



The Impact of Labor Penalty for Public Benefit in Empowering Environmental Restoration



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Abstract

The labor penalty for public benefit is utilized within penal law as a modern alternative to short-term imprisonment, proving highly effective in convict rehabilitation and societal reintegration. Our rationale suggests that extending this approach to environmental restoration efforts could significantly amplify its impact, particularly in addressing damages resulting from pollution, waste, and other human-generated pollutants.

The findings underscore that the labor penalty for public benefit embodies a win-win approach for all stakeholders involved: the government, individuals, and the environment.

Keywords

Labor Penalty for Public Benefit;
Environmental Rehabilitation;
Modern Punitive Policy;
Alternatives to Punishment;
Rehabilitation of the Convict.

الكلمات المفتاحية

العمل للنفع العام؛
التأهيل البيئي؛
السياسة العقابية الحديثة؛
بدائل العقوبة؛
تأهيل المحكوم عليه.

دور عقوبة العمل للنفع العام في إعادة التأهيل البيئي

ملخص

تعتبر عقوبة العمل للنفع العام بديل ناجع للعقوبة السالبة الحرية قصيرة المدة في السياسة العقابية الحديثة، وقد أثبت تطبيقها فاعلية كبيرة في تأهيل المحكوم عليه و إعادة إدماجه في المجتمع.

وهي ذات بعد هام إذا طبقت في الشق البيئي خصوصا في إصلاح الأضرار الناتجة عن التلوث البيئية بالنفايات و غيرها من الملوثات التي يمكن إصلاحها بيد الإنسان، و بهذا يمكن استغلال هذا النوع من العقوبات للصالح العام لحماية البيئة و جبر الأضرار الواقعة عليها و دون الإضرار بحقوق المحكوم عليه المعني بهذا البديل.

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I- Introduction :

The new world witnesses a shift in legal priorities, with many advocates who struggle to implement novel approaches concerning the Human rights and laws. One such priority is engrained in modern penal policy, which states that individuals convicted of minor crimes possess rights of 'reentering' or 'rehabilitation' vis-à-vis the society: "conceptually, the term reentry can also be employed to describe the process of an inmate's movement from custody into society" (Jonson & Cullen, 2015, p. 7)

The inmate, who may be considered as a victim of bad circumstances, has the right to be reintegrated into the society as a productive and rehabilitated member. This reintegration will be as a compensation for the adverse circumstances he faced, which led to his deviation from societal norms and involvement in criminal activities.

Regardless the inmate surroundings and environment, the government has been allocated the dual mission of fostering the rehabilitation and reintegration of incarcerated individuals into society on one hand, and endeavoring to mitigate the shortcomings inherent in the traditional punitive approach on the other one. Historically, penal policies centered solely on the concept of retribution, resulting in an overabundance of punitive measures and a burgeoning prison population, "the latest data report shows that there will soon be 11.5 million people who are incarcerated worldwide" (Hull, Brekler, & Jeagers, 2023), thus imposing a significant financial strain in their care.

Consequently, many correctional institutions in various countries, notably within the Algerian state, have found One effective solution to address this issue by adopting the labor penalty for the public benefit, which serves as an alternative to short-term imprisonment and the loss of freedom. This approach has gained prominence as a punitive measure instead of the classic sentence which has bad impact on both individual and society.

The legal commandments which preserve the rights of the human being and look for his well-being, has also a special concern for environmental preservation, recognizing its vast diversity and significance in sustaining life and humanity as a whole.

Internationally, numerous initiatives have arisen to safeguard and address the environmental degradation that has occurred. Countries, including Algeria, have responded to these concerns through legislative measures and practical initiatives, extending beyond the realm of law to encompass economic activities aimed at implementing mechanisms for the preservation of environmental heritage.

Within the spectrum of these divergent concepts (penalty, inmate environment, jail) there is a point of convergence within the legal framework. The utilization of Public Benefit as a punitive measure, governed by specific legal regulations outlined by the legislature, can be harnessed within the realm of environmental conservation.

Therefore, the inmate who is condemned by a labor penalty for the public benefit will be engaged in activities aimed at environmental restoration, whether through cleaning initiatives in diverse locales such as beaches, forests, and riverbanks, or through tasks like waste collection, tree planting, or contributing to eco-friendly industries. Such actions are conducted under the oversight of judicial authorities to ensure the protection of individuals' rights while simultaneously serving the dual purpose of general and specific deterrence. Moreover, they contribute to the rehabilitation of the environment in response to the harm it has endured.

