The Road Less Travelled

More Humane Approaches to   Addressing the Harm of Criminal Behaviour

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More humane approaches to addressing the harm of criminal behaviour

In a nutshell

1. A just society is one in which people have the opportunities and capacities to participate in society for the common good as they choose.
2. The harm of criminal behaviour causes suffering which interrupts opportunities and disrupts capacities to participate in society.
3. Society needs humane approaches to prevent such harm and, if a harmful act happens, to restore people's opportunities and capacities as effectively and as rapidly as possible.

We argue that the critical problems in relation to crime are not the people who commit crimes but the harms that have resulted from the crime, the harms that have caused the crime and the harms that result from inhumane and ineffective ways of addressing crime.

Most crime is inhumane because it violates the dignity of human beings, because it can weaken social relations and because victims generally experience it as unjust.

The commission and consequences of crime can dehumanise both the victim and the perpetrator.

More humane approaches to addressing the harm of criminal behaviour are based upon the dignity of the individual, upon the solidarity of people supporting each other and upon social justice. More humane approaches activate in practical and effective ways people's agency, victims' ability to act to recover from harm and perpetrators' ability to act to redeem themselves. More humane approaches build pro-social relationships that support recovery and desistance from offending. More humane approaches bear witness to and strive to reform abuses of human rights, discrimination and stigmatisation.

Contents

1. Introduction

1.1. Origin of the project

This document is the result of a two-year research project funded by an international philanthropic organization. This is a shortened version of the full research material which included international human rights standards and detailed regional scans of Europe, Latin America and North America which mapped patterns of criminal behaviour and institutional responses to crime.

Robert Frost in his poem *The Road Not Taken* writes of being faced with the choice between two roads and choosing "the one less travelled by". Most discourse on crime relates to how to be more effective in reducing offending. We believe that the concept of a humane approach is generally the road less travelled and as a consequence less understood, researched and practised.

The use of the word 'humane' and the phrase 'addressing the harm of criminal behaviour' rather than the prevailing use of the terms effective practice in reducing offending raises new questions.

1. How do we understand the harm of criminal behaviour?
2. What is distinctive about more humane approaches to harm?
3. How would such approaches work and are there current examples, which demonstrate their worth and positive outcomes?
4. How can such approaches be developed and sustained through criminal justice reform, quality assurance, research and evaluation?
5. What are the priority needs in different parts of the world for more humane approaches?

This document aims to address these questions and to encourage further analysis, critical thinking, research and implementation of more humane approaches to the harm of criminal behaviour.

1.2. Context

The globalised economy has harnessed scientific and technological advances to produce goods and services, which have added greatly to many people's standard of living, material comfort and convenience. However, there have also been major negative consequences; a widening gap between those with power and money and those who struggle to live on a restricted income and are excluded from political influence. This in turn has a negative impact on social stability and cohesion.

The *harm of criminal behaviour* is also being globalised through cyber-crime, the drug trade, organised human trafficking, terrorism and hate crime. Ethnic minorities and

migrants are stigmatised and subject to greater control by the state authorities especially the agencies of the criminal justice system leading to a disproportionate number of foreign prisoners in European prisons.

The modern world, while it offers many material comforts, also creates an underlying sense of insecurity (Bauman 2000). Social theorists refer now to 'risk society' (Beck 1992) and to the 'precarity' many people experience (Butler 2004). Citizens lose the experience of solidarity with others that community and religion offered in the past. Many feel threatened by other ethnic groups who they blame for using already limited resources, thus, offering opportunities for populist and identity politics.

There is a real danger that the value of the common good is being eroded in modern society. Yet there remains a yearning among many people for social relationships of a more human scale and towards a more humane culture.

1.3.   What does human and humane mean?

The concept of *harm* signifies that criminal behaviour is not simply rule-breaking activity but draws attention to how people suffer from the impact of crime. Consequently the primary focus of this project is the lived reality of individual and communal experiences, perspectives, feelings, needs and desires.

Human includes all that is human. People can act both inhumanely and humanely. A more humane approach must not only encourage, develop and support the capacity within people to contribute to the common good but also allow for the expression of society's condemnation of serious harm and the control of people's capacity to act unjustly and to inflict suffering on others.

Our perspective of humanity takes into account a complexity in which cultural and social background, personal narrative and identity and relationships interact to influence how individuals make sense of their circumstances and choices. This reality brings into focus not only human agency and relationships but also structural inequality and discrimination requiring a commitment to social justice and human rights. This requires us to take the harm and suffering that people experience in relation to criminal behaviour seriously and to press for reform within criminal justice to ensure that more humane approaches to harm are implemented and sustained.

Humane is all that allows the positive aspects of being human to flourish. This project to seek and support *more humane approaches* asks us to imagine how harm would be addressed if human beings were conceived of as possessing dignity derived from their full capacities and potential to act in solidarity with others for the common good.

1.4.   How can criminal justice be reformed?

To achieve the reforms, which are required to support the development and effective implementation of more humane approaches, one needs a theory or theories of

change. It may that different models of change will be chosen depending upon the target of change, the nature of the change and the political, economic and cultural context.

In some situations the appropriate approach would be a planned and logical step by step process. Other situations might require a more flexible adaption to the political environment. Policy change may involve social activism, which requires effective agents of change.

Some of the common characteristics of effective agents of change (Backer 2001) include:
➢ a strong clear vision which engender a strong sense of commitment;
➢ a belief that change is possible;
➢ a belief in one's self efficacy.

To this end we have gathered materials which support a process of change involving:
1. *Defining the problem.*
   The problem is defined as the harm of criminal behaviour *and* of social and institutional responses to crime.
   You will find our analysis of this problem in sections 2, 3 and 4 of this report.
2. *Formulating a theory of the desired aim.*
   We have analysed the harm of criminal behaviour as hindering and restricting people's ability to participate actively in society and to contribute to the common good. We have developed a theory of more humane approaches based upon three core values and four principles of practice.
   This theory is developed in section 5.
3. *Formulating a theory of intervention.*
   Specific criminological theories and models of practice have been identified to support the implementation of more humane approaches.
   These models of practice are presented in section 6.
4. *Generating examples of approaches, which would comply with the theory of intervention.*
   Six areas of practices are illustrated with exemplars of more humane approaches that have been tested in practice. Most have been evaluated as achieving positive results.
   These can be found in section 7.
5. *Developing and sustaining more humane approaches through research, evaluation and quality assurance.*
   It is important that more humane approaches are not only led by strong values and principles but can also generate evidence of their effectiveness.
   Section 8 stresses the importance of research, evaluation and quality assurance if more humane approaches are to be embedded and sustained.
   This section also recommends that approaches addressing violence should be prioritised and offers 10 suggested areas for development.
6. *Identifying need for more humane approaches.*

We have mapped areas of need. A summary of the findings and conclusions of the three regional scans (of Europe, North America and Latin America) can be found in Appendix 1.

Once these elements of a theory of change are in place the change agent engages in the real world of policy making. In some countries this may be conceived of as a rational process, which is supported by the five elements described above. Some policy makers, who do not have access to information relevant to policy development, may welcome external bodies making the effort to provide it. In other countries policy making is essentially a process of negotiating among different interests. In such scenarios reliable data may not always be seen as useful unless it supports one interest. It is probable that most decisions concerning criminal justice in most countries are based more on political considerations than on the evidence of research. This is further complicated by the fact that in politics issues can change rapidly and the attention of the policy maker is drawn to another priority. To be successful the problem and its solution must be connected to the right policy at a time when the politics is conducive to the change (Kingdon 1995).

This suggests that the change agent must be constantly scanning the environment for problems or crises within their area of concern, which are causing the public, the media and the politicians to take notice. At the same time they need to be aware of innovative, effective and feasible solutions, which meet the criteria of more humane approaches and to be in a position to promote these solutions to policy makers who are likely to be receptive to them. This will usually entail a solution that makes policy makers look good, or strengthens their political capital, or makes their job easier in some other way. Given the short-term nature of politics it may be necessary to deliver a 'quick win'.

It will be important to determine what level of change is sought. In the area of criminal justice in which both offenders and victims can be revictimised by the system, affirmative action is designed to improve treatment or to counter-act discrimination or stigmatisation. Criminal justice reform will seek to eliminate the negative experience altogether. Transformative action addresses the causes of the problem.

We suggest a mix of supporting and improving current humane practices, testing innovative approaches, which are clearly more humane, and promoting criminal justice reform to support and sustain more humane approaches. The diagram below illustrates these different levels of change with regard to the harm of violence.

AFFIRMATIVE ACTION

INNOVATION
- Doing the same things better
- To reduce harm

EXAMPLE
Action to improve prison programmes to address violence

CRIMINAL JUSTICE REFORM

INNOVATION
- Doing new things
- To eliminate harm

EXAMPLE
Action to offer a robust alternative to custody which challenges violence as a court order.

TRANSFORMATIVE ACTION

INNOVATION
- addressing the causes of harm
- to generate new value

EXAMPLE
Action to challenge the normalisation of violence through restorative circles in schools and neighbourhoods that experience high levels of violence

To have political influence may require the agent to work with other organisations or networks with a similar interest in either promoting or implementing more humane approaches. This may involve creating coalitions to advocate change. Norway may have a more humane criminal justice system due to the 'moral community' that Christie (1993) describes through which politicians, practitioners, journalists, and prisoners meet annually on a retreat to discuss criminal justice reform.

It is important to understand what is the immediate target of change:
➢ a change in public opinion?
➢ a change in policy?
➢ a change in the law?
➢ an improvement in current practices?
➢ a new approach being implemented?

Once one change has been achieved, it may require some time to be embedded before the next target is addressed. In each change there is a similar process of raising awareness, gaining support, implementing the change and ensuring it is sustained. Throughout the change process the value of the more humane approach needs to be communicated clearly.

2.   Criminal behaviour

2.1.   Typology of crime

The central problem in this report is not crime itself but the harm of criminal behaviour. However you cannot discuss this harm without taking a closer look at the various types of criminal behaviour that can be distinguished and the different types of victims and offenders that exist. Table 1 provides an overview. Some overlap between categories cannot be prevented.

Table 1: Type of offenders and victims per type of crime[1]

Type of crime	Type of offender	Type of victim
I. Conventional crime (violent crime, property crime)	Individual offenders (mainly)	Individual victims
II. Crime against vulnerable groups (including sexual and domestic violence)	Individual offenders (mainly)	Individual victims that are member of a specific (identity) group, like women, children, (illegal) migrants, LGBTI people, indigenous groups
III. Corruption (small bribes paid to officials employed by a public body or larger scale corruption)	Civil servants	Citizens, businesses
IV. Crime by governments (violence by the police, political terror etc.)	Governmental bodies	Citizens
III. Transnational / global crime		
a. Organized crime (including trading / smuggling of drugs, money laundering etc.)	Criminal organisations	Society at large, individual victims and members of competing criminal organisations
b. Human Trafficking (including Child Trafficking and Slavery)	Members of a criminal network or criminal organisation	Children, women or other people that are exploited (but sometimes with their consent, which can make

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[1] Crime in conflict areas (transnational violent conflicts, civil war, genocide, gross human rights violations etc.) fall outside the scope of this project.

		it a form of consensual crime: see IVa)
c. Terrorism	Ideologically driven offenders, often members of a (criminal) network or (criminal) organisation, sometimes individuals (lone wolfs)	Soft targets, symbolic buildings/targets etc.
d. Cybercrime	Individual offenders or members of a criminal network	Individual victims, businesses, public bodies or states
IV. Other types of crime:		
a. Victimless/consensual crime (including Illegal use of drugs, illegal possession of weapons, prostitution, gambling etc.)	Individual offenders	Society at large (most of the time no individual victims)
b. Crime by (employees of) private organisations (including white-collar crime, environmental crimes etc.)	Managers or staff of private organisations	Owners of private organisations (white collar crime) or society in general (environmental crime)

2.2. Amount of crime: quantitative data of three types of violent crime

We have retrieved quantitative data for all the different types of crimes that were mentioned above in Table 1. These are presented in the overall report in the form of interactive graphs that show per country the exact crime figures. In this summarized report we will focus on the quantitative data of three types of serious violent crimes that create a lot of harm: intentional homicide, terrorism and political terror. [2]

Intentional homicide
The UNODC Global Study on Homicide from 2013 provides both a worldwide and regional overview of intentional homicide rates and the context of these numbers. It combines data from the criminal justice systems and data from the WHO (death as a result of violence as registered by the healthcare system).

