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**Making standards work: fifty years of standard-setting
in crime prevention and criminal justice**

Workshop 2: Enhancing Criminal Justice Reform, including Restorative Justice**

Background paper

Summary

Criminal justice systems must face difficult challenges. They must respond to different demands for justice made by accused persons, prisoners, witnesses, victims or groups such as women, children, indigenous people, minorities and local communities, as well as the international community. The present background paper begins by identifying some general priorities for criminal justice reform, as well as some of the known “good practices” in effecting such reform. It highlights recent examples of successful efforts to achieve such reform. In the light of recent restorative justice initiatives and attempts to promote the rights of victims, particular attention is paid to those areas. The examples are not exhaustive; they simply serve as points of departure for further enhancement of criminal justice. The paper also sets forth possible action-based agendas, including opportunities for information-sharing and capacity-building. Some broad guidelines regarding the optimal means to achieve enhanced criminal justice reform are proposed, including:

- (a) Engaging in comprehensive reforms that are integrated throughout the criminal justice system;
- (b) Coordinating reform at the regional and international levels with appropriate technical and financial assistance, to include the community and civil society in such reform;

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(c) Making effective use of limited resources but also providing adequate resources for least developed countries;

(d) Ensuring that criminal justice reform is monitored, evaluated and evidence-based.

The paper offers some conclusions upon which workshop participants may wish to base their recommendations for future criminal justice reform.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-8	4
A. Pressures on criminal justice systems	2	4
B. Access to justice	3-5	5
C. Restorative justice.	6-8	6
II. Priorities for criminal justice reform	9-24	6
A. Recognizing and respecting diversity	10-12	6
B. Protecting the vulnerable	13-16	8
C. Avoiding over-reliance on imprisonment	17-23	9
D. Incorporating international standards and resources	24	12
III. Opportunities for effective enhancement of criminal justice.	25-43	13
A. Integrated and comprehensive reform efforts	26	13
B. Regional and international coordination in reform efforts.	27	14
C. Involving the community, civil society and institutions not traditionally associated with the criminal justice system in reform efforts	28-30	15
D. Sufficient and effective investment of resources in reform.	31-36	16
E. Monitoring and evaluation of criminal justice practices	37-39	18
F. Promoting accountability and respect for relevant standards on human rights and the rule of law in reform efforts	40	18
G. Increased emphasis on crime victims and vulnerable groups such as children consistent with international guidelines and standards	41-42	19
H. Increased emphasis on the use of restorative processes and principles where appropriate and consistent with international guidelines and standards.	43	19
IV. Conclusion and recommendations	44-45	20

I. Introduction

1. Workshop 2, on “Enhancing Criminal Justice Reform, including Restorative Justice”, will help identify some of the many challenges facing the administration of criminal justice and encourage a discussion of recent experience worldwide in improving such administration. Regional preparatory meetings for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice have suggested that attention be paid to the effects of criminal justice on the most vulnerable people, in particular women, children, indigenous people and those from the poorer social strata.¹ It was also suggested at the regional preparatory meetings that the Workshop should attempt to identify best practices in criminal justice reform, implementing restorative justice approaches, developing alternatives to imprisonment and solutions to the problem of prison overcrowding, and the implementation of United Nations standards and norms relating to children in conflict with the law and restorative justice.² It was also suggested that restorative justice programmes, as well as training for those responsible for the implementation of such programmes, should be reviewed and discussed, taking into account the concerns of victims of crime.³

A. Pressures on criminal justice systems

2. Criminal justice systems are under increasing pressure to adapt to new conditions. There is national and international pressure to deal with serious forms of transnational crime, such as terrorism, organized crime, trafficking in humans, drug trafficking and trafficking in firearms. International cooperation is required to fight those forms of crime, and each national system must be brought into compliance with the international commitments of the country in question. National systems are expected to deliver security and respond to growing public expectations. In addition, many criminal justice systems are facing other difficult challenges, such as corruption, inadequate resources, political interference and inefficiency. Other challenges facing criminal justice systems include:

(a) *Crisis of public confidence and rising public expectations.* In many instances, criminal justice systems inspire less confidence than other public institutions.⁴ This lack of confidence fuels public demands for greater safety and more efficient institutions. A number of jurisdictions have introduced specific targets for the system to meet.⁵ There are also increased demands for public safety that are not always accompanied by a realistic sense of the limited role that criminal justice plays in contributing to the broader issues of public safety and security;

(b) *The perception that the criminal justice system is failing vulnerable groups.* There is widespread recognition that indigenous populations and certain racial, ethnic, religious minorities and those with disabilities experience high rates of crime victimization and are often over-represented in prison populations. There is increased recognition of the problems of gender-based violence, exploitation and abuse of children, and the secondary victimization of victims by the criminal justice system;

(c) *The rise of victim advocacy.* Having traditionally been excluded from many stages of the criminal process in some countries, victims are assuming an

ever-important role. Many jurisdictions now provide allocution rights to victims at sentencing or parole hearings. In addition, the rise of restorative justice has contributed to growing support for reforming the system by expanding the rights of victims;

(d) *Limited capacity of existing systems and lack of human and financial resources.* Most developing countries face considerable restraints on the resources that they are able to devote to criminal justice. They are often confronted with difficult choices in establishing priorities for investment in building or modernizing their systems. Many developed countries are starting to recognize that a more substantial investment of resources in policing and prisons may not necessarily produce greater public satisfaction with the criminal justice system or an increased sense of safety or justice. At the same time, the relation between criminal justice and prosperity cannot be denied, nor can the contribution to be made by criminal justice to transitional justice in countries emerging from conflict and countries with economies in transition.

