the project." (p306).*

Turning to **sustainability, capacity and skill building**, she then describes the importance of *"developing a beneficiary's ability to respond to problems and develop new skills to help them take the new practice forward. Capacity building is more important than product transfer."*

She also writes about the value of experts preparing and learning in advance about a country including *"history, geography, law, demography, culture and economy".* For this reason, experts should if possible be enabled to make several missions, whilst there are benefits too in experts who work more extensively on a project on a "medium-term" basis. Further, building skills and capacity *"means not lifting components from one system and transplanting them into another."* Quoting Clark (the author of one of the book chapters) she adds *"successful migration involved mindful experts building a successful alliance with local professionals." (p306).*

Among the key issues for sustainability, she notes are:

- *"Empowerment of beneficiary to participate, design, develop, pilot, and lead activities and programmes, with advice.*
- *Build in support and learning for staff after the project ends.*
- *Keep things simple" (p307)*

Addressing next **"timescales and adherence to contracted tasks"**, McFarlane describes how tight "relentless" timescales, including between inter-dependent elements of a project, work against flexibility even when delivery experience shows it to be desirable. In addition, circumstances may change between drafting of a work "fiche" and delivery, for example changes may occur in the political and social context of a department, or other projects may have taken place. Although it would be more effective to vary the contract, whilst technically possible this takes time and is hard to achieve.

She continues that in view of the constraints *"inevitably there is a feeling of wishing that the knowledge gained had been present at the start of the work, but a high level of interpersonal skill as well as a high threshold for handing uncertainty, plus professional knowledge, appears to be helpful, both for the visiting expert and the beneficiary. The recruitment of experts on both sides needs to take this into account. And the EU should consider building in more planning and consultation activity." (p 307-308)*

Among the key issues she notes for fulfilling the contract are:

- *"Ensuring high level support and engaging donor leaders if this is lacking.*
- *Clarify assumptions and theoretical base/models at the start of activities.*
- *Sequencing and pacing activities, with pilots or demonstration projects and reviews.*
- *Be prepared to make changes, but don't sacrifice principles.*
- *Build in quality assurance and international standards.*
- *Negotiate adequate translation and interpretation budget and staffing.*
- *Allow plenty of time for translation of training materials and manuals.*
- *Build in research and valuation and follow up reviews if possible." (p 308)*

McFarlane next considers **Reviews and Evaluation**. Noting that the EU evaluates sometime after project completion, she suggests that a review about one year after main activity, involving both beneficiary and service provider, would offer feedback on what has been sustained, fallen by the wayside, and inform future projects about potential obstacles and barriers. Piloting would similarly assist. Experts could also be consulted. A lack of review after this period, and changes in personnel, act against improving products (such as interventions or assessment systems) and sustainability.

Among the key issues for review and evaluation she notes are:

- *"Build them into the contract, including piloting/demonstration projects.*
- *Involve STE's - Short Term (international) Experts - over longer periods than just one mission.*
- *The EU to consider how a longer-term review of implementation could be built into the process." (p 309).*

Next, on the subject of **the offender as an individual, and equal opportunities issues**, McFarlane discusses differences including history, culture, education, and the legal system. Noting that experts had varying prior knowledge, she highlights differences in attitude to the individual and the family, and in the toleration and encouragement of difference and diversity in Turkish and Western European societies. These are relevant in programme design and training, including case studies and role plays. For example, differences in problem solving as an individual or family process, and in "protective" factors such as Turkish boys in most parts of the country seldom being on their own.

She concludes *"In transferring of policy and practice it is important to become aware of the influences on our approach and how far they are shaped by the nature of the society we live in." (p 310)*

The key issues for reinforcing principles within a specific cultural and social context she notes are:

- *"Agree reference points for principles, such as human rights/ECHR, and include in contract.*
- *Aim for thoughtful adaptation within programme integrity.*
- *Use imaginative scenarios to evoke empathy an understanding, rather than politically correct statements.*
- *Ensure that the "principles" are not just custom and practice in Western Europe and North America.*
- *Decide what the bottom line is, for example in relation to human rights, and know why it is important to stick to it.*
- *Acknowledge the two-way learning process, make everyone's learning visible and encourage mutual respect.*
- *Model non-abusive relationships, collaborative decision-making, and problem-solving.*
- *Use interpreters to make sense of meanings and increase mutual understanding.*
- *Listen." (p 310).*

McFarlane then turns to consider **Roman and common law systems and the extent of discretion.**

Commenting that a legacy of the centralist approach of the Republic of Turkey is the subject of discretion vs prescription, she makes links with the difference between England and Wales (where a common law system means that whilst laws are laid down by Parliament, professionals have a great deal of discretion in their implementation) and Turkey where visiting experts might want to encourage discretion but found themselves in a situation where prescription was the norm or required.

She identifies the following key legal issues:

- *"Aim for clarification of the legal context in the contract.*
- *Ensure that sequencing is effective for the beneficiary, that is, when the changes in the law and commencement of the new service will take place.*
- *Preparation by visiting experts through reading about beneficiary's legal framework and differences from their own country's laws.*
- *Be clear about what should be included in laws such as Criminal Law Procedures, rather than contained in Ministry of Justice policy and guidance.*
- *Check how much individual discretion is possible within the system." (p 311).*

Focussing on **staffing profiles**, McFarlane then notes how differences between the Turkish and England and Wales civil services impacted on transfer (a difference she notes is also commented on by Seddon and Barrows whose chapters we review here). The creation of non-social work branch managers could create tensions with probation practitioners. A further issue arose from differences in attitude to the "learning organisation", with an approach in Turkey that favoured getting it right first time, and anxieties about blame, impacting on staff development and supervision.

She identifies the following key issues relating to staff:

- *Understand the culture of civil service and public sector management...*
- *Check that project objectives are seen as attainable by front line staff.*
- *Develop staff through training and other activities to cascade ideas and change.*
- *Model good management approaches.*
- *Empower and facilitate staff to develop and grow in skill.*
- *Encourage managers to be staff developers.*

- *Build in training needs assessments and training plans which will outlive the project.*
- *Embed new HR practices such as staff appraisal and positive feedback. (p 312).*

McFarlane also considers **language, culture and interpretation**. Commenting that language assistants were "vital members of the team", she notes obstacles including that many matters relating to victims are not commonly discussed in Turkey, including sexual matters. Differences in understanding had to be resolved. She describes how working through interpretation made *"all parties think about the words they used and the way in which their language was constructed."* Some experts appeared to develop artistic and miming skills, and those with prior experience of working with interpreters and translators had an advantage. *"It is a very important and separate skill to the professional experience required in the topic".* (p 312).

On key issues about language, McFarlane writes:

- *"Need for highly skilled interpreters.*
- *It's not what you say but what you do that influences people (Non-verbal communication is even more important when working in another language).*
- *Build in at least 50% more time to allow for interpretation.*
- *Negotiate adequate translation and interpretation time for the work. Recognise that project staff will translate with more understanding than outside agency translators.*
- *Understand that there is unlikely to be a direct translation for many professional phrases, particularly with a new service.*
- *Allow time to tease out meaning of key words and phrases in both languages. This enables you both to be clearer about assumptions and concepts.*
- *Make sure your interpreters get regular breaks and speak slowly and clearly. Build in support if they are translating sensitive, unfamiliar, or upsetting material." (p 313).*

McFarlane turns finally to **successful joint working**. She describes how *"experts who engaged well in listening and learning were able to take forward a shared understanding and experience to create new materials with Turkish experts."*

Turkish probation experts were very well educated and able to put ideas into practice and then discuss that experience. Nonetheless, some topics including aspects of human rights were more difficult. In these cases, it was helpful to refer to international guidance of the Council of Europe, making discussions less personal. McFarlane comments -

"So, in many ways, the actual process of the interaction between the visiting and home experts, as they developed materials, was as important as the detail of the content of the materials. Where the interaction worked well and the experts formed a bond through listening and mutual respect, there is evidence of twinning at its best."

She concludes the experience was highly significant for the visiting experts, many of whom (because of the need for clarity and simplicity of language) *"revisited the basic principles for their work"* (p 314) and found the experience professionally *"extending and refreshing."* Learning was also two ways, with British experts "taking away" understanding of family resilience, the value of simple assessment tools, and higher levels of compassion.

She identifies several key issues for successful experts including:

- *"Good preparatory work about the beneficiary and being prepared to learn and think about (their) own practice.*
- *Avoiding preconceptions if possible.*
- *Balancing leading with empowerment and listening.*
- *Mindfulness, reflective learning and openness about own thinking and learning.*
- *Trying different approaches.*
- *Facilitating dialogue and the beneficiary shaping the product.*
- *Checking learning styles.*
- *Thinking about power differentials.*
- *Learning a few phrases and participating in social activities ... to get to know co-workers."* (p 314).

McFarlane closes the chapter and book suggesting that cross-cultural working between professionals has not been the subject of much reflection or analysis, although *"the field is littered with projects that have faded away, had to be repeated, have had unintended consequences, or simply failed to be sustained."* *(p 314).* The editors look forward to further research and publications on this topic.

Implications for Probation Transfer:

The implications of the book for our subject of study are of course direct – it deals with questions closely aligned with our own. We find especially useful that the two editors reflect in essence on the fields of academia and practice.

Implications are succinctly summarised by Razumovskaya[183] who, in a contemporary review of the book, wrote:

"The main challenges of the Turkish project, as described by the contributors to the book, were to assist without imposing, avoid technical transfer of policies and practices, find common values and adapt western experience to a local cultural environment based on Muslim faith and traditional values."

Each of these challenges is explored in detail in the book, together with others arising often from historical, cultural and other differences between the delivery agency and beneficiary.

McFarlane and Canton in the introduction (and chapter authors too where we have reviewed them) make the complexity of transfer clear, pointing out the importance of national and international context and how globalisation is in various ways accompanied by a value base including democratisation and free market capitalism which in turn emphasise the need for strong and fair justice institutions.

We agree completely that no two countries are the same, also that relationships with the European Union are as varied as the countries themselves. We add that there are some similarities to the countries in our own study in that probation development has, in four of the five countries we study, occurred in the context of European Union funding and, in two cases, explicit attention to future membership which has since occurred. Our own (later) study therefore provides further opportunity to understand influences, similar and different, in probation capacity building in the context of funding and/or broader relationship with a supra-national body (in this case the European Union).

We also take note of discussion of globalisation, both the association suggested with "Americanisation" and the spread of democratisation and free market capitalist principles - a parallel at least in part also evident in Wheeldon's book (2012) we discuss later - and with the guidance of trans-national institutions such as the Council of Europe and United Nations.

We were also struck by discussion of need to exploring and understand assumptions, checking out one's own (as a visiting expert) value base to ensure it is based on widely held principles rather than primarily on practice in Western Europe or the USA, building on case discussion and the guidance of supra-national bodies such as the Council of Europe (of which the beneficiary may well be a member) rather than on "political correctness", identifying and

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[183] Razumovskaya, M. (2014), Review Mary Anne McFarlane and Rob Canton (eds): Policy Transfer in Criminal Justice. Crossing Cultures, Breaking Barriers, *European Journal of Probation, 6 (3), pp. 310-312.*

supporting those who are most committed, and engaging stakeholders, are all sensible approaches reflecting extensive experience.

