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Commission on Crime Prevention and Criminal Justice

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Use and application of United Nations standards and norms in crime prevention and criminal justice

These are the Member States that came up with the idea of the resolution and formally submitted it. This resolution has been tabled by Member States from two different Regional Groups.

Canada, Colombia and Mexico: draft resolution

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

NOTE: This resolution is meant for adoption by the General Assembly.

Restorative justice in criminal matters

Restorative justice has not been very high in the agenda of the UN Crime Programme lately, and this resolution could be seen as a move to bring the issue back to the core of the Crime Programme.

The General Assembly,

The following paragraphs are the so called preambular paragraphs. They give the context of the draft resolution: concern over certain developments (such as the increase in certain forms of crime), pleasure over certain other developments (such as meetings held, or decisions taken), and what key resolutions have previously been adopted on the subject.

Recalling Economic and Social Council resolution 1999/26 of 28 July 1999, entitled “Development and implementation of mediation and restorative justice measures in criminal justice”, in which the Council recommended to the Commission on Crime Prevention and Criminal Justice that it consider the desirability of formulating United Nations standards in the field of mediation and restorative justice,

* E/CN.15/2018/1.



Recalling also Council resolutions 2000/14 of 27 July 2000 and 2002/12 of 24 July 2002, both entitled “Basic principles on the use of restorative justice programmes in criminal matters”,

Bearing in mind the *Handbook on Restorative Justice Programmes* prepared in 2006 by the United Nations Office on Drugs and Crime,¹ which provides an overview of key considerations in the implementation of participatory responses to crime based on a restorative justice approach, and noting the need to reflect recent advances and other innovative approaches developed in that field,

Taking into account the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,²

Recalling its resolution 61/295 of 13 September 2007, entitled “United Nations Declaration on the Rights of Indigenous Peoples”,

Recalling also its resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, which includes, under Sustainable Development Goal 16, the commitment to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, and the target of ensuring responsive, inclusive, participatory and representative decision-making at all levels,

Recalling further its resolution 70/174 of 17 December 2015, entitled “Thirteenth United Nations Congress on Crime Prevention and Criminal Justice”, in which it endorsed the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, in which Heads of State and Government, ministers and representatives of Member States had affirmed their endeavour, inter alia, to review or reform their restorative justice and other processes in support of successful reintegration,

Referring to the Crime Congress Declaration, which already had discussed the topic at a higher level showcasing the commitment of the Member States.

Reaffirming the commitment expressed by Member States in the Doha Declaration to integrate child- and youth-related issues into their criminal justice reform efforts, as well as their endeavour to mainstream a gender perspective into their criminal justice systems by developing and implementing national strategies and plans and to promote gender-specific measures as an integral part of their policies on crime prevention, criminal justice and the treatment of offenders, including the rehabilitation and reintegration of women offenders into society,

Recalling Economic and Social Council resolution 2016/17 of 26 July 2016, entitled “Restorative justice in criminal matters”, in which the Council requested the Secretary-General to convene a meeting of restorative justice experts to review the use and application of the basic principles on the use of restorative justice programmes in criminal matters as well as new developments and innovative approaches in the area of restorative justice,

Reaffirming resolution 26/3 of 26 May 2017 of the Commission on Crime Prevention and Criminal Justice, in which the Commission called upon Member States to continue to appropriately mainstream a gender perspective into their criminal justice systems and into efforts to prevent and combat crime, including transnational organized crime, including by developing and implementing national criminal justice legislation, policies and programmes that took into account the important role and specific needs of women and girls and by promoting gender-specific measures in crime prevention and protection policies,

¹ Criminal Justice Handbook Series (United Nations publication, Sales No. E.06.V.15).

² General Assembly resolution 40/34, annex.

Bearing in mind other recent developments in the area, including the 2017 draft recommendation concerning restorative justice in criminal matters of the Committee of Ministers of the Council of Europe,

Reaffirming the shared commitment to universal respect for and observance of all human rights and fundamental freedoms, and recognizing that restorative justice processes can be adapted to established criminal justice systems and complement those systems, taking into account legal, social, economic and cultural circumstances,

Recognizing the need to ensure that restorative justice processes are gender-sensitive and uphold the rule of law,

Recognizing also that restorative justice has shown promising results with respect to a broad range of situations, including serious crimes, cases involving a large number of victims and offenders, historic, systemic or institutionalized abuse and human rights violations, crime prevention, reintegration, and addressing harm and conflict in other systems and settings, such as schools and communities,

Recognizing further that restorative justice is one of the guiding paradigms of transitional justice, which is aimed at ensuring accountability, serving justice and achieving reconciliation, while taking into account the need to protect the right of victims to seek reparation,

Taking into account that restorative justice processes, such as victim-offender mediation, community and family group conferencing, circle sentencing, peacemaking and truth and reconciliation commissions, can contribute to a wide range of beneficial outcomes, including redressing the harm done to the victims, holding offenders accountable for their actions and engaging the community in the resolution of conflict,