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[2] Figures on violence against women were only available for Europe, see regional scan and overall report. From these data it shows that awareness is influencing the victim survey data tremendously since Scandinavian countries score high, because victims in these countries report small incidents that they feel cannot be tolerated, while in countries where those small incidents are so 'common' that women do not report these in the victim surveys.

Map 4.1.2c Intentional homicide[3] (UNODC)[4]

Intentional homicide is high (shades of red) in many countries in Latin America and Sub-Saharan Africa, but also in Russia and the Northern parts of Asia.

Terrorism

The Institute for Economics and Peace is producing yearly The Global Terrorism Index[5]. The Global Terrorism Database is considered to be the most comprehensive dataset on terrorist activity globally and has now codified over 150,000 terrorist incidents. The index ranges from 0 (low) to 10 (high). Map 1.6.1.1 shows how terrorism is distributed in the world.

Map 1.6.1.1 Global Terrorism Index - the Institute for Economics and Peace, 2015[6]
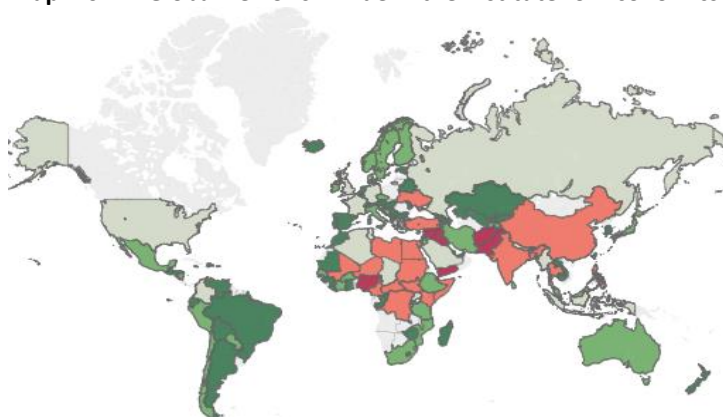
Countries in (dark) green suffer the least from terrorism; these countries can be found in Latin America, in Europe, in Oceania and in the South of Africa. The countries in red have an above average amount of Terrorism. These countries are concentrated in Africa, Middle East and Asia. There are only two countries in Europe with above average terrorism, Ukraine and Turkey.

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[3] We retrieved data from the UNODC Data Portal in May 2017. We used the average of the last available years (2010-2014).

[4] Go here for the interactive graph.

[5] We used the last available one with data from 2010- 2015 which includes data from 163 countries. The GTI is based on data from the Global Terrorism Database which is collected and collated by the National Consortium for the Study of Terrorism and Responses to Terrorism (START), a Department of Homeland Security Centre of Excellence led by the University of Maryland.

[6] Go here for the interactive map:
https://public.tableau.com/profile/publish/Terr_2/Sheet2#!/publish-confirm

Although *terrorism* is nowadays mostly associated with radical Islam, it is unlikely that above average terrorism in the Ukraine, India, China and Thailand (Asia) are radical Islam related.

Political Terror

The "terror" in the Political Terror Scale refers to state sanctioned killings, torture, disappearances and political imprisonment that the Political Terror Scale measures[7]. The scales range from 1 (little state terror) to 5 (high).

Map 1.5.1.1 shows that political terror is most prevalent (deeper shades of blue) in various African, Asian and Latin American countries. In Europe, Ukraine and Turkey (both 4) stand out. Countries that score high on the Rule of Law Index[8] almost never terrorise their populations.

Map 1.5.1.1 Political Terror Scale by Amnesty International 2015[9]

When a state commits a crime, which is the case with Political Terror, this is generally organised by the state in such a way that their own Criminal Justice System does not define it as such and/or does not take action against it.

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[7] The data for the PTS is provided by the annual reports on human rights practices that are published by Amnesty International, the U.S. State Department and occasionally using the Human Rights Watch report. Senior researchers (at least two per country) score each country according to a standardized coring system.

[8] See for an interactive global map and explanation of the Rule of Law Index: paragraph 4.1.4.c *Correlates of Crime: Positive indicators* of the overall report.

[9] Go here for the interactive map:
https://public.tableau.com/profile/publish/Terr_2/Sheet1#!/publish-confirm

3. Institutional and social responses to criminal behaviour

3.1. Institutional responses

3.1.1. Legislation

A number of sanctions are considered harmful and inhumane. Map 4.2.2a presents international comparative data about the *death penalty* from Amnesty International[10].

Map 4.2.2a. Global map about Death Penalty in the CJS[11]

Red: Death Penalty and execute convicts.
Orange: Death Penalty but de facto abolished.
Blue: Death Penalty only in times of war
Green: Death Penalty completely abolished
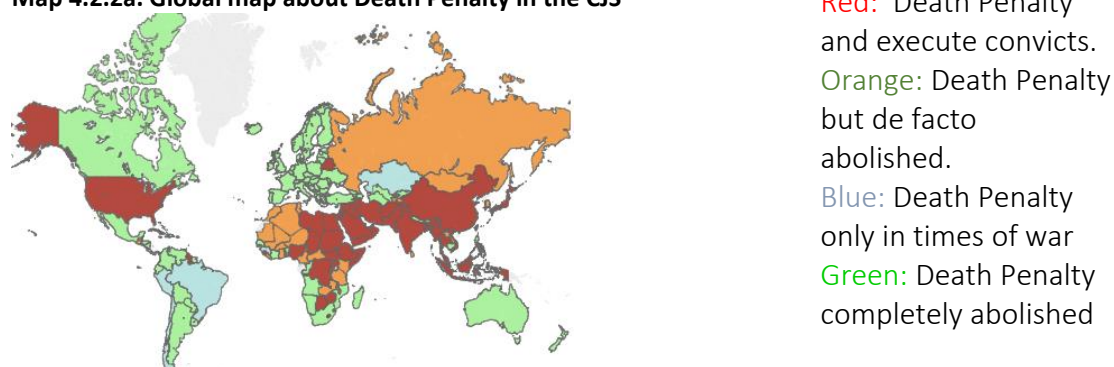
It is not just a matter whether a jurisdiction has this type of sanction in its criminal code but also whether it is actually used and these sanctions are in fact executed. Map 4.2.2a shows countries that not only have the death penalty as a legal sanction, but also actually executes offenders. There are also countries that have the death penalty but have de facto abolished the practice. In green are the countries that totally abolished the death penalty. On the interactive map on our website, moving the mouse over the red coloured countries show the number of people executed in 2016 according to Amnesty international.

A next type of sanction that is considered inhumane is *corporal punishment*. We use comparative data on corporal punishment from four different sources[12]. To distinguish from other types of violent reactions we call it Judicial Corporal Punishment. This means it is a sanction posed on convicts by judges.

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[10] Amnesty International https://www.amnesty.org/en/documents/act50/3487/2016/en/
Data retrieved from https://en.wikipedia.org/wiki/Capital_punishment_by_country
[11] Go here for the interactive graph.
[12] Most often mentioned sources are: Global Initiative To End All Corporal Punishment Of Children (GITEACPOC), US Department of State: Several Country Reports on Human Rights Practices, Amnesty International, World Corporal Punishment Research
See: https://www.corpun.com/
Data retrieved from https://en.wikipedia.org/wiki/Judicial_corporal_punishment

Map 2.2.1.2 Global map; countries with Judicial Corporal Punishment
https://public.tableau.com/profile/john.van.kesteren#!/vizhome/HarmfulSanctions/Sheet2

Countries where judges can order Corporal Punishment can be found mainly in Africa and the Middle East, but it is also a legal sanction in Indonesia, Asia and in two countries in South America.

Another harmful situation is that in many countries, for example in Latin America, there is *no (or a very limited) specific juvenile justice system*. This means that juvenile suspects (in some countries under the age of 12) can be tried under adult law, resulting often in severe sentences that harm their psychological well-being. This is not in line with children's rights and the notion that in juvenile justice the focus should be on restoration and rehabilitation rather than punishment.

System change can be required at the level of legislation to enable more humane approaches. Table 2 provides an overview.

Insufficient or lacking legislation	More humane legislation
- Legislation is not complying with international minimum standards. - No separate legislation (procedural and material law) for young offenders. - No minimum age of criminal responsibility (for prosecution and incarceration) of children. - No special procedures and regulations for extra vulnerable victims.	- Legislation is in accordance with international minimum standards. - Separate legislation (procedural and material law) for young offenders. - Age of criminal responsibility at a minimum of 12 (but preferably higher) as advised by the UN Committee on the Rights of the Child (for prosecution and incarceration of children). - Special procedures and regulations for extra vulnerable victims. - Legislation that emphasizes alternatives to detention.

3.1.2. Prison sentence and pre-trial detention

Putting people in prison is designed to punish or cause pain to the prisoner, referred to as *'the pain of imprisonment'* (Sykes, 1958). Incarceration may also cause suffering to the prisoners' families.

The UNODC[13] provides information on the number of convictions (per 100,000 population) and number of prison sentences. The percentage of prison sentences

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[13] United Nations Office for Drugs and Crime (UNODC). Data retrieved from
http://www.unodc.org/documents/data-and-analysis/Crime-

from the total convictions may also indicate an inhumane preponderance of punishment over rehabilitation and restoration. The percentage ranges from 1% in Finland and Egypt to over 80% in Zambia, Philippines and El Salvador. Map 4.2.6a shows the results.

Map 4.2.6a. Percentage of convictions that are prison sentences (UNODC)[14]
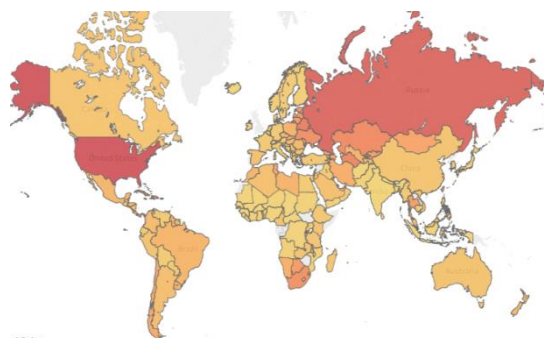
Graph 4.2.6b. Prison population per 100,000 population (Walmsly)[15]

The data from the size of the prison population in Map 4.2.6b is from Walmsley (2016)[16]. It is no surprise that both measures have a high correlation (r=0.86, n=75). The international average is 160 per 100,000 people in jail. Cuba, Russia, USA and Rwanda are countries with a prison population of more than 500 per 100,000 people. Comoros, Burkina Faso, Central African Republic and India have less than 30 per 100,000 people in jail.

Another significant statistic is the number of people incarcerated without a conviction, the so-called *pre-trial detentions*, in relation to the prison population. In Paraguay and Djibouti there are almost as many people incarcerated without trial as after conviction. Namibia and Taiwan are the countries that are the most reluctant to incarcerate people without a trial. Map 4.2.6c shows the results.

Walmsley also provides information about the female prison population. On average, 5% of the prison population is female. However, between 10 and 20 percent of the prison population is female in Ecuador, Singapore, Bahrain, Vietnam, Bolivia, Myanmar, Thailand, Hong Kong, Qatar and Portugal. The size of the female prison population is shown in map 4.2.6d.

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statistics/International_Statistics_on_Crime_and_Justice.pdf
Total number of prison sentences and total number of convictions per 100,000 population.
[14] Go here for the interactive graph.
[15] Go here for the interactive graph.
[16] Roy Walmsley et al. "The World Prison Brief" hosted by http://www.PrisonStudies.org.
Prison population (Walmsley) per 100,000 population World Prison Population List 11th edition (total prison population) and 3rd edition (for female prison population and Pre-Trial Detention)
http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf
http://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_third_edition_0.pdf
http://www.prisonstudies.org/sites/default/files/resources/downloads/wptril_3rd_edition.pdf

Graph 4.2.6c. Ratio of pre-trial detention compared to prison population[17]
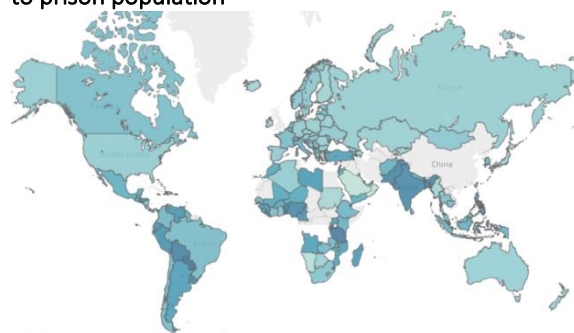
Graph 4.2.6d. Number of women per 100,000 population in prison.[18]
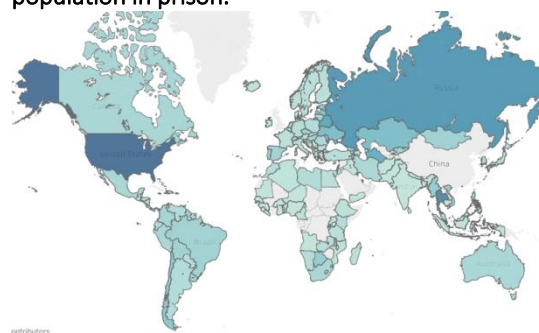
On top of the inherent pains of imprisonment additional harms may be caused in many countries by the way this sentence is executed such as endemic *violence, overcrowded or inhumane prison conditions* and *poor treatment* by unprofessional staff.