In summary, taking the reviewed chapters as a whole, we note in particular:

- Transfer complexity, including international and national context.
- The Editors argue that globalization (which the Editors associate with Americanization, hence also democratization and free market capitalism) emphasizes need for strong and fair justice institutions supportive of human rights.
- However political economy (and penal culture which may be linked) may work against fairness: community sentence options can develop with varied impacts on human rights, not always "parsimonious" regarding restriction, and may widen state control.
- Regionally, (referring to wider experience in Central and Eastern Europe), Soviet legacy means that punitive concepts are likely to remain ingrained in popular culture, limiting the scope for the penitentiary leadership to make changes.
- The regional influence of the Council of Europe (especially its guidelines), and support of EU Commission for reduced imprisonment and probation, are significant. So too can be the informal pressure resulting from regional networking.
- The strong influence of political economy, impacting not only on penal philosophy and punitiveness (as we remark earlier), but also on the nature of - and access of (ex)offenders to - resources helpful (or even necessary) to inclusion and rehabilitation.
- The need therefore to take time to consult with and get to know the beneficiary, "test" and understand assumptions and other differences between beneficiary and provider, identifying needs and developing a relevant plan to meet them.
- Therefore, the benefit of longer (than current) pre-contract discussions, and flexibility in project delivery in the light of experience. Donors should be involved, and pilots can help tailor appropriately.
- It can however be a fine line between aiming for and achieving on the one hand a probation system that is adapted to the beneficiary's culture and political economy, while on the other hand not compromising international standards.
- McFarlane and Canton's use of the framework of Dolowitz et al (1999; 2000) helps validate our own view of the framework's value in understanding probation transfer.
- "Why transfer" and "who is involved" may interact, motivation increasing or decreasing between parties in light of experience. We add that "why

transfer" and "why probation" may differ: the latter sometimes requiring more attention than the former.

- Importance of a sense of purpose (how and the why of probation, good practices in probation including evidence of effectiveness), and ...

- The seriousness of intention to reform, involvement of leaders and senior managers in plans and delivery, and the value of their continued involvement.

- Support from key stakeholders, *"identifying reform-minded officials and finding ways to draw top judges, prosecutors and lawmakers into informal discussions."*

- A realistic assessment of existing and projected capacity including resources such as counterpart project management, effectiveness of delivery agencies, staff for training, facilities, and ability to sustain and further develop project activities and products.

- Understanding differences in legal tradition, such as degree of prescription, and ensuring necessary legislative changes precede project practice developments.

- Clear contracting and project planning including vision, aims and objectives, plan for implementation, attention to human resources, evidence-informed methods linked to aims and objectives, and stakeholder communication plan including public awareness.

- While some policies or practices may be copied or emulated successfully, with adaptation, inspiration is more likely to prove empowering and sustaining. Further, all parties have opportunity to learn from each other in a "two-way" process.

- Involve more than one jurisdiction as source of information. Study visits are helpful, a range of practical experience preceding policy discussion.

- McFarlane and Canton describe other important differences to be addressed in transfer such as language, culture, attitude to diversity, training style, and influencing and facilitating policy (which may reflect differences in underlying principles and attitudes regarding the State, welfare, families, and individuals, and those who deviate).

- On topics that may test differences in principles and agreement: *"Agree reference points for principles, such as human rights/ECHR... aim for thoughtful adaptation within programme integrity, use imaginative scenarios to evoke empathy an understanding, rather than politically correct statements, ... ensure "principles" are not just custom and practice in Western Europe and North America."*

- Interpreters can help to make sense of meanings and increase mutual understanding.

- Overall, resist direction or imposition, aim to empower, to build staff capacity and sustainability rather than transfer products or a foreign system.
- Involving experts more than once, or on a medium-term basis, builds familiarity with culture and issues such as working with interpreters.
- Successful joint working is supported by the nature of interaction between experts, including social, (perhaps more than technical content).
- Value of timely evaluation and review feeding back to ongoing activity.

Resocialisation and rehabilitation of offenders in the community – The Croatian Probation Service

Špero, J. (2020), 'Resocialization and Rehabilitation of Offenders in the Community – The Croatian Probation Service', in: *Unafei, prevention of crime and treatment of offenders, pp. 39-56, Annual Report for 2019 and resource material, Tokyo*.

The fourth paper we consider on the development of a probation service in a specific country, focusses on Croatia. The author, Špero, has been closely involved at a leadership level since the early days. She describes judicial reforms and resulting outcomes, in particular changes regarding the enforcement of the sanctions for offenders who committed a crime after the introduction of the probation service.

"*In a short period of time, the probation service has become an important professional aspect for the enforcement of sanctions for persons who committed a crime, with a strong orientation to the resocialization and rehabilitation of offenders into the community. For many years, persons who committed a crime were sent to prison to serve a prison sentence.*"

The author provides an account of the history of alternative sanctions in Croatia -

"*After becoming an independent state, Croatia's Criminal Code of 1997 introduced the possibility of replacing prison sentences with community work orders but did not develop a probation service at the time.*" …." (the) *first community sanctions and measures*

started being implemented at the end of 2001, when the changes in the new Criminal

Code led to the development of the special Supervision of Suspended Sentence and

Community Service Act."

Croatia's accession negotiations for EU membership and related judicial reforms contributed to the idea of building a professional probation service and helped to provide a positive basis for development. After 2005, a strong initiative was undertaken to develop the probation system:

"*The main goals of the reform were to reduce the number of prisoners in overcrowded prisons, make enforcement of criminal sanctions more humane and help to reintegrate offenders into the community, taking into consideration its safety……… At that time, Croatia was struggling with the problem of an increasing prison population*."

The process of building the new service started formally after adoption of the Strategy for the Development of the Croatian Probation Service 2008–2012. The key year was 2009, when the first ever Probation Act was passed in the Croatian Parliament. Bylaws followed in 2011, and an updated Law in 2013.

International Cooperation

It is noteworthy that international cooperation took place with many European countries in order to learn about a wide range of practices conducted in Europe. An early bilateral project which began in 2004 included focus on the development strategy, involved as main partner the United Kingdom, and included review of an *"array of European practices and experiences ... enabling Croatia to consider a wide range of options in the strategic planning process."* This was followed by a project in which Croatia worked jointly with the United Kingdom and the Czech Republic (a country which had a few years earlier also established a probation service). Work ensued with partners in Germany and Spain. Other partnerships have followed. Not only have projects involved learning from a range of other countries, but they have also followed each other consecutively in a way which has enabled Croatia to continue its probation development trajectory for well over a decade with more or less continuous involvement and support of more experienced nations.

International projects progressively addressed a wide range of factors, for example (in addition to the initial strategy), legislation, cost analysis, human resources including staff recruitment and training, offender human rights, increasing the number of persons supervised in the community, decreasing the prison population, decreasing recidivism, standards and professional guidance, database and probation information system, a management framework, communications, and equipment.

Challenges

The author highlights several challenges that had to be overcome in establishing the new service:

1. **First communication**: it was important to explain to the key decisionmakers and to the general population why a new system was needed.
2. Second, also involving communication, was to **explain and ensure understanding** of the system by prosecutors and judges.
3. The third challenge was to attend to the **infrastructure** of the future service (for example the buildings, cars, and IT needs,) and to the staff (including a requirement for proper education and training).

Špero remarks on the importance of good information to support communication and necessary resources, including prediction in the long run of cost savings, and the improved recidivism rates of those serving sentences in the community, backed up by data from other countries, ideally with similarities.

Types of Probation Task

Turning to the Probation Service today, the author describes tasks in four different stages of probation work:

1. Tasks before the Initiation of Criminal Procedure: drafting reports requested by the State Attorney
2. Tasks during the Criminal Procedure: report to the court on the type and measure of criminal sanction. The author additionally notes "*These kinds of reports are not requested very often, but in the longer term we do expect them to increase.*"
3. Community Sanctions: Two main types of community sanction are described:

The first sanction is that of community work; the maximum order is for 730 work hours of work (a number we note is very high in comparison with most European countries). The number of orders made has increased substantially between 2011 and 2018 from 900 cases 2000 cases respectively.

Špero observes that considerable publicity was given to the advantages of Community Service:

"*One …. example of the best use of the community work order that Croatia is very proud of is during the serious flooding in Croatia in 2014, the probation service responded by organizing assistance in the affected areas by offenders performing their community work orders directly in the affected areas or by working with services where humanitarian aid was collected and delivered.*"

She also comments on financial savings:

"*Considering offenders in Croatia perform more than 500,000 hours of work on community work orders during the year, budget savings are significant.*"

The second sanction is the suspended sentence with protective supervision by the probation service or with the special obligation and/or security measures. "*Suspended sentence with protective supervision is the second most represented alternative sanction – sanction in the community – in the Republic of Croatia.*"

Tasks during the Enforcement of the Prison Sentence: These consist of preparing reports for enforcement judges when reaching decisions on the termination of sentence and conditional release, and the supervision of persons on conditional release.

The Croatian Probation Service also employs specialist tools including a tool (informed originally by the OASys[184] assessment tool of England and Wales) for the assessment of criminogenic risk and need, and Individual Treatment Programmes.

And regarding the Service's overall mission, and in relation to staff and their training, she writes -

"*The hardest for the probation officers is to find the appropriate and just balance between control and support.*"

Benefits and Success

The author concludes by summarizing some of the undoubted benefits of the Probation Service. Pointing first to the financial benefit of community sanctions she comments (in addition to the earlier note on budget savings related to community service work):

"*….one day of one prisoner in prison in Croatia costs the State budget approximately 50 Euro, while one day of one offender under probation supervision costs the State budget approximately 1.5 Euro.*"

She then describes the impact of the service on the number of prisoners in Croatia which has decreased. In 2012 the country held over 5000 prisoners, and had 1573 probation cases, most of which were Community Service. (However)…

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[184] OASys – Offender Assessment System

"During 2015, the probation service and prison system had the same number of offenders, and by the next year the number of offenders under the supervision of the probation service become larger than the number of the prisoners."

She notes too that *"About 90 per cent of all cases under the supervision of the Probations Service are successfully completed each year."*

Finally, turning further to the Success of the Probation Service, the author writes –

"….. the Croatian Probation Service has been recognized as one of the best models on how to develop a Probation Service by the Council of Europe. Also, in October 2019, Croatia was the first country ever to win the Development of National Probation Service Award by the Confederation of European Probation. Today, probation officers are experts that work on different European projects regarding probation services… Many probation officers are members of working groups that are developing probation standards at the international level."

Implications of the Croatian Probation Service experience for capacity building

The acknowledged success of Croatian Probation Service development naturally means that it offers learning of considerable potential value to others. Elsewhere in this report we offer additional insights based on other sources of information regarding the Croatian Probation Service's development; in terms of the paper reviewed here, we highlight the following:

It seems clear to us that the author has, in considering and following the development path described, attended to many similar points to those we suggest in our model. The Croatian Probation Service works in all four probation "domains". During the development process it has paid attention to all those areas we describe as "enablers" such as legislation, aims and strategy, engagement with key stakeholders, communities and partnerships, effective practices and guidance, staff training, communications, and infrastructure. Furthermore, the leader, and author of the paper we review here, has offered an enduring and strong energy over an extended period.

We also note examples of what appear good practices in the international capacity building *process*, such as involving the experiences of more than one country in partnership (and even when one country leads, building experiences into the project from several others), arranging international projects so that they provide more or less continuity in capacity building focus and assistance over a period of several years, and an emphasis on engaging key stakeholders whilst identifying and communicating the aims and expected benefits.

In summary, we take from this paper the following **key points** -

- Probation capacity building can be successful in a relatively short time.
- Reaching out to several countries to inform development, continuity of international support, and the alignment with CEP and CoE seems to have worked well.
- Success can also be discerned in the sense that probation sanctions have driven down use of the prison sanction.
- Other conditions for success appear to include focused attention to development in all domains and to the enablers.
- Communication is a key enabler (and appears to have influenced and supported a move towards community sentencing without adult pre-sentence reports to court).

3.3. Literature on probation policy transfer and capacity building in countries included in our study

We turn finally to consider literature on probation policy transfer and capacity building in two countries included in our field study, Latvia and Romania. Both literature accounts are contemporaneous and provide direct insight into processes of capacity building and technical assistance as described by actors who were closely involved. We summarise key points here as well as referring in detail to these accounts in the relevant country studies.

Probation Service development in Latvia

Wheeldon, J. (2012), After the Spring: Probation, Justice Reform, and Democratization from the Baltics to Beirut, ISBN: 978-94-90947-59-0, Eleven International Publishing., The Netherlands.

In *After the Spring: Probation, Justice Reform and Democratization from the Baltics to Beirut,* Wheeldon describes a case study of how probation developed and thrived in a former Soviet country - a journey in "*how to assist criminal justice reform or how to confront a system that seemed so reliant on punishment*" (page ix).

