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Work of the Centre for International Crime Prevention: standards and norms

Albania, Australia, Austria, Bolivia, Bulgaria, Cameroon, Canada, Costa Rica, Croatia, Czech Republic, Italy, Germany, Malta, Namibia, Netherlands, Portugal, Sierra Leone, South Africa, Spain, Sudan, Swaziland and Zambia: 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 justice 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,

Noting the discussions on 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, in relation to the agenda item entitled “Offenders and victims: accountability and fairness in the justice process”,

Recognizing that the use of restorative justice measures does not prejudice the right of States to prosecute alleged offenders,

1. *Takes note* of the submission of the preliminary draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters, annexed to the present resolution;

2. *Requests* the Secretary-General to seek comments from Member States and relevant intergovernmental and non-governmental organizations, as well as the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, on the desirability and the means of establishing common principles on the use of restorative justice programmes in criminal matters, including the advisability of developing an instrument, such as the preliminary draft declaration annexed to the present resolution, and on the contents of this draft;

3. *Also requests* the Secretary-General to convene, subject to the availability of voluntary contributions, a meeting of experts selected on the basis of equitable geographical representation to review the comments received and to examine proposals for further action in relation to restorative justice, including mediation, as well as the possibility of developing an instrument such as a declaration of basic principles on the use of restorative justice programmes, taking into account the preliminary draft declaration annexed to the present resolution;

4. *Further requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its tenth session on the comments received and the results of the meeting of experts;

5. *Invites* the Commission to take action at its tenth session, on the basis of the report of the Secretary-General;

6. *Calls upon* Member States, building on the results of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10-17 April 2000, to continue to exchange information on experiences in the implementation and evaluation of programmes for restorative justice, including mediation.

Annex

Preliminary draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters

I. Definitions

1. “Restorative justice programme” means any programme that uses restorative processes or aims to achieve restorative outcomes.
2. “Restorative outcome” means an agreement reached as the result of a restorative process. Examples of restorative outcomes include restitution, community service and any other programme or response designed to accomplish reparation of the victim and community, and reintegration of the victim and/or the offender.
3. “Restorative process” means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing and sentencing circles.
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 justice programme.
5. “Facilitator” means a fair and impartial third party whose role is to facilitate the participation of victims and offenders in an encounter programme.

II. Use of restorative justice programmes

6. Restorative justice programmes should be generally available at all stages of the criminal justice process.
7. Restorative processes should be used only with the free and voluntary consent of the parties. The parties should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily by the parties and contain only reasonable and proportionate obligations.
8. All parties should normally acknowledge the basic facts of a case as a basis for participation in a restorative process. Participation should not be used as evidence of admission of guilt in subsequent legal proceedings.
9. Obvious disparities with respect to factors such as power imbalances and the parties' age, maturity or intellectual capacity should be taken into consideration in referring a case to and in conducting a restorative process. Similarly, obvious threats to any of the parties' safety should also be considered in referring any case to and in conducting a restorative process. The views of the parties themselves about the suitability of restorative processes or outcomes should be given great deference in this consideration.
10. Where restorative processes and/or outcomes are not possible, criminal justice officials should do all they can to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and reintegration of the victim and/or offender into the community.

III. Operation of restorative justice programmes

11. Guidelines and standards should be established, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should address:
 - (a) The conditions for the referral of cases 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 ethical rules governing operation of restorative justice programmes.
12. Fundamental procedural safeguards should be applied to restorative justice programmes and in particular to restorative processes:
 - (a) The parties should have the right to legal advice before and after the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to parental assistance;
 - (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 induced by unfair means to participate in restorative processes or outcomes.

13. Discussions in restorative processes should be confidential and should not be disclosed subsequently, except with the agreement of the parties.

14. Judicial discharges based on agreements arising out of restorative justice programmes should have the same status as judicial decisions or judgements and should preclude prosecution in respect of the same facts (*non bis in idem*).

15. Where no agreement can be made between the parties, the case should be referred back to the criminal justice authorities and a decision as to how to proceed should be taken without delay. Lack of agreement may not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

16. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or to the criminal justice authorities and a decision as to how to proceed should be taken without delay. Failure to implement the agreement may not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

IV. Facilitators

17. Facilitators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities. They should be able to demonstrate sound judgement and interpersonal skills necessary to conducting restorative processes.

18. Facilitators should perform their duties in an impartial manner, based on the facts of the case and on the needs and wishes of the parties. They should always respect the dignity of the parties and ensure that the parties act with respect towards each other.

19. Facilitators should be responsible for providing a safe and appropriate environment for the restorative process. They should be sensitive to any vulnerability of the parties.

20. Facilitators should receive initial training before taking up facilitation duties and should also receive in-service training. The training should aim at providing skills in conflict resolution, taking into account the particular needs of victims and offenders, at providing basic knowledge of the criminal justice system and at providing a thorough knowledge of the operation of the restorative programme in which they will do their work.

V. Continuing development of restorative justice programmes

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding 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 should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as an alternative to the criminal justice process and provide positive outcomes for all parties.

23. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular, rigorous evaluation and modification of such programmes in the light of the above definitions.