B. Access to justice

3. All of the above-mentioned challenges have a significant impact on access to justice. Access to justice is a complex concept—much broader than simple demands for more access to police, prosecutorial, defence, judicial or correctional services. It includes demands for accountability for crime, protection of victims and protection of the rights of the accused, as well as the requirement that criminal justice officials abide by the rule of law. It also includes protection of the rights of members of disadvantaged groups who may be disproportionately subjected to victimization or criminalization.

4. Various international legal instruments and standards reflect the demands for access to justice. Instruments such as the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), and other related standards are concerned with the basic rights of those accused of crime. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Assembly resolution 40/34, annex) addresses the basic rights of those victimized by crime. The Rome Statute of the International Criminal Court⁶ is addressed to a new demand for accountability for the most serious crimes when that cannot be achieved within domestic justice systems. The theme of overarching access to justice can be related to the evolving understanding of justice and injustice at the community, country and international levels, as both communities and nations, especially in transitional and post-conflict settings, confront past and present injustices.

5. At the most basic level, crime challenges the security that is necessary for social and economic development. “Security is fundamental to people’s livelihoods, reducing poverty and achieving the Millennium Development Goals.⁷ It relates to personal and state safety, access to social services and political processes. It is a core government responsibility, necessary for economic and social development and vital for the protection of human rights.”⁸ There is also a need to establish sustainable security systems that contribute positively to development goals. Access

to justice in many developing and least developed countries may require specific focus on capacity-building and the protection of basic rights.

C. Restorative justice

6. Restorative processes, as defined in the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex), are those in which offenders, victims and/or others affected by a crime participate, often with the help of a facilitator, in the resolution of matters arising from that crime. The emphasis in such instances is on individual and collective needs and the reintegration of the victim and offender. Restorative justice processes have emerged as important alternatives to the criminal justice prosecutorial process and as alternatives to the use of imprisonment as a means of holding the offender accountable. Restorative justice can also be seen as complementary to the more formal process.

7. Recent experiences with peacebuilding, societies in conflict and countries in transition suggest that re-establishing the rule of law and credible criminal justice are essential foundations for achieving the Millennium Development Goals of peace, security, poverty alleviation, human rights, democracy, good governance and the protection of the vulnerable. With respect to war crimes, crimes against humanity and problems of transitional justice, there has been a renewed emphasis on achieving accountability both through prosecutions, as well as alternative approaches such as truth and reconciliation commissions based on restorative principles.

8. Restorative justice draws on existing traditional, indigenous and religious ways of dealing with disputes, but effective restorative justice practices often depend on a well-functioning and credible criminal justice system. The renewed emphasis on restorative justice is often based on the view that the State can no longer be regarded as the only source for the delivery of effective and equitable justice. The recent emphasis on seeking alternatives is reflected in the basic principles on the use of restorative justice programmes in criminal matters and other international standards such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Those instruments are important resources for Member States considering ways to enhance their criminal justice system.

II. Priorities for criminal justice reform

9. In the present section, examples of successful reform in a number of jurisdictions are used to identify some promising directions for future criminal justice enhancement.

A. Recognizing and respecting diversity

10. Reforms that may be appropriate and possible in some countries may not be feasible everywhere. In addition, there is a need to respect diversity within populations, including the interaction of the criminal justice system with women, children, the elderly, racial, ethnic and cultural minorities, and people with

disabilities. Those groups may be disproportionately affected by crime. The result may be both disengagement and alienation of some groups from the criminal justice system.

11. In a broad range of countries, various minority groups may be more likely to enter (and having left, return to) the criminal justice system. Those minority groups may be, for example, indigenous people or foreign residents. Such populations may be subjected to disproportionate scrutiny by branches of the justice system (such as the police), and that may result in differential processing by the courts or the prison or parole system. Consequently, one or more minority groups may be over-represented in the prison population.

12. A number of specific reform initiatives may be considered, including the following:

(a) Creation of culturally appropriate police services, or attempts to increase the proportion of police officers with minority backgrounds;

(b) Development of training programmes to sensitize criminal justice professionals such as police officers, prosecutors and judges to the importance of diversity;

(c) With respect to indigenous peoples, development, maintenance and evaluation of aboriginal justice, diversion and counselling programmes and dedicated courts;

(d) Information on how culturally sensitive sentencing procedures (such as sentencing circles) and sentencing options have been operated;

(e) Incorporation of new restorative justice responses to crime.

Sentencing aboriginal offenders

Australia, Canada and New Zealand are confronted with significant over-representation of indigenous persons in the prison population. One recent response to that problem has been to direct judges to make greater effort to avoid prison sentencing when dealing with aboriginal defendants.

In a number of cases, the Supreme Court of Canada has stressed the importance of restorative principles when sentencing aboriginal offenders. It has codified reparation and acknowledgment of harm and rehabilitation as sentencing objectives. In addition, it has codified directions to judges to reduce the level of incarceration of all Canadians, in particular aboriginal people. The results have been somewhat mixed: while there has been a decline in the overall number of admissions to custody, the rate of aboriginal admissions has yet to decline. Thus, the over-representation of aboriginal people in prison continues to be a problem. In some Canadian cities, special courts have been established for accused aboriginals who wish to be tried in an environment in which probation workers, prosecutors, defence lawyers and judges are familiar with the problems encountered by indigenous people in urban settings.

The Australian Royal Commission on Aboriginal Deaths in Custody⁹ provides an example of how examination of one problem can generate discussion and recommendations about a broad range of issues concerning the population at risk.