In his introduction, Wheeldon sets out the fundamental nature of the approach described -

"*Critical scholars accuse development of amounting to international imperialism, driven either by craven national economic interests or naïve global impulses. This book presents a more optimistic account. ……a fundamental assumption that informs my work is that **multiple paths to reform exist**. As such **development is perhaps best seen as a bilateral process of constructive, and**

*not proscriptive, interaction. In this book, I argue that **to be sustainable, it must be voluntary, truly participatory, and above all else pragmatic in its delivery**. Instead of relying upon outdated solutions such as simply changing old laws or drafting new ones, **legal technical assistance must find ways to support the development of formal tools while increasingly focus on building the human capacity required to utilize and adapt those tools."***

Wheeldon describes a programme of work, the Latvian Legal Reform Program (LLRP), which he calls an example of *"a 'collaborative' governance project"*. The project, which was funded by the Canadian International Development Agency (CIDA), began in 1999. It progressed from an initial focus on reform of the appellate courts and the prosecution system, to (by 2000) a refocus on juvenile justice reform in order to respond to *"the high incarceration rates of Latvian youth in conflict with the law."* The author explains how, with the encouragement of a Canadian Latvian diaspora,

"…the project grew first to support a series of pilot projects intended to develop community-based alternative programs for youth……... During this period, guided by the experience of past pilot project directors, the Ministry of Justice formed the Probation working group and passed a series of legislative amendments that would enshrine Probation in law."

During the implementation of this programme and a later extension, the work programme offered *"targeted legislative support, institutional capacity development and human resources training to the Latvian Ministry of Justice as it developed Latvia's first Probation service."*

The work program, which included *"technical assistance through study visits to Canada, job shadowing in Canada and training seminars and capacity development activities in Latvia."* (page 2), was "*identified as an example of successful Canadian programming in the region, based on the establishment of the State Probation Service (SPS) in 2003.*

Elsewhere in his opening comments, Wheeldon remarks briefly on two "success" factors:

"I think we often overlook the power of the young and the eager. In Latvia it was clear a new generation was emerging…(xvi)", and (in a reference which appears to chime with both the "why" and the "who" of the analytical framework advanced by Dolowitz and Marsh) *"Probation was successful in Latvia in part because it offered a means to reduce incarceration rates while retaining a state role in the control of offenders*." (page 3)

The author develops a Three-Tier Model of international interactions. Based on this, the book tells three stories: ***contextual, organisational, and individual***:

The **first**, the contextual level –

- embraces both the international and national. Wheeldon suggests that a central aspect of democratisation includes reforming the justice system. Through a focus on probation, he elaborates the three-tier model to better understand penal reform practice, develop community-based alternatives to imprisonment, and to promote civil and community participation as a whole.

- Whilst his major focus is on probation development in Latvia, he explores whether aspects of the three-tier approach provide lessons that can be used elsewhere, specifically (with due regard to important differences such as historical, religious, and cultural), in countries of the Middle East and North Africa (MENA), where changes taking place at his time of writing were being referred to as the "Arab Spring."

- In both regions, the justice system has been used as a means of control. Wheeldon's view is that the three-tier model has applicability. Justice reform projects in particular, well delivered inclusively, have potential to enhance human rights, going beyond technical content to support participation in ways that model values of democracy.

- He also notes resource problems: (Problems)… *"inherent in any justice reform endeavor …may include the challenge faced by international donors in a time of economic austerity and growing doubts about the role and utility of international development*." (page 3).

The **second** level concerns –

- "*how Latvia overcame some of the legacies of occupation including the organizational challenges that resulted from the upheaval following independence.*" Challenges include the *"impact of broad social disorganization on the development of community-based intermediate sanctions and volunteer-based rehabilitative programs."* He traces reform to the *"efforts of a small group of individuals based in eight Latvian communities who partnered with international justice practitioners to offer alternatives for youth in conflict with the law. Over two years, the success of these pilot projects formed the basis for a series of systemic reforms that resulted in new laws and polices throughout Latvia."* (page 4). ….."

Wheeldon's **third** story –

- concerns processes of interaction – *"the process of engagement and the attempts to overcome and mitigate the individual impediments to reform that result from the contextual constraints and organizational challenges."* He contends that whilst formal top-down and hierarchical approaches have traditionally been the justice reform norm, *"the results of this project suggest that to fully engage with the criminal justice system in transition countries, one must consider how the norms, values, and assumptions that inform these societies impact efforts to reach the individuals who will ultimately sustain justice reform over the long term."* The project explored and modelled more inclusive and participatory approaches to training and education environments with *"individuals who were (formerly) educated using an authoritative learning style that focused on memorization over extrapolation."*

Concluding that the importance of this approach should not be underestimated, Wheeldon says -

"…….. By supporting community-based models and pilot projects based on locally identified needs, country relevant reform can emerge. In the place of arrogant and hierarchical training models that focus on rote memorization instead of critical thinking, more interactive and experiential models can provide a means to establish personal relationships and integrate individual experiences." (page 4 and 5).

Wheeldon offers further detail of the Three-Tier Model in a diagrammatic representation -
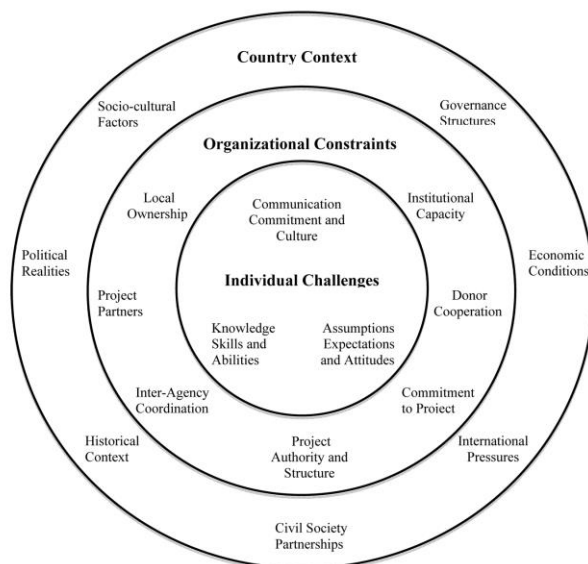

Figure 1: A Three-Tier Model of Project Analysis (Figure 3.2. in After the Spring, 2012).

Turning to the success of development of the Latvian Probation Service since 2003, which he describes as unprecedented, Wheeldon points to recognition of the problems of mass incarceration and a renewed focus on social inclusion, developments which he suggests benefitted from the experience of several countries in the region and beyond. (Referring later to regional influences, he suggests *"The interest in Eastern Europe surrounding probation can be seen as a desire to reduce prison populations, among the highest in Europe, and to reject prison as a reflexive response to any and all social problems")* (page 89). The author notes a reduced prison population in Latvia and summarises the range of activities of the new service, including "*mediation in criminal matters, preparing pre-sentence and parole reports, developing and implementing social behaviorial correction programs for offenders, organizing and supervising community work for juveniles and adults, and supervising those conditionally released or paroled from places of imprisonment."* (page 72)

Wheeldon also addresses the identification of failures in "legal" technical assistance (a discussion we refer to in more detail elsewhere in this report, including in review of the work of Dolowitz and Marsh) and the paucity of detailed longer-term methodologically accurate evaluation to inform understanding of good practices).

Issues he cites which are suggested by critics (and which we have identified too) include -

"a lack of sufficient funds, uncoordinated external attempts by multiple and under-informed donors (Protic, 2005), and the failure to promote coordinated and cooperative technical assistance among the numerous justice agencies within a country (Herman, 2001). Too often this has led to duplication and a poor utilization of development dollars." (page 82)

Other contributors to failure mentioned are misunderstood country needs and interests, a "top-down" approach, unrealistic expectations, a focus on tools rather than processes, and favouring the involvement of "elites" over civil society.

Wheeldon notes several contextual challenges, many of which feed into the failure risks described. We note these here briefly before concluding with a summary of some striking aspects of the approach which, in the main, contributed to success. It is perhaps not surprising that several of these success factors differ significantly from, indeed are the reverse of, those contributing to failure, and that they take account of key aspects of context. The project delivery context (abbreviated here) includes:

- *"a widespread punishment-based mentality"*
- *"a criminal justice system ... inherited after independence (in which) ...the limited supervision of offenders in the community ... was organized and conducted by the police (van Kalmthout et al. 2003). ... with limited involvement of community members within the justice system".* (page 56)
- *"When the USSR fragmented and the command economy collapsed in the late 1980s, the criminal justice system inherited policing without popular legitimacy, political management of the Courts, remarkably low acquittal rates and poor representation of defendants (Bowring, 2009).*
- *"Vested interests in old criminal justice practices existed alongside emotional, habitual, and ideological allegiances to Socialist criminal justice policies that could be harsh. This more punitive approach did not change with independence."* (page 147)
- *"This need for alternatives is stimulated by two factors: 1) the rapid increase of criminality in many countries, mainly due to less serious (property) crimes, which has resulted in an overburdening of the criminal justice and penitentiary systems; and 2) the relatively large number of pre-trial detainees – in some countries amounting to about 50% of the total number of detainees.* (page 148) *Kalmthout & Durnescu (2008, p. 18)*

Some striking points of the approach, mostly contributing to success (on which we expand in the Latvia country study) are the following:

1 Canada's **development strategy** was to start pilot projects with community participation, thereby stimulating local organizational capacity, action and professional pride. This resulted in inclusive decision making as opposed to a previous reliance on coercion and intimidation.

2 **Coordination councils** were established consisting of justice professionals in a region. This resulted in shared information about alternative approaches in use by those working in the field, supported informal networks (in some cases, formed during study tours to Canada). Networks proved invaluable when the Ministry of Justice demonstrated ……. interest in the coordination of a probation system, supported additional alternatives to imprisonment, and *"was later identified by senior Latvian officials as playing an important role in the discussions and negotiations with local municipalities".* (page 190)

3 The programme heavily relied on **piloting and local experimentation**. *"… using pilot projects as one part of a broader approach to legal technical assistance may be an important contribution to sustainable justice reform programming… they often result in creative solutions and the kind of local ownership required to support sustainable efforts at political reconciliation and perhaps even democratic reform.* (page 199)

4 **Making use of the diaspora**. *"Additional contextual constraints were related to Latvian culture and post occupation psychology that influenced the readiness of its people to consider new approaches to existent problems. One strategy, employed in Canada, was to look to the Latvian community living in Canada, displaced during the Second World War.*

5 **Study Tours**. Twenty-two (22) participants travelled to Ontario and Quebec. *"As one official suggested, the study tour: …created Latvian networks of people and promoted agency cooperation …and common strategy for reform…it showed [Latvians] need to work all together…the study tour didn't just alter [my] attitude but changed the attitude of all that participated." (155)*. *"A number of Latvian municipalities participated in study tours and conferences about alternatives to imprisonment."* (page 182)

6 **Probation Coordination Group**. The Ministry of Justice formed the Probation Coordination working group - a kind of steering group for tasks which included legislative amendments that would enshrine Probation in law. *"Early reforms focused on introducing a more progressive system to challenge the reliance on incarceration, and to ease prisoner transfer policies to better match offenders with existing prison security levels."* The wide variety of officials involved, local, regional and central, *"became the basis for the National Probation Service."* (page 189)

7 **Start with Community Service. (However emerging challenges in involving local communities).** A group of enthusiastic reformers emerged out of a conference organised by Soros foundation and

continued to press for both legislative and operational reforms. This *"led to the introduction of "Community Work" for less serious offences. (However)... unfortunately, within a few months it became clear that neither municipalities nor judges understood the meaning of "Community Work", and inadequate funding existed for municipalities to administer this new punishment (Jurevicius, 2008). In 1999 Soros Foundation-Latvia filled this gap and undertook the implementation ... in partnership with selected local municipalities."* (page 178). ... A key challenge observed was that *"While justice reform initiatives were often discussed, authorities rarely pursued the ... coordinated approaches required to make localized reforms sustainable. One explanation for this inaction is the strong resistance to the involvement of civil society groups in policy making (Norgaard et al. 1999). This reality is common in transition and post authoritarian countries. It represents a core challenge for attempts at participatory development."* (page 179)

8   Skilled consultants, including communication skills
A further area discussed in detail is that of skills, especially in communication, of the consultants. This corresponds with views we heard expressed during our field studies, not only in Latvia but in most countries in our study. *"A significant contribution is the notion that **effectiveness in technical assistance requires more than knowledge and expertise**. …to be effective at creating positive learning environments, **Canadian trainers had to understand the importance of professional modesty, to rely on local experts through mutual learning, and consider cultural dimensions**. (page 94). Elaborating further, "Individual and interpersonal **elements to project success... include basic cross-culture skills, the capacity for adjusting to the new environment, communicating, creating networks, taking part in social life, and getting along in unfamiliar cultures** (Kealey et al. 2005). And "To build trust among participants, experts must be seen as modest, be willing to continuously learn, and avoid employing old notions about what worked in other countries."* (bold added) (all citations from page 212).

