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# Chapter 9

## The use of non-custodial measures in the administration of justice

*Facilitator's Guide*

# Learning objectives I

- To familiarize the participants with the existing international standards that promote the use of non-custodial measures
- To explain the aim of non-custodial measures and their use at the various stages of the administration of justice
- To help the participants identify what kinds of non-custodial measures may be useful in the context of their professional responsibilities

# Learning objectives II

- To acquaint the participants with the legal protection linked to the use of non-custodial measures
- To familiarize the participants with the consequences of non-compliance with the dispositions of non-custodial measures

# Questions I

- What alternatives to imprisonment exist in the country where you work, and in regard to what kinds of criminal offences?
- Have you, in your role as judge, prosecutor or lawyer, advised, or resorted to, the use of non-custodial measures?
- In what situations do you think that it would be particularly useful to do so?

## Questions II

- Are there special groups of people that are more likely to benefit from the use of non-custodial measures than others?
- If so, identify these groups and explain why they are more likely to benefit from alternatives to imprisonment
- What legal safeguards exist in the country where you work with regard to the imposition of non-custodial measures?

# Questions III

- What are the sanctions for violations of the conditions attached to non-custodial measures in the country where you work?
- How do you think that the use of non-custodial measures might be further developed in the country where you work?

# Relevant legal standards and rules

- The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990
- The International Covenant on Civil and Political Rights, 1966

# General principles I

## The fundamental aims of non-custodial measures (1)

The primary purposes of non-custodial alternatives to imprisonment are:

- To enable the individualization of penal sanctions to the needs of the offender, thereby making the sanctions more effective, with a view to the rehabilitation of the offenders and to facilitate their reintegration into society
- To promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society
- To contribute to preserving the exceptional character of pretrial detention

Non-custodial measures are also less expensive for society in general than deprivations of liberty.



# General principles II

## The fundamental aims of non-custodial measures (2)

Individualized penal sanctions involving non-custodial measures must be considered in the light of the general aim of the criminal justice system, which is to reduce delinquency, and the need to recognize the needs and interests of the victims of crime.

The use of non-custodial measures must respect internationally recognized human rights.

# General principles III

## The scope of non-custodial measures (1)

The flexibility inherent in non-custodial measures implies that they can be used at any time of the proceedings.

Non-custodial measures must be applied fairly and objectively; they must not involve discrimination. Differences in treatment are lawful only if they have a reasonable and objective justification.

# General principles IV

## The scope of non-custodial measures (2)

Authorities must also ensure consistent sentencing when resorting to non-custodial measures.

Non-custodial measures should be used in accordance with the principle of minimum intervention; all excessive measures must be avoided.

# General principles V

## The scope of non-custodial measures (3)

When resorting to non-custodial measures, the competent authorities must consider:

- The nature and gravity of the offence
- The personality and background of the offender
- The protection of society (the prevention of crime)
- The avoidance of unnecessary use of imprisonment

# General principles VI

## Legal safeguards (1)

The principle of legality must be fully respected in the resort to non-custodial measures, that is, resort to, and implementation of, such measures must be in accordance with the law.

Non-custodial measures shall be based on the following criteria:

- The nature and gravity of the offence
- The personality and background of the offender
- The purposes of sentencing
- The rights of victims

# General principles VII

## Legal safeguards (2)

The use of non-custodial measures requires the consent of the offender.

The offender has a right to appeal to a judicial or other competent and independent authority against the imposition of non-custodial measures.

The dignity of an offender subjected to non-custodial measures must be respected at all times and so must his or her other rights and freedoms.

# General principles VIII

## Legal safeguards (3)

The severity of the implementation of the non-custodial measure must not go beyond that authorized in the original decision.

The right to privacy of the offender and his or her family must be guaranteed in the course of the application of the non-custodial measures.

# The use of non-custodial measures

Non-custodial measures are flexible tools that can be used at the *pretrial* stage, the *trial* and *sentencing* stages or at the *post-sentencing* stage. They should always be considered in the light of the principle of minimum intervention.



# Non-custodial measures at the pretrial stage

At the pretrial stage, the interest of the offender in seeing the proceedings abandoned has to be weighed against:

- The protection of society
- Crime prevention/the promotion of respect for the law
- The rights of victims

A common non-custodial measure at this stage is the abandonment of proceedings.

# Non-custodial measures at the trial and sentencing stages I

At the trial and sentencing stages, the resort to non-custodial measures should consider:

- The rehabilitative needs of the offender
- The protection of society
- The interests of the victims

Victims should be consulted whenever appropriate.

# Non-custodial measures at the trial and sentencing stages II

Rule 8.2 of the United Nations Standard Minimum Rules for Non-custodial Measures mentions the following possible non-custodial sentencing dispositions, among others:

- Verbal sanctions, such as admonition, reprimand and warning
- Conditional discharge
- Status penalties
- Economic sanctions and monetary penalties, such as fines and day-fines
- Confiscation or an expropriation order
- Restitution to the victim or a compensation order

# Non-custodial measures at the trial and sentencing stages III

Rule 8.2 of the United Nations Standard Minimum Rules for Non-custodial Measures further mentions the following possible non-custodial sentencing dispositions:

- Suspended or deferred sentence
- Probation and judicial supervision
- A community service order
- Referral to an attendance centre
- House arrest
- Any other mode of non-institutional treatment
- Some combination of the above measures

# Non-custodial measures at the post-sentencing stage I

At the post-sentencing stage the authorities should have a wide range of non-custodial measures at their disposal in order ensure the earliest possible release of the offender for the purpose of facilitating his or her reintegration into society.

# Non-custodial measures at the post-sentencing stage II

According to Rule 9.2 of the United Nations Standard Minimum Rules for Non-custodial Measures, such dispositions may include:

- Furlough and halfway houses
- Work or education release
- Various forms of parole
- Remission
- Pardon

# Implementation of non-custodial measures I

## Supervision (1)

The supervision of non-custodial measures is aimed at reducing reoffending and helping the offender's social reintegration. The need for supervision depends on the nature of the non-custodial measure concerned.

The supervision shall be carried out by competent authorities in accordance with conditions prescribed by law.

# Implementation of non-custodial measures II

## Supervision (2)

The supervision has to be adjusted to the needs of the offender and depends, for its success, on his or her consent, participation and cooperation. It should be reviewed periodically.

Supervision can be accompanied by psychological, social and material assistance.



# Implementation of non-custodial measures III

## Duration

The duration of the non-custodial measures shall be established by the competent authority in accordance with the law; the measure can be terminated early and may also be prolonged if necessary in the interests of the offender.

# Implementation of non-custodial measures IV

## Conditions (1)

The conditions attached to non-custodial measures shall take account of the needs of society as well as the needs and rights of the offender and victim. The conditions shall be realistic and precise and shall be explained to the offender both orally and in writing.

It may be necessary to develop special treatment schemes to deal with the needs and problems of particularly difficult categories of offenders.

# Implementation of non-custodial measures V

## Conditions (2)

In case of breach of the conditions of non-custodial measures, the measures may be modified or revoked. However, such a breach should not automatically lead to a deprivation of liberty.