A New Zealand study showed in two separate samples a decrease in the number of persons reoffending: one sample involving Maori offenders who met with representatives of their tribe; and another involving offenders who met with victims and community panel members.¹⁰

Children in conflict with the law

There is evidence that juvenile offending is connected with both family structure and conflict in families.¹¹ Drawing upon the experiences of family conferences as practised in New Zealand and Australia, there have been proposals for youth development circles that would assist children at risk in a wide variety of areas. Such innovations could be subject to careful evaluation that would measure not only the effect of such interventions on involvement with the criminal justice system, but also on success in school and drug use reduction.¹²

B. Protecting the vulnerable

13. Protecting vulnerable members of society is another clear priority. Common examples of vulnerable populations include women, children and the elderly—all of whom account for a disproportionate share of domestic violence victims. It would also include those who have been victimized by hate crime and witnesses, especially child witnesses, who may be re-victimized as a consequence of testifying in an adversarial setting. The vulnerable may also include those who might be thought of as suspects of crime and offenders. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power explicitly recognizes that victims may include those who have suffered from the abuse of power, including the impairment of fundamental rights. Similarly, the basic principles on the use of restorative justice programmes in criminal matters recognize the need to take into consideration disparities leading to power imbalances, as well as cultural differences among the parties, and to reintegrate both the offender and the victim into the community.

14. There appears to be consensus that criminal law should play a role in addressing the problem of domestic violence. At the same time, there is also recognition of the need for longer-term solutions to domestic violence and, in particular, violence against women and children. The problem of family violence and the treatment of victims needs also to be placed in the context of international developments concerning the rights of women and children. For example, court-ordered restitution to pay for alternative housing may not be an option if basic housing itself is not available. Similarly, reforms in the developed world such as publication bans and the use of video-taped evidence may also presume a level of development and a level of criminal justice services that may not be available in all Member States.

Domestic violence

Many jurisdictions have adopted a specialized approach to responding to domestic violence. This response includes a number of interrelated elements such as: mandatory charging policies; specialized protocols for the exercise of discretion by the police; dedicated teams of prosecutors; specialized “domestic violence

courts”. In Colombia, a network of more than 32 “houses of justice” bring together a range of services to deal with issues of family violence. These include police, prosecutors and legal advisers, as well as psychologists, family services and medical and victim services. In 2002, 300,000 cases were brought to the “houses of justice”, the majority by women. About one quarter were sent on to court; the rest were resolved through meetings of the parties in conflict.¹³

15. One approach to the issue of sexual violence against women and children in many parts of the world has been the reform of substantive and procedural aspects of criminal law. That reform has been concerned both with improving the protection of the physical and sexual integrity of women and children and with minimizing the possibility of re-victimization in the course of criminal justice processes. One approach inspired by rule 70 of the Rules of Procedure and Evidence¹⁴ of the International Criminal Court is to define consent as not to be inferred by the silence or lack of resistance of the victim. The International Criminal Court also provides that no evidence of the prior and subsequent sexual conduct of the victim or witness is admissible. In this and other areas, a delicate balance has to be achieved between the rights of the accused to adduce relevant evidence in his or her defence and concerns about the privacy of the victim and witness and the potential for re-victimization in the criminal justice system. The reform of sexual assault laws may have played a role in the increased reporting of crimes of sexual aggression to the police. There have been significant increases in the reporting of sexual violence in many countries with some evidence of increases in the reporting of such violence by people known to the victim.¹⁵

Protecting victims of sexual aggression from secondary victimization

In recent years, several jurisdictions have created “rape shield” legislation, which protects rape victims who testify from intrusive cross-examination that can have adverse psychological effects. Related legislation protects the privacy interests of sexual assault victims by regulating access to third-party records sought by counsel representing accused persons at trial. In addition, many countries have increased the range of services for victims of sexual aggression by creating specialized police units as well as rape and sexual assault crisis centres.

16. The protection of the vulnerable increasingly requires international and regional cooperation and the use of international instruments in addition to the reform of criminal law. For example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II), in addition to calling for criminalization of such trafficking in each State party, also calls for specific measures for the protection of victims.

C. Avoiding over-reliance on imprisonment

17. There is clear recognition among developed and developing countries that imprisonment should be used only when no other sentence will accomplish the

objectives of sentencing. This is known as the principle of restraint. The principle of restraint has been codified in many jurisdictions, including Canada, Finland, New Zealand and the United Kingdom of Great Britain and Northern Ireland. This principle is also consistent with restorative justice goals; reintegration of the offender with the victim and the community is more difficult while the offender is detained in a correctional facility.

18. One way of conserving precious criminal justice resources is to ensure that accused persons are released while awaiting trial (unless they pose a threat to the community or represent a flight risk). Despite this, accommodating pre-trial prisoners is a problem for most jurisdictions. Article 140 of the draft transitional code of criminal procedure¹⁶ would provide for alternatives to pre-trial detention, including house detention and other forms of community supervision of the suspect. It would also provide that restrictions on the return of the suspect to the family home may be appropriate in cases of domestic violence. There is always a danger that bail programmes may function in ways that discriminate against accused persons who cannot afford to meet the financial requirements of release. Consultation with the victim is important at this stage and can result in creative alternatives to pre-trial detention. At the same time, there must be more evaluation of the effects of these alternatives on different groups of victims, in particular women and children.

