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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Federation Terre Des Hommes, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Restorative juvenile justice

The concept of restorative justice

Restorative juvenile justice is a way of treating children in conflict with the law with the aim of repairing the individual, relational and social harm caused by the committed offence. This aim requires a process in which the child offender, the victim and, where appropriate other individuals and members of the community participate actively together in the resolution of matters arising from the offence. There is not one single model for practicing this restorative justice approach.

Experience in different countries shows that restorative juvenile justice is practiced via mediation, family group conferencing, sentencing circles and other cultural specific approaches. Where possible policies to introduce restorative juvenile justice should build on and benefit from already existing traditional and non-harmful practices of treating children in conflict with the law.

The outcome of this process includes responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

Restorative juvenile justice should not be limited to minor offences or first offenders only. Experience shows that restorative juvenile justice can also play an important role in addressing serious crimes. For example, in many armed conflicts children are used as child soldiers and forced to commit unspeakable crimes targeting especially their own family members, their neighbours and their community. Restorative justice is very often the only way of bringing reconciliation to victims and offenders alike in a war-torn society where victims of offences suffer as do child offenders, having been forced to commit offences. Without such reconciliation the reintegration of child soldiers in their communities is not possible, much to the detriment of the then ostracised child as well as the community bereft of workforce and under threat of criminal behaviour of the excluded child. Furthermore it is important not to limit the restorative practice to isolated cases in juvenile justice but to also develop and implement a policy of pro-active restorative practices e.g. in schools.

The role of the restorative approach in juvenile justice

Restorative justice is a way of treating children in conflict with the law which contributes to the child's reintegration into society and supports the child in assuming a constructive role in society. It takes the child's responsibility seriously and by doing so it can strengthen the child's respect for and understanding of the human rights and fundamental freedoms of others, in particular of the victim and other affected members of the community. Restorative justice is an approach that promotes the child's sense of dignity and worth.

Restorative justice should be applicable in all stages of the juvenile justice process, either as an alternative measure or in addition to other measures. At the police level one of the options should be a referral of the child to a process of restorative justice. Police officers should be well trained and instructed regarding the use of this option and where appropriate special attention must be given to possible abuse of this and other forms of diversion. If the case has to be reported to the prosecutor he/she should consider, before any other action the possibility of a restorative justice process as a way to deal with the case without resorting to judicial proceedings. Before using police custody or pre-trial detention alternative measures, including the use of restorative justice, should be used to avoid this deprivation of liberty.

When the case has been brought before the court the juvenile judge should, to the maximum extent possible, explore and initiate a process of restorative justice as an alternative to other possible sanctions or measures. Finally and based on experiences in some countries: restorative justice can and should be used, when possible, as part of the treatment of children placed in juvenile justice institutions. In other words: restorative justice should be an integral part of the juvenile justice system that is in full compliance with the provisions of the Convention on the Rights of the Child and related international standards; restorative justice should be offered as an option to all persons affected by the crime, including direct victims/their families and the offenders/their families. In that regard it is important to include effective prevention programmes, with special attention and support for the role of parents and the communities, in the national juvenile justice policy. States should consider establishing a national body with the mandate to coordinate and supervise the implementation of juvenile justice, including restorative justice programmes.

As part of the introduction of restorative juvenile justice programmes it is very important that the public at large, professionals working with or for children in conflict with the law and politicians receive information via awareness raising campaigns organised by the State, with the support of NGOs where appropriate, not as a one time event but should be repeated with a regular interval. This informative advocacy should, amongst others aspects, present the benefits of restorative justice as a “victim centred” approach.

The rules for the use of restorative justice

The use of restorative justice should be governed by the basic principles on the use of restorative justice programmes in criminal matters as set out in ECOSOC Resolution 2002/12 such as:

Restorative juvenile justice should only be used when there is sufficient evidence to charge the child offender and with the free and voluntary consent of the victim and the offender. The offender and the victim should be allowed to withdraw such consent at any time during the process of restorative justice.

Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations. Neither the victim nor the child offender should be coerced or induced by unfair means to participate in the restorative process or to accept the restorative outcomes.

Disparities leading to power imbalances, as well as cultural differences among the parties should be taken into consideration.

The victim and the child offender should, subject to national law, have the right to legal counselling and the child offender and the child victim should have the right to the assistance of a parent or guardian.

The victim and the child offender should be fully informed of their rights, the nature of the restorative process and the possible consequences of their decision.

The outcome of the process should have the same status as any other judicial decision or judgement and should preclude prosecution in respect to the same facts.

Terre des Hommes is working with justice systems and advocating to implement the concept of restorative juvenile justice in several countries around the world. As a result, the restorative practices are becoming an efficient and economic way of favouring the actual rehabilitation of many minors in conflict with the law, avoiding stigmatisation and exclusion and contributing to the human security in their community.