A specific area of communication identified is that of **language** -

"*Within the criminal justice training environment this challenge ... is especially complex. For Canadian trainers, concepts like human rights, civil liberties, supervision, due process, rehabilitation and reintegration all come with a historical context ... endowed with specific meaning in Canada through the Canadian Charter of Rights and Freedoms... it may not be reasonable to assume a common starting place from which a shared lexicon could be established."* (page 213/214). However, in a further reference to younger participants, *"According to one Canadian trainer: …the younger representatives from the government side have lots of energy and enthusiasm and appeared more able*

to adapt than older participants. The younger ones seem to have a foot in both worlds." (page 214)

Finally, turning to the training sessions themselves: *"An integral aspect ... are the relationships that are forged between and among participants, trainers, and local experts.*

...trainers needed to establish *"… the meaning of what was said [by] providing examples that would make sense in the Latvian context."* Others... *suggested that understanding could be achieved through connections and relations with trainers during non-formal activities such as dinners, saunas, and parties. For the Canadians, successfully presenting concepts meant "…reshaping and reworking training plans so they could be of some value to those involved."*

Participatory, interactive approaches were seen as a part of the solution. "*A wide variety of styles were utilized ... including lectures, problem-based learning scenarios, work groups, role-plays, and experiential exercises drawn from restorative justice principles and practices.*" (217) Practical exercises were valued. Although *"…the shift in learning styles from authoritarian to interactive and participatory was initially difficult."* (218)

"*By considering how to develop pre-sentence reports and create plans for clients under supervision, Latvian probation officers had to put themselves in the place of their future clients. In addition, the use of experiential exercises drawn from the restorative justice movement allowed participants to consider more deeply the influence of one's past on one's future and challenged simplistic conceptions of right and wrong.*" (page 231)

Implications of the study into the Probation Service development in Latvia

In a relatively short time probation has gained an important place in Latvia. The country wanted to make a break with the past, especially so the younger people. Involving the NGO-sector was important to stimulate the generation of new approaches regarding how to cope with criminality. NGOs learned to shred the old line of waiting to learn what was decided at the top, instead formulating new proposals on their own. Bringing parties together locally via pilots encouraged and tested ideas, supported ownership, and helped to stimulate a national probation coordinating group of key stakeholders which in turn aided probation development, "buy in", and successful implementation. The approach helped to ensure development that addressed real need and was realistic.

The country was assisted by the diaspora, and by projects carried out by Canada and Scandinavian countries. It appears that all projects were based on principles of knowledge exchange, stimulating the national experts and staff to

find out how their system could best be served and by which steps. **Knowledge exchange and encouragement were the most important features of Latvia's probation journey**. The Three-Tier Model of international interactions emphasises the national and international context of probation. This was helpful in analysing the environment in which probation had to be developed but also gave hints regarding how the context could be influenced.

In summary:

Key points in relation to capacity building that we take from Wheeldon's article include -

- A model framework for capacity building of three tiers embracing context, developing the organization, and individual.
- Context implies a value-base (in this case, the role of capacity building in influencing human rights and democratization), also national characteristics and donor resources.
- In a relatively short time probation gained an important place in Latvia. Supporting factors included the country's desire to make a break with the past, especially in the case of younger people.
- Involving the NGO-sector was important in stimulating a generation of new approaches to managing criminality. NGOs formulated new proposals on their own.
- Bringing parties together locally via pilots encouraged and tested ideas, supported relevance, realism, and ownership, helped stimulate a national probation coordinating group of key stakeholders, aiding probation "buy in" and successful implementation.
- The country was assisted by the diaspora, by projects carried out by Canada and Scandinavian countries (in this sense "near-neighbours").
- Projects proceeded on a basis of knowledge exchange and "working with", stimulating national experts and staff to find out how their system could best be served by which steps, rather than being "top-down".
- Conversely, risk factors include misunderstood country needs and interests, a "top-down" approach, unrealistic expectations, a focus on tools rather than processes, favouring involvement of "elites" over civil society, poor donor coordination, and taking insufficient time to understand differences in the meaning of language.
- Projects would not have worked so successfully were it not for the strong interpersonal skills of those involved, including consultants.
- Evaluation or "what works" in capacity building is too often overlooked (and "begs the question" of what constitutes "success").

Probation Service development in Romania

Durnescu, I. and Haines, K. (2012), 'Probation in Romania: Archaeology of a Partnership', *British Journal of Criminology,* **52** (5): 889-907

In *Probation in Romania, Archaeology of a Partnership,* Durnescu and Haines provide an "inside story" on the beginnings of probation in the country. The authors, who played key roles as *"insiders"* in probation development in Romania (and who are, we note, from the two main parties to the partnership described - Romania and the United Kingdom - respectively) re-construct the origin and development by using the framework developed by Dolowitz and Marsh (1996) that we described earlier. We highlight key points from their account, using the same framework.

Looking first at *why* transfer (and with a comment on the voluntary-coercive continuum advanced by Dolowitz and Marsh), the authors describe how in Romania, as often elsewhere, policy transfer was "*neither voluntary nor coercive ... the process started as* **a policy diffusion** *and developed into an international partnership over time*" (bold added). They go on to explain how in the mid-1990s, there was no evidence that the Romanian authorities were aware of a specific problem with the criminal justice system.

"They were not, therefore, seeking solutions from outside. In 1996, a non-governmental organization (NGO), Europe to Europe, approached the local representatives of the judicial and executive estate (prison governor, president of the local court and social services directorate) in Arad, inviting them to cooperate in testing some elements of probation in their local area."….."There was no concrete or urgent problem that probation was called upon to solve, but rather setting up a probation system just seemed to be a (neutral) part of the modernization process that Romanian society was undertaking at that time ...The trigger for the introduction of probation in Romania was, therefore, nothing more than the offer of an experimental project from an independent NGO and the official response could simply be characterized as 'well, why not')."*

Durnescu and Haines further explain that the European Commission played an important stimulating role through its country reports. In these reports. "*The European Commission linked the probation development with the problem of 'the excessive use of custody and pre-trial detention.'*" Over time this "*transformation of 'probation, why not' into a specific reform designed to address an identified problem in the Romanian criminal justice system, linked to EU accession, established a clear need for reform….*" Furthermore, they state that "*The subsequent expansion of probation in Romania "reflects a hunger for human rights reform within the broader civil society*."

The authors then provide instructive insight into the question of *Who* transfers policy? Describing the early stages in the build-up of probation in Romania, a

central feature is, they say, the *"notion of equivalence"*, which was "*key to the success of the British–Romanian project*." In every project activity a British expert and a Romanian partner were leading:

"*Transfer is a relationship, a dynamic interaction between both sides……Partnership, in which both sides are engaged in a joint—mutually agreed—venture, is a concept more adequately fitting to the design and delivery of international penal reform*."

On a strategic level a five-year plan was made by the Romanians, with the assistance from the British partners. This took considerable time as drafts were extensively discussed also in the field, with probation staff and judges, to attract their support. The authors also recount the importance of placements in Romanian teams by British probation officers, and of overseas study visits by a significant number of Romanian staff. They influenced visit focus and reported on return, in writing and in person, to other colleagues.

A large number were therefore involved in different ways in transfer. However, the critical issue in answering the *who transfers* question is "*one of matching or the equivalence of personnel, roles and knowledge between partners in the exchange process.*"

Turning to *what* is transferred, Durnescu and Haines devote attention to the transfer *process* and what we might term underlying transfer *philosophy*: "*The critical factor to realize in any policy transfer relationship is the imbalance, between lending and borrowing state, in knowledge and experience.*" They describe how in the specific case of the Development of Probation Service in Romania Project, the change methodology comprised five key elements:

1 *clear agreement about the goal (to establish a national probation service capable of delivering effective probation services as an integral part of the criminal justice system);*
2 *recognition of and respect for whose country it is and whose probation service it is, leading to a delineation of the respective responsibilities of partners (principally that the decision-making authority and responsibility rest with the Romanian partners);*
3 *clear (if only emerging and flexible) agreement about 'next steps' towards achieving the project goal;*
4 *recognition that the essential object of transfer is knowledge;*
5 *to start the process with an exit strategy.*

In fact, "*Romanian colleagues were enabled to build up a Romanian probation model in line with Romanian traditions, institutions, culture or legislation.*" And during the project, different ideas and possibilities were shared "*that were used creatively by the Romanian colleagues to design a Romanian model of probation.*"

The authors then devote considerable attention to whether there were different *degrees of transfer*. Drawing, as before, on the analytical framework offered by Dolowitz and Marsh (who proposed copying, emulation, hybridisation and synthesis, and inspiration) they argue against copying (especially when advanced by the "donor" party), and summarise other degrees of transfer degree thus:

- **"Emulation** *was evident in the introduction of pre-sentence reports into the Romanian system. Such reports are integral to the process of individualization in sentencing and, therefore, essential aspects of probation practice internationally. However, in Romania, these reports were developed, not as simple copies of British or any other country's reports but tailored to local culture and circumstances. For instance, the pre-sentence report format was decided according to the local legal culture. Parts referring to risk and recidivism or to 'the most appropriate sentence' were deliberately omitted, since they were not considered acceptable by judges.*

- **Hybridization and synthesis** *of supervision models from the United Kingdom, France, and the Netherlands, "focusing on the quality of one-to one relationships between supervisor and supervisee" adopted also in acknowledgement of "both the proper infrastructure and the expertise for group work or programme delivery, but also because of the value attached to interpersonal relationships and trust in Romanian culture."*

- **Inspiration** *from the international restorative justice movement to develop pilot projects, focused on victim–offender relations … but … focused on victim–offender relations and the potential, within the Romanian Criminal Code, for victims to nullify criminal justice proceedings if a resolution to the offence was found.*

It is clear from these descriptions that whilst the "degree of transfer" concept is helpful, other concepts mattered too. As the authors point out *"Romanian staff did not simply emulate or take inspiration but followed a process of adaptation— of sensitizing the development and implementation of new ideas to the Romanian context ensuring (or accepting) fit with cultural, social, financial and pragmatic realities of the local context."* Furthermore, the project leaders avoided *"any notion of replicating a British model of probation in Romania… focusing instead on knowledge exchange to enable Romanian staff to take control of developing and implementing a probation service fitting to the local context."*

In this respect the authors reiterate their clarity in "*establishing a Romanian probation service … a Romanian responsibility in which Romania took the lead*" and that *"the notion of probation, the concept of probation, what constitutes*

professionalism and effective practice in probation, is not the preserve of one country or of one particular point in history…. Our joint aim was to equip the Romanian probation service with the ability to manage and deliver probation services now and in the future."

On whether there are different degrees of transfer, they conclude the question "*becomes somewhat ill conceived. Transfer is not (should not be) the objective of international partnerships;* **cross-country professional exchange forms a normal and desirable aspect of practice.** *Rather, the aim is to create an independent professional service capable of responding to current demands and of meeting future challenges.*" (bold added).