19. A number of strategies have been adopted to ensure that imprisonment as a sanction is reserved for the most serious cases:

(a) Statutory directions to judges to use prison as a “sanction of last resort”, that is, only when no community-based alternative is appropriate;

(b) Creation of statutory criteria that must be fulfilled before offenders may be imprisoned;

(c) Expansion of community penalties to provide realistic alternatives to custody;

(d) Creation of restorative justice processes such as victim and offender mediation, conferencing and circles to encourage the development of creative sentencing recommendations;

(e) Attempts to educate the public about the merits of community penalties, thereby relieving pressure on judges to send offenders to prison.

20. Imprisonment interrupts the children’s education and moral development and deprives them of family support at a critical period in their lives. Accordingly, it is particularly important to inform judges regarding the use of custody in the case of juveniles. Recognition of that reality has led to national and international efforts to expand the number of alternatives to prosecution and punishment for juveniles, for example, recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe to member States concerning new ways of dealing with juvenile delinquency and the role of juvenile justice. In addition, such reform is consistent with the Convention on the Rights of the Child (General Assembly resolution 44/25, annex), which has been ratified by 192 States.

Juvenile justice and restorative justice

Concerning juvenile justice, a reform of systems in Latin American countries started in 1989 with the adoption of the Convention on the Rights of the Child (although efforts had started at the beginning of the 1980s with the negotiation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), a process in which the Latin American Institute for the Prevention of Crime and the Treatment of Offenders actively participated) (The Beijing Rules were adopted by the Assembly in its resolution 40/33 of 29 November 1985.)

New legislation adopted in several countries in Latin America has led to a system of responsibility consistent with the principles of the Convention on the Rights of the Child and the instruments that complement it: the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (Assembly resolution 45/112, annex). The new system includes efforts to avoid the prosecution of juveniles, including measures to keep them from becoming prematurely hurt, the establishment of a range of sanctions according to which imprisonment should be exceptional and reserved for the most serious offences, provided it is not possible to apply a different type of punishment, and the victim's participation in the process.

The Latin American Institute carried out a five-year project to assist countries in the region in harmonizing their legislation to the Convention on the Rights of the Child. The project covered Brazil (in 1990), Peru (in 1994) and Honduras (in 1995), which have adopted overall codes, and El Salvador (in 1994) and Costa Rica (in 1996), which have adopted specific juvenile criminal justice laws. Other countries that have adopted codes or laws more recently are Nicaragua (in 1998), Venezuela (Bolivarian Republic of) (in 1999), Bolivia (in 2000) and Paraguay (in 2000). Some monitoring of the results of the reduction of the use of custody as sanction and the increased number of alternative sanctions has begun. Some comparative figures will be presented during the Workshop.

21. Many jurisdictions have introduced ways to promote the use of alternative sentences and simultaneously reduce the use of custody as a sanction. One strategy in that direction is to increase the number of community-based alternative sanctions. This approach has been adopted in both developed and developing countries. Many of those new sanctions include a restorative component, requiring the offender to pay something back to the community or the victims.

22. Many jurisdictions have adopted some form of home confinement sanction. Such a sanction captures some of the characteristics of imprisonment while permitting the offender to remain in the community, usually at home. In developed countries, electronic monitoring is often imposed as a way to ensure that the offender remains at home. In other countries, the same objective is achieved through the use of random checks by probation officers. If imprisonment must be used to sanction offenders, it is preferable that the sentence be discharged in the community rather than in an institution. That is consistent with restorative justice principles. More research needs to be done on whether home confinement constitutes a viable alternative in developing countries.

23. Restorative justice programmes and policies do not pertain exclusively to the pre-trial and sentencing phases of the criminal justice process. Restorative justice may also contribute to enhancing criminal justice outcomes at the correctional level. A restorative justice programme in prisons in Belgium has proved to be of benefit to victims and prisoners.¹⁷

D. Incorporating international standards and resources

24. As suggested earlier, many of the pressures to enhance criminal justice are driven by demands to increase access to justice. Those demands find expression in a broad array of international standards relating to the rights of the accused, prisoners, victims, children, women and others. In addition, much work has been done by the international community on developing abstract standards into more detailed policies and guides for criminal justice reform. In addition, international standards relate to certain priority crimes such as terrorism and trafficking and to the role of criminal justice in countries in conflict and at various stages of development. There is a need for domestic policy makers to become more familiar with relevant international standards and, where possible, to draw on the support and resources that may be available at the international level for domestic enhancement.

Establishing criminal justice in post-conflict societies

Draft transitional codes applicable to post-conflict societies may be useful as a source of standards for guiding criminal justice enhancements. They have been developed drawing on the experience of the ad hoc international tribunals and the International Criminal Court, as well as relevant international standards. Draft transitional codes provide a valuable source of standards for basic criminal justice systems that allow for local variations while respecting international standards, but they do not exhaust the enhancement of criminal justice even in post-conflict societies. Over 30 truth commissions have been established in various post-conflict countries. They may foster accountability and involve victims, but they also need to be independent, to be supported by civil society and the international community and to respond to the concerns of victims, including by providing reparation (S/2004/616, paras. 50-51 and 54-55). Most commissions do not follow the South African model of granting amnesties; some make recommendations for subsequent prosecutions or referral to community and customary processes. Those hybrid approaches follow the basic principles on the use of restorative justice programmes in criminal matters.

