



Eleventh United Nations Congress on Crime Prevention and Criminal Justice

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Report of Committee I: agenda items 6 and 7 and Workshops 1, 2 and 3

Addendum

Enhancing criminal justice reform, including restorative justice

1. At its 8th and 9th meetings, on 22 April 2005, Committee I held a workshop on enhancing criminal justice reform, including restorative justice, organized in cooperation with the International Centre for Criminal Law Reform and Criminal Justice Policy. The committee had before it the following documents:

- (a) Background paper on Workshop 2: Enhancing Criminal Justice Reform, including Restorative Justice (A/CONF.203/10);
- (b) Discussion guide (A/CONF.203/PM.1 and Corr.1);
- (c) Reports of the regional preparatory meetings for the Eleventh Congress (A/CONF.203/RPM.1/1, A/CONF.203/RPM.2/1, A/CONF.203/RPM.3/1 and Corr.1 and A/CONF.203/RPM.4/1).

Proceedings

2. The workshop was divided into four panels and heard 15 panel presentations. At the 8th meeting of the Committee, the workshop was introduced by a representative of the Secretariat and addressed by the Associate Deputy Minister of Canada. Two panels, which considered three sub-themes, were held. The first panel reviewed examples of integrated, comprehensive, system-wide criminal justice reforms. The second panel discussed collaboration and cooperation, focusing on regional and international initiatives.

3. The workshop continued at the 9th meeting with the presentation of the two remaining panels. The third panel presented an overview of restorative justice worldwide, giving examples of three case studies of restorative justice programmes. The fourth panel dealt with justice for youth and vulnerable groups. A number of panellists made concluding remarks.



4. At the 8th meeting of the Committee, statements were made by the representatives of the United Kingdom of Great Britain and Northern Ireland, Finland, Algeria, Senegal, Pakistan, Morocco and Turkey. At the 9th meeting, statements were made by the representatives of Benin, Malawi, Oman, Egypt, France, Samoa and the United Arab Emirates and by the observers for the International Centre for Criminal Law Reform and Criminal Justice Policy, the International Bureau for Children's Rights, Defence for Children International and the World Society of Victimology.

General discussion

5. In his introductory statement, the representative of the Secretariat noted that the workshop was part of an important focus by the United Nations on effective and equitable reform of the criminal justice system, through the use and application of standards and norms in crime prevention and criminal justice. In particular, he explained that the main objectives of the workshop were to exchange information on recent successful criminal justice reform initiatives; to encourage international research into evidence-based approaches for the further development of restorative justice practices; and to identify opportunities to share information and technical assistance requirements, including in post-conflict situations, in line with the goals set in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex) and its plans of action (Assembly resolution 56/261, annex).

6. In his opening address, the Associate Deputy Minister of Canada noted the importance accorded by his Government, as well as the International Centre for Criminal Justice Reform and Criminal Justice Policy, to addressing issues related to criminal justice reform at the Commission on Crime Prevention and Criminal Justice. Canada had been instrumental in the adoption of the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex). He urged the workshop to consider, in particular, the legal and financial framework necessary to support victims of crime, especially those from vulnerable communities.

7. In the panel on "Criminal justice reform overview", the panellists identified the following as key areas for reform: access to justice; police, judicial and correctional reform; restorative justice; and youth crime prevention. They noted that to foster public involvement in sustainable criminal justice reform required the integration of civil society in a multi-sectoral approach in partnership with relevant stakeholders, including the private sector. It was also important to establish clear objectives and realistic benchmarks, which had to be monitored and evaluated regularly.

8. In the panel on "Comprehensive reform", two specific examples were presented. The first example, the "Security, Justice and Growth Programme" in Nigeria, was aimed at improving access to and the quality of safety, security and justice for poor people and their livelihoods. In that regard, it was noted that Africa's history over the last 50 years had been blighted by two weaknesses: a lack of capacity to design and deliver policies; and a lack of accountability. While improvement of both of these was first and foremost the responsibility of African countries and peoples, support by rich nations was indispensable. The second example, the "Access to Justice Project" of the Public Defenders' Office of Chile,

included restoration of the basic rights of citizens, such as the right to be heard, the right to be informed of charges and the right to be represented by counsel, which had been abrogated during the dictatorship period. Under the new legislation, access to justice was promoted by the Public Defender's Office, which offered a decentralized service to all persons accused of a crime, irrespective of their means.