1. *Welcomes with appreciation* the report of the Secretary-General on the outcome of the expert group meeting on restorative justice in criminal matters, held in Ottawa from 22 to 24 November 2017³ to review the use and application of the basic principles on the use of restorative justice programmes in criminal matters⁴ as well as new developments and innovative approaches in the area of restorative justice;

2. *Expresses its gratitude* to the Government of Canada for its financial support to the expert group meeting on restorative justice in criminal matters and to the United Nations Office on Drugs and Crime for convening the meeting;

These are the operative paragraphs, which are generally regarded as the most important part of a resolution, since they lay out policy or establish mandates. It is the actual substance of the resolution calling the Member States to take action. Note that it makes a big difference whether the formulation “states shall ...” or the much weaker “states may ...” is used, or even “states may consider ...”. Other formulations along the same line include the exhortatory but non-binding “states are called upon ...” and “states are encouraged to ...”. One more phrase, “states shall consider ...” may seem binding at first glance, but ultimately all that it requires is that states consider something.

3. *Encourages* Member States to promote and increase the use of restorative justice in criminal matters at all stages of the criminal justice system and to strengthen the quality of practice in accordance with recognized values, principles and guidelines on restorative justice, including by applying the basic principles on the use of restorative justice programmes in criminal matters;

4. *Calls upon* Member States to promote the management and resolution of social conflict through dialogue and mechanisms of community participation, including by raising public awareness, preventing victimization, increasing

³ E/CN.15/2018/13.

⁴ Economic and Social Council resolution 2002/12, annex.

cooperation between the public, competent authorities and civil society, and promoting restorative justice;

5. *Encourages* Member States to develop legislative and policy frameworks that prevent individuals from becoming unnecessarily involved in the criminal justice system and to facilitate access and support to restorative justice programmes, bearing in mind the need to ensure that the different systems and sectors work in a collaborative manner;

6. *Invites* Member States to consider, when developing restorative justice programmes, issues such as social inclusion, the strengthening of the social fabric, access to justice, social reintegration of offenders and access to health and education services, to consider the needs of victims of crime when developing those programmes, and to promote a culture of lawfulness and the well-being of individuals, with a particular emphasis on children and youth;

7. *Also invites* Member States to develop and implement restorative justice services and programmes in the area of juvenile justice, bearing in mind the Convention on the Rights of the Child,⁵ as well as relevant norms and standards in the area of juvenile justice;

8. *Further invites* Member States to assist one another in the exchange of experiences on restorative justice and in the development and implementation of research, training or other programmes and activities to stimulate discussion, including through relevant regional initiatives;

9. *Invites* Member States to consider providing technical assistance to developing countries and countries with economies in transition, upon request, to assist them in the development and implementation of restorative justice programmes, **where appropriate;**

Here is an excellent example of using the simple phrase “where appropriate” to leave each state with a margin of appreciation in deciding how to implement the resolution in question.

10. *Also invites* Member States to support the efforts of States that are carrying out transition processes in their endeavour to implement mechanisms of restorative justice aimed at protecting the rights of victims of serious violations of human rights and international humanitarian law, with a view to strengthening the rule of law and contributing to national reconciliation;

On a practical level, resolutions often request that the Secretariat take specific actions, such as prepare a report, organize a meeting or provide certain assistance to member states on request. In the following 3 paragraphs the UNODC is requested to take a specific actions.

11. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to develop educational materials and practical guidance on restorative justice in criminal matters, including updating its *Handbook on Restorative Justice Programmes*,¹ on topics identified at the expert group meeting on restorative justice in criminal matters held in 2017, in consultation with relevant restorative justice experts;

12. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to offer training and other capacity-building opportunities, in particular for practitioners working in the areas of crime prevention and criminal justice, and to make available and disseminate information on successful restorative justice models and practices, in close

⁵ United Nations, *Treaty Series*, vol. 1577, No. 27531.

coordination with the institutes of the United Nations crime prevention and criminal justice programme network;

13. *Further requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of restorative justice, including restorative juvenile justice;

As discussed ; a resolutions may be used to promote a certain political agenda: condemning certain developments, action taken or incidents, welcoming other developments, stressing the importance of certain values. The below paragraph could be seen as a political agenda on promoting indigenous issues. It must be noted that the Government of Canada one of the sponsoring countries has had a strong national agenda related to the rights of indigenous people. In the oral statement by the Minister of Justice and Attorney General of Canada, herself of indigenous origin, also mentioned the topic.

14. *Invites* the Commission on Crime Prevention and Criminal Justice to collaborate with the United Nations mechanisms on indigenous issues, including the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, taking into account the United Nations Declaration on the Rights of Indigenous Peoples,⁶ in order to closely coordinate their activities relating to restorative justice, including the relationship between restorative justice and indigenous approaches to justice;

15. *Also invites* the Commission on Crime Prevention and Criminal Justice to collaborate with the Human Rights Council on the use and application of restorative justice in the context of transitional justice;

16. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice, at its twenty-ninth session, on the implementation of the present resolution;

17. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes described above, in accordance with the rules and procedures of the United Nations.

⁶ General Assembly resolution [61/295](#), annex.