There are many previous studies, indeed, in Algerian university that have explored the role of public benefit penalties in individual reform and rehabilitation. For instance: the article of 'Mezayti Fateh' and 'Khalout Souad' (2022) entitled: "عقوبة العمل للنفع العام ودورها في إصلاح وتأهيل المحكوم عليه" (خلوط، 2022). The article of Elorfi Fatima (2021) entitled: "نور عقوبة" (العرفي، 2021). Also, we mention the article of 'Madkour El-khamssa' (2022) entitled: "نور عقوبة العمل للنفع العام في تأهيل المساجين وإعادة ادماجهم" (مذكور، 2022)

However, what sets our work apart is its focus on bridging the gap between punishment and environmental restoration. Unlike prior researches, which primarily emphasized the rehabilitation of individuals without addressing environmental concerns, our study uniquely intertwines these seemingly disparate concepts, recognizing the potential for community service penalties to simultaneously foster individual transformation and environmental rejuvenation.

Accordingly, our research centers on a main inquiry: How can penal institutions aid in environmental rehabilitation through the labor penalty for public benefit for prisoners? This main problem encompasses secondary questions, including:

-How can punishment be reimagined as a transformative agent for both individual rehabilitation and environmental restoration?

-Furthermore, how can labor penalties be optimized in addressing the myriad environmental violations?

-Lastly, can the participation of prisoners in environmental restoration efforts warrant their integration into society, symbolizing a form of societal repayment encompassing not only personal rehabilitation but also environmental restoring and national rebuilding?

To address this question, we have adopted an analytical approach besides the descriptive method as required by the research demands. Our work is structured into two principal sections: The first section explores the concept of community service as a substitute for short-term imprisonment, while the second section delves into strategies for guiding individuals sentenced to public benefit penalties towards environmental rehabilitation.

1.1 The Concept of Labor for Public Benefit in Algerian Penal Legislation:

The Algerian Penal Code recognizes labor for public benefit as a sanctioned penalty for certain minor offenses, adhering strictly to the principle of legality. In its legal framework, the Algerian legislature has meticulously defined the criteria and procedures governing the application of this form of punishment. Such measures are designed to safeguard the rights of the convicted individual and ensure the fair and respectful implementation of their imposed sentence. Mahmoud Taha Djellal (2005) has defined the labor for public benefit in the following passage:

'الزام المحكوم عليه بالقيام بعمل ذو نفع عام خارج المؤسسات العقابية لخدمة المجتمع دون مقابل خلال المدة المقررة في حكم الإدانة ويؤدي هذا العمل لصالح شخص معنوي عام أو مؤسسة عامة أو لفائدة جمعية مؤهلة' (جلال، 2005، صفحة 23)

“Labor for public benefit entails compelling the convicted individual to undertake community-oriented tasks outside of correctional institutions, serving the populace without remuneration for the duration stipulated in the sentencing decree. Such assignments are carried out for the advantage of a public legal entity, a governmental body, or a recognized charitable organization.” (Our translation)

The aforementioned definition states that the labor for public benefit is a benevolent job i.e., the inmate will not receive any amount of money regarding his job. The Charity Commission for England and Wales describes the public benefit job as a Charity: “Public benefit is an essential part of what it is to be a charity” (Charity Commission for England and Wales, 2017, p. 3)

In the same context, the labor penalty for serving the public benefit in Algeria, also entails to undertake specific tasks outside the correctional institution for free. These tasks are carried out by the inmate without remuneration during specified hours set by the authorities and in accordance with the provisions of the law. They serve as an alternative to short-term imprisonment. (صافي، 2020 / 2021، صفحة 188)

So, this job of charity for the public benefit is considered as a substitute form of punishment. This form of penalty, known as public benefit, functions as a distinct mechanism for temporarily halting the enforcement of a short-term custodial sentence, constituting an original punishment alongside other original penalties outlined in the Algerian Penal Code. (عدو، 2010، صفحة 387)

Bouceri Abdullatif defines the labor penalty for public benefit as; “an alternative punishment, also referred to as an alternative to imprisonment, allows the judge, exercising discretion to tailor the punishment after delivering the initial sentence, to propose to the convict, with his consent and in accordance with legal provisions, the opportunity to undertake specific tasks for the betterment of society over a designated period of time.” (our translation)

"أنها عقوبة بديلة عن عقوبة الحبس بمقتضاها يمكن للقاضي في إطار سلطته التقديرية في تفريد العقوبة بعد النطق بالعقوبة الأصلية أن يعرض على المحكوم عليه وبموافقته وفقا لنصوص القانون أداء أعمال محددة لصالح المجتمع لمدة زمنية محددة" (بوسري، 2018/2017، صفحة 240)