Child victims and witnesses

One primary concern is that the application of criminal justice should not harm the vulnerable and, in particular, that it should not result in a re-victimization of victims of crime who may be required to be witnesses in criminal proceedings. The multifaceted challenge of this task is reflected in the guidelines on justice for child victims and witnesses of crime drawn up by the International Bureau for Children's Rights (Economic and Social Council resolution 2004/27, annex). The guidelines are designed to assist Member States in developing their laws, procedures and practices in a manner consistent with relevant international standards and

guidelines. They are based on the principles of respect for the dignity of the child, the best interests of the child, the child's right to participation and non-discrimination. They require that interference in the child's private life be limited to the minimum needed to ensure fair and equitable outcomes in the justice process and that all interactions with the justice system be conducted in a child-sensitive and empathetic manner. Children should be informed and be able to participate with regard to expressing concerns for their safety and how they desire to present their testimony. Rights against discrimination include discrimination on the basis of caste, socio-economic condition and immigration and refugee status, as well as the child's special needs. The guidelines contemplate special assistance for children not only with respect to criminal justice processing but also with respect to financial, health and social services and physical, psychological and other services necessary for the child's reintegration.

III. Opportunities for effective enhancement of criminal justice

25. A number of practical considerations suggested below should be taken into account in planning, implementing and evaluating criminal justice reform initiatives. Opportunities for international cooperation, use of international standards, training and evidence-based evaluation are highlighted, as are ideas for technical assistance to be provided to developing countries.

A. Integrated and comprehensive reform efforts

26. In order to achieve specific policy goals such as reducing the number of admissions to custody, and hence prison overcrowding, reforms must be integrated and comprehensive rather than ad hoc. Reducing the number of prisoners requires reform at all stages of the system: greater pre-charge diversion by the police; greater use of prosecutorial diversion; greater use of alternative, community-based sentences; and increased use of parole and other early release mechanisms. The most successful attempts to reduce the number of admissions to custody have attacked the problem throughout the criminal process. The need for integration creates particular challenges for countries and for geographically large states within countries. Actors such as the police, prosecutors, the courts and the correctional system must be coordinated so that the effects of one intervention (such as different charging policies) are appreciated by other institutions. Regular meetings between different criminal justice actors should be encouraged. At the same time, care must be taken to ensure that the criminal justice actors function as a system of mutual checks and balances. Thus, prosecutors may in some jurisdictions review the decisions of the police, and judges may review decisions by correctional officials.

Reduction of imprisonment levels for racial minorities

The reduction of imprisonment levels for racial minorities will require a comprehensive approach that involves all actors in the justice system, including the police, prosecutors, defence lawyers, the judiciary and correctional officials. Moreover, the requirement of comprehensive reform can be extended beyond the domain of the criminal justice system to include development issues such as the

provision of economic opportunities and the design of neighbourhoods in a manner that discourages crime (see also the Vienna Declaration on Crime and Justice (General Assembly resolution 55/59, annex) and the plans of action for the implementation of the Vienna Declaration (Assembly resolution 56/261, annex, paras. 31-33).

B. Regional and international coordination in reform efforts

27. In addition to the need for greater coordination of criminal justice at the national level, there is also a need for greater coordination at the regional and international levels. Some forms of crime proliferate across borders; transnational organized crime, terrorism, drug trafficking and trafficking in persons are examples of such problems. National efforts alone are not enough to deal with such crime. At the same time, the need for greater international and regional coordination is not limited to transnational crime. There is a need for bilateral and multilateral assistance where developed countries with expertise in criminal justice enhancement assist other countries in their reform efforts. In that process, there must be respect for diversity and local conditions and customs. International and bilateral assistance can help a State to enhance its criminal justice system and recover elements of community participation in justice matters. In addition, adequate resources must be devoted to such technical assistance. That process may also assist in the development of baseline data and performance indicators by which the effectiveness of both the assistance and the enhancement of criminal justice may be evaluated. There is also a need for information about good practices in criminal justice to be exchanged and for better understanding of the relevant international standards and guidelines on criminal justice among criminal justice professionals, civil society and the general public. There should be increased emphasis on the practical guidance that such standards and guidelines offer Member States in enhancing criminal justice.

Safety, security and justice for the poor in Nigeria

One good example of a sector-wide reform programme based on human rights is the United Kingdom/Nigeria Security, Justice and Growth programme that supports the realization of the goals set out in the United Nations Millennium Declaration. The five-year programme of the Department for International Development of the United Kingdom has as its overall goal the enhancing of access to and the quality of safety, security and justice for poor people in Nigeria. Begun in March 2002, the 30 million pound programme is managed by the British Council, together with national counterparts. The programme supports initiatives such as capacity-building in three substantive areas: safety and security, access to justice, and growth. It provides technical assistance, equipment and material support. Nigerian government ministries and national and state agencies co-fund many activities through cash and in-kind support. As for safety and security, the programme seeks to improve service delivery by formal and informal policing structures and strengthened mechanisms to prevent, resolve and manage conflict. One of its goals is supporting a transformation of the culture and organization of the Nigeria Police Service through the introduction of community-based policing. The programme also seeks to enhance access to justice by supporting the creation of

improved systems for the delivery of effective justice services for poor people at the national and state levels. Specific goals in that area include strengthening policies and plans and the financing of the justice sector at national and state levels; making consumers of justice services aware of their entitlements and support in their access to justice services; and strengthening the observance of human rights. In the area of growth, the programme seeks to support the creation of an environment that is conducive to economic growth benefiting the poor. Specific goals include strengthening the legal and regulatory environment so that the private sector can facilitate such growth and strengthening institutions and agencies to combat corruption.