The authors then address the question of *from where are lessons drawn*? Noting that Dolowitz and Marsh argue that successful policy transfer is based on having ideological and resource similarities between nations as necessary preconditions, Durnescu and Haines continue (referring to themselves) "*…However, the authors can hardly claim historical or socio-political familiarity in respect of Britain and Romania. Neither was there socio-cultural similarity between the two countries.*"

They then suggest that the role of similarities in successful transfer may have been overstated due to the nature of transfer having been conceived in the literature "*in too simplistic a manner.*" They continue -

"*If we look at transfer as a simplistic and one-way process, from the lending state to the borrowing state, then, yes, we can agree that common grounds could at least facilitate the transfer. On the contrary, if we take a more nuanced and complex approach to 'policy transfer', as we have been setting out in this paper, then it becomes clear that such things as ideological and resource similarity play a marginal role.*"

On this point, Durnescu and Haines conclude "*We do not believe (it is not our experience), however, that the parties to a penal reform process need to share historical, ideological, cultural or resource similarities for an effective partnership to be developed…. The final result of a partnership depends a lot more on shared understanding, shared commitment, shared knowledge and so on*".

In considering the Dolowitz and Marsh framework in the context of their own experience, Durnescu and Haines turn finally to *what factors constrain policy transfer?* They note that according to Dolowitz and Marsh, more complex programmes are more difficult to transfer.

They argue however that their own experience "*suggests… that project complexity is not the active ingredient in impediments to policy and practice transfer. Indeed, in the case of probation, there is an inherent complexity to the object of transfer, and, in the case of the Probation in Romania Project, there was*

an aversion to attempts to simplify the project and even a deliberate strategy to add to the complexity of the task."

The authors offer some further observations on the nature of probation as a *"social institution in which there is no blueprint."* They add that *"The differences and divergences in probation between countries are testimony to its complexity and to its social and cultural and historical linkages… Probation as an institution is never fully built or finished."* Moreover, *"In developing probation in Romania, there was a deliberate recognition that there was no a priori model—no blueprint… As we have shown, what was transferred in Romania was 'knowledge' and not a certain policy, programme or penal technic."*

Durnescu and Haines conclude with some clear messages on the nature of probation transfer:

"…we have tried to show how complexity should be embraced, knowledge should be the primary object of transfer and the notion of partnership can provide an effective model of practice. We have advanced these arguments based on our experience and in the belief that probation is not a 'thing' that is the known preserve of any state and that what constitutes probation changes over time; that, for probation to 'work' in any country, it is knowledge that is the critical factor, not emulation; and that penal reforms work best when they are culturally and socially sensitive."

And again, bringing together concepts of knowledge and partnership, they affirm *"……simplistic notions of transfer need to be challenged if the development and delivery of criminal justice services are to develop along a constructive route. We suggest that the notion of* **'partnership'** *in which* **knowledge is reflexively exchanged** *between diverse actors in the service of a dynamic professional field is a more fitting paradigm within which to locate the practice and analysis of international penal reform"* (bold added).

Implications of the study into the Probation Service development in Romania

Given our own view that probation transfer is indeed more often than not a complex process (as we have suggested earlier in this review and elsewhere in the paper), we are completely sympathetic to the argument that conditions other than initial jurisdictional similarity are very much at play. Important, and well-illustrated in this case study, are a project's underlying philosophical approach, also including the importance of factors such as relational skills (described also in the previous review of Wheeldon's work in Latvia).

Technically, we note that attention was paid during service implementation to what we term in this paper probation "enablers". However, the most important lesson, we argue, is that the successful approach adopted by the Romanian

project was one of partnership and knowledge exchange: Romanian partners were stimulated and supported in formulating their own probation strategy and models that fitted Romanian culture.

We conclude:

- An important success factor in the Romanian project was a partnership approach and knowledge exchange (within which relational skills were an important factor).
- The Romanian partners were stimulated and supported in formulating their own strategy and models that fitted the Romanian culture.
- This was assisted by facilitating access to a range of countries from which to draw.
- NGO involvement helped ensure "on the ground" appropriateness.
- Significant attention was paid to a range of enablers, not least communication with stakeholders.

Annex E - Summary and Consolidation of Key Findings

Annex E provides a summary and consolidation of key findings from the three project research strands. Full findings are set out in Chapters 3, 4 and 5. Source materials and additional detail are available in Annexes C (European and international Influences), D (literature review), and F (full country field studies and brief country study Serbia).

Chapter	Project Research Strand	Linked Annexes
3	Field Studies	*Full country studies* Albania Georgia Latvia Poland Romania *Brief country study* Serbia
4	European and International Influences	European and International Influences
5	Literature Review (Overview, Table of Key Points)	Literature Review (Full)

Research Questions and Methodology

Research Questions

Findings address three principal research questions –

First, the feasibility of designing a model or framework to support probation capacity building.

The aim was to explore and create a "language" to assist understanding of, and communication about, capacity building and to inform future probation development initiatives. The tested and refined model addresses both the "domains" or areas of probation responsibility and the "enablers" that contribute to a successful probation organisation.

A frequently positive story of probation development in Europe, supplemented by literature, revealed useful insights, whilst we also highlight factors hindering probation development and several issues to be addressed, not least - as noted - the phenomena of "net-widening".

Finally, during the study, informed by European experience, it became increasingly clear that the international probation community, together with related bodies, has untapped potential to progress the contribution of probation work globally.

We sought therefore –

Third, to identify steps that the international community and bodies could take to support probation development and further probation work at the global level.

We consider the extent to which European experiences may inform probation development in other parts of the world. We conclude the relevance of European experience is considerable, notwithstanding significant differences in, for example, history, culture, religion, economy, or the legacy of colonialism.

Research Methodology

The methodology has comprised, in brief, three main research strands –

- Field research in five European countries (supplemented by insights from two further European countries, and knowledge of capacity building in other world regions)
- A Literature Review
- Enquiries of Supra-national bodies and review of other European and international influences on probation development

The three research strands were preceded by preparation of an outline model of capacity building, providing an initial framework with which to structure enquiries. The model was refined in the light of project research and validated in a broader framework of good practices in capacity building implementation, based on our three research strands.

For more information on development of the initial and refined model, see Chapter 2 (Methodological Overview) and Annex A.

We are additionally very grateful for the insightful support to our research provided by an international academic advisory board.

Summary of Findings from the three Research Strands

Introduction

Whilst there are differences in perspective and emphasis, we were struck by the strong congruence between findings from the three research strands. Together they point convincingly towards our conclusions, inform our validation of the domains and enabler model, and illuminate the complexity of capacity building and important success factors.

We provide a summary of key messages from each of the three **individual** research strands, then draw the three research strands together as **consolidated** findings. **Conclusions and recommendations** are set out in Chapter 6 of the main report.

Key messages from the three research strands

Research Strand 1 - Field Study

Establishing a probation organisation, and capacity building, are complex endeavours:

Complexity –The field work (reinforced and illuminated by the literature and enquiries into European and international influences on probation development) demonstrates the complex nature of capacity building, elaborates that complexity, and helps to identify possible risks and mitigations in building probation capacity.

Capacity building takes time - The complex nature of capacity building means that sustainable success is generally achieved only after a considerable time. Each of the countries in our study has been developing probation capacity for 15 years, often more. We are certain that none would consider the task yet complete.

Furthermore, the direction of development and success are influenced by multiple factors, both internal and external to a country or jurisdiction, and by the organisations and people involved. To risk stating the obvious, capacity is far more than a technical process!

We discuss various aspects of this complexity next. **The significance of context** -

Research in all five countries, reinforced by the two countries on which we also comment, revealed the strong significance of **national context** on probation development. All seven countries were formerly within the Soviet Union or its sphere of influence. This left a legacy of harsh sentencing and penal conditions emphasising use of custody. With varying degrees and timelines, we have seen from our field studies that the fall of the Soviet Union created *"oxygen"* for countries to examine and compare their political, social, judicial, and penal systems, and to discover new approaches, often inspired by professional and personal contacts in the "Western" world. Dissatisfaction developed with *prison conditions*, especially overcrowding and sparse preparation for release. The plight of *juvenile offenders* was often a prime concern. More broadly, a desire to break with the past, to stress European roots, or to begin a new era, was present in most countries in varying degrees, also feeding aspiration to become members of the European Union, as we discuss later.[185]

Each country has addressed this legacy in different ways and to different degrees, ranging from modern services working broadly across all "domains", to those having a present-day emphasis on electronic monitoring and house arrest as a main alternative to imprisonment.

Political support is essential, but not always clear, outspoken, or constant (with changes of governments being a further factor). Politicians had to become accustomed to the idea of probation. It helped that probation was looked upon as part of a modernisation process in the framework of accession to the European Union.

Legislation efforts to regulate probation took considerable time and effort, increasing the necessity to garner and sustain support from politicians. The legislative process was often not based on the outcome of pilots, the cultural and legal conviction in general being that probation activities could not start without a formal base in legislation. In this sense legislation slowed the start of probation project activities and had to be allowed for sufficiently in planning timelines. Furthermore, legislation sometimes preceded detailed consideration of probation strategy and purpose, including the intended place of community sentences in the sentence framework.[186]

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[185] In three of the five countries in our study, accession to the EU has since completed. In terms of probation development Poland is a separate case. The changes in the penal system as a consequence of the accession process were directed more to other institutions, like the police and the judiciary. In comparison to the other countries the probation organisation did already exist.

[186] As the studies of probation development in this research are of European countries, the studies have not directly informed the impact or legacy of Western European colonialism on probation development including legislation in countries in other world regions. From our experience in other world regions, we would however suggest the influence

Management approaches need to be considered too, taking account of top-down styles not well versed in change management. This consideration applies beyond the new probation service to the justice system and other parts of the state impacted by the new service, areas which may be undergoing simultaneous developments themselves, as noted next.

The **justice and penal system contexts** within which probation was to be developed were – from the outset and to varying degrees – not always enthusiastic about the "new kid on the block". The new partner - probation – complicated the cooperation and communication network of the stakeholders and drew resources. Stakeholders in turn had to be convinced of the value of probation, and calls by the judiciary on the probation service for pre-sentence advice remains low (a fact which may also reflect Roman Law process).

Neither was the humanistic perspective of probation, such as its reintegrative potential, immediately recognised. In most of the studied countries considerable energy was invested in involving stakeholders regarding what emerged as key questions - the "why" and the "how" of probation. Where stakeholders were willing to fully participate in the preparation of the start of probation activities, for instance as part of a standing coordination group, the actions were based on joint efforts and convictions and had considerable success.

Also, significant has been the influence of **international context**, in particular the attraction of EU membership (and influence of the conditions membership attached), standards of the Council of Europe, and the role and membership of "epistemic" communities such as the CEP. We say more about these, and the influence of academia and research, later when discussing the third, European and "international", research strand.

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is strong or even profound, effecting on occasion probation legislation and activity, and what we would argue is sometimes disproportionately severe criminal sentence legislation.
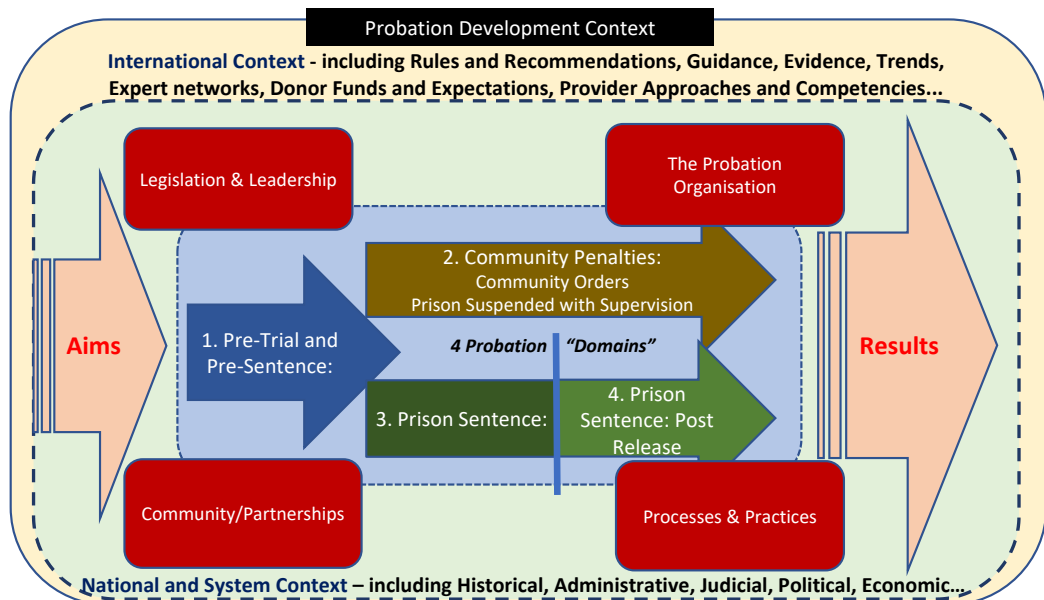
Figure G1: illustrates aspects of international, and national/justice system context in relation to probation aims, domains and enablers, and results.