3.2.   Social responses

International comparative data on *fear of crime* and *punitive attitude* are only available for Western industrialized countries (International Crime Victims Surveys). We therefore lack data on this topic for regions where crime is very high like Latin America, Africa, the Middle East, Russia and Asia.

The International Crime Victims Surveys (ICVS) includes an item to measure fear of crime: "Do you feel safe at home after dark?" The populations of countries that feel the safest are mainly the rich western countries, excluding the South of Europe[19].

When we look at the punitive attitude of people in Western industrialized countries according to the ICVS people in Mexico and Japan are the most punitive. In the USA, Canada, the United Kingdom, the Netherlands and Bulgaria many also are punitive; almost 50% of the population opt for a prison sentence in the specific case that was put forward in the International Crime Victims Survey[20].

The International Crime Victims Surveys included two items on *victim support* for four crimes that have an impact on victims' personal lives. These crimes are burglary, robbery, sexual offences and assaults and threats. Victims of these crimes were asked whether they received victim support and if not, whether that would have been useful.

Data is only available for Western countries. Map 4.3.2a shows the percentage of victims that reported they got victim support. Percentages vary from 0 to 25%. Victim support is most widely implemented in New Zealand (25%), USA (16%) and Norway (10%).

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[17] Go here for the interactive graph.
[18] Go here for the interactive graph.
[19] Go here for the interactive graph.
[20] Go here for the interactive graph
https://public.tableau.com/profile/john.van.kesteren#!/vizhome/PrevDoorLocks/Puniv

Graph 4.3.2a. Victim support in Industrialized countries (ICVS)[21]
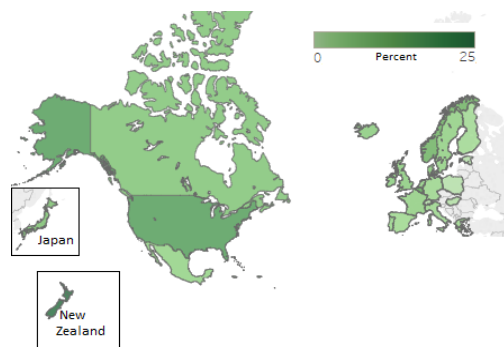
Graph 4.3.2b. Percentage of the victims in industrialized countries that needed victim support and got it (ICVS)[22]
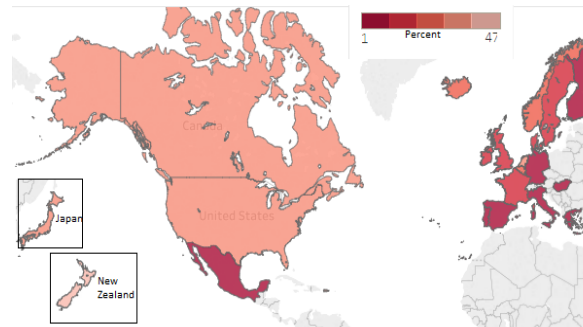

It is important to realize that not all victims actually need victim support. Many cope by themselves. We can combine the amount of victim support with the information from the question whether support would have been useful to compute what percentage of the victims who needed victim support actually got it. Map 4.3.2b shows the result. Victims in Hungary, Greece and Spain (in dark red) get the least amount of needed support. Scotland and New Zealand have the best victim support mechanisms. 40% or more of the victims that need support also get it.

If we look at the global World Value Survey data about *trust between people*, we can conclude that people generally don't trust each other in Latin America, Russia, Africa and also quite a lot of European countries with exception of Scandinavia and some other North European countries. The Asia Pacific region and North America however score overall quite positively when it comes to trusting each other[23].

Trust in criminal justice institutions seems to be quite low in the majority of countries worldwide[24]. In Australia, the USA and in New Zealand, people do not have great confidence in the national parliament and the government of the capital city. But they are confident in relation to the police and the courts. A similar pattern can be found in a number of countries in the North of Africa.

In some countries it is quite common that '*people take justice in their own hands*'. This is for example the case in various Latin American countries. This is due at least in part to lack of confidence in the Criminal Justice System and the fact that many people seem to have impunity. Taking justice into their own hands can include inhumane actions such as lynching and vigilantism. This drive could be diverted into more humane processes by stimulating active participation of victims, offenders and

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[21] Go here for the interactive graph.
[22] Go here for the interactive graph.
[23] Go here for the interactive graph:
https://public.tableau.com/profile/john.van.kesteren#!/vizhome/WVStrustAll/WVSTrustinothers
[24] For the interactive graph on confidence in the courts see:
https://public.tableau.com/profile/john.van.kesteren#!/vizhome/ConfidenceWVS/Courts
And for confidence in the police:
https://public.tableau.com/profile/john.van.kesteren#!/vizhome/ConfidenceWVS/Police

community members in restorative circles or other restorative practices and stimulating so called civil courage[25]: a value based, democratic and humanitarian type of action that citizens take when faced with a crime. Examples of such action can be found in section 7.

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[25] For definitions of civil courage see a.o.
http://www.tagpalycw.org/Conference%202016/Sem%201A%20%20Promoting%20Civil%20Courage%20(I.Buchroth).pdf

4.   The harm of criminal behaviour

> The harm of criminal behaviour involves the loss or damage of resources and the violation of values that enable both victims and perpetrators and those in relation to them to participate actively in society.

4.1.   Is harm caused by criminal behaviour distinctive?

Connecting *harm* to *criminal behaviour* limits the scope of this initiative. The laws of the state and the norms of society define *criminal behaviour*. The *harm* that is to be addressed is that which is caused by breaches of laws or norms rather than natural occurrences such as floods or economic conditions such as a recession or political decisions such as going to war. Harm has been defined by Feinberg (1984:33) as "the thwarting, setting back or defeating of an interest." The interests to which Feinberg refers are "all those things in which one has a stake" (1984:34).

Generally people accept that there are rules or norms that regulate behaviour and that, if a person violates these rules, a social reaction in the form of a sanction is appropriate. We cannot ignore that deviance from the norm is performed before a moral audience. What is distinctive is the meaning of the harm. It is experienced as an injustice and those affected expect to experience justice.

4.2.   What is the human impact of criminal behaviour?

When harm occurs the criminal justice system focuses on the perpetrator - detecting, building a case, prosecuting, sentencing and implementing the sentence. Making addressing the harm of criminal behaviour the focus of policy and practice fundamentally alters this orientation; adapting White's maxim (2007): the perpetrator is not the problem: the harm is the problem.

Three parties can be affected as a consequence of criminal behaviour:
1. The person who has been harmed and their network (family members, friends etc.)
2. The person responsible for harm and their network (family members, friends etc.)
3. Society (both communities on a micro level and the society at large).
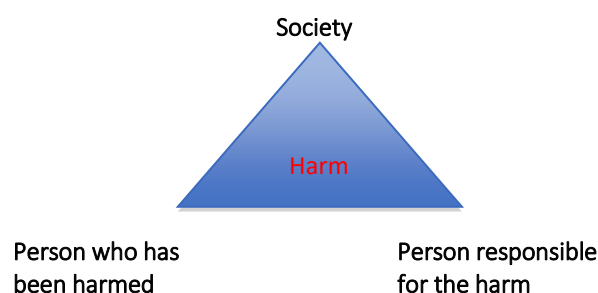
4.2.1. People who have been harmed

People who have been victims of crime may report material, physical, emotional, psychological and relational harms (see table below). From a more humane point of view we need to distinguish between the reality of harm and the experience of suffering. The suffering caused by the harm of criminal behaviour will be specific to each individual.

The meaning of the harm caused by criminal behaviour is also mediated by its wrongfulness in that it has no justification in law and as such is an injustice. For Shklar (1990) injustice is experienced in a very human way distinct from how the system administers justice. It stimulates powerful, often distressing, emotions particular to the individual. Consequently, victims' experiences are personal and specific to the context in which the injustice occurs. Their lives are disrupted by an unwelcome experience of harm over which they had no choice and little control (Pemberton et al, 2016, Crossley, 2000). This interruption to a life narrative can cause 'shattered assumptions' (Janoff-Bulman 1992) about living in the world. This consequent distress can seriously disrupt the capacity to participate actively in society. This complex combination of distressing emotions and moral judgements that arise from an injustice will often continue to dominate the victim's thoughts and behaviour long after physical wounds have healed, punishment has been inflicted or compensation received.

The criminal justice system as a bureaucratic, professional system operating as far as possible under universal principles strives to address the criminal offence in an impersonal and rational manner. Victims' wish to undo the injustice that they have suffered personally is usually very much at odds with their experience of the criminal justice process, which is rule bound and procedural.

In some countries there have been improvements such as the option of victim impact statements and police victim liaison officers. The EU Directive on Victims has required member states to improve services for victims. Nevertheless, many victims continue to experience *secondary victimisation* by the criminal justice system (Dignan 2005; Laxminarayan et al, 2013; Kunst et al, 2015).

Families of victims may experience a 'ripple' effect from the harm and suffer from distressing emotions arising from their concern for the victim's suffering. Important relationships may be weakened or ended due to the changes in the victim's personality, moods and behaviour caused by trauma. A family's standard of living may be adversely affected by the victim's ill health having an impact on employability.

	Harm associated with criminal behaviour	Harm associated with the reaction of society or the criminal justice system
Victims	• material harms (damaged or stolen property) • physical harms (injuries) • emotional harms (rage, fear, anxiety, shame) • psychological harms (trauma, mental illness) • relational harms (stigmatisation, disconnection from people) • a narrative of injustice and shattered assumptions • serious detrimental effects on the capacity to participate in society	"Ripple effect" on family relationships, well-being and standard of living. Secondary victimisation by the criminal justice system through lack of information about or influence over the criminal justice process.

4.2.2. The impact on people responsible for harm

From a humane point of view the risk factors (Farrington 2007) found to be associated with offending can also be experienced as harmful (see table below for details). Indeed, many offenders have experienced trauma in the past (Ardino 2011, Foy et al 2011, Weeks and Widom 1998). These experiences may interact to reinforce what Maruna (2000) has called 'a condemnation script', inhibiting desistance from harmful behaviour.

A humane approach would also recognise the harmfulness of the reactions of society and the media (Cohen 1973) and the criminal justice system to the individual as a significant part of this cycle (Becker 1963). Social reaction theory maintains that these reactions often cause stigmatisation leading to *secondary deviance* (Lemert 1951).

If, as research into desistance has found, the process of desisting from harming others is facilitated by improving social circumstances, attachment to pro-social relationships, maturation, and generating a more positive identity or life narrative, it is clear that social and criminal justice reactions to the perpetrator can have the effect of excluding offenders from the resources that they require, weakening personal relationships, reducing personal responsibility, and reinforcing a commitment to anti-social values and peers.

There is also a ripple effect of harm in relation to perpetrators. Their families may suffer also from stigma and consequent isolation and lack of support. If the main earner is in prison or unable to gain employment, the family's income will be reduced. The absence of a parent can lead to children not thriving and, in many cases, engaging in harmful behaviour themselves.

Harm associated with criminal behaviour	Harm associated with the reaction of society or the criminal justice system
- Harms in the family (poor parental supervision and discipline, childhood abuse and abandonment, taken into care as a child, observed violence in the home, family members involved in crime) - Harms in the school (expelled or regular truant from school, academic underachievement) - Harms in society (unemployment, grew up in a deprived neighbourhood with a high incidence of crime, peers involved in anti-social behaviour, homelessness) - Harms to health (mental illness, excessive use of drugs and/or alcohol) - A narrative of condemnation - Serious detrimental effects on the capacity to participate in society	"Ripple effect" on family relationships, well-being and standard of living. Labelling and stigmatisation by society leading to secondary deviance. The criminal justice system may exclude offenders from the resources that they require, weaken personal relationships, reduce personal responsibility, and reinforce a commitment to anti-social values and peers.

