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

Outcome of the expert group meeting on restorative justice in criminal matters

Report of the Secretary-General

Summary

The present report contains the key reflections and outcomes of the expert group meeting on restorative justice in criminal matters held in Ottawa from 22 to 24 November 2017, pursuant to Economic and Social Council resolution 2016/17, entitled “Restorative justice in criminal matters”. The meeting brought together 25 experts from all regions of the world who reviewed 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.

* E/CN.15/2018/1.



I. Introduction

1. In its resolution 2016/17, entitled “Restorative justice in criminal matters”, the Economic and Social 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, annexed to its resolution 2002/12, as well as new developments and innovative approaches in the area of restorative justice.
2. As part of its efforts to implement Economic and Social Council resolution 2016/17, the United Nations Office on Drugs and Crime (UNODC) held an expert group meeting on restorative justice in criminal matters. The meeting was hosted by the Government of Canada and was held in Ottawa from 22 to 24 November 2017. The meeting was attended by 25 experts, in their individual capacity, from all regions of the world.
3. In addition, as part of its efforts to implement Economic and Social Council resolution 2016/17, UNODC presented to the Commission on Crime Prevention and Criminal Justice, at its twenty-sixth session, a summary of comments received from Member States and other stakeholders on the use and application of the basic principles on the use of restorative justice programmes in criminal matters and on national experiences and best practices (E/CN.15/2017/CRP.1).

II. Summary of deliberations

4. At the meeting, the expert group affirmed the value of restorative justice and the usefulness of the basic principles on the use of restorative justice programmes in criminal matters in promoting the use of restorative justice programmes. Noting that many Member States underused restorative justice in criminal matters or had yet to explore its full potential, the expert group stressed the need to further develop public awareness and support for restorative justice.
5. The expert group emphasized the relevance of restorative justice in terms of improving access to justice, including for vulnerable and marginalized populations and societies in transition. In that context, it noted that restorative justice was crucial to the achievement of Sustainable Development Goal 16, on promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. It was also noted that restorative justice was consistent with the spirit embodied in the Sustainable Development Goals of leaving no one behind.
6. The expert group observed that many Member States had continued to explore ways in which restorative approaches could be incorporated into criminal justice practices. Since the adoption of the basic principles, the application of restorative justice had expanded beyond cases involving children or young persons in conflict with the law, first-time offenders or minor crime. Furthermore, the expert group noted that, although the primary restorative justice process at the time of development of the principles had been victim-offender mediation, the field of restorative justice now encompassed a wide range of processes, such as community and family group conferencing, circles for purposes of resolution or diversion from the criminal justice system, circle sentencing, peacemaking and truth and reconciliation processes.
7. The expert group also observed that, in the past 15 years, restorative justice had demonstrated promising results with respect to a broader 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; and reintegration. It had also been used in other systems and settings (i.e., schools and communities) to address harm and conflict. The expert group also considered the possibility of using restorative justice in the context of

other current serious issues, including terrorism-related offences, hate crimes and intergroup conflicts.

8. Given that the concept of restorative justice, as well as its application and place in the criminal justice system, continued to evolve, the group noted that there was now a more nuanced understanding of some of the key concepts of the basic principles. Those concepts included voluntariness, confidentiality, impartiality, responsibility and accountability, agreements and outcomes, the centrality of victims in the process and the engagement of the community. The expert group highlighted the importance of clarifying such concepts and agreed that further guidance would be beneficial in the interpretation and application of those key concepts.

9. The expert group observed that States were increasingly seeking more effective ways of preventing crime, preventing radicalization to violence, preventing and responding to victimization, promoting the reintegration of offenders, addressing root causes of crime and systemic inequalities, and providing meaningful opportunities for reparation of harm to all those impacted by criminal offending. It was said that more comprehensive use of restorative justice had the potential to address the challenges faced by criminal justice systems, in particular by alleviating congestion in courts and overcrowding in prisons; reducing the overrepresentation of marginalized and vulnerable groups; better meeting the needs of victims; holding offenders accountable for their actions; and engaging the community, including women and young people, in the resolution of conflict.

10. The expert group acknowledged that restorative justice could contribute to reducing the overrepresentation of indigenous peoples in the criminal justice system, both as victims and as offenders. In that regard, it was noted that there were many ways in which indigenous legal traditions could inform restorative justice practices or contribute to increasing access to justice for indigenous populations.

