

CRIME

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on the Prevention of Crime
and the Treatment of Offenders
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Agenda item 6

Offenders and victims: accountability and fairness in the justice process

Report of Committee I on topic IV

1. At its 1st plenary meeting, on 10 April 2000, the Congress allocated to Committee I the consideration of agenda item 6, entitled "Offenders and victims: accountability and fairness in the justice process" (topic IV), in accordance with the programme of work proposed by the Secretary-General (E/CN.15/1999/6 and Corr.1, para. 8 and annex) and approved by the General Assembly in its resolution 54/125.

Proceedings

2. At its ___ to ___ meetings, on 14 and 15 April 2000, Committee I, under the chairmanship of Mr. R. K. Raghavan (India), held a general discussion on the item. For its consideration of the item, it had before it a working paper prepared by the Secretariat (A/CONF.187/8).

3. At the 1st meeting, on 14 April 200, the Chairman of Committee I made an introductory statement in which he emphasized the importance of victimology. That was followed by a statement by one of the panellists on the major themes for discussion. Two other panellists made general statements on restorative justice. Statements were also made by the representatives of Australia, Canada, the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, Cuba, Mexico and the Republic of Korea.

4. At the 2nd and 3rd meetings, on 15 April 2000, the discussion focused on the rights of victims and offenders and on restorative justice.

5. At the 2nd meeting, two recent publications, *Handbook on Justice for Victims* and *Guide for Policy Makers* were introduced. They had been prepared by a group of experts from more than 40 countries at a series of meetings supported by the Office for Victims of Crime in the United States Department of Justice and by the Ministry of Justice of the Netherlands. The publications had been developed in cooperation with the Office for Drug Control and Crime Prevention of the Secretariat and had been funded by the Office for Victims of Crime of the United States Department of Justice. Statements were made by the representatives of South Africa, Namibia, the United States of America, New Zealand, Sweden, Finland and Cuba.

6. One of the panellists presented recent research on the effective implementation of victims' rights. That was followed by statements by the representatives of the United Kingdom and Turkey.

7. At the 3rd meeting, statements were made by the representatives of Italy, Canada, Germany, China, the United Kingdom, Croatia, Poland, France and Austria. That was followed by statements by the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment. Statements were also made by the observers for World Society of Victimology, Friends World Committee for Consultation, Prison Fellowship International and Penal Reform International. Four experts also made statements.

General discussion

8. The participants agreed that the concept of restorative justice should be a fundamental element of discussions of accountability and fairness to offenders and victims in the justice process. The philosophy behind restorative justice was to manage the harm done and to restore the offender and victim to their former state as far as possible. It was noted that the aim of reintegrative shaming was first to shame the offender into acknowledging the harm committed against the victim and society and then to reintegrate the offender into the community and society as a whole. Restorative justice presented the criminal justice process with an alternative to the established modes of trial and punishment and sought to include the community and society as a whole in the restorative process.

9. It was noted that, in recent years, restorative justice had attracted the interest of policy makers, practitioners, researchers and individual actors in the criminal justice process. Restorative justice was an ancient practice that had re-emerged in new forms such as mediation, family group conferencing and healing circles. It was largely used for young offenders and less serious offences. The participants discussed possible applications of restorative justice in cases involving adult offenders and more serious crimes.

10. It was noted that a number of countries, in particular those with common-law jurisdictions, had been at the forefront of some of the most innovative initiatives involving restorative justice, such as family group conferencing. Some other jurisdictions had also adopted restorative alternatives in the form of mediation. Reference was made to various programmes for restorative justice in developed countries. Representatives of several countries noted that restorative justice had long been practised at the community level in many developing countries, notably in Africa. The representative of South Africa stated that, in his country, restorative justice had recently undergone a renaissance in the form of truth and reconciliation councils.

11. It was stated that restorative justice had received a favourable reception in a number of countries, including Canada, Cuba, France, Germany, Italy, Mexico, New Zealand, Poland, the Republic of Korea, the United Kingdom and the United States. Representatives of a number of Governments compared victim satisfaction in initiatives for restorative justice with traditional forms of criminal justice and discussed the likelihood of there being lower rates of recidivism after restorative justice. Some participants, however, cautioned against considering the potential of restorative justice to be unlimited, given that, in the majority of cases, the crimes were never solved and the offenders were not identifiable. Some participants noted that, as society was also affected by crime, it should be

compensated for crimes committed; it was also noted that restorative justice had a tendency to emphasize the harm done by crime to individual victims.

12. Several participants noted that restorative justice was in an embryonic stage and could not yet be viewed as a cure-all for crime and the failings of traditional criminal justice systems. One participant stated that restorative justice failed to address questions of etiology with respect to the causes of crime. It was suggested that, in a few years, restorative justice might become a passing fad, like certain other criminal justice initiatives.