Based on the foregoing, we find that the practice of suspending sentences while participating in public service differs from the typical suspension of sentences. Unlike the conventional approach mandated by the judge, this alternative method is contingent upon the convict's consent. It doesn't necessitate the commission of a crime for the punishment to be carried out; rather, it only requires the convicted individual to fail in meeting their imposed obligations. (بوسري، 2018/2017، صفحة 287)

1.2 Requirements for Imposing Labor Penalty for Public Benefit:

In order to impose the labor penalty for public benefit, specific objectives and procedural conditions must be met, either within the accused individual or in the circumstances surrounding the case, to ascertain the appropriateness of utilizing this alternative measure

The decision to employ the option of public benefit as a penalty, rests within the discretion of the competent judge. However, various conditions must be satisfied to initiate the procedure. These conditions encompass establishing the guilt

of the accused and issuing a final verdict with an effective prison sentence, as stipulated in Article 5 bis 1 of the Algerian Penal Code.

Another essential condition is the absence of a criminal history, ensuring that the convict does not pose a threat to society's security and stability. Without certainty regarding this aspect, there remains a risk of harm to society, as the convict might abscond or engage in further criminal activities while benefiting from public benefit as an alternative to short-term incarceration.

Article 53 bis 5 of the Algerian Penal Code states that any individual convicted by a conclusive court ruling to a custodial sentence, whether or not it includes a suspension of execution, for a felony or misdemeanor under common law, is deemed to have a prior criminal record, without prejudice to the regulations set forth for cases of recidivism.

This provision was added by Law No. 06/23 dated 20th December 2006, published in Official Gazette No. 84, page 16. Additionally, individuals solely fined or rehabilitated in accordance with the Criminal Procedure Code are exempted from the criteria outlined in this article.

As per the provisions outlined in Article 5 bis 1 of the Algerian Penal Code, particularly in its third and fourth paragraphs, it's mandated that the punishment for the committed offense does not surpass three years of imprisonment. Additionally, the penalty imposed on the accused should not exceed one year of imprisonment, aligning with the principle that the labor penalty for public benefit serves as a beneficial alternative.

This limitation to one year aims to mitigate the drawbacks associated with short-term incarceration. (خلفي، 2017، صفحة 519) Furthermore, it's explicitly stipulated that the convict must be no younger than 16 years old at the time of committing the offense, in accordance with the regulations outlined in the Labor Code. (Article 15 of Law No. 90/11 of 03/25/1990, relating to individual labor relations, issued in Official Gazette No. 17, dated 04/25/1990)

The convict's acceptance of the community service penalty is crucial, marking the culmination of the shift from coercive to consensual criminal justice. This condition stands as an indispensable requirement for finalizing the procedures associated with community service sentencing. (بوسري، 2018/2017، صفحة 274) Explicit consent necessitates the convict's presence, and the judge himself must ensure that convict has comprehended and willingly accepted the presented idea, demonstrating full mental capacity and freedom of choice.

This procedure guarantees that the convict is aware of the responsibility to undertake the assigned tasks voluntarily and without coercion. (خلفي، 2017، صفحة 518) Furthermore, it's evident that explicit consent entails the convict's ability to physically, psychologically, and mentally carry out the assigned work. Without this capability, satisfaction with this alternative punishment cannot be guaranteed.

2. How to Guide Convicts towards Environmental Rehabilitation Work for Public Benefit

Directing convicts to engage in public benefit work for environmental rehabilitation primarily aims at reforming individuals who exhibit promising signs of reintegrating into society without posing harm to it. This approach aligns with the requirements for utilizing consensual alternative punishments and allows for the utilization of their abilities. It serves as a form of restitution for the societal harm caused, benefiting society as a whole, and operates within the parameters established by the legislator, without detriment to the involved convicts. Of course, this directive pertains specifically to individuals capable of undertaking various environmental tasks within the confines of legal regulations.

2.1 Engaging in Environmental Public Service Through Association Involvement:

In the 2020 constitutional amendment (*Constitutional Amendment of 2020, dated 12/30/2020, issued in Official Gazette No. 82*), the legislator solidified the Algerian citizen's entitlement to a clean and healthy environment, alongside the obligation of both natural and legal entities to safeguard it.

Referring to Law 10/03 concerning environmental preservation within the scope of sustainable development, it becomes evident that associations play multifaceted roles with environmental implications. They serve as advisors and hold the privilege of membership in administrative bodies and public institutions, contributing to decision-making processes regarding environmental issues and challenges. Moreover, they possess a platform for advocacy, raising awareness about the right to seek legal recourse in safeguarding the environment from inflicted harm.