4.2.3. The impact on society

The *harm of criminal behaviour* can also be experienced by society. Fear of crime (Hale 1996) is an example of such harm. This fear can be a very concrete emotion at certain times of the day or in specific places or in the vicinity of types of people or it can be a more general, a prevailing feeling of anxiety or unease over the problem of crime. Some groups perceive the risk of becoming a victim more than others. They tend to be people who feel less able to cope with the consequences of crime. Often this fear is exaggerated when related to the actual risk. This fear of crime can have concrete effects on people's choices and behaviour. They avoid certain areas, purchase equipment to improve their security and take other preventive measures.

On a community level fear of crime can be detrimental to social cohesion and the social capital available to members of the community. Intergroup conflict may develop, for example between gangs or between groups of young people and other residents or between different ethnic groups. Some communities can be stigmatised as 'hot spots' for crime and this can have an impact on how the rest of society see and act towards residents. More generally people can lose a common belief in a just, stable and moral society (Wenzel et al 2008, Vidmar 2000).

	Harm associated with criminal behaviour	Harm associated with the reaction of society or the criminal justice system
Society	Fear of crime has serious detrimental effects on citizens' capacity to participate in society	Resentment over crime can lead to intergroup conflict. Stigmatised communities Loss of belief in a just, stable and moral society.

4.3. What is the impact of these harms on personal and social life?

In conclusion, we contend that crime dehumanises people by treating them as means towards satisfying the perpetrators' needs and desires. Perpetrators may be committing acts of harm due to being dehumanised by past experiences and by their treatment by the criminal justice system. Further, treating others as objects to satisfy one's needs rather than people can dehumanise the perpetrator. Crime can also corrode and dehumanise community life as neighbours and citizens neglect their obligations to each other.

The harm of criminal behaviour diminishes people's sense of control over their lives and has a negative impact on their self-efficacy (Simantov-Nachlieli et al., 2013). It was the limitation to people's agency or capacity to take action that Arendt (1958) understood through the concept of the irreversibility of a harmful act, the impossibility of undoing past actions once they have been taken. Further due the interdependence of society the consequences of harm are unpredictable. Negative or harmful reactions can stimulate a chain of reactions, for example, of revenge and retaliation.

The irreversibility of an action can lead both victim and perpetrators of harm to be stuck in the consequences of what they have done, as Arendt (1958:237) writes: "our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever."

The shattered assumptions (Janoff-Bulman 1992) that harm causes in the victim leads to a sense of unpredictability about future events, which disrupts the individual's preferred life narrative. Both the perpetrator and the victim can be trapped in a narrative of harm, which inhibits each party from moving on and fully engaging in activities that are important to them.

On a practical level the harm and suffering caused by criminal behaviour results in a huge waste of human potential and on a moral level this harm represents a social injustice that has a very detrimental effect upon society.

Arendt (1958) also offered ways to counter the irreversibility of a harmful act and the unpredictability of its consequences. She suggested that forgiveness by releasing the perpetrator of the harm from further obligations to the victim liberates the individual from the irreversibility of the action. He or she can, thus, make a fresh start. The process of forgiveness can be facilitated by the perpetrator demonstrating remorse and making promises concerning future action. Such commitments, if kept, restore some stability and predictability to the victim. A promise or a commitment is also a way of signalling that one has re-entered the web of obligations expected of a member of a community and, thus, encourages reintegration. Vanier (1998) writes that forgiveness can only occur if we believe that we are all part of a common humanity and that human redemption is possible and that we yearn for unity and peace.

Forgiveness is described by Govier (2002:26) as 'the setting of wrongful deeds in the past'. This is not say that the events are to be forgotten but it is an acknowledgement that they have passed and it is time to move on. What has happened will no longer control current thoughts, feelings of actions or limit the possibilities of the future. Such a realisation signals the end of a narrative dominated by the suffering that the harm caused. While more humane approaches should not contrive forgiveness, they should offer opportunities for people to commit to actions, which address the harm they have caused.

4.4.   What is the injustice that more humane approaches should address?

According to Fraser (2003) injustice in relation both to the distribution of resources and to the recognition of the value of people violates the principle of parity of participation in society. In conclusion **we define the harm of criminal behaviour as the loss or damage of resources and the violation of values that enable both victims and perpetrators and those in relation to them to participate actively in society.**

5. What is distinctive about more humane approaches to harm?

> *More humane approaches to addressing the harm of criminal behaviour* include all actions designed and delivered with the purpose of repairing the individual, relational and social harms and of preventing and undoing injustices that have caused and been caused by criminal behaviour. This definition includes but is not restricted to restorative justice.
>
> > The aim of more humane approaches to addressing the harm of criminal behaviour is to enable people responsible for harm, people who have been harmed and others who have been affected to participate fully in society and to contribute to the common good.
>
> The values underpinning more humane approaches include the dignity of human beings, solidarity with others and social justice.
>
> The principles guiding the implementation of more humane approaches include recognising people's agency, believing that every human being is redeemable, building strong pro-social relationships, and bearing witness to abuses of human rights, discrimination and stigmatisation.

5.1. What should be the aim of more humane approaches?

The concept of the *common good* can be traced from ancient Greek philosophy through Catholic social teaching to modern liberal philosophy. It stands in opposition to a life lived purely in the pursuit of personal interest. A just society is one in which people have the opportunities and capacities to participate in society for the common good as they choose.

The aim of more humane approaches to addressing the harm of criminal behaviour is to enable people responsible for harm, people who have been harmed and others who have been affected to participate fully in society and to contribute to the common good.

5.2. What is the definition of a more humane approach?

More humane approaches to addressing the harm of criminal behaviour include all actions designed and delivered with the purpose of repairing the individual, relational and social harms and of preventing and undoing injustices that have caused and been caused by criminal behaviour.

This definition includes but is not restricted to restorative justice. Restorative justice is a specific process, which can be defined under the heading of *more humane.* It is

distinguished by its focus, its participants and its process of making decisions on how harm should be addressed.

Restorative Justice is an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired, relationships maintained and justice achieved. (EFRJ)

5.3.   What values do more humane approaches represent?

We have seen that crime harms individuals, relationships and society in general. These values relate to three key areas: the value we place on the individual, the value we place on how individuals relate to each other and the quality of the society we aspire to create.

Thus we define humane as that which respects, restores and sustains these values and inhumane as that which disregards, damages or violates these values.

5.3.1.   What does it mean to value the dignity of human beings?
The dignity of human beings is derived from the value of human life and the potential of people's agency, their ability to choose their actions and be responsible.

To be a victim of a crime is to be treated as a means to another's end or to be objectified. This is dehumanising and humiliating.

There is research evidence that disrespect can provoke aggression and violence (Gilligan 1996, Butler and Maruna 2009). The more humane approach is based upon respecting people and emotional intelligence (Sherman 2003). This would require a refusal to stereotype, stigmatise, objectify or idealise individuals and a belief that in spite of previous behaviour people can change.

Davies (2013) in his critique of psychiatry's over-reliance on clinical diagnosis and medication argued for a shift towards "an approach that prioritises healing

relationships with people, helping people find meaning in their lives, and using therapies and other social/humanistic interventions as the first line of treatment." The emphasis on relationship and meaning are consistent with more humane approaches. Such approaches will not reduce people to the sum of their deficits. They will not ask what is the matter with people affected by crime. They will ask what matters to people affected by crime.

5.3.2. What does it mean to value solidarity?

A more humane approach reinforces solidarity derived from mutual responsibility and reciprocal support. It is delivered according to the principle of subsidiarity, originating in Catholic social teaching and leading to action taken to address a problem at the most local level and most human scale (Donati 2009). Human beings can only live in relation to others (Levinas 1969). As a consequence, both actions for the common good and harmful behaviour have a 'ripple effect' beyond those directly responsible and those directly affected by it. Families, friends, neighbours and communities all have a stake in the harm being dealt with. The criminal justice system's almost exclusive focus on the person responsible for the harm means that these other parties are mainly ignored and neglected.

For Donati (2009) relationship is at the core of being human. Responsibility originates from the demands of living with others (Levinas 1969). The primacy of relationships explains why human beings consider that norms and their ethical basis are so important. Other people are not only an essential part of our well-being and our capacity to survive and to thrive but also an imminent threat to our safety and well-being. This reality requires individuals to be socialised in the norms and values of society and to eventually learn to take personal responsibility for acting according to obligations to others.

Inequality in society tends to separate people physically and relationally according to wealth, status, ethnicity, and faith. This disconnectedness can lead to moral indifference or the neutralisation of moral responsibility for others (Bauman 1989). This enables the system to consider the problem of harm as a technical problem that can be solved effectively by technical methods often involving excluding or separating people. A more humane approach would create opportunities for people to re-connect.

5.3.3. What does it mean to value social justice?

A Jesuit priest named Luigi Taparelli is usually credited with introducing the term, social justice, in the 19th century. It now forms the basis of international conventions of human rights and many international statements on crime and criminal justice promoting respect of human life and concern for the poorest and most vulnerable members of society.

Research has demonstrated how discrimination and stigmatisation not only causes people to harm others but also results in secondary harm by the state system. Thus, it is necessary to work towards criminal justice reform and social reform so that humane approaches are supported and sustained.

Social justice refers to the fair and just relations between the individual and society. It involves the redistribution of resources and the removal of obstacles to equality of opportunity and full participation in society. Social justice has in recent times focused on the recognition of the value of diversity. Similar approaches can be adopted in relation to the neglect of victims and discrimination against and labelling of offenders.

5.4. What principles underpin the practice of more humane approaches?

5.4.1. Recognising people's agency

Rather than seeing individuals as simply products of their genes, their upbringing or their environment, more humane approaches would recognise their capacity to make meaning out of situations and events, to choose their actions, to reflect upon the results of these actions and to learn and to generate new understandings. The ability to choose one's actions, not necessarily in the circumstances of one's choosing, and to be responsible for the consequences of one's actions is to be human. The *harm of criminal behaviour* can disrupt and inhibit this ability. Unfortunately, the response to crime by the system often reinforces this disruption in the lives of both victim and perpetrator of the harm.

More humane approaches should offer opportunities for all parties to take active responsibility for the process of *addressing the harm* so that they may get on with their lives.

5.4.2. Believing that every human being is redeemable

If individuals choose to commit harm, it follows that they have the capacity to choose to act in a different way. When one acts in such a way as to harm a person unjustly, one has broken a social contract that enables people to go about their lives and societies to function. This breach creates an obligation to make things right with the individual who has been harmed and with society. By fulfilling these obligations (or repaying the debt) one should be reintegrated with respect into society with all its benefits and responsibilities. Following this way of thinking there should be no further debt to pay. In this way the offender is redeemed and forgiven. This is what Bazemore (1998) refers to as 'earned redemption'. Not all perpetrators of harm will be ready or willing to redeem themselves when held accountable. This does not mean that they will never be ready or willing to in the future. (Maruna 2009, 2010)

More humane approaches should offer all parties the opportunity and support to "signal" that they have transformed themselves or are in the process of transforming themselves. (Bushway and Apel 2012).

5.4.3. Building strong pro-social relationships

The *harm of criminal behaviour* not only affects personal life, it also weakens and destroys relationships without which individuals cannot fully express their humanity. We live in families, friendships and communities and we need to learn to live at

peace and in cooperation with others. The various forms of social capital have been found to be essential for both the reintegration of the offender and the recovery of the victim.

The process of desistance from crime (Weaver 2015) and recovery from trauma (Courtois and Ford 2015) are relational processes. Both processes involve finding one's place in the world again and moving on in one's life. To do so requires the individual to actively participate in the process with support and with the recognition of others that change is taking place.

More humane approaches should offer the opportunity and support to repair broken relationships, maintain and strengthen important relationships or to build new relationships.

5.4.4. Bearing witness to abuses of human rights, discrimination and stigmatisation

A more humane approach is based upon human rights on a very human scale summarised by Eleanour Rooseveldt with these words:
"Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."[26]

To this we should add, not only close to home but within homes so as to include the huge (and often hidden) incidence of domestic abuse and violence.

Given the many different social, cultural, political and economic conditions in the countries in the areas of the world, it would be difficult and probably wrong to set universal standards for more humane approaches. Consequently we propose that we need to think globally but act locally:
1. International conventions on human rights and children's rights and standards set by the United Nations and its bodies such as United Nations Office on Drugs and Crime should be used as general benchmark especially in countries that have ratified the standards[27].

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[26] Excerpt from a speech by Eleanor Roosevelt at the presentation of "IN YOUR HANDS: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights." Thursday, March 27, 1958. United Nations, New York.

[27] We have prepared a separate report on international instruments relating to human rights and humane criminal justice systems.