The stimulation for probation was influenced by the interplay of these internal (national and system) and international contexts, contexts which are illustrated in Figure G1. Whilst we have not illustrated these contexts in the simplified Domains and Enablers infographic (see inside front cover and Chapter 7), they are in our opinion central to capacity building processes and are reflected in the success factors we identify and in recommendations for the international community. Contexts were especially apparent, as we mention above, in relation to the who and the why of probation and the interaction between them.

People involved - the "Who" of probation:

The **people involved** frequently go hand in hand with clarity of vision, or the "why" of probation (as we discuss next). Early steps in probation development were often prompted by a small core of **committed individuals** who sometimes had experience in other countries or had established strong professional relationships with people overseas in related roles. Strong and determined leadership, often over many years, has been a significant success factor. Of notable importance are committed political and service leaders, willing to introduce probation work and embark on this complex journey. On occasion, committed leaders of NGOs or academics have played a core and motivating role.

Success is more assured with continuity of dedicated individuals. Whilst in practice early development often involves only a relatively small cohort of

trailblazers, building and sustaining probation works best, as we note earlier, when supported by a range of **engaged and informed stakeholders** from an early stage (who ideally become more committed over time, or come to play a leading role), including "justice-chain" partners such as judges, prosecutors, prison leaders, NGOs, academics and municipalities - building the case and the way forward together.

There is of course a strong i**nterplay** between **people** involved and the probation **"vision"**. A network of people and organisations they represent, supportive of probation, can help to review the current situation, contribute to development of a shared vision for probation's potential, clarify views and roles, create buy-in, and help communicate the probation concept and identify and overcome obstacles and differences in perspective over time.

Vision and Inspiration - the "Why" of Probation:

Creating an inspiring shared vision, a rationale including regarding probation's potential and intended place in the sentencing framework, appears fundamental to success in introducing probation. Clarity is necessary regarding probation's use as an alternative - rather than an addition - to the use of prison, to reduce risks of "widening the net". There is worrying evidence this is not always the case. Other aims, for example to reduce reoffending, support rehabilitation and reintegration, or to prevent further victims should be clarified too (of course) taking account of needs as expressed by the beneficiary. In other words, clarity concerning the **"why?"** of probation helps to initiate - and to sustain - development.

Where clarity of vision is lacking (which we have observed particularly in some cases not in this study) progress has been slower and often compromised by differences in assumption or expectation between main project parties (beneficiary, donor, and provider); tension may also exist between a beneficiary and expectations expressed in European guidelines.

We have been surprised by the **variety of drivers of probation**, extending well beyond the (almost universal) desire to reduce custodial numbers - a point which reflects the literature, for example Durnescu (2008) on the many purposes of probation. We found other, broader, influences highlighted by the field studies (and literature), such as the desire for change and modernisation post-Soviet era and pull of the European "family". Human Rights concerns, notably regarding youth and prison conditions, were often early drivers, later expanding to embrace other elements of probation service purpose and delivery.

Ideas about the purposes and roles of probation thus varied considerably between countries, especially during early stages of introduction or development. On occasion this appears to have led to **"false starts"**, particularly

when beneficiary and provider/donor expectations were not sufficiently aligned, and /or when resistances were encountered. Resistances could occur at different points and amongst different groups, within the new organisation, at political levels, or amongst stakeholders such as the judiciary.

Bringing people on board can take time, reinforces the value of an inclusive approach mentioned above, and suggests care in selecting those domains of probation with which to begin, clarity regarding a phased plan to achieve the vision, and the critical importance of supporting enablers such as legislation, leadership, partnerships, and communicating accessibly with stakeholders including, of course, justice, media and public.

Shaping and implementing - the "What" and the "How" of probation:

We found that achieving the vision should be supported by systematic planning and implementation, addressing the "why", identifying work priority steps in the four domains (the **"what?"** of probation), building on strengths, and linked to (realistic) aims. Steps should in turn be supported by focus on all four enabler areas (emphasized according to prioritised domains and tasks within those domains) including the legislative framework, determined leadership and communications, a strong organisation (including satisfactory infrastructure, sufficient and well-trained staff, appropriate and effective practices), and community engagement with a range of partnerships (the **"how?"** of probation).

We discuss steps in developing domains and enablers in Chapter 7, Conclusions and Recommendations including "success factors" in building a probation organisation. Achievements should be reviewed on a regular basis, involving stakeholders, identifying success, evaluating results, moderating plans where necessary, and acting as a stimulus for future development.

Programme or Project Preparation, Management and Delivery:

The field studies also offered insight into good practices in building probation capacity at the **international programme or project level**. Whilst benefits of "policy or practice transfer" (such as opportunity to learn quickly from others' experience, avoid pitfalls, and reduce "reinvention of the wheel") are evident and real, successful capacity building amounts to a great deal more than implementing borrowed practices, even when adapted. As we note earlier, successful capacity building is much more than a technical process! We find the reality is far more nuanced: the study highlights a wide and varied range of success factors.

Thus other aspects of the **project approach and relationship** between the parties (including beneficiaries, donor-funders, and providers of technical support) matter too, including – to emphasise points we identified earlier -

sufficient understanding of beneficiary context on the part of "donor" and provider nations or organisations, mutual identification with beneficiary of priorities and steps that are likely to "strike a chord", clarity and realism regarding what may be involved, appropriateness, and awareness of potential obstacles (especially when a beneficiary is new to probation work and/or donors have significantly different background).

Work should also consider development capacity on the part of the beneficiary, avoiding excessive "load bearing" or too early introduction of policies or practices (especially because they happen to be what the provider does well!), and build in opportunity for **flexibility** in the light of experience (informed, when possible, by pilots) and as mutual understanding grows.

Capacity building therefore appears most likely to succeed when the underlying **philosophy and principles of approach** embrace concepts and practice grounded less in policy or practice "transfer" or "copying" (which may succeed with sufficient attention to processes such as adaptation, and between countries sharing relevant similarities), but are based on **partnership and knowledge-exchange**, including needs analysis, strengths, mutual learning, and development of personal capacity, all of which help build resilience, ownership, and sustainability. The beneficiary should always be in the "driving seat"!

Important in this respect too are the qualities of individual staff, as well as their organisations, in particular international experts who preferably bring both strong **technical** (probation, project, and development) and **relational** skills including cultural sensitivity.

Successful probation development is also supported by **coordination** of effort on the part of all parties, including the multiple donors who may be involved, thereby improving synchronicity whilst helping to avoid gaps and duplication. This was a consideration we found, perhaps surprisingly, often underplayed but of real value when present, further aided by continuity on the part of both international and national staff. Opportunity to **learn from a range of countries** (donors, providers, or for example through field studies) especially those with similar experience, helps ensure choice from a range of "solutions" to better meet need.

Field studies also offered insight into **issues in probation capacity building** – risks or points to avoid. In brief, they include the phenomena of net widening, the high caseload of probation workers, legislation timing and content, and the dominance of training over other enablers. We address these and other risks further in Conclusions and Recommendations, Chapter 6.

Research Strand 2 - Enquiries of Supra-national bodies, and other European and international influences

The significance of international context:

Our enquiry into international influences confirmed and elaborated the findings of our field studies and literature review. They confirm the significance of the prevailing **international and regional (European) context**, including the role and influence of international bodies and professional associations on the development and direction of probation.

The attraction of the **European Union**, and desire of most European countries to join, has helped stimulate probation development (in particular as an aspect of humane and decent treatment of those who break the law), whilst **standards** are set for European Union accession which "candidate" countries must work towards and achieve. Candidate countries have been required to take practical steps to reduce prison overcrowding and improve conditions; however, if countries have themselves wanted to establish, or improve existing, probation systems, then funds have been made available by the European Union and by other donor organisations.[187] [188] [189] Several countries in our study have used this facility to good effect, achieving clearly beneficial results.

Whilst the *European Commission* stressed the need to improve prison conditions, it has also supported limits to the number of prisoners to reduce overcrowding, an aim which found expression in part through promoting increased use of alternatives to custody (including pre-trial options and early release).

The *Council of Europe* has also focused progressively on probation for several decades including the significant introduction of *"soft law"[190] recommendations* such as No 16 (1992) - the European Rules on Community Sanctions and Measures (CSM), followed by guidance on Conditional Release in 2003. These were followed by the Probation Rules in 2010 which addressed the establishment and proper functioning of probation agencies as being "among

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[187] Whilst the primary "driver" was to improve prison conditions, countries could apply for capacity building funds to develop alternatives (in effect to create a probation service). Most funds were made available for a form of (mainly bilateral) "twinning" project with a well-regarded service in another country. Countries with established services bid to deliver a project, bringing their own approach and expertise to a plan developed by the EU donor and beneficiary, then delivered over 1- 2 years, usually with a resident lead expert. Other projects have been funded by individual "donor" countries or international philanthropic organisations.

[188] We would argue that the value of probation work per se is increasingly recognised, and that funding should be directed towards probation in its own right as well as a means to improve prison conditions.

[189] From 2008 a further push to develop probation in the whole of Europe Union and to accession countries was prompted by the EU Framework Decisions, European Law on the transfer of probation sanctions and measures in case the subject is apprehended and convicted in another country than where he/she is a citizen.

[190] The Council of Europe produces "soft law" which whilst not having the full status of international law, can be drawn upon by citizens as a "yardstick" in the event of complaint to the European Court of Human Rights. See: Martufi & Slingeneyer (2016).

the key agencies of justice and that their work has an impact on the reduction of the prison population." Formulated standards have helped countries to better understand probation, and assisted probation leaders to explain probation - its status and what has to be in place to enable effective functioning - to the political level and justice stakeholders. In some cases, we saw that Probation Rules inspired the shape of national law on Probation.

Understanding of developments and trends in probation work has been greatly strengthened in Europe since 1992 by the introduction of SPACE II *statistics*[191] on non-custodial sanctions and measures to complement those on imprisonment and penal institutions introduced earlier. Moreover, the phenomena of "mass supervision" in Europe revealed by the SPACE II statistics is clear to see.[192]

Turning to the *influence of Epistemic or Professional Communities,* as we saw in our field studies the Confederation of European Probation ("CEP") has helped to unite all who want to belong to the *European "family" of probation*. In Europe, the value of the CEP to established and newer members is evident in wide and active membership. During our research, we heard examples of the CEP acting as a motivator, learning source, and "companion on the journey." Membership offers a feeling of belonging, of sharing similar ideals. It supports knowledge and practice sharing, and inspiration. It also offers credibility to national leaders arguing the probation role and benefit to a wider audience. Furthermore, national leaders can find support and knowledge from countries that have gone through similar experiences of development. The CEP has organized several events focused specifically on these experiences.

The probation cause is also served by the contribution of NGOs, and by academics (an academic member sits on the CEP Board) who enlarge the scientific base and support the methodological basis for effective probation work. The **science of probation** in Europe has developed significantly in the last 20 years, including in countries where probation has more recently been established. An important feature has been the strength of communication within academia, and in both directions between academia and practice. Multi-national research and development projects (which may be part-funded by the European Union or Council of Europe) frequently involve statutory, not-for-

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[191] The Council of Europe Annual Penal Statistics, better known as SPACE (Statistiques Pénales Annuelles du Conseil de l'Europe) consists of two related projects. SPACE I provides data on imprisonment and penal institutions annually since 1983. SPACE II collects data on non-custodial sanctions and measures since 1992 (annually since 2009). The SPACE II data is collated and analysed by the University of Lausanne.