If we consider the option of substituting short-term imprisonment with public benefit work as a form of punishment, as previously mentioned, entailing tasks that contribute to societal well-being and public welfare under the supervision of public institutions or associations, then the foremost priority is to channel such work towards environmental initiatives, particularly those sectors of industry reliant on manual labor.

In Hong Kong, the Correctional Services Department (CSD) manages 29 correctional institutions, in addition to three half-way houses, four rehabilitation centers. These facilities prioritize both discipline and rehabilitation. Therefore, Prisoners are assigned an assortment of tasks that are thought to offer them training that will eventually lead to their successful reintegration in society. (Chui & Cheng, 2013, p. 104).

Nevertheless, the predominant tasks assigned to inmates in Hong Kong are focused on manufacturing activities aimed at contributing to the country's economy or supporting other critical sectors. These tasks include, for instance: "manufacturing work, such as the production of office furniture, uniforms, and traffic signs, and laundry work for other government departments such as hospitals and the fire department." (Laidler, 2009)

With a strong emphasis on rehabilitation and reintegration, correctional institutions over the world are integrating association as prison volunteers to offer services to inmates, spanning from emotional support to educational seminars:

Various non-governmental organizations have volunteered to work with the Hong Kong Correctional Services Department (CSD) to provide different services and activities for prisoners. In 2004, the CSD Rehabilitation Volunteer Group was set up to support the CSD in offering programs such as language courses and computer training for inmates. (Chui & Cheng, 2013, p. 103)

The involvement of associations in environmental stewardship, within the boundaries set by law, positions them as ideal entities for overseeing individuals sentenced to public benefit work. Such individuals can contribute to society in this capacity, in accordance with the stipulations of the Penal Code, provided they are first-time offenders, pose no threat to public safety, and possess the requisite skills to fulfill their assigned tasks within the framework of this alternative punishment.

Among the activities falling under the umbrella of environmental restoration, which these associations can organize and in which convicted individuals can participate, are: clean-up efforts targeting neighborhoods, forests, beaches, and other areas affected by the proliferation of various forms of paper and plastic waste.

The convict may also engage in afforestation projects and the cultivation of beneficial plants and crops, as determined appropriate by these associations and within the legal hours designated for inmate work. Moreover, such engagement serves to distance the convict from negative influences and criminal elements often found within penal institutions, fostering a heightened environmental consciousness and reinforcing the importance of respecting and restoring environmental elements to their natural state.

Upon examining the role assumed by environmental associations and their interactions with various fields and sectors, it becomes evident that they possess significant potential to accommodate individuals sentenced to public benefit work. Environmental associations are regarded as trusted advisors to the administration concerning environmental policy.

This advisory function is crucial for the protection and advancement of the environment. Within this capacity, associations have the authority to offer opinions, submit proposals, and articulate viewpoints on matters pertaining to the environment that they deem relevant, within the confines of the law and their jurisdiction. They may advocate for arrangements with penal institutions and relevant entities to facilitate the assignment of individuals serving sentences to engage in beneficial work under their auspices. (مسعودي، 2021، صفحة 1839)

The work assigned to the convict in the aforementioned capacity is overseen by the penalty enforcement judge responsible for imposing the sentence. This supervision serves to ensure the rights of the convict are upheld while preventing exposure to work environments that do not meet necessary legal standards.

It's essential to understand that the judge overseeing penalty enforcement selects positions from available options, considering potential environmental implications and suitability for the convict's integration, all while minimizing disruptions to their daily life.

Subsequently, the judge issues a status decision delineating the recipient institution and the protocols for executing public benefit work. This decision includes comprehensive identification details of the individual, outlines the assigned tasks and associated responsibilities, specifies the total hours required, and distributes them according to an agreed-upon timetable.

Furthermore, it mandates notification upon completion of the work and immediate reporting of any failure to fulfill obligations. This decision is communicated to the individual, the Public Prosecution, the receiving institution, and the external service of the prison administration tasked with detainees' social reintegration (صافي، 2020/2021، صفحة 194).

2.2 Engaging in Public Benefit Labor within Environmental Public Bodies:

Upon reviewing Law No. 11/10 concerning municipal affairs (*Law No. 11/10 relating to the municipality, dated 07/22/2011, issued in Official Gazette No. 37, 07/03/2011.*), we observe that within its environmental scope, particularly articulated in Article 31, it delegates the responsibility for household waste management to the Health, Hygiene, and Environmental Protection Committee, with the municipality tasked with enforcing legislative compliance. This encompasses regulations pertaining to public health and hygiene standards in solid waste collection, transportation, and treatment.