2. Regional standards e.g. directives issued by the European commission and recommendations from the Council of Europe as well as for example African, Asian and American standards can be applied in specific regions of the world.
3. More specifically there should be local analyses and assessments of the level of *humane approaches* in each country or region. This will enable benchmarks for the country to develop priorities and objectives appropriate to the development of *more humane approaches* in that country[28].
4. It is also important to respect and build upon existing indigenous and other local practices, which are culturally appropriate, as long as they comply with human rights and international and national standards.

A *more humane approach* must, then, be led by the values and principles outlined above, but must also recognise the need to deliver results in the real world within the constraints of available resources.

The quality of *humane*, then, may be assessed according to the extent that specific approaches:
- reinforce the observance of human rights and the responsibility to respect other people's rights;
- overcome exclusion, stigmatisation and discrimination of people responsible for crime and affected by it;
- strengthen relationships and build social capital;
- engage all those affected by the harms caused by crime in actively taking responsibility in repairing what has been damaged, lost or violated;
- provide victims with adequate and effective support and services.

It is clear that these approaches will engage not only in supporting individuals, families and communities in these activities but will also engage in initiatives to reform the criminal justice system.

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[28] We have also prepared comprehensive mappings of needs for the regions in which Porticus operates.

6. Which theories support more humane approaches?

Theories of practice, which are compatible with more humane approaches.
1. Reintegrative shame
2. Desistance from crime
3. Recovery
4. The Good Lives Model
5. Restorative Justice

6.1. Theories of practice, which are compatible with more humane approaches

6.1.1. Reintegrative shaming

John Braithwaite's (1989) theory of reintegrative shame has had a significant influence on restorative justice. Its emphasis on the importance of emotion, responsibility, relationship and reintegration means that it is compatible with the more humane approaches developed in this document. Its key idea is that the shame should arise naturally from the examination of the harm in the presence of the person who has been harmed and other people significant to the perpetrator. In this way the shame is attached to the act not to the person and can lead to genuine remorse and motivation to repair the harm and to desist from further conduct causing harm. Critical to this process is the acceptance of the perpetrator and the offer of support by the community on the basis of his/her making good the wrong.

6.1.2. Desistance from crime

Desistance research (Maruna 2000, Farrall 2004, McNeill 2006, Weaver 2015) is the study of how offenders stop harming people. It is an uneven process of progress and relapse. Three key and overlapping concepts have been identified and each of these resonates with more humane approaches:
1. Maturation: people eventually grow out of criminal behaviour;
2. Social bonds: significant relationships cause the individual to decide that the risks of crime are no longer worth it. The relationship may be intimate, a partner or a child, or a new set of pro-social friends, or a job or a recreational activity.
3. Identity transformation: the individual develops a new non-criminal narrative. Maruna (2000) distinguishes the 'condemnation script' of the persistent offender from the 'redemption script' of desistance.

6.1.3. Recovery

"Recovery-oriented systems of care" refer to a holistic framework of services and relationships that can support the long-term recovery of people who have suffered harm or trauma. This is clearly relevant to victims. But it is also true that many offenders have suffered trauma in their lives and this may be driving their harmful

behaviour. This means mobilising social support and activating the individual's personal resilience and other psychological resources. It also requires positive living conditions, a safe home, sufficient income, meaningful activities etc. Support (Courtois and Ford 2015) may include self-help groups, mutual aid and other peer based care. It also involves understanding the impact of the harm on families and communities.

6.1.4. The Good Lives Model

The Good Lives Model (GLM) developed by Ward and colleagues (see Ward and Maruna, S. 2007) is an approach to offender rehabilitation, which is responsive to offenders' particular interests, abilities, and aspirations. The practice involves making plans with the offender to achieve the 'goods' that are important to the individual. This is based on the premise that people harm others because they lack the internal and external resources necessary to satisfy their values, needs and goals.

6.2. Restorative justice

6.2.1. Definition

Restorative processes are designed to undo injustice and repair harm. Restorative justice is distinguished by its focus, its participants and its process of making decisions. It entails an encounter or at least communication between those affected by a specific act of harm. Crucially it involves a process of coming to a common understanding of the harmful act and its consequences and an agreement on what should be done about it. Generally, when humane approaches address the harm of criminal behaviour either with the offender or the victim, the other party is not present but represented (Arendt 1958) through the imagination or empathy of the individual. Restorative justice processes enable all parties to be present and to engage actively in dialogue.

> *Restorative Justice* is an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired, relationships maintained and justice achieved. (EFRJ)

6.2.2. The Balanced Model

The Balanced Model of Restorative Justice places the examination, understanding and repair of harm at the centre of the process and identifies all those with a relationship to the harm, the persons harmed and those close to them, the persons responsible for the harm and those close to them, and those affected in society or the community.

Society

Harm

34
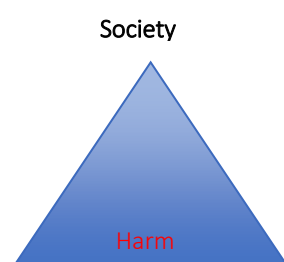
Person who has   Person responsible
been harmed   for the harm

These parties have a real stake in the process of undoing the injustice that the harm represents. They should only meet if the wish to communicate to repair the harm, maintain relationships and achieve justice. This is the counter intuitive aspect of the restorative process; that even though they may hate or fear each other, each party needs the other to have what they have lost restored.

The harm may have resulted in material loss. But in many cases, this is not so important. Existential losses such as safety, respect, justice and control over one's life are often what motivate both parties to engage in this difficult process.

This balanced model is designed to reproduce in practice the values of dignity, solidarity and social justice through a process in which self-interest is transformed into the common good.

When a person harms another unjustly, the perpetrator incurs an obligation to the injured party to make some form of reparation and to society to take steps to avoid harming others. Restorative justice enables the perpetrator to express remorse for the harm and to take responsibility to fulfil these obligations and enables the victim and society to release him or her from any further obligations.

The very human activities of storytelling and dialogue drive the restorative process towards its outcomes. Arendt (1978:216) wrote of the ability of stories to "reclaim our human dignity". Stories represent human beings as actors and sufferers rather than passive victims or objects of others' narrative or theories. Not only does the space to tell one's story in the words and style of one's choosing restore dignity but it also often facilitates an emotional and relational connection which can lead to mutually satisfactory outcomes (Wenzel et al 2008, Black, 1976; Horwitz, 1990; Winkel, 2007, Rossner, 2011, 2014, Strang et al., 2006).

Dialogue is a conversation with a centre not sides (Isaacs 1999). At its best in a restorative process it connects with our humanity: "We humanise what is going on in the world and in ourselves only by speaking of it, and in the course of speaking of it we learn to be human." (Arendt 1968:25)

This quality of dialogue requires skilful preparation and facilitation to be empowering: "Power is actualised only where word and deed have not parted company, where words are not empty and deeds are not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities." (Arendt 1958: 200)

The key to the effectiveness of the process depends to a large extent on the level of responsibility that each party assumes for the harm and its repair. Perpetrators make

themselves accountable for the harm that they have caused expressing remorse and offering to make amends and taking steps to demonstrate that they wish to avoid harming again. The responsibility of the victim in a restorative process is first to bear witness to the reality of the suffering of the past harm and second to seek some sort of amends from the person responsible for the harm, which makes it possible for justice to prevail. In so doing the victim is announcing publicly that he or she is no longer a victim. As Blustein (2014: 594) points out, this "enables victims to move recognition of their moral standing and psychological needs to a more central place in the justice process, something that often does not happen when wrongdoers are subject to criminal prosecutions." Minow (2000:243) has observed that the telling of the story by the victim transforms the narrative from one of "shame and humiliation to a portrayal of dignity and virtue." Through this the victim regains "lost worlds and lost selves."

6.2.3. The overall process

The first phase of the process is inclusion in the process. This entails engaging the consent of each party to participate and preparing them to participate. An inclusive approach to engagement means that the process should be sufficiently flexible and creative to meet the needs and interests of the individuals affected by the harm. A human centred process should adapt to the people rather than have the people adapt to the process. This may involve affirmative action on the basis of age, gender, race, culture, ethnicity, sexual orientation, disability and language.

Each party needs support to prepare to articulate their narrative of the harm in as discerning manner as possible. This challenges each person to reflect and prepare their story, identify their needs, questions and requests with the support of the facilitator. The narrative addresses the past, (what happened?), the present, (how are you feeling about it now and what do you need?), and the future, (what do you want to do about it?)

The second phase is participation in the process and involves the meeting of the parties or at least some form of communication between them. This will generally take the form of each of the main parties telling their story of the harm, asking each other questions and responding to both the stories and the questions. Through this process of dialogue, the stories adjust to each other and a common understanding on what needs to be done will usually emerge.

The third phase is transformative through the making of commitments and carrying them out. The agreement on what is to be done is usually carried out by the perpetrator though it may also involve offers of support from supporters, professionals, community representatives and even victims. The process is only completed when all commitments have been kept.

6.2.4. Research evidence

Most of the empirical research into the effectiveness of restorative justice has been undertaken in English speaking countries.

	Finding
✓ RJ satisfies victims	Restorative process consistently achieve at least 85% satisfaction among victims[29]
✓ RJ satisfies perpetrators	People responsible for harming others appreciated the opportunity to express remorse, to meet the victim, and to actively participate. They also appreciated not being made to feel that they were a bad person.[30]
✓ RJ reduces further harm	There is considerable empirical work acknowledging the role that restorative justice processes play in lowering re-offending rates. Offenders in restorative programmes are more likely to complete the programmes and less likely to reoffend compared to a control group. A meta-analysis of victim- offender mediation and family group conferencing studies found that family group conferencing was shown to have twice the effect as traditional justice programmes, and victim-offender mediation had an even larger effect on recidivism. Another meta-analysis in 2005 found that restorative processes were associated with reduced recidivism for both youth and adults. A rigorous study in England found that significantly fewer offences were committed by those who participated in restorative processes over two years than those in a control group. This amounted to a 14% reduction in the frequency of offending.[31]
✓ RJ saves money	£9 expenditure in the criminal justice was saved for every £1 spent on restorative justice.[32]

These positive outcomes are the result of high quality practice. It is important for the credibility of more humane approaches and restorative justice that high standards are maintained. It follows from a commitment to the real lived experience of those most affected by the harm of criminal behaviour that the quality of practice should prioritise their needs and interests rather than the priorities of the system in which the practice takes place. There is now considerable evidence that institutional needs regularly over-ride the needs of the people that the institution is designed to serve. As we have seen the operation of the criminal justice system often runs counter to the recovery of victims from harm and offenders' desistance from harming others. (Pavlich 2009, Hoyle and Rosenblatt 2016, Bolivar 2015, Choi et al 2013, Zernova 2007, Choi and Gilbert, 2010, Hoyle et al., 2002, Strang, 2002, Bolívar, Pelikan, and Lemonne 2015).

6.2.5. Restorative processes and their use

	Process	When to use
Restorative Circle	A non-hierarchical process which enables a circle of people affected by an issue to meet in a circle and	When improving the culture, relationships and communication in organisations and communities. For

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[29] Shapland, et al 2012, Jacobson and Gibbs, 2009, Beckett, et al 2004, Strang, 2002, Strang, et al 2006 Umbreit, and Coates, 1993.

[30] Shapland, et al 2012, Morris and Maxwell 2001.

[31] De Beus, K., & Rodgriguez, N. 2007, Bradshaw and Roseborough 2005, Latimer et al 2005, Shapland et al 2012.

[32] Shapland et al 2012.

	take it in turns to state their views on the problem until they come up with a solution.	example, it could be used when addressing anti-social behaviour, conflicts between young people and older residents in a neighbourhood, and conflict between groups such as gangs or different ethnic groups.
Victim Offender Mediation	The Council of Europe Recommendation (1999) 19 concerning Mediation in Penal Matters defines victim offender mediation as "a process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)".	Mediation can be used to hold a person, who admits to responsibility for a harmful act or crime, accountable to the person who has been harmed. When used to divert an individual from prosecution it maintains public credibility and the support of the system in which it takes place. Mediation can also be used in schools and communities as preventive measure to resolve actual or potential conflict so that it does not escalate into causing harm.
Restorative Conferences	The European Forum for Restorative Justice has defined restorative conferencing as: "conferencing consists of a meeting, taking place after a referral due to an (criminal) offence. The condition *sine qua non* for it to happen is that the offender admits (or does not deny) guilt and takes responsibility for the crime. The meeting will be primarily between the offender, the victim (but it should never be an obligation for him/her), their supporters and a facilitator. Subsequently a number of other individuals may also take part, depending on the scheme or crime, such as a representative of the police, a social worker, a community worker, a lawyer etc. After a period of preparation, this assembly will sit together and discuss the crime and its consequences. They will try to find a just and acceptable outcome for all, with an agreement including a number of tasks to achieve for the offender in order to repair the harm committed to the victim, the community and society in general." Zinsstag et al 2011.	Restorative conferences are particularly effective in more serious or complex cases and where there is a persistent pattern of offending. They can also be used for less serious cases. A conference not only allows for victims' needs to be met but also facilitates a more comprehensive dialogue on what the person responsible for the harm needs to avoid further harmful behaviour. Conferences can include the wider family, social workers and other experts and can result in not only a plan for reparation but a plan to reintegrate and rehabilitate. Such a plan can be part of a community sanction.