C. Involving the community, civil society and institutions not traditionally associated with the criminal justice system in reform efforts

28. Enhancement of criminal justice entails involving other institutions in society. For example, immigration systems are heavily involved in efforts to combat trafficking and terrorism. Formal and informal systems to deal with mental health may be crucial in determining the treatment of mentally disordered persons within the criminal justice system. Religious institutions, the military and private police in some countries may fulfil functions normally associated with criminal justice. The media, non-governmental organizations, health systems, research centres, bar associations, the legislature and human rights and law reform commissions may also be key actors in criminal justice enhancement. Institutions, including those in the private sector, that are outside of traditional criminal justice may nevertheless serve as important models for institution-building and reform within the criminal justice system.

29. Criminal justice reform cannot proceed without the active support or at least acquiescence of the community. This is particularly true for progressive reforms such as greater use of diversion, alternate dispute resolution mechanisms and restorative initiatives in general. Engaging the community requires an investment on the part of Governments to educate the public through awareness-raising campaigns. That fact was recognized by a conference on penal reform in South Asia that was held in Kathmandu in November 1999. Community-based intervention also has much greater potential to promote the goals of restorative justice.

30. Attempts to enhance criminal justice through restorative justice will also involve institutions not traditionally associated with criminal justice and will require the involvement of both civil society groups and the community at large. Thailand offers a good example of how the media can facilitate community involvement with criminal justice using a restorative model.

Facilitating community involvement with criminal justice in Thailand

In a process of information exchange and public education that lasted from 2000 to 2002, the principles of restorative justice were discussed in a series of national seminars in Thailand, some of which were broadcast live on public television. There were also study visits to New Zealand, and training for relevant officials was provided by the International Institute for Restorative Practices, with

the support of the United Nations Children’s Fund (UNICEF) and the Thai Health Promotion Foundation. Restorative justice was named “justice for social harmony”, to emphasize its consistency with the Thai tradition of resolving dispute by mutual consent in the community. Pilot projects of community justice networks were established to assist in the prevention of crime and the treatment of offenders, including in cases involving youth crime or domestic violence. Multidisciplinary drug rehabilitation committees with prosecutors, probation workers, doctors, psychologists and community members were also established. Restorative principles served as a basis for system-wide comprehensive reform in order to respond to problems such as prison overcrowding and trial delays and as a means of implementing more formal programmes of diversion. Laws concerning the suspension of prosecution also supported such programmes. A programme of diversion to family and community group conferences was used with success in cases involving youth crime.

D. Sufficient and effective investment of resources in reform

31. Conservation of resources constitutes an essential prerequisite of effective criminal justice management. A justice system that attempts to resolve all conflicts by processing all reports of criminal acts through the court system is likely to be overburdened and may ultimately fail. Two general principles emerging from numerous countries are: (a) diversion of as many cases away from the court system as is safe and appropriate; and (b) reduction of criminal process costs by routing cases, where applicable, outside the formal system, which may also contribute to reducing case costs by preventing the progression of offenders further down the criminal process. The cases that consume the most resources are those in which the offender is charged, tried and eventually sentenced to custody. Replacing prison with community-based sanctions is an important policy goal that has been pursued in many jurisdictions.

32. A common challenge to all justice systems, whether in developed or developing countries, whether in countries following the common-law or the civil-law model, is to determine which cases to exclude. Not denying justice but diverting cases to the most cost-effective procedures that in many instances also offer victims more than court-based solutions; in other words, diversion. Cases are diverted away from formal court appearances. In addition, once there is adjudication, offenders are treated in the most cost-effective way that holds them accountable and offers some restorative benefit to the victim.

33. Imprisonment is the one of the least cost-effective sentencing options. While imprisonment may be necessary for the most serious cases, it typically offers victims little tangible benefit beyond the satisfaction that the offender is being punished.¹⁸ Criminal justice reform can accordingly be enhanced by promoting the use of:

(a) Diversionary police-based pre-trial programmes: such programmes are particularly effective in cases involving juveniles in conflict with the law;

(b) Diversionary programmes under the aegis of the prosecution branch: the exercise of discretion by the prosecution can save precious court resources to the benefit of victims, who receive apologies and reparation (where appropriate);

(c) Use of restraint with respect to custody: regulating the imposition of custody;

(d) Linking sentence length with prison capacity.¹⁹

34. Other jurisdictions have attempted to achieve the same goal by expanding the use of community responses to crime (such as family group conferences).²⁰ Many jurisdictions have developed restorative responses to youthful offending. For example, Thailand has begun diverting juvenile cases to family and community group conferencing.

35. In developing countries, lack of resources may in some cases be a reason for crime to be dealt with only at an informal level within society. Informal ways of responding to crime may have some benefits in terms of practical problem-solving and avoiding the harm and expenses associated with the formal criminal justice system. Some forms of informal justice may have some of the qualities that many associate with restorative justice. At the same time, informal justice may replicate existing imbalances of power within and across societies. It has been difficult for some countries in the Caribbean to employ restorative processes for juvenile offending in part because an established juvenile justice system is lacking. Restorative justice generally operates against the backdrop and as a complement to a capable, fair and efficient justice system.

36. Resources may not be all that are needed to respond to demands for access to justice and the ever-growing expectations regarding the criminal justice system. Many developed countries that have devoted considerable resources to the existing criminal justice system are questioning the effectiveness of this policy. Resources spent on policing, prosecution, prisons and the enactment of new criminal laws do not seem to have reduced crime rates or assuaged public anxiety about victimization. Many of those societies are looking to restorative justice both as a means of diverting appropriate cases from the criminal justice system and as an idea to shape the delivery of justice in the criminal justice system by increasing reliance on devices such as non-custodial sentencing, restitution and reform designed to reduce secondary victimization in the criminal justice system.