Additionally, Chapter Three of this law outlines the municipality's public facilities catering to citizen needs in household waste management and related matters. (شريف، 2020، صفحة 118). In this context, it is appropriate to harness the skills of individual sentenced to public benefit labor, particularly in addressing environmental concerns.

Following similar procedures outlined previously, the convict can contribute within the framework of municipal operations, under supervision, to tasks aimed at preserving the environment, promoting public health, and ensuring cleanliness. Such tasks often necessitate physical effort, a capability the convict has already demonstrated, hence their sentencing to public benefit labor. This becomes especially pertinent considering the prevalent challenge of household waste affecting society at large.

There is merit in leveraging this punishment to achieve dual objectives rather than solely focusing on one. It's beneficial to not only rehabilitate and reintegrate the convict into society as a law-abiding individual but also to provide him with the opportunity to contribute positively to society and deter him from reoffending. This is especially valuable considering that they offer their labor voluntarily and are motivated to avoid further criminal behavior.

Concurrently, this approach addresses pressing environmental issues, such as the removal of harmful waste, which has emerged as a significant concern. Importantly, these efforts must uphold the rights of the individual involved, as determined by the relevant authorities mentioned earlier.

Furthermore, engaging in environmental protection efforts within public bodies fosters a sense of belonging and participation in charitable actions aimed at repairing the psyche of individuals who have erred in their interactions with society. Thus, it will have a significant impact on the psychological and physical well-being of the convicts since "people who are incarcerated also face comparatively higher levels of mental and physical health effects from being confined, which can be compounded by increased use of solitary confinement and social isolation" (Hull, Brekler, & Jeagers, 2023, p. 2)

Findings and Conclusion:

The study has shown that the labor penalty for public benefit stands as a successful alternative to imprisonment in contemporary penal policies. It not only serves as a means of deterrence for the individual sentenced but also contributes to broader deterrence within society. Moreover, it serves as a fitting punishment for addressing the aftermath of environmental crimes, allowing individuals to contribute towards restoration, repair, and remediation, all within the confines of controls and conditions stipulated by the Algerian Penal Code.

Key findings include:

- The implementation of labor penalty for public benefit as a punishment proves to be an effective mechanism in modern penal strategies, as outlined in Law No. 09/01, encompassing the Penal Code.
- Labor penalty for public benefit, as an alternative sentence administered beyond the walls of correctional institutions, offers a significant opportunity to steer individuals away from high criminal recidivism rates. Consequently, it enhances the prospects for the sentenced individual to reform, rehabilitate, and reintegrate positively into society.
- Given the significant threats facing terrestrial, aquatic, and atmospheric environments, it becomes imperative to strategically channel available resources towards remedying and mitigating the damage incurred. One effective approach is to engage convicts in public benefit labor tailored to address these environmental challenges, even across various sectors and forms of affiliation.

The research outcomes have satisfactorily addressed our inquiry into the efficacy of labor penalties in rehabilitating both individuals and environments. Additionally, the findings underscore the notion that individuals who have engaged in environmental restoration efforts, striving to improve both themselves and their surroundings, merit societal reintegration.

This signifies a comprehensive societal restitution, encompassing not only personal rehabilitation but also the restoration of the environment and the nation as a whole.

In summary, implementing the labor penalty for public benefit represents a mutually advantageous and awin-win approach. By doing so, the government can mitigate the financial burden on correctional institutions and the care of inmates, while convicts are spared the hardships of incarceration and loss of liberty. Simultaneously, this approach fosters environmental restoration and flourishing, creating a positive impact on society as a whole.

Among the proposed recommendations are:

- Expanding the scope of labor penalty for public benefit sentencing to include repeat offenders and individuals facing financial difficulties, not solely limited to short-term imprisonment for misdemeanors. This broader application aims to maximize the labor force's contribution to repairing environmental damage.
- Implementing rigorous legal and practical oversight mechanisms to safeguard the rights of convicts and prevent recidivism, thereby reducing the risk to society.
- Enhancing coordination among civil society organizations, environmental associations, relevant public bodies, and judicial authorities, including penalty enforcement judges and the Public Prosecution. This collaborative effort ensures prompt implementation of public benefit work sentences, optimizing their effectiveness.
- Increasing the hourly rate stipulated in Law 09/01 for recidivist offenders to enhance deterrence and motivate them to engage in unpaid work, thereby dissuading further criminal behavior because nobody accepts to work for free.
- Ensuring the provision of suitable work environments for individuals sentenced to public benefit labor, recognizing the importance of conducive conditions for their rehabilitation and contribution to environmental restoration efforts.

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