7. How can more humane approaches be applied?

More humane approaches are designed to challenge the ways that the harm of criminal behaviour restricts human potential to participate in society positively by violating human dignity and damaging personal and social relationships. We have organised different approaches according to how they address key questions arising from criminal behaviour.

Approaches in these areas will be judged according to how they exemplify the core values distinguished above:
- Dignity of human beings
- Solidarity with others
- Social justice

And the key principles of practice:
1. Recognise personal agency and opportunities for active responsibility
2. Believe in redeemability and offer opportunities to signal change
3. Build strong pro-social relationships
4. Bear witness to abuses of human rights, discrimination and stigmatisation

The tables below illustrate how the principles underpinning more humane approaches can be applied in practices. Most of these exemplars can provide evidence of their effectiveness (see the websites). They are not offered simply as approaches that can be replicated. They are cited as exemplars of specific key elements (KE) of more humane approaches.

7.1. Prevention: How can people be enabled and encouraged to participate in society and to contribute to the common good without harming others?

Within the definition of more humane approaches to addressing the harm of criminal behaviour we will not be including situational crime prevention which include activities such as strengthening locks and surveillance through closed circuit television (CCTV). These interventions focus on the practice of offending; making it more difficult, riskier, and less rewarding. They do not focus on the personal or social consequences and causes of crime. Consequently, they do not meet the criteria of the values and principles supporting more humane approaches.

We also want to avoid mainstream services, which have been found to reduce crime including urban design, housing, general community development, health, education and employment. This would expand the scope to the extent that the focus and direction of any strategy would be undermined. We have favoured preventive initiatives, which have a clear focus and purpose.

Consequently, we have identified projects that socialise people into the values of a citizen who respects others' rights and that build people's resilience and ability to apply skills that help them to avoid harming others. Consistent with the principles already outlined such prevention from crime or criminal behaviour should involve individuals, families, schools, and groups within neighbourhoods.

	Recognise personal agency and opportunities for active responsibility	Believe in redeemability and opportunities to signal change	Build strong pro-social relationships	Bear witness to abuses of human rights, discrimination and stigmatisation
Prevention	Family support KE: Parents should be seen as an asset in prevention not as a liability **FERYA (Spain)** Schools KE: Young people can learn to participate actively in the community of the school for the common good. **Youth or Teen Courts (USA, The Netherlands)[33]**	Neighbourhood projects KE: Connecting with the disconnected through relationship, personal development, accountability and practical support can reduce violence and other criminal behaviour. **Cure Violence (USA)[35] Catch-22 (UK)[36] ROCA (USA)[37]. Birmingham Violence Reduction Initiative (UK)[38]**	Family support KE: Parents and children can repair and strengthen their relationships **Strengthening Families[39] (UK and Ireland)** Societal prevention KE: Offering an attractive alternative to activities that increase the risk of criminal	Schools KE: Young people can learn the importance of peaceful relationships **Peaceful Schools Movement[41]** Intercultural or intergroup conflict KE: Facilitating dialogue between those most affected by harmful conflict

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[33] http://johnjayresearch.org/wp-content/uploads/2011/04/buttsortizjrnjan11.pdf

	Employment KE: Practical support to achieve realistic goals can enable people at risk of offending to improve their job prospects. **Stichting Nelis (Netherlands)[34]**		behaviour. **The Iceland strategy on alcohol and drugs use among young people[40]**	can prevent intergroup violence and build community. **ALTERNATIVE action research programme (EU)[42]**
Restorative processes in prevention	Peer mediation		**Restorative Schools**	**Restorative Circles Restorative Cities**

7.2. Victims: How can the needs of those harmed by crime be protected and supported so that they can recover and move on from the harm?

While some victims require therapy to recover from trauma, many can move on from a harmful event through a restorative process and/or with the support of other victims or specialist services. There are specific groups of victims that are not been catered for by mainstream victim support organisations. They may need organisations to advocate on their behalf.

The position of victims of crime has improved generally in Europe in part as a response to the EU Directive[43] establishing minimum standards on the rights, support and protection of victims of crime. Many governments have funded initiatives to support the needs and rights of victims. The rise of restorative justice is in part a response to the neglect of the victim in the criminal justice process. Yet the criminal justice system continues to focus disproportionately on prosecuting and punishing the offender and the needs and rights of victims are used more often as a rhetorical device than as the basis of mainstream policy. There is a long way to go before attending to victims are seen as a core responsibility of the system.

Victims are not a homogeneous group. Individual victims have different experiences of harm and **different needs and attitudes regarding what should be done to the perpetrator**. More humane approaches to victim's rights and needs should be as diverse as those for offenders. Some countries have general victims' services, for example Victim Support in the UK. In countries where such an organization does not

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[35] http://cureviolence.org
[36] https://www.catch-22.org.uk
[37] http://rocainc.org
[38] https://www.cfbham.org/bvri/
[39] https://www.strengtheningfamiliesprogram.org
[41] http://www.peacefulschools.org.uk
[34] http://stichtingnelis.nl/over-nelis
[40] https://www.theatlantic.com/health/archive/2017/01/teens-drugs-iceland/513668/
[42] http://www.alternativeproject.eu
[43] Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

exist support should be given to develop one.

	Build strong pro-social relationships	Bear witness to abuses of human rights, discrimination and stigmatisation
Victim Support	Terrorism KE: Offering a holistic approach to addressing victims' needs on different levels of suffering. WAVE (Northern Ireland)[44]	System change KE: Designing the system so as to enable victims to participate more actively in the justice process. **Facilitadores Judiciales (Nicaragua)[45] The Working Group Against Hate Crimes (Hungary)[46]** Domestic violence KE: Support for victims can be enhanced through community disapproval of the harm, practical support for both victim and perpetrator backed up by more effective law enforcement. **National Network for Safe Communities, John Jay College, Intimate Partner Violence Intervention in High Point (USA)[47]** Sexual harm KE: Respect for the victims' needs, offering comfort throughout a distressing experience, restoring dignity and ensuring justice for children and women who are victims. **Thuthuzela Care Centres (South Africa)[48]** Hate crime KE: Designed with victims' needs in mind and combining support with law enforcement. **Step Up Beat Hate (UK)[49]**
Restorative processes in victim support	**Restorative Schools** **Peer mediation** **Family Group Conferences**	**Victim-initiated Restorative Justice** **Restorative Circles** **Restorative Cities**

7.3. Diversion: How can people who have been responsible for harming others be held accountable and diverted from the criminal justice system?

Much research has found that people can be harmed through the trauma, labelling and stigmatisation of entering the criminal justice system. Much of the harm caused by crime can be addressed by engagement in constructive activities and services. Restorative processes can hold the perpetrator accountable and satisfy the needs of the victim thus avoiding the stigmatisation of involvement in the criminal justice system and a criminal record. Diversion can also be attractive to governments due to the costs saved within the criminal justice system.

	Recognise personal agency and opportunities	Believe in redeemability and opportunities to	Build strong pro-social relationships	Bear witness to abuses of human rights,

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[44] http://www.wavetraumacentre.org.uk/home
[45] http://www.poderjudicial.gob.ni/facilitadores/
[46] http://gyuloletellen.hu/about-us
[47] https://nnscommunities.org/our-work/strategy/intimate-partner-violence-intervention
[48] https://www.unicef.org/southafrica/hiv_aids_998.html
[49] http://www.stepupbeathate.com

	for active responsibility	signal change		discrimination and stigmatisation
Diversion	General offending programme KE: By balancing support and accountability diversion schemes can earn public credibility. Halt (The Netherlands)[50]	Mental health KE: Community outreach and positive relationships can divert people with mental illness from the criminal justice system. **Assertive Community Treatment (USA)[51]** Restorative conferences and mediation KE: Restorative processes can be very effective ways of diverting people from entering the justice system as they emphasise making oneself accountable for the harm caused. Kent Police (UK)[52] for an example of many police initiatives	Inter-agency referral planning KE: Sharing information and cooperative decision making can avoid the stigmatisation of perpetrators of harm. **Youth Justice Management Unit (Scotland)[53]** Employment and social and vocational skills KE: Intensive and practical support can divert high risk young people from crime. **Stichting Herstelling (The Netherlands)[54]**	Court based diversion KE: Some offenders may be treated more humanely if considered as victims. **Changing Actions to Change Habits (USA)[55]**

7.4. Desistance: How can the criminal justice system enable people to desist from harming others?

In England and Wales the proportion of sentences served in custody is steadily increasing. Courts seem to have less confidence in alternatives to custody. This may be a product of the emphasis upon risk management and the enforcement rather than rehabilitation and reintegration. People who harm others persistently may need to be prosecuted. They are likely to have complex needs. Their anti-social attitudes, the influence of their peers and dependence upon alcohol and drugs tend to make them difficult to engage and motivate.

Young adults (18-25 years' old) generally represent around 10% of the population but account for 30 to 40% of the criminal caseload for the police, probation and prison services. They are likely to have been exposed to violence and trauma. Research findings in criminology, psychology and neurology indicate the need for a distinctive approach[56]. They are challenging to manage, harder to engage and tend to have

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[50] https://www.halt.nl/en/

[51] http://www.namihelps.org/assets/PDFs/fact-sheets/General/Assertive-Community-Treatment.pdf

[52] https://www.kent.police.uk/services/victims-and-witnesses/restorative-justice/

[53] http://www.cycj.org.uk/resource/police-scotland-youth-justice-management-unit-eei/

[54] http://www.herstelling.nl

[55] https://www.nycourts.gov/ip/human-trafficking/content/Changing%20Actions%20to%20Change%20Habits%20.PDF

[56] Justice Committee (2016) *The Treatment of Young Adults in the Criminal Justice System.* London: House of Commons.

poorer outcomes. Consequently, there should be approaches specially designed for this group.

Desistance is a process of stopping criminal behaviour after a sustained pattern of offending. Research has found that it is supported by an interaction of maturity, developing strong pro-social relationships and changing one's identity and narrative in life.

	Recognise personal agency and opportunities for active responsibility	Believe in redeemability and opportunities to signal change	Build strong pro-social relationships	Bear witness to abuses of human rights, discrimination and stigmatisation
Desistance	Problem-solving courts[57] KE: Perpetrators of serious harm can avoid custody if they agree to address the causes of their harm and make themselves continuously accountable to the court. Restorative conferences and mediation KE: The encounter with the victim in the presence of people whose approval is important to the perpetrator of harm provides the opportunity for remorse and commitment to make amends and desist from further harm. **Youth Justice Agency (Northern Ireland)[58]**	General offending programmes KE: Addressing needs associated with offending and offering intensive support and supervision can enable persistent offenders towards desistence in the community. **Denmark** and the **UK** use the risk, need and responsivity principles aims to contribute to a more effective intervention approach.	Circles of Support and Accountability KE: Being offered support and being held accountable by members of the community facilitates the desistance process while reassuring the community. **Circles of Support and Accountability[59]** originated in the Canadian Mennonite community and is now widely used in Europe.	System change At a time of increasing use of custody in many countries there is an opportunity to press for system change: • **Bail support schemes**. • **The use of mental health treatment** rather than imprisonment. • **The use of drug and alcohol treatment** rather than imprisonment. • **The use of community-based rehabilitation programmes for offences that** concern the public such as sexual crime, domestic violence, gang membership, radicalization etc. • **Greater use of restorative justice by courts**

7.5. Humane containment: How can inhumane conditions of incarceration be reformed and mitigated?

It is estimated[60] that around 15 million people in the world are detained awaiting trial on criminal charges. 120,000 are currently held in pre-trial custody in Europe. The estimated cost of this detention is €4.8 billion. They experience all the harmful effects of incarceration without having been found guilty. Many are eventually acquitted or do not receive a custodial sentence. Ethnic minorities and poor people

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[57] http://justiceinnovation.org/wp-content/uploads/2016/08/Problem-solving-courts-An-evidence-review.pdf
[58] http://www.prisonreformtrust.org.uk/Portals/0/Documents/making%20amends%20restorative%20youth%20justice%20in%20northern%20ireland.pdf
[59] http://www.circles-uk.org.uk
[60] Open Society Justice Initiative (2016) *Presumed Guilty: The Global Overuse of Pretrial Detention.*

are disproportionately represented. This problem can be addressed through effective bail support schemes.