Juvenile justice reform in Lebanon

In the mid-1990s, the institutional and legislative framework in Lebanon was not in a position to deal with the rise in juvenile delinquency. Efficient administration of juvenile justice was hampered by the absence of a coordinating body and the lack of an effective system for gathering information. In the period 1996-1997, a juvenile justice reform programme was put in place that included the establishment of a department for minors within the Ministry of Justice. The department coordinates the work carried out by the judicial police officers, judges, prosecutors, social workers, educators and the personnel of detention and correctional facilities. It standardizes good practices and monitors the impact of activities carried out by the key stakeholders assigned to issues of childhood and adolescence. While working in close cooperation with other relevant government ministries, the department is responsible for policy development and for the initiation of new education and reintegration programmes. It also encourages the preparation of plans of action to prevent juvenile delinquency and to protect child

victims. A computerized data system has been established within the department for minors in the Ministry of Justice to collect the relevant information on juveniles in conflict with the law.

E. Monitoring and evaluation of criminal justice practices

37. Local and international actors have gained expertise in monitoring criminal justice in crisis situations. The role of the International Committee of the Red Cross in visiting prisons and other places of confinement is one of the more obvious examples. Monitoring has been built into the United Nations mandate in some parts of the world. The concept of monitoring, however, has significant potential in many other parts of the world. The principle of strategic and knowledgeable monitoring of criminal justice practices holds considerable promise for promoting accountability and propriety within justice systems and producing evaluations that are necessary to ensure that reforms are effective and evidence-based.

38. Effective criminal justice reform and practices should, where possible, be evidence-based.²¹ For new programmes, this means using systematic evaluations, wherever possible, and providing training in data management and statistical skills. Baseline data are necessary to evaluate both trends and the effectiveness of any particular intervention. Although still in its infancy, literature on the evaluation of restorative justice intervention is growing fast. Such research should be continued and the results should be disseminated throughout the world so that those concerned will know exactly how restorative justice can supplement, and in some cases replace, the conventional criminal justice response.

39. A significant step towards promoting evidence-based criminal justice programmes and policies has been the creation of the Campbell Collaboration (www.campbellcollaboration.org), a non-profit organization with an international network of experts who review research in a particular area or on a particular issue. Once a review has been conducted and published, it is updated to ensure that the conclusions of the review are consistent with findings from the latest research.

F. Promoting accountability and respect for relevant standards on human rights and the rule of law in reform efforts

40. As part of a commitment to the rule of law (and in recognition of the importance of public confidence in the criminal justice system), special attention should be given to dealing with misconduct by the police, prosecutors, judges and correctional officials. It is crucial that corruption and abuse of power be addressed in a manner that affirms the commitment of the system to fairness and the rule of law. Training and other forms of intervention should be devoted to addressing and eliminating problems of corruption and violence by state officials. Restorative justice processes can be used effectively in modelling discipline that takes wrongdoing seriously but seeks to reintegrate the wrongdoer. Such processes provide an opportunity for community involvement and participation by civilian victims.

G. Increased emphasis on crime victims and vulnerable groups such as children consistent with international guidelines and standards

41. One promising strategy in criminal justice enhancement is to make the treatment of victims a priority. Not only would such a priority help advance respect for standards for the treatment of victims, giving particular attention to women, children and minorities as victims of crime, but it could also help serve as a link to a broader development agenda consistent with the Millennium Development Goals.²² A focus on victim needs and input would also serve as a valuable guide in addressing priorities in criminal justice reform and evaluating the effectiveness of criminal justice reforms. To the extent possible, effective criminal justice reforms should address the interests of the victim throughout the criminal process in a way that is consistent with principles of justice. This means informing victims of developments in their cases, allowing them to provide input into the process (where possible and appropriate) and seeking to respond to their needs—for example, by encouraging offenders to make reparation where possible. This is clearly consistent with the restorative justice philosophy, which emphasizes victims' needs over the need to impose retributive punishment.

Reparation in Southern Africa

Reparation has emerged as an important consideration in developed and developing countries and has implications for both domestic and international criminal justice proceedings. In Southern Africa, reparation programmes have been developed to respond to the needs of victims of human rights violations.²³

42. Within the overall focus on victims suggested above, it may also make sense to focus on groups that are vulnerable to both crime victimization and treatment by the criminal justice system as offenders. For example, child prostitutes are victims of sexual abuse, violence and exploitation but are also vulnerable to punishment as offenders. Women and indigenous people in conflict with the law also often have high rates of crime victimization. It may be best to devote limited resources to crime victims who themselves impose the greatest costs on society and criminal justice systems and focus on reforms that will help limit cycles of victimization and re-offending. More generally, United Nations principles relating to both crime victims and restorative justice recognize the need to respond to abuses of both crime victims and offenders. Such an approach would also need to recognize that both victims and offenders may often come from situations of economic disadvantage.

H. Increased emphasis on the use of restorative processes and principles where appropriate and consistent with international guidelines and standards

43. The basic principles on the use of restorative justice programmes in criminal matters provide a valuable tool to be used by Member States to integrate restorative processes, where appropriate, in their existing criminal justice systems. Even with respect to the most serious crimes, including those committed by societies in conflict, there may be value in attempting to achieve a restorative outcome that

responds to the needs of victims, offenders and the community and aim at reintegration. Most experts on restorative justice hold the view that restorative justice should not be seen as a parallel justice system, but rather as a complement to conventional criminal justice measures. Member States should consider opportunities from increasing the exchange of information on restorative justice and cooperation with one another in research, training and technical assistance on such matters with particular regard to developing countries and countries with economies in transition.²⁴

IV. Conclusion and recommendations

44. The present background paper has examined some of the pressures placed on criminal justice systems. The most important pressures relate to demands for increased access to justice for the accused and offenders, for victims and for communities. Some promising practices in various areas of criminal justice reform and some action-oriented strategies to facilitate effective criminal justice enhancements have been identified. The participants in Workshop 2 may wish to acknowledge the importance of the following general considerations:

- (a) The need to recognize diversity among and within Member States when attempting to enhance existing criminal justice systems;
- (b) The need to protect vulnerable members of society when attempting to enhance existing criminal justice systems;
- (c) The need to use imprisonment only when necessary;
- (d) The need to be guided by international human rights and other justice standards.