9. The panel on "Collaboration and cooperation", focused on a set of transitional criminal codes developed jointly by the Irish Centre for Human Rights, the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime, in collaboration with a number of individual experts. The codes were based on lessons learned in peacekeeping operations and were tailored to meet the exigencies of a conflict or post-conflict situation, where efforts in the past had proved inadequate and had lacked strategic vision and a comprehensive approach. The codes comprised a compendium of laws and procedures that sought to address each element of criminal justice—the courts, the police and prisons—in a cohesive and integrated manner. The compendium consisted of four annotated draft models: the transitional criminal code, regulating penal matters, the code of criminal procedure and the transitional detention act, regulating procedural and substantive issues relating to pre-trial detention and imprisonment, and the transitional law enforcement powers act. The codes were supplemented by guidelines for application of model codes. A practical example of collaboration in the Pacific region was highlighted, where cooperation among countries to address the challenges posed by transnational organized crime included harmonization of legislation and border control policies, information-sharing and improved communication and coordination. Another example was the introduction of restorative justice mechanisms in juvenile justice legislation in the Latin American region, where all but three countries had enacted comprehensive juvenile justice codes.

10. The panel on "restorative justice, youth and vulnerable groups" focused on an overview of restorative justice around the world and on three examples of best practices. While there was no universal definition of restorative justice, three main restorative justice processes could be identified: victim offender mediation, conferencing and circles. In the victim offender mediation model, a trained facilitator typically brought together the victim and the offender to discuss the crime, the resulting harm suffered and the steps needed to right the wrong done to the victim. In the conferencing model, in addition to the victim, offender and facilitator, family members, friends and government representatives might also participate. The circles model was the most inclusive, because in addition to the participation of the parties included under the conferencing model, interested members of the community could also participate. While there were variations of each of the above models, restorative justice processes appropriate to specific cultures and contexts were constantly emerging. Offenders could make amends in several ways, by offering an apology, by paying monetary compensation or by replacing damaged property, or by performing free services to a charitable organization or governmental agency. In Canada, restorative justice was based on the need to have a clearly articulated strategy combining crime prevention, a tough response to serious crime and greater use of community sanctions for low-risk offenders. In Thailand, restorative justice was recently introduced in order to address the problems of case backlogs, prison overcrowding, special needs of juveniles in conflict with the law, concerns for the rights of victims and inadequate

public participation in the criminal justice system. It included pre-trial diversion programmes for drug addicts and treatment, reintegration and aftercare of drug offenders in their communities. In New Zealand, the restorative justice process focused on holding the offender accountable and promoting a sense of responsibility, while taking into consideration the interests of the victim, including reparation. Assessment of the current programmes had shown an increased rate of satisfaction among victims but it remained to be seen whether such programmes contributed to reducing recidivism.

11. The fourth panel, on “Youth justice and vulnerable groups” discussed specific aspects of criminal justice reform relating to juvenile justice indicators; restorative justice and victim policies in Belgium; and penal reform in Uganda. The pilot test of juvenile justice indicators was developed by the United Nations Children’s Fund with the aim of comparing progress made by countries in the protection of the rights of children in conflict with the law and in the administration of juvenile justice. The indicators could be used for the countries reporting to the Committee on the Rights of the Child (established under the Convention on the Rights of the Child (General Assembly resolution 44/25, annex)) for monitoring and improvement of systems, advocacy and awareness-raising and research and publications. The project in Belgium explored the complementarity of restorative justice applications and victim policies. Considering that only some victims benefited from mediation, depending on the availability of the programme or the willingness of the magistrate, a general restorative vision on crime and criminal justice should be developed and key actors should be sensitized and involved in order to develop restorative justice applications in the best possible way. The presentation on Uganda focused on the need to carry out penal reform from a dynamic perspective, taking into account the interrelationships between activities and functions in the areas of legislation, law enforcement, judicial process, treatment of offenders and juvenile justice, in order to ensure greater coherence, consistency, accountability, equity and fairness within the framework of national development objectives. The acute problem of the physical conditions in prisons in Africa was highlighted, since this had a negative impact on the rights of prisoners, contributing to prison overcrowding and transmittal of infectious diseases, including HIV/AIDS. The need for HIV/AIDS policy guidelines and programmes aimed at reducing the vulnerability of individuals and communities to HIV/AIDS, with a special focus on prisoners, was particularly underscored.

12. In the general discussion that followed, several speakers noted the increased demands for access to justice for the accused and offenders, for victims and for communities. There was growing recognition of the importance of effective criminal justice for good governance, stability and prosperity of developed and developing countries, as well as societies in conflict.

13. Participants also noted the importance of coordinating reforms regionally and internationally with appropriate technical and financial assistance and the need to include the community, civil society and the private sector in reforms. This included making use of limited resources, but also providing adequate resources for least developed countries. It also included making use of organizations and institutions that might not be traditionally associated with the criminal justice system, especially with respect to restorative justice processes.