Incarceration, while necessary for those who have committed serious harm and who pose a significant risk to the public, clearly has a detrimental impact upon people's well-being and upon the conditions which support desistance from offending. It disrupts and damages positive relationships with family, community and employment. It can cause homelessness. Most regimes' emphasis upon security and control undermine the exercise of personal responsibility. Financial constraints and reductions in staffing reduce opportunities for medical and social care and for rehabilitation. Indicators of the harm that detention can cause include increased incidence of suicide and mental illness. In almost every country the poor and ethnic minorities are disproportionately represented in prison populations.

Prisoners react to these conditions through an inmate culture, which may be based upon gangs, the threat of violence and widespread availability of drugs. In this way detention can be seen as reinforcing criminal attitudes and depriving prisoners of the resources required for desistance from crime. Furthermore, the partners, generally women, and the children of prisoners also suffer. It is estimated that there are 200,000 children with a parent in prison in England and Wales. There is a strong association between parental imprisonment and adverse outcomes for children[61]. Finally, the experience of imprisonment imposes a serious and lasting stigma on ex-prisoners and their families.

From the victims' point of view imprisonment may offer a sense of retribution and justice. However, they know that the person who has harmed them will be released and they have little knowledge of what the prisoner is doing to reduce the risk of further harm. If they have any questions for prisoners or wish to tell them about the harm that they have caused, they rarely have access to them.

The movement to support the 'moral performance[62]' of prisons through embedding the values of respect, trust, humanity, the quality of staff-prisoner relationships and a sense of decency in prison culture can be supported. There are prisoners who have special needs which regimes find difficult to meet. These may include women, minority ethnic groups, those suffering from mental illness or stress, prisoners with literacy problems and other educational difficulties, and the families of prisoners. **Prisons should be supported to address these needs.**

Prisons can resist some of the negative aspects of institutionalisation by basing their regime on the 'Mandela Rules', a United Nations set of standards aimed at 'normalising' prisons or making life in custody as similar as possible to life in the community.

	Recognise personal agency and	Believe in redeemability and opportunities to	Build strong pro-social relationships	Bear witness to abuses of human rights,

[61] http://www.sccjr.ac.uk/wp-content/uploads/2015/10/SCCJR-Impact-of-crime-prisoners-families.pdf
[62] Developed by Alison Liebling, see: Liebling 2004

	opportunities for active responsibility	signal change		discrimination and stigmatisation
Humane Containment	Alcohol and drug treatment KE: Harm reduction strategies for addiction can reduce stigma and respect people's dignity. Prisoners in **Moldova** are benefitting from a pioneering scheme to combat and prevent the spread of HIV/AIDS and sexually transmitted diseases, as well as drug use. Restorative processes within the regime and with external victims KE: A restorative response shifts the focus of the regime to enabling prisoners to fulfill the obligations that arise from harm their victims, their community and their family. APAC (Association for the Protection of the Condemned) Brazil[63]	Education and Vocational training KE: Prisoners' dignity can be enhanced through learning to read and being engaged in productive work. **"Redemption through Reading" (Brazil)**[64] In some **Italian**[65] prisons the inmates are employed in making wine and other products for companies. In **Canada**[66] there is a prison where victims and violent offenders work together on a farm growing vegetables.	Normalising prisons KE: By normalising prison conditions as far as it is possible not only is the dignity of prisoners being respected but they are also given opportunities to take responsibility, sustain important relationships and resist the internalisation of 'condemnation'. **Beveren Prison (Belgium)**[67] **Halden Fengsel (Norway)**[68] **Berwyn (UK)** Family support KE: It is important that prisoners' relationship with their partners and children are maintained. **Exodus and Humanitas (The Netherlands)**[69]	System change KE: A crisis in the system creates the urgency and opportunity for fundamental change. Following a revolution in 2010/11 the **Ministry of Justice in Tunisia** has committed to operationalizing prison detention to observe human rights protocols, stimulated by financial and political support from the European Union. **Scotland** has the second highest rate of female offenders in Europe and the country's only all-female prison was branded not fit for purpose by HM Inspectorate of Prisons. In 2015 the Justice Secretary for Scotland decided that a more humane approach to the rehabilitation of female offenders was necessary. 6 new smaller facilities will be opened between 2018-2020.

7.6. Reintegration: How can people who have been incarcerated be supported to reintegrate so that they have access to the relationships and resources required for a good life and for desistance from harming others?

The most important and usually the most neglected aspect of rehabilitation is resettlement in the community on release from prison. Practical and moral support in finding accommodation and employment is critical. Processes such as family group conferences before release and Circles of Support and Accountability on release have also proved effective.

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[63] https://www.ibj.org/2009/08/14/apac-associacao-de-protecao-e-assistencia-aos-condenados-an-alternative-vision-for-prisoners-from-brazil/

[64] http://imaginingjustice.org/blogs/redemption-through-reading/

[65] http://www.prisonobservatory.org/index.php?option=com_content&view=article&id=10:prison-conditions-in-italy&catid=13&Itemid=116

[66] http://www.cbc.ca/keepingcanadasafe/blog/from-puppies-to-farming-an-in-depth-look-at-innovative-prisoner-rehab-progr

[67] http://www.bbc.co.uk/news/world-europe-36067653

[68] https://haldenfengsel.no

[69] https://www.clinks.org/sites/default/files/jive_report_building_successful_partnerships_final.pdf

	Recognise personal agency and opportunities for active responsibility	Believe in redeemability and opportunities to signal change	Build strong pro-social relationships	Bear witness to abuses of human rights, discrimination and stigmatisation
Reintegration	Employment KE: Training that leads to real, skilled jobs respects the dignity of the prisoner. **Switchback (UK)[70]** **Mekelle Prison Project (Ethiopia)[71]**	Community support KE: Practical support for reintegration is best provided in the community by people in a style that limits stigma. **Pension Skejby (Denmark)[72]** The **Association for Creative Social Work (Croatia)** **St Giles Trust (UK)**[73] **Circles of Support and Accountability[74]**	Family reintegration KE: Direct communication between the prisoner and the whole family prior to release can enable all members of the family to prepare for reintegration and to request support. **Family group conferencing (Hungary)[75]**	Campaigns to overcome discrimination against ex-prisoners in the fields of employment, housing etc.

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[70] https://www.switchback.org.uk

[71] http://www.ilo.org/pardev/development-cooperation/WCMS_228592/lang--en/index.htm

[72] http://www.pensionskejby.dk http://cosacanada.com

[73] http://www.stgilestrust.org.uk

[74] http://cosacanada.com

[75] http://mereps.foresee.hu/en/segedoldalak/news/276/03026ecd2b/214/

8. How can more humane approaches be developed and sustained through criminal justice reform, quality assurance, research and evaluation?

8.1. How can more humane approaches demonstrate their value?

This initiative refers to *approaches* rather than *projects, programmes, services, techniques or methods*. *Approaches* is a more inclusive term and can encompass each of these activities but is not confined by them. An *approach* tends to denote an orientation and a movement towards a destination or goal rather than a scientific method or highly developed and designed professional practice. An approach requires action designed to reach a goal. Yet this approach is not described as *more effective.* It is a *more humane approach,* which as we have explained places the importance of values at the core of the approach.

This is not to say that evidence of effective achievement of outcomes is disregarded. It is important that this initiative tests the hypothesis that treating human beings in a humane manner meets real social needs and will yield socially beneficial results. This means that there should be evidence that the approach adopted will be effective in meeting the identified needs or that it is designed in such a way as to assess its effectiveness. The second option allows the opportunity to test an innovative approach.

Research and policy on approaches to the harm caused by crime in modern society are dominated by two perspectives: on the one hand empirical sciences, the observation, description and measurement of crime and its causes and the effectiveness of responses established to address these causes, and on the other hand a philosophical or ethical commitment to values, beliefs and norms which determine how society ought to be and how approaches ought to contribute to such a society.

Empiricism, 'the force of what is', tends to lead to the pragmatic acceptance of reality typified in the criminal justice system in the practices of risk assessment and management. However, there have always been reformers who have channelled 'the force of what ought to be'. These people have been driven by ideas, moral principles, justice, the appeal of the common good, conscience and faith. There is and always will be a gap between these two forces, between reality and vision.

Ferrara offers a 'third term' as an alternative to facts and values as a means of understanding the world, 'the force of the example'. He defines exemplarity as "entities, material or symbolic, that are as they should be, atoms of reconciliation where *is* and *ought* merge and, in so doing, liberate an energy that sparks our imagination." (2008:ix-x). Exemplarity can take one of two forms; examples of best practices judged on existing criteria or examples of completely new practices, which extend the range of possibilities open to society. Ferrara argues that the exemplarity

of *what is as it should be* accounts for much of the change in the world. Examples "illuminate new ways of transcending the limitations of what is and expanding the reach of our normative understandings." (2008:3)

Furthermore, exemplarity allows the reconciliation of universal values and cultural pluralism. An example of best practice can show: "How human dignity can be protected and how diversity can be reconciled into unity without dissolving itself into homogeneity." (Ferrara 2008:14) An authentic example in a particular context can demonstrate the validity of a value that can be a source of inspiration in another context. The nature of examples is "to set the imagination in motion and to further or enhance our life." (2008:22) They provide "outstanding instances of authentic congruence that are capable of educating our discernment by way of exposing us to selective instances of that special pleasure called by Kant the feeling of "the promotion of life" (*Beförderung des Lebens).*" (2008:22)

Ferrara believes that it is important for people to experience exemplary events in which ideas and values are implemented so as to achieve a satisfactory result. It is important because the experience of an event as it should be opens people's minds to the possibility that how they have always addressed harm could be transformed or at least improved.

This is what *more humane approaches* seek to achieve – concrete examples, which people can attest to be both real and successful.

These dimensions of *humane* can be quantified through measures of efficacy and efficiency:
➢ reducing the number of people causing harm;
➢ reducing the number of people being harmed;
➢ reducing the number of people being prosecuted;
➢ reducing the number of people being incarcerated;
➢ increasing the number of people improving their educational attainment, gaining employment, and other personal and social circumstances;
➢ increasing the number of people rebuilding relationships with their family or community.

8.2. Effective delivery

Once a more humane approach has gained the support of policy and finance, it must, of course, be implemented competently both to sustain the credibility of these approaches and to test their effectiveness. This involves:
➢ the effective management of staff, finance, and information;
➢ the recruitment, training and supervision of appropriate staff;
➢ quality assurance and performance management systems;
➢ monitoring and evaluation systems.

New approaches may require external expertise to advise on process design, to deliver training and to evaluate the quality of the process and its outcomes.

8.3.   10 suggested Exemplars

We have described some existing exemplars of more humane approaches in the regional mapping reports. In this section we suggest areas where real innovations could be tested.

The external mapping of Latin America indicated that violence was a major issue in most countries of this region. However, violence is an issue in all regions and we suggest that comparisons between regions using these or other exemplars would yield important findings in the emerging field of more humane approaches. These include the extreme violence of terrorism, hate crime, violence against women and girls, violence against children, and gang violence.

Violent acts violate the physical, emotional and psychological integrity in a more direct and a more intimate way than any other criminal behaviour. The perpetrator demonstrates a lack of respect for the human dignity of the victim. In doing so the victim is treated as an object or means to an end and as a consequence is dehumanised. We have also argued that committing a violent act requires the suppression of human qualities such as compassion and respect and dehumanises the perpetrator.

Consequently, our strategy to develop and deliver more humane approaches to addressing the harm of criminal behaviour prioritises violence caused both by criminal behaviour and by structural conditions such as sexism and racism.

Prevention

1.   Support schools to challenge the normalisation of violence as a means of dealing with conflict.
This can be done through establishing a strong non-violent culture within the school, through staff taking responsibility to be role models in non-violence and through restorative conferences and circles to address violence or the threat of violence when it occurs.
Outcomes would include reduced incidents in violence and attitudinal change as measured by annual surveys.

Victims

2. Develop victim initiated restorative processes.
The flaw in most restorative processes is that it depends upon the perpetrator being identified and being willing to participate in the process. This means that the victim has limited access to reparation and that restorative processes tend to be unbalanced in favour of the offender. Often this results in Victim Support organisations being sceptical about restorative justice.