11. The expert group emphasized that the spirit, values and objectives of restorative justice should inform criminal justice systems across the world. The group agreed that restorative justice processes could be implemented both within and alongside criminal justice systems and inspire the transformation of those systems to promoting restorative outcomes for those involved or affected.

12. The expert group recognized potential risks and harmful practices that could occur in restorative justice. The group strongly emphasized that restorative processes should be consistent with fundamental human rights, including women's and children's rights, and should be attentive to systemic discrimination. It was noted that the application of restorative justice should be guided by the principle that no additional harm would result from participating in the process. The expert group also noted the risk of net-widening, the importance of not pressuring participants to be involved, the need for procedural safeguards and ensuring that practices were culturally sensitive and appropriate, and the need for appropriate accountability mechanisms. It was pointed out that, as criminal justice was a public matter, the application of restorative justice needed to carefully balance the need for confidentiality, transparency and public accountability.

13. The expert group emphasized the centrality of ensuring the safe, appropriate and meaningful engagement of participants. In that regard, the group discussed the importance of needs-based practices and flexibility of process. It was noted that appropriate and ongoing assessments and the thorough preparation of both victims and offenders for participation were essential and required facilitators to be skilled and well prepared. In addition, the expert group highlighted the need for follow-up mechanisms and adequate victim and offender support services.

14. With regard to restorative approaches to matters involving serious crime, such as violent crimes and crimes involving sexual violence, the expert group noted the experiences of several countries, which demonstrated that many victims had an interest in participating in a restorative justice process when offered the opportunity to do so. The group discussed numerous needs-based practices that were essential to

ensuring the safe engagement of victims, in particular victims of serious crime. Those practices included the need to address concerns for victim safety; adjust the power imbalance between participants; understand, recognize and appropriately respond to the effects of trauma that victims might suffer from the offence; and take steps to minimize the risk of revictimization from the process. It was noted that highly specialized facilitation skills and extensive training for facilitators were required.

15. The expert group considered the various measures that could improve the participation of victims in restorative justice processes. Those measures included making restorative justice services widely available to victims, as well as accessible to them; raising victims' awareness of restorative justice options (e.g., through establishing in legislation a victim's right to be informed about restorative justice); providing ample information about restorative justice and the implications of participating in a restorative justice process so as to allow victims to make an informed choice; and ensuring that participation by victims was truly free and voluntary.

III. Conclusions and recommendations

16. In view of the foregoing, the Commission on Crime Prevention and Criminal Justice may wish to consider the following outcome of the expert group meeting.

17. The expert group concluded that Member States should promote and increase the use of restorative justice in criminal matters, including by applying the basic principles on the use of restorative justice programmes in criminal matters. The group also concluded that Member States should:

(a) Promote data collection, monitoring and evaluation to broaden the evidence base on restorative justice, including on its usefulness in preventing crime and victimization;

(b) Provide a wide range of restorative justice options at every stage of criminal justice proceedings;

(c) Consider the use of restorative justice in cases of historic, systemic or institutionalized harm;

(d) Consider the development of legislative frameworks to facilitate access to restorative justice and ensure procedural safeguards;

(e) Exchange experiences and promote mutual learning on various matters relating to restorative justice;

(f) Provide sufficient resources to ensure that high-quality restorative justice programmes and relevant support services are available.

18. The expert group concluded that the Commission should 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, to jointly explore access to justice through restorative justice, including indigenous approaches to justice.

19. The expert group also concluded that the Commission should collaborate with the Human Rights Council on the use and application of restorative justice in the context of transitional justice.

20. The expert group further concluded that additional practical guidance on the following issues of restorative justice in criminal matters should be developed by UNODC, with the involvement of relevant restorative justice experts:

(a) Key concepts of restorative justice, as contained in the basic principles on the use of restorative justice programmes in criminal matters;

- (b) Restorative justice responses to serious crime;
 - (c) Safe and meaningful engagement of victims in restorative justice programmes;
 - (d) Application of restorative justice in matters related to justice for children and child protection matters;
 - (e) Provision of information about restorative justice options and preparation of participants for participation in a restorative justice process;
 - (f) Criteria to consider in:
 - (i) The selection of facilitators, who should reflect the diversity of the community in terms of gender, age, culture, ethnicity and faith;
 - (ii) The training of facilitators, which should be extensive, provided on a non-commercial basis, and aimed at ensuring cultural competence;
 - (g) Transparency and oversight of restorative justice processes.
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