45. The participants may wish to consider the following specific recommendations:

- (a) Criminal justice reforms should include all relevant parts of the domestic criminal justice system and be as integrated and comprehensive as possible;
- (b) International cooperation should be recognized as essential to the success of criminal reform initiatives, and technical assistance should be offered whenever possible;
- (c) Reforms should be based on the active involvement and participation of civil society, community groups and institutions not traditionally associated with the criminal justice system;
- (d) States should maximize the effective use of limited resources and provide adequate resources, with special emphasis on assisting developing countries and the role of criminal justice in advancing the Millennium Development Goals;
- (e) States should recognize the need for monitoring and evaluating criminal justice reforms to ensure that they are effective and evidence-based;
- (f) Mechanisms should be developed to ensure accountability and respect for the rule of law;

(g) States should place increased emphasis on crime victims and vulnerable groups such as children consistent with international guidelines and standards;

(h) States should increase the use of restorative justice processes and principles where appropriate and consistent with international guidelines and standards.

Notes

- ¹ See, for example, the report of the Western Asian Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Beirut from 28 to 30 April 2004 (A/CONF.203/RPM.4/1, para. 38).
- ² See, for example, the report of the Asian and Pacific Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 29 to 31 March 2004 (A/CONF.203/RPM.1/1, para. 41).
- ³ Report of the Latin American and Caribbean Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in San José from 19 to 21 April 2004 (A/CONF.203/RPM.2/1, para. 68).
- ⁴ M. Hough and J. V. Roberts, "Confidence in justice: an international review", *Findings*, No. 243 (London, Home Office Research, Development and Statistics Directorate, 2004).
- ⁵ For example, in England and Wales, the Home Office has introduced national targets such as achieving an increase of at least 1 per cent in public satisfaction with justice over the period 2002-2005 (see United Kingdom, Home Office, Department for Constitutional Affairs, *Improving Public Satisfaction and Confidence in the Criminal Justice System* (London, 2003).
- ⁶ United Nations, *Treaty Series*, vol. 2187, No. 38544.
- ⁷ A/56/326, annex.
- ⁸ Policy statement adopted by the Annual Meeting of Aid Ministers and Heads of Aid Agencies organized by the Development Assistance Committee of the Organization for Economic Cooperation and Development, Paris, 15-16 April 2004.
- ⁹ Royal Commission on Aboriginal Deaths in Custody, *Reports of the Royal Commission on Aboriginal Deaths in Custody* (available at www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/index.html).
- ¹⁰ Gabrielle Maxwell and Allison Morris, "Restorative justice and reconviction", *Contemporary Justice Review*, vol. 5, No. 2 (2002), pp. 133-146.
- ¹¹ Henriette Haas and others, "The impact of different family configurations on delinquency", *British Journal of Criminology*, vol. 44, No. 4 (2004), pp. 520-532.
- ¹² John Braithwaite, *Restorative Justice and Responsive Regulation* (New York, Oxford University Press, 2002), pp. 221-223.
- ¹³ Lynette Parker, "Colombia's Houses of Justice" (2003) (available at www.restorativejustice.org/rj3/Feature/2003/July/housesofjustice.htm).
- ¹⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.A.
- ¹⁵ Eric P. Baumer, Richard B. Felson and Steven F. Messner, "Changes in police notification for rape, 1973-2000", *Criminology*, vol. 41, No. 3 (2003), pp. 841-872.
- ¹⁶ The draft code was prepared by the Irish Centre for Human Rights, the United States Institute

for Peace and the Office of the United Nations High Commissioner for Human Rights.

- ¹⁷ I. Aertsen and T. Peters, "Mediation and restorative justice in Belgium", *European Journal on Criminal Policy and Research*, vol. 6, No. 4 (1998), pp. 507-524.
- ¹⁸ In a developed country such as Canada, incarceration costs approximately 50,000 United States dollars per inmate each year.
- ¹⁹ M. Tonry, *Thinking about Crime: Sense and Sensibility in American Penal Culture* (Oxford University Press, 2004), p. 220.
- ²⁰ For discussion of such reforms around the world, see: M. Tonry and A. Doob, eds., "Youth crime and youth justice: comparative and cross-national perspectives", *Crime and Justice*, vol. 31 (Chicago, University of Chicago Press, 2004).
- ²¹ For a useful discussion on efforts to apply this principle to the practice of probation, see T. Chapman and M. Hough, *Evidence-Based Practice: a Guide to Effective Practice*, J. Furniss, ed. (London, Home Office, H.M. Inspectorate of Probation, 1998).
- ²² United Nations, Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims* (New York, 1999).
- ²³ See Warren Buford and Hugo van der Merwe, "Les reparations en Afrique australe", *Cahiers d'études africaines*, vol. 44, Nos. 1-2 (2004), pp. 263-322.
- ²⁴ See the report on the meeting of the Group of Experts on Restorative Justice (E/CN.15/2002/5/Add.1), held in Ottawa from 29 October to 1 November 2001.
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