

APPENDIX 1

United Nations Economic and Social Council

E/cn.15/2002/L.2/Rev.1
18 April 2002

Commission on Crime Prevention and Criminal Justice

Eleventh session, Vienna, 16-25 April 2002

Agenda item 4

United Nations standards and norms in crime prevention and criminal justice

Austria, Belgium, Canada, Czech Republic, Mexico, Netherlands, Peru, Saudi Arabia, South Africa and Zimbabwe: revised draft resolution:

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following draft resolution:

Basic principles on the use of restorative justice programmes in criminal matters

The Economic and Social Council,

Recalling its resolution 1999/26 of 28 July 1999, entitled "Development and implementation of mediation and restorative just measures in criminal justice", in which the council requested the Commission on Crime Prevention and Criminal Justice to consider the desirability of formulating United Nations standards in the field of mediation and restorative justice,

Recalling also its resolution 2000/14 of 27 July 2000, entitled "Basic principles on the use of restorative programmes in criminal matters", in which the Council requested the Secretary-General to seek comments from Member States and relevant intergovernmental and non-governmental organisations, as well as institutes of the United Nations Crime Prevention and Criminal Justice

Programme network, on the desirability and means of establishing common principles on the use of restorative justice programme in criminal matters, including the advisability of developing a new instrument for that purpose,

Taking into account the existing international commitments with respect to victims, in particular the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex),

Noting the discussions on the restorative justice during the Tenth United Nations Congress on the Prevention of Crime and the Treatment of offenders, held in Vienna from 10 to 17 April 2000, under the agenda item entitled "Offenders and victims: accountability and fairness in the justice process",

Taking note of General Assembly resolution 56/261 of 31 January 2002 entitled "Revised draft plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century"; in particular the action on restorative justice in order to follow up the commitment undertaken in the paragraph 28 of the Vienna Declaration,¹

Noting with appreciation the work of the Group of Experts on Restorative Justice at their meeting held in Ottawa from 29 October to 1 November 2001,

Taking note of the report of the Secretary-General on restorative justice² and the report of the Group of Experts on Restorative Justice,³

1. *Takes note* of the basic principles on the use of restorative justice programmes in criminal matters annexed to the present resolution;
2. *Encourages* Member States to draw on the basic principles on the use of restorative justice programmes in criminal matters in the development and operation of restorative justice programmes;
3. *Requests* the Secretary-General to ensure the widest possible dissemination of the basic principles on restorative justice among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and non-governmental organisations;
4. *Calls upon* Member States that have adopted restorative justice practices to make information about those practices available to other States upon request;
5. *Also calls upon* Member States to assist one another in the development and implementation of research, training or other programmes, as well as

activities to stimulate discussions and the exchange of experience on restorative justice,

6. *Further calls upon* Member states to consider, through voluntary contributions, the provision of technical assistance to developing countries and countries with economies in transition, on request, to assist them in the development of restorative justice programmes.

ANNEX

Basic principles on the use of restorative justice programmes in criminal matters

Preamble

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives,

Recognising that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people,

Emphasising that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities.

Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs.

Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enable communities to understand the underlying causes of crime, to promote community well being and to prevent crime,

Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances,

Recognising that the use of restorative justice does not prejudice the right of State to prosecute alleged offenders.

I. Use of terms

1. “Restorative justice programme” means any programme that uses restorative processes and seeks to achieve restorative outcomes,
2. “Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.
3. “Restorative outcome” means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community services, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.
4. “Parties” means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.
5. “Facilitator” means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

II. Use of restorative justice programmes

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.
7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and contain only reasonable and proportionate obligations.
8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a Restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.
10. The safety of parties shall be considered in referring any case to, and in conducting, a restorative process.
11. Where restorative process are not suitable or possible, the case should be referred to the criminal justice authorities and decisions should be taken as to endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community.

III. Operation of restorative justice programmes

12. Member State should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia:
 - a. The conditions for the referral of case to restorative justice programmes
 - b. The handling of cases following a restorative process
 - c. The qualifications, training and assessment of facilitators
 - d. The administration of restorative justice programmes
 - e. Standards of competence and rules of conduct governing the operation of restorative justice programmes
13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:
 - a. Subject to national law the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and / or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian;
 - b. Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

- c. Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in the restorative process or to accept restorative outcomes.
14. Discussions in restorative processes, that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.
15. The results of agreements arising out of restorative justice programmes should where appropriate, be judicially supervised or incorporated into judicial decisions or judgments. Where that occurs, the outcome should have the same status as any other judicial decision or judgment and should preclude prosecution in respect of the same facts.
16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.
17. Failure to implement an agreement made in the course of a restorative process should be referred to back the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgment, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.
18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.
19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

IV. Continuing development of restorative justice programmes

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the

promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.
22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

V. Saving clause

23. Nothing in these basic principles shall affect any rights of an offender or a victim which are established in national law or applicable international law.

Endnotes

- 1 See Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10 -17 April 2000, chap 1 (A/COF.187/15)
- 2 E/CN.15/2002/5
- 3 E/CN.15/2002/5/Add.1