In relation to violence the different contexts, (domestic, sexual, street, inter-group and intercultural, race hate, terrorism) in which it takes place, should be taken into consideration but a core set of theoretical premises and principles of practice should be employed based upon the assumption that the harm of violent crime is a product of oppressive relationships.

Victim support agencies could be supported to develop victim led restorative justice in relation to the harm of violence.

Diversion

3. <u>Support communities to challenge gang violence in their neighbourhoods.</u>
This can be modelled on the successful Operation Ceasefire in Boston. The approach combines three elements:
   I.   Representatives of the local community expressing their disapproval of the gang members' violence and requesting them to desist and reintegrate within the community.
   II.   The offer of support to desist and reintegrate from service providers, probation and parole officers, and church and other community groups.
   III. A focused deterrence strategy by the police aimed at the most serious offenders to apprehend and prosecute those who carry firearms, to put them on notice that they face certain and serious punishment for carrying illegal firearms.

A simple pre/post comparison (Braga et al 2001) found a statistically significant decrease in the monthly number of youth homicides in Boston, Mass., following implementation of Operation Ceasefire. There was a 63 percent reduction in the average monthly number of youth homicide victims, going from a pre-test mean of 3.5 youth homicides per month to a post-test mean of 1.3 youth homicides per month.

This approach to violence has also been used to address domestic violence successfully in High Point North Carolina. It could also be used in relation to radicalized violent extremists and other forms of violence.

Desistance

4. <u>Test a rigorous approach which combines restorative justice with a follow-up support based upon the research into desistance from offending.</u>
Restorative justice has consistently been found to reduce reoffending and desistance research has discovered the processes through which most people eventually desist from offending. There are clear links between the two approaches. For example, the key operating values in restorative processes are according to Howard Zehr, responsibility, relationships and respect. These complement the key desistance processes of maturation, social bonding and changing one's identity and narrative.

These links could be tested in practice to find out if it is possible to support and accelerate desistance in relation to violence.

Reducing the use of custody

5. Reduce pre-trial remands in custody.
The incarceration of people before trial is a major cause of prison overcrowding throughout the world. As a result prisons become violent places which reinforce criminality.

This requires an international campaign:
    I. To change the law;
    II. To develop alternatives to custody e.g. bail support schemes.

Criminal Justice Reform

6. Support the establishment and growth of international networks to promote more humane approaches in each region.
Networks focusing on more humane approaches and/or restorative justice bring policy makers, leaders, practitioners, researchers and trainers together:
    ➤ to raise awareness and promote reform and innovation in their field;
    ➤ to share best practice and innovation across national and professional boundaries.
The European Forum for Restorative Justice is an example of an effective network. Similar networks could be established in Latin America, North America, Asia (Asia-Pacific Forum for Restorative Justice currently exists as a loose network) and Africa.

7. Support countries to develop the 'moral community' that Christie (1993) describes in Norway through which politicians, practitioners, journalists, and prisoners meet privately on retreat annually. For Christie these meetings encouraged participants to consider what standards of treatment are valid for all human beings not just the objectified and stigmatised prisoner.

8. Support work towards building dynamic security (UNODC 2015) approaches in prisons. Physical and procedural security arrangements are essential for any prison. But daily interactions between staff and prisoners, the development of positive relationships, fair treatment and concern for prisoners' well-being, and a routine of constructive activities all reduce the risk of discipline problems, conflict and breaches of security. Furthermore, by having positive relationships with prisoners staff will not only act as positive role models but will also be more aware of what is going on generally and with individual prisoners and be able to 'nip problems in the bud'.

9. An example of an aspect of the criminal justice system that could be viewed as less humane would be the detaining of children in prison with adults. In many parts of the world, children and young offenders may be placed in prison with adults, which signifies a large violation of humane approaches and human rights. To campaign for reform in this practice would be consistent with a commitment to social justice.

10.   Support the development of holistic strategies in metropolitan areas based upon the restorative city model. This would provide an opportunity to research the effectiveness of integrating more humane approaches throughout the 'offender pipeline' from prevention to reintegration.

Some global strategic priorities:
1. Strengthen civil society so that most harm caused by criminal behaviour can be dealt with outside of the criminal justice system.
2. Enable victims to take active part in the Criminal Justice system such as taking the initiative in restorative processes.
3. Develop more humane approaches to divert people from custody.
4. Support smaller custodial institutions based upon the Mandela principles of normalisation and effective reintegration.

Appendix 1 Regional scans of Europe, North America and Latin America: summary of findings, conclusions and recommendations

Regional scan Latin America: summary of findings and conclusions

1. There is an exceptionally high level of violence and murder in many Latin American countries.
   - Support strategies to challenge the normalisation of violence, including strategies to engage people likely to use violence (prevention).
2. Drugs related crime is a major problem in the region and affects also the integrity of the criminal justice system and other governmental institutions in a negative way.
   - Investigate the existing promising regulation on drugs in Uruguay, to find out whether other countries in the region could learn from it.
3. Impunity is a common problem in the region. Because there is minimal trust in the criminal justice system, citizens are stimulated to take justice into their own hands, often in inhumane forms such as lynching or vigilantism.
   - Build the capacity of citizens to engage in civil courage activities or other more humane responses when faced with criminal behaviour.
4. Civil society is generally underdeveloped in many Latin American countries.
   - Stimulate the societal infrastructure that facilitates social change. Build the capacity of civil society to engage in criminal justice reform and increase the societal base for more humane approaches to criminal behaviour.
5. In several Latin American countries the police have a reputation for using excessive force.
   - Support communal action against police violence and other activities in the field of citizens security
6. It seems that victim support could be better tailored to the needs of specific groups of victims.
   - Stimulate victim support for vulnerable groups that are especially at risk of becoming a victim, such as indigenous groups, women, illegal migrants and LGBTI people
7. There is a need for more humane approaches in the field of crime prevention and reintegration.
   - Stimulate local public private partnerships in the field of crime prevention and reintegration of offenders.
8. Prison conditions are often very inhumane due to overcrowding, maltreatment and violence
   - Support promising initiatives to humanise prison conditions.
9. The incarceration rate and amount of pre-trial detention is very high in the region
   - Support strategies to reduce prison sentences and pre-trial detention.
10. The recent regional human right charters on *Justicia Restaurativa*, the growing interest for restorative justice amongst regional academic and existing promising

projects in this domain provides opportunities for further development of these innovative practices.

> ➢ Support the further development of restorative justice and other forms of (indigenous) communal justice which stimulates active participation of victims, offenders and community members.

11. Criminal justice reform on the level of legislation has improved quite a lot in the last decade, but there is still room for improvement.

> ➢ Stimulate and advocate for a separate criminal justice system for children and young adults and organize international pressure and support.
> ➢ Use the momentum the current revision of the criminal justice code in Uruguay provides for humanizing legislation in this field. Learn from good examples in Chile and the Netherlands.

12. There is a lack of evaluation research and other data that is needed for sound policy development and programme management

> ➢ Stimulate knowledge development by sharing the 'good practices library', that is included in the overall report, with regional stakeholders and by building upon the growing academic interest for topics like restorative justice and criminal justice reform in the region.
> ➢ Support research on more humane approaches in the region.

Regional scan North America: summary of findings and conclusions

1. There is a serious problem with gang violence and murder in some cities in the USA.

> ➢ Effective strategies to reduce violence based upon the values and principles of more humane approaches.

2. There are low levels of trust between the police and other agencies of the criminal justice system and communities that are excluded from power and prosperity.

> ➢ These strategies should be linked to programmes to improve relationships with law enforcement.

3. There is a serious problem of mass incarceration in the USA.

> ➢ A focus on effective and credible alternatives to imprisonment is needed

4. This mass incarceration predominantly affects the African American and Hispanic communities.

> ➢ Social support to different groups in society to prevent them from falling into crime.

5. Prison conditions are harsh and exacerbated by the over-use of solitary confinement.

> ➢ Focus on improvement of such harsh and inhumane conditions

6. There are too many children and adolescents in (long term) detention.

> ➢ Improve alternatives to detention.

7. Restorative justice while growing is still very patchy in coverage throughout the States and Canada.

> ➢ Focus on the potential and development of restorative justice.

8. Sexual assault is seen as problematic in Canada, as it is reported very little to the police.

- ➢ Invest in better information and care by the police regarding sexual assault and violence against women and children.
9. A lot of crimes are drug related in the United States and to a lesser extent in Canada. The 'opioid epidemic' (including addictions to pain relievers, heroin and fentanyl) is killing large numbers of people in the region due to overdoses and it affects public health as well as social and economic welfare.
    - ➢ More should be done to deal with drug problems in a humane way by looking at the needs of the addicted, how to invest in prevention and possibly in legalising softer drugs like marihuana for recreational use.

Regional scan Europe: summary of findings and conclusions

1. While the incidence of violence is lower in this region, there are concerns over domestic violence, inter cultural conflict and hate crime, and terrorism.
    - ➢ Support more humane approaches to meeting the needs of victims of violence in general and domestic violence in particular.
    - ➢ Support initiative to challenge the normalisation of violence.
    - ➢ Test restorative responses to violence in these contexts.
2. Human rights violations do occur in some countries, including the use of the death penalty in Belarus and the consideration of re-installing it in Turkey
    - ➢ Invest in stopping gross human rights violations, such as abolishment of the death penalty and inhumane imprisonment.
3. Intercultural conflicts are reported in many European countries
    - ➢ Invest in developing restorative responses to inter-cultural cohesion.
4. Prison populations are in many countries too high. Partly this is due to high numbers of people detained pre-trial.
    - ➢ Developing viable alternatives to custody combining restorative justice with the research into desistance from offending.
5. There are a disproportionate number of foreigners in European prisoners.
    - ➢ Developing viable ways to support bail for people, particularly foreigners, awaiting trial.
6. There are problems with overcrowding, problems with mental illness and suicide in prisons.
    - ➢ Investing in more humane prison systems and small housing units as developed in for example Scandinavia.
7. While restorative justice is growing in Europe, it is still under-developed in terms of coverage, quality and legislation.
    - ➢ Consider ways to support the potential of restorative justice to humanise the criminal justice system.
8. Identifying which countries are most in need of more humane approaches, is quite complex. The different countries in the region face different problems, and have strengths on different areas.
    - ➢ A specialized, country-based approach based on this research would therefore be beneficial.
9. Victim support in Europe has improved since the Victim Directive of 2012, but can be better tailored to the needs of specific groups of victims.

- ➢ Stimulate victim support for vulnerable groups that are especially at risk of becoming a victim, such as indigenous groups, women, illegal migrants and LGBTI people.
10. **There is a need for more humane approaches in the field of crime prevention and reintegration.**
    - ➢ Stimulate local public private partnerships in the field of crime prevention and reintegration of offenders.
11. **Violence against young people is a matter of concern and lacks solid research and reactions.**
    - ➢ Support strategies to improve data collection and adequate reactions on violence against youth.

Appendix 2   Recommended reading

Aertsen, I., Daems, T., & Robert, L. (Eds.). (2006). *Institutionalizing restorative justice*. Devon, UK: Willan Publishing.

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Appendix 3 The project team

The core team of this international research exists of three senior researchers: Annemieke Wolthuis coordinated the overall project. She holds a PhD in restorative justice and children's rights and is a researcher, trainer and mediator in the Netherlands. Tim Chapman is a visiting lecturer of the University of Ulster with a back ground in probation, and currently the chair of the European Forum for Restorative Justice. Anneke van Hoek is a Dutch criminologist and co-founder of Restorative Justice Nederland.

The supporting team existed of:
- Malini Laxminarayan who holds a PhD in victimology and who is experienced in both qualitative and quantitative research;
- Marit de Haan who recently graduated in international criminology and speaks and reads Spanish, which was very valuable when executing research in Latin America.
- Philip McCready, PhD in Restorative practices & part time lecturer, University of Ulster, was instrumental in the collection of evidence based practices.
- John van Kesteren, who also holds a PhD, is an expert in statistical techniques and quantitative databases on crime and responses to criminal behaviour. He has been working for many years on the international crime victim survey (ICVS) in close collaboration with professor Jan van Dijk.

Consultants
In addition to this team of researchers we engaged two leading professors as consultants: Shadd Maruna (Manchester University) to advise on current approaches with offenders and Antony Pemberton (INTERVICT, Tilburg University) to advise on approaches with victims of crime.

The European Forum for Restorative Justice supported the project with relevant data and studies on restorative justice. They also administered a survey among its members and network partners.

We consulted several other experts in the fields of human rights, criminal justice and restorative justice. Among those were: Jan van Dijk, Christa Pelikan, John Braithwaite, John Blad and Jacques Claessen.

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