[192] See Aebi, M., Delgrande, N. and Marguet, Y. (2015)

profit, and academic partners, and are designed with European-wide benefit in mind.

The influence of international context on probation development in Europe is, in summary, profound.

Looking **beyond Europe**, we acknowledge the significance of trans-national organisations such as the United Nations, practice insights into capacity building from other fields relevant to probation work (as we describe in the main chapter of the report on European and International Influences), and the valuable role of professional associations and events such as World Congress on Probation and Parole and the ICPA[193] in supporting connections, exchange, and learning. In our recommendations we reflect on how European experience can add to international experiences elsewhere to promote probation development globally.

Research Strand 3 – Literature Review

Literature on capacity building specific to the probation field is comparatively rare (relative to, for example, health or security). Nonetheless, a picture emerged of other literature, which whilst not probation-specific, does shed significant light on probation capacity development. We concluded that literature of value to the project consists of three interrelated categories:

- General literature on policy transfer and capacity building
- Literature on the typology of justice systems in different countries
- Literature on policy transfer and capacity building in probation

We consider each in turn, reflecting possible implications for probation capacity when this is not evident in the text. We find considerable congruence between articles in the different categories, despite their very different although often complementary perspectives. Similarly, as we discuss further in the overview of consolidated findings, we find the literature to complement, reinforce, and add insight to the field work results and review of European and international influences.

General Literature on Policy Transfer and Capacity Building.

System change complexity, international context, structured approach, coercion versus voluntaryism, "degrees" of transfer, and success or failure including identifying need, building on local solutions, and avoiding the capability "trap."

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[193]   ICPA - International Corrections and Prisons Association

Sources in this category describe the **complexity** of system change. They draw attention to the inter-connectedness of systems and how change in one part or system may prompt unpredictable change in another. They offer **structures** with which to analyse and understand transfer including factors influencing success or failure (such as public opinion), highlight the interplay of **globalisation** with local forces or context (whilst emphasising that transfer is not always entirely voluntary), and stress advisability of identifying and responding flexibly to actual need (rather than provider pre-conceptions). Capacity building is both science and art!

Dolowitz and Marsh, in two significant papers, "*International Policy Transfer: Between Global and Sovereign and Between Global and Local*" (1996) and *"Learning from Abroad: The Role of Policy Transfer in Contemporary Policymaking"* (2000), offer an influential **framework** for understanding policy **transfer**. Asking **why** transfer occurs and degree of voluntaryism (in probation terms, we may ask to what extent probation development is an internal conviction, with what aims, or influenced or even part-coerced by external bodies or factors such as EU membership), **who** is involved and their role (actors including stakeholders, who may be supportive and/or have influence, and the implied value of open communication and inclusiveness), **what** is transferred and the **degree** of that transfer (a **continuum** from copy or "transplant", through emulation, to the offer of inspirational ideas), and from **where**, are critical early questions to ask in a probation capacity building initiative.

Discussing transfer **success or failure** (which may be attributed to **uninformed, incomplete, or inappropriate transfer**), they point to the importance of (amongst other steps) careful, open, informed joint planning to build mutual understanding and expectation and to help ensure "fit" politically, economically, culturally, and in terms of capacity to handle change.

Evans (2017) in "*International Policy Transfer: Between Global and Sovereign and Between Global and Local*", provides "*an understanding of the relationship between systemic globalizing forces* (we identify several in the probation field at the European or global level such as international standards and sharing of evidence of effectiveness) *and the increasing scope and intensity of policy transfer activity*." **International context** matters too - supra-national bodies encourage probation development, and/or contribute to "negotiated" or coercive change, especially in developing or transitional economies which are dependent on investment, whilst voluntary transfer is more typical of developed countries. Evans describes different forms of transfer: band-wagoning, convergence, diffusion (especially between countries sharing similarities such as culture), emulation, policy learning, social learning, lesson-drawing and trans nationalisation. Barriers to successful transfer which we can also relate readily to the probation field include 'cognitive' (especially organisational or national

culture) in the pre-decision phase, 'environmental' (including resources) in the phase of   implementation and, increasingly, domestic public opinion.

Reflecting on their peace building and rule of law reform in various regions of the world, Leroux-Martin and O'Connor (2017) in "*Systems Thinking for Peacebuilding and Rule of Law: Supporting Complex Reforms in Conflict-Affected Environments*", ask why they get stuck so often in their projects. They point to the **complexity**, interconnectedness, and unpredictability of systems ("clouds" rather than "clocks") in which capacity building often takes place. When a change happens to or within such a system, it sets off a chain reaction between parts of the system and its environment. We see parallels with probation work, which when introduced effect other justice services such as prosecutors, judges, and prisons. Complex systems cannot be managed (only) by linear, strategic planning or application of technical best practices; "*What if instead of viewing failures as something to be expunged or reframed, we interpret them as signals through which deeply inter-connected systems invite us to self-correct?*" They propose realistic expectations, feedback and "self-correction" to "*effectively manage reform processes as messy journeys requiring many readjustments.*"

Finally in this section, Andrews, Pritchett, and Woolcock (2012), in "*Escaping Capability Traps through Problem Driven Iterative Adaptation (PDIA)*", consider what they term (beneficiary) "**capability traps**" – premature load-bearing which they advise "escaping" (...) "Through Problem Driven Iterative Adaptation (PDIA)", a process they argue minimises "solution" transfer in favour of identifying local problems, and building flexibly on **local solutions** to resolve them - preferably developed with a wide group of stakeholders to support appropriateness and ownership, albeit stimulated or informed by international experience.

Literature on the Typology of Justice Systems in Different Countries.

National context, political economy, other "embedded" characteristics, and penal policy, penal "divide", and penal nationalism.

This second group of papers illuminates the significance of **national context** and its **relationship with international context**. Penal culture, its association with political economy and other factors not related directly to crime rates, have an often strong and enduring influence on sentencing and punitiveness. Papers also describe an East-West European "penal divide" and "penal nationalism." We find all have clear relevance to probation development in Europe and (with variation) in other areas of the world.

In "*Penal Policy and Political Economy*", Cavadino and Dignan (2006) argue a strong **association between political economy and penal policy**. They study 12 countries, placing each in one of four typological categories: neo-liberal,

conservative corporatist, social democratic, or oriental corporatist. They relate each to degree of punitiveness of **penal culture** and imprisonment rates. We see clearly implied implications for (in effect a moderation of) the impact of international or globalising influences (such as the Council of Europe, United Nations, or professional associations) on probation development, and how we conduct and support probation "transfer." Thus, change in criminal justice policy, if tethered to political economy, may be restrained, whilst **understanding differences in penal policy and culture** between international parties to capacity building (especially if parties possess significantly different penal cultures) appears a vital early, or even "pre-step," in successful transfer - supporting realism, ownership, and helping to identify potential resistances.

Tonry (2007) in "*Determinants of penal policies*" proposes several **"risk" and "protective"** factors that may bear on penal policy, including national levels of punitiveness. These help to explain differences in policy between countries that may have similar rates of crime. Whilst some factors are aspects of the legal system, others are far broader in nature, such as inequality and weak welfare provision.

Lappi-Seppälä (2008) in "*Trust, welfare, and political culture: explaining differences in national penal policies*", similarly points to deeply **embedded characteristics which influence penal policy**, such as public sentiment, welfare provision, income equality, political structure, and legal culture. He concludes "*that what happens in particular countries*" (or country groups) "*turns on distinctive social, cultural, and political features*." These and other characteristics may be historical, national, or regional. They may influence, including **hinder**, probation development. Success stories demonstrate they can be mitigated.

These papers help to understand the enduring influence of national variations such as in public perceptions of trust in state institutions and welfare, welfare provision, adversarial political and justice systems, and public and press attitudes towards offenders. They also point to the importance of understanding other factors which may be linked to penal philosophy, such as a relationship between poverty and penal reaction; other things being equal, wealthier countries may be less punitive.

It seems highly likely that **penal culture including punitiveness may extend to probation work**, for example the balance of control and rehabilitation, or growth of "mass supervision". Probation stakeholders, including in other justice system areas of a jurisdiction or country, may also be influenced by penal culture, and may be at different points in relation to global trends. Strong stakeholder involvement and communication again appear essential, emphasising the need to lay a groundwork for probation, including realism in approach through understanding culture, clarifying expectations, piloting, and iterative adaptation, together with stakeholder communications including with judiciary, senior political figures, and public. It should be recognised too that

probation development does not mean other services including welfare that may be important to probation users, will develop "in synch".

Regional factors are highlighted by Krajewski (2007) who, in *"Too Many Suspended Sentences? Polish or Central and Eastern European Problem?"* based on a comparative analysis of sentencing patterns in Europe, points to a **"penal divide"** which still splits the continent into two "penal climates", Western and Eastern. He contends that the leaders in the use of imprisonment (and suspended imprisonment) are almost exclusively the post-communist countries. There seem obvious implications for probation capacity building.

Haney (2016) in *"Prisons of the past: Penal nationalism and the politics of punishment in Central Europe"* adds an interesting perspective on penal culture. Based on analysis in Hungary, Poland, Slovakia, and the Czech Republic, her conclusions regarding "penal nationalism" and the "politics of punishment" include that they reflect contemporary concerns and reactions to uncertainties stimulated by the process of democratisation and the influence of supra-national bodies. Upheaval at times of economic and political change may make it politically harder to liberalise penal policy, although ironically it may be at just such times that governments of transitional democracies feel the need to accept policy transfer. Potential resistance to what may be perceived as more liberal (probation) international influence is a consideration.

In *"Punitive by negligence? The myths and reality of penal nationalism in the Czech Republic"*, Drapal (2021) added a further perspective: studying penal nationalism in the Czech Republic, he found Czech politicians did not employ "law and order" rhetoric. However, many suspended sentences are ordered on the same individuals. If those sentences are breached, then Czech prisoners are incarcerated for long periods of time. The large Czech prison population in this sense seems to be **inadvertent**, reflecting state actors' "negligence" regarding use of suspended sentences rather than penal populism or penal nationalism.

Literature on Policy Transfer and Capacity Building in Probation.

> **(a)** Literature on probation capacity building not particular to an individual country or countries.

Challenges in introducing or strengthening probation – including political and public acceptance, evaluation.

Three papers explore practical challenges in introducing or strengthening "alternatives." They range from an emphasis on understanding stakeholder attitudes and **political and public acceptance** to a wider range of interrelated issues. Success is predicated on attention to all.

In "*Enhancing the Community Alternatives: Getting the Measures Accepted and Implemented*" Lappi-Seppälä (2003) highlights three issues that must be worked on to reduce the number of detainees: how to get the laws accepted on the **political level**, how to get them **implemented on a practical level**, and how to **confront punitive-populist pressure** from politicians and the media. Understanding and building the commitment of politicians and other stakeholders is important; one strategy advocated is to encourage Governments to invest in public education and information regarding the benefits of non-custodial sanctions.

Canton, in "*Taking probation abroad - the Ecological Niche*", (2009) considers a wider **range of circumstances and influences** that help shape transfer success (or transfer failure or "corruption") including frameworks of law, politics, context such as criminal justice institutions and practices, technology, research, pressure groups and networks, cost, public opinion, ethical environment and culture. Canton also addresses the question of **evaluation** which is, he argues, usually insufficiently discussed: however, "the enhancement of human rights is the single most important criterion for evaluating transfer."

Joutsen (2019) in "*Re-Assessing the Role of Community-Based Sentences in the Context of the Sustainable Development Goals*" also takes a broad view of factors influencing probation development. He points to a discrepancy: whilst **all UN-states** agree need to reduce imprisonment and **expand effective community-based sentences, in many countries they are not available**, are used far less than they might be, or are used as substitutes for other community-based sentences and not for imprisonment (the so-called net-widening effect). Reasons are, he suggests, "found in law, sentencing constraints, policy, resources, and attitudes. These cannot be dealt with in isolation from one another. Use of community-based sentences can be expanded effectively only if all the problems are recognized and dealt with".