14. The importance of monitoring and long-term evaluation of criminal justice reform efforts was stressed by many participants, as this would help to ensure

respect for international standards, as well as provide data on cost-effective and evidence-based reforms. The need for further empirical research was also stressed, in order to plan, integrate and unite efforts to draw up a directory of proven best practices and concepts in criminal justice reform. There was also a need to develop additional tools, manuals, model laws and performance measures that could be transferred and adapted.

15. It was observed that in developing effective criminal justice enhancements, a number of important considerations should be borne in mind. These were the need to recognize diversity among and within Member States; the need to protect vulnerable members of society; the need to use imprisonment only when necessary; and the need to be guided by international human rights and standards and norms in crime prevention and criminal justice.

16. Several speakers emphasized the need for further reforms in the area of children in conflict with the law, in particular reducing custodial sanctions and abolition of the death penalty for juvenile offenders. Reference was also made to the guidelines on justice for child victims and witnesses of crime, which would be before the Commission on Crime Prevention and Criminal Justice at its fourteenth session.

17. Reference was also made to discussions relating to the reduction of the number of offences that carried capital punishment, in accordance with the safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50; see also Council resolution 1989/64 and 1996/15).

Conclusions and recommendations

18. The workshop noted:

(a) The need for continued commitment to the enhancement of criminal justice reform. This included effective and appropriate community, national, regional and international responses to increased demands for access to justice. Such measures should also take into account the diversity of conditions and circumstances of Member States, as well as relevant international standards;

(b) The need for comprehensive and integrated approaches to criminal justice reform. Wherever possible, criminal justice reforms should include all relevant parts of the domestic criminal justice system;

(c) The need for technical assistance, cooperation and collaboration when enhancing criminal justice reforms. International cooperation and the provision of financial and technical assistance, when necessary and possible, were essential to the success of criminal justice reform initiatives. In particular, there was a need for technical assistance to developing countries and countries with economies in transition in order to assist in institution-building, capacity-building, training of prosecutors, judges, law enforcement officials, including prison officials, and other relevant professional groups, taking into account best practices at the international level;

(d) The connection between enhancement of criminal justice and the Millennium Development Goals. This called for greater engagement with civil

society, especially community groups, when designing and implementing criminal justice reforms and restorative justice measures.

19. Accordingly the workshop recommended that Member States consider the following:

(a) Maximizing the effective use of limited resources through comprehensive criminal justice reforms, drawing when necessary on technical assistance and international cooperation;

(b) Using alternatives to imprisonment for appropriate categories of offences and offenders;

(c) Monitoring and evaluating criminal justice reforms to ensure that they are effective and evidence-based and that they comply with relevant international standards. Clear goals and measures of success should be established;

(d) Using and applying, as appropriate, existing United Nations standards and norms in national programmes for crime prevention and criminal justice reform, providing for mechanisms to ensure accountability and respect for the rule of law, in order to create an environment that successfully responds to crime;

(e) Developing the use of restorative justice processes and principles in accordance with the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex) and drawing on international best practices;

(f) Strengthening, as necessary, the appropriate legal and financial framework to provide support to victims, especially women, children and migrants who are victims of trafficking in persons, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);

(g) Applying standards and norms in juvenile justice, and providing for the needs of child victims and witnesses of crime, taking into account their gender, social circumstances and developmental needs;

(h) Paying attention to the needs of vulnerable prison populations, such as minorities, indigenous groups, children and women, in order to provide a fair, safe, secure and humane treatment of offenders and assist them in their rehabilitation;

(i) Paying special attention to the pressing problem of prison overcrowding, which creates a range of difficulties for society including communicable diseases such as HIV/AIDS, by designing strategies to prevent the spread of HIV and other disease and mitigate the adverse health effects, and addressing the problem of communicable diseases such as HIV/AIDS and of persons infected by HIV/AIDS and other infectious disease;

(j) Provision by the United Nations Office on Drugs and Crime of technical assistance to enable requesting States to undertake programmes of criminal justice reform, including assistance to amend their criminal legislation and codes of criminal procedure;

(k) Development by the United Nations Office on Drugs and Crime of training manuals, model laws and other tools based on best practices in order to assist States to design strategies for crime prevention and criminal justice reform,

including juvenile justice, penal reform, victim support and alternatives to imprisonment, subject to the availability of resources;

(1) Consideration by the Commission on Crime Prevention and Criminal Justice of the recommendations contained in the report of the Intergovernmental Expert Group Meeting to Develop Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, held in Vienna on 15 and 16 March 2005 (E/CN.15/2005/14/Add.1), in accordance with Economic and Social Council resolution 2004/27 of 21 July 2004.