Joutsen proposes a 6-step approach embracing legislation, communications, and involvement of major stakeholders (including public), sufficient resources for staff, training and infrastructure, and review. He places them in the context of the UN SDGs;[194] access to services is central to social inclusion and reduced reoffending, whilst "promoting a greater role for **community-based sentences is part of sustainable development**."

Perry and Barrows (page 77), who we refer to in Chapter 3 (field studies) offer further insights based on their own field work. They highlight a need to consider political, cultural, and economic driver "realities", and management style,

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[194]   United Nations Sustainable Development Goals

amongst other factors, "helping managers and professionals find their own solutions to their strategic goals". They also suggest being "ready for the second wave, when professional management approaches must follow the initial enthusiasm if the changes are to be sustained and developed further."

(b) Literature on Probation Development or Capacity Building in Specific Countries.

Resistances resulting from cultural and other differences, approaches supportive of success, mutual planning, expectation, and learning, piloting, building on existing practice, partnership and knowledge exchange, soft skills, and longevity.

Six papers are concerned with probation development in specific countries. Among the themes recurring is that resistance may result if transferred policies or practices **conflict with a country's history and culture**.

In *The Social construction of probation and its impact on Transferability*, Phillips (2010) studies how probation has evolved in the United States and the United Kingdom. He warns that the *enduring nature* of the social construction of probation in these two countries also illustrates how the top-down introduction of policies and practices developed or determined elsewhere might lead to resistance if they conflict with a country's history and culture. We believe **flexibility** is needed to match the shape the probation service has already taken, assuming this does not conflict with probation **values expressed in international guidance**.

In *Penal Policy Transfer: A Case Study from Ukraine*, Canton (2006) recounts a project to develop the community supervision of offenders. Employing the framework of Dolowitz and Marsh, he considers factors such as "why" "who" "what" and extent of transfer and tries to *"identify ... influences that shape penal policy and practice and that must, therefore, be taken into account by any transfer endeavour."* Points include institutional and cultural fit and finance. Whilst desire to change should also be recognised, challenges may be found in implementation; steps advocated include **piloting, and building on existing practice**, rather than programme transfer. He again considers the under-studied subject of success evaluation. In *Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers*, (2014) the editors, Mary Anne McFarlane and Rob Canton, introduce a project to assist and influence the Turkish Probation Service. Individual chapters examine aspects of transfer, for example regional **historical and current cultural influences**, the nature of institutions, understanding legislative differences, and contracting and project planning for success. The latter includes **allowing time** to get to know a country's culture, needs and expectations before finalising a (mutual) plan, and more **flexibility** in light of delivery. They conclude with insights on success, including the importance of properly communicating language meaning, experts' inter-cultural skills and building familiarity over time, and the significance of mutual

learning.

Špero (2020), in *'Resocialization and Rehabilitation of Offenders in the Community – The Croatian Probation Service'*, describes the successful development of the Probation Service in Croatia over about two decades. In terms of **"what"**, the new service was informed by a **strategic plan**, and now works in all **four probation "domains"**. Attention was paid to **all "enablers"** including legislation, infrastructure, practice, staff, and gaining trust and respect and building cooperative partnerships, including through **communications** with public and political and justice system stakeholders, including about probation benefits. Capacity building has involved regular **international partnerships** from a **range of countries**.

In *After the Spring*: Probation, Justice Reform and Democratization from the Baltics to Beirut Wheeldon (2012) describes a case study of how probation developed and thrived in Latvia. A 3-tier development model comprising context, organisation and individual is, he suggests, transferable. He highlights factors that appear to have contributed to success: a bilateral process of **constructive, not proscriptive, interaction**, and relevance and realism assisted by **local pilots** and a **national coordinating council**. Sustainable reform must be **voluntary, participatory, pragmatic and build the human capacity** to develop the probation system independently further. Development processes can matter as much as technical tools. **Relational attitudes and skills** of those involved, including consultants, count!

Finally, in *Probation in Romania, Archaeology of a Partnership*, Durnescu and Haines (2012) provide an "inside story" on the beginnings of probation in the country. Drawing also on the framework of Dolowitz and Marsh, they emphasise the importance of the **philosophy of transfer, especially equivalence, partnership, and knowledge exchange**. *"Romanian colleagues were enabled to build up a Romanian probation model in line with Romanian traditions, institutions, culture or legislation."*

6.3.2. Consolidating Findings from the Three Research Strands

As we observed earlier in this report, we find strong congruence between findings of the three research strands. We note here some examples of congruence which we believe are illustrated particularly well by the foregoing summaries of the individual research strands.

All field studies demonstrated the **complexity** of capacity building including how systems beyond probation - within and outside of justice – are influenced by probation development. As Leroux-Martin and O'Connor (2017) comment, development in one field may set off a "chain-reaction" elsewhere with hard to

predict consequences, one of several factors contributing to complexity and development processes often being more like "clouds" than "clocks".

The strong influence of **international context** on probation development, including at the regional level, was amply demonstrated, again by all our field studies, reinforced by our review of European and international influences. The demise of the Soviet Union, attraction of the European Union, availability of EU funds, influence of Council of Europe standards, support of the CEP, and insights from effectiveness research were all significant. Krajewski (2007) describes a regional international contextual dimension - a European east-west penal divide, the two penal climates partly reflecting the legacy of communism in Eastern Europe. Haney (2016) and Drapal (2021) explore this aspect of penal philosophy further, reflecting on, amongst other points, what may be, perhaps unexpectedly, a negative impact of economic and political change - in response to international context - on liberalisation of penal policy.

Our own observations regarding how international, national, and penal system context interact are further illuminated by Cavadino and Dignan (2006) who argue the strong **association between political economy and penal policy**, and by Tonry (2007) and Lappi-Seppälä (2008) who discuss embedded characteristics which influence penal policy and may hinder probation development and its nature or focus (such as varying emphasis we observed in the studied countries on rehabilitation or control, including variation over time, or between different parts of the justice system such as the reaction of judicial authorities to the probation role including provision of advice).

Phillips (2010) also provides an example of the durability of penal culture and how hindrances may result from attempts to impose change that conflict with an existing culture and approach and have potential for conflict with international standards.

In our field studies we observed how the end of the Soviet Union promoted optimism in its former members and sphere of influence ("we can now make our own choices") whilst the European Commission and Council of Europe promoted reduced prison overcrowding and a more humane approach. The Soviet legacy in terms of social and political economy (such as top-down government, punitiveness, lack of independence of the judiciary), and changes that followed its ending (for example less certainty regarding income & employment), could hinder penal reform. In turn probation had to "fight its corner"; to find its place in competition for finance and attention (such as for development of new judicial processes) in parallel with, for example, prison reform. Probation could be seen as "soft" and was not the only part of the justice system struggling for recognition. Furthermore, it appeared to us that court reports could be felt by judicial authorities as a threat to their role and independence.

Evans (2017) explores the relationship between systemic **globalising forces** (we have noted several in the probation field at the European level such as international standards of the Council of Europe, and evidence sharing within the CEP) and the increasing scope and intensity of **policy transfer** activity. Evans also describes reasons driving transfer (many of which we recognise from probation field research) and a continuum of motivation to adopt policy or practice from overseas ranging from voluntary to partly or mainly coercive – a construct we identify readily in the probation field studies where international pressure for penal development may be linked to, for example, membership of the EU or funds, but may on occasion conflict with existing penal culture which may reflect a Soviet-era legacy.

Evans also draws on the structured approach to capacity building described by Dolowitz and Marsh (1996 and 2000) who elaborate questions such as why, who (is involved), what, and how, and other analytical dimensions of transfer including "degree of transfer" and what restricts or facilitates transfer. **Transfer "degree"** refers to a continuum from inspiration, through emulation and adaptation to direct copying (an insightful concept we found only rarely discussed in practice). Factors that may restrict or facilitate transfer include understanding and taking sufficient account of cultural, political, or ideological compatibility and economic cost. Policy failure may also equate with what they describe as uninformed, incomplete, or inappropriate transfer.

Each of these points **echoes findings from our field research**: we can correspond the framework's "what" and "how" of probation development to what and how of the domains and enablers model. We also found the "why" (or drivers for) probation described by Dolowitz and Marsh, and the "who" (to involve), to be critical early questions in probation development in our field studies (seen clearly for example in the experiences of Latvia and Croatia) and to the minimisation of future implementation difficulties.

However, why introduce or develop probation was sometimes in our field studies, to our surprise, not always explicit, an important finding with later ramifications including in relation to sentencing and, we believe, net widening.

We found several field examples (including Latvia, Romania, and Albania) relatable to the descriptions by Evans of factors that may facilitate or restrict transfer, such as the importance of understanding and taking account of cultural, political, or ideological compatibility, economic cost, and on occasion a tension between international standards and developing policy and practice (a tension we refer to earlier, and which we saw may reduce over time).

Andrews, Pritchett, and Woolcock (2012) elaborate another consideration they term the **"capability trap"**. Again, this is a risk we have observed in relation to some countries in our study including Albania, and in other countries in which we have worked including European "near-neighbours" (and which we believe

may also relate to uninformed, incomplete, or inappropriate transfer noted earlier). This risk may arise as much from ambition of the receiving jurisdiction as the donor or provider, relative to the resources available at the time to implement provision and/or to invest in what are frequently demanding international projects (often undertaken by beneficiaries in addition to their "day job").

Joutsen (2020) argues the mutual reinforcement of actions to support **offender social inclusion** and build safer societies, as embraced by the UN SDGs, pointing to the vital role of **probation partnerships**. We found, in general, only limited attention to probation partnerships in the field studies, and little reference to the SDGs. The latter (at least) perhaps reflected more recent timing of attention to the SDGs and, perhaps more significantly, limited focus on the relationships, including inter-departmental, between areas such as inclusion, safer societies, rehabilitation, and development goals in areas such as employment and equality.

Not surprisingly, literature on probation transfer and development in specific countries relates especially directly to field study findings. The importance of several technical and relational aspects of international project delivery were emphasised in field studies and literature.

Špero (2020 describes a step by step holistic and strategic approach, attending in effect to domains and enablers. The importance of the "who" of probation development and of communication is evident; in relation to the judiciary and prosecutors from an early point, and in communicating with media and public, drawing on hard facts on the benefits of probation. She notes the **benefits of international projects**, preferably drawing on a range of national experiences, and of continuity in international support.

McFarlane and Rob Canton (Editors, 2014) suggest **allowing time** to get to know a country before finalising a well-informed (mutual) plan, delivery flexibility as understanding develops, and the importance of attention to language meaning, experts' inter-cultural skills, and building familiarity over time – echoing findings in our field studies including Romania and, perhaps most clearly, Latvia.

The framework offered by Dolowitz and Marsh is used to good effect by Canton (2006) and Durnescu and Haines (2012) to explore their own case studies of probation development. Steps advocated by Canton, informed by recognition of the significance of existing culture, systems, and practice, include piloting, and building on existing practice, rather than programme transfer (whilst noting there may also be strong desire for change), and stronger focus on evaluation. Durnescu and Haines encourage a **partnership approach and knowledge exchange**, whilst success factors highlighted by Wheeldon (2012) include constructive (not proscriptive) interaction, local pilots, a national coordinating

council, and sustainability encouraged by a **participatory, pragmatic style** that builds human capacity to develop probation independently, supported by strong relational skills.

In short, literature, our own field study findings, and review of European and international influences, are mutually reinforcing regarding the significance of factors such as complexity of capacity building, interplay of international and national context, benefits of a structured approach including the why, who, what and how, potential issues to address, and hindrances.

Furthermore, specific technical success factors are emphasised such as pilots, attention to domains and to enablers including communication, working with a range of countries, and (as we found most clearly in Latvia and Georgia), relational as well as technical skills and, if possible, longer-term involvement of the parties to development.

Drawing together findings from the research strands led to conclusions and recommendations in the three research areas set out earlier, addressed in the main report, Chapter 6:

1   A model or framework for capacity building in probation
2   "Success" factors and points to avoid when building probation capacity
3   Recommendations for the international community