13. The participants discussed the practical application of restorative justice initiatives in cases involving non-juvenile offenders and more serious crimes. The applicability of restorative justice to sensitive cases was questioned. There was also a discussion on the need to preserve the procedural rights of victims, with reference being made to the dangers of pressuring victims into opting for restorative justice.

14. While some participants expressed the view that community and state interests could not be easily reconciled through restorative justice, most participants were more enthusiastic about the potential for restorative justice being implemented alongside traditional criminal justice processes. Criminal justice personnel should, accordingly, receive adequate training with respect to restorative justice.

15. The discussion also focused on accountability and ensuring fairness to both offenders and victims through due process of law. Representatives of a number of Governments presented their most recent legislation with respect to a wide range of measures, service provisions and compensation schemes. The participants addressed issues related to the protection of the rights and needs of offenders and victims: for example, the need to protect the anonymity of the victim in sensitive cases while preserving the rights of the offender. One participant referred to findings from research on the implementation of recommendation (85) 11 of the Council of Europe, concerning victims of crime, in 22 European jurisdictions. He pointed out that the law in practice was often strikingly different from the law on the books with regard to the implementation of guidelines for victims. In that regard, it was noted that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,¹ while providing a benchmark for the rights of victims, had yet to become a reality in practice in most States. In that respect, the above-mentioned *Handbook* and *Guide* were seen to be of considerable assistance to practitioners in the implementation of policies concerning victims of crime.

16. A number of participants from developing countries, in referring to various initiatives for victims and offenders, stressed the need for funding, in particular with regard to compensation schemes and the training of criminal justice agents in providing services to victims. The importance of volunteers for community-based schemes aimed at both offenders and victims was also raised. One participant, referring to some of the suggested initiatives for victims and offenders, contained in document A/CONF.187/8, also noted the technical problems encountered in the implementation of those initiatives and, in that regard, reference was made to the detection and punishment of persons involved in organized crime.

17. Many participants observed that the pendulum of criminal justice was increasingly swinging towards consideration of the much neglected victim. Another participant referred to the particular plight of persons serving long-term prison sentences and pointed out that, in some countries, a large proportion of prisoners were foreign in origin. Reference was also made to the need to avoid crime by and victimization of persons serving long-term

prison sentences. The use of psychological tools to predict and counteract prison violence was advocated. The particular needs of female prisoners, juvenile offenders and the families of prisoners were also highlighted.

18. The subject of prison overcrowding was raised with respect to short-term prison sentences being imposed on offenders for, among other things, non-payment of fines, and to the absence of programmes that would divert offenders from the criminal justice system.

19. Several participants referred to the needs of specific categories of vulnerable victims, for example, female and child victims of sexual assault. In that respect, it was emphasized that stereotypical views of victims should be avoided. That opinion was reiterated with respect to the diverse nature of the so-called "victims' movement".

20. Several participants also referred to the victims of transnational organized crime. The special needs of such victims were mentioned, as was the reinforcement of their rights to protection. In that regard, international cooperation was considered to be an essential element in ensuring that they were protected and not subject to further victimization.

Conclusion

21. A number of conclusions were reached during the discussion, in particular with regard to accountability and ensuring fairness to both offenders and victims in the criminal justice process:

(a) It was agreed that interest in victims had grown. That growth had been, in part, due to the growth of interest in restorative justice which in turn had received a substantial impetus from the penal crisis of recent years;

(b) Although not all participants regarded restorative justice as a paradigm shift for criminal justice, there was consensus with regard to its desirability;

(c) It was noted that there was a presumption that restorative justice delivered rights to victims. Some participants referred to restorative initiatives as forms of empowerment; however, the view was expressed that there were circumstances in which caution was necessary. In that connection, it was considered that quality control and evaluation of restorative initiatives were desirable;

(d) With regard to the rights of offenders, no firm conclusions were drawn as to whether it was advisable to give the victim a final say in decisions on prosecution, early release and parole, or whether it was preferable to allow the victim to provide information to the criminal justice authorities that could be taken into account when taking such decisions. It was noted that any mention of rights inevitably stressed the need for a balance between the rights of the victim and the offender.

22. No conclusions could be drawn on the following: what would happen if rights were not observed; what recourse the offender or victim had; how victims and offenders learned about their rights and what they knew; and the rights that victims and offenders actively sought. It was suggested that further consideration should be given to those issues.

23. Some participants expressed the view that there was a need for further consideration to be given to the question of transnational victimization. Such a discussion could touch upon, for example, the problems raised by difficulties with language, cultural discrepancies and unfamiliarity with foreign legal procedures.

24. Some participants suggested that the Commission on Crime Prevention and Criminal Justice be invited to formulate basic principles and standards to guide States in the fair and effective use of mediation and other processes of restorative justice.

Note

¹ General Assembly resolution 40/34 of 29 November 1985.

Annex I

Panellists participating in the discussion

Mr. Marc Groenhuijsen, Professor of Criminal Law and Criminal Procedure, Tilburg University, Netherlands

Mr. Paul Rock, Professor of Sociology, London School of Economics, University of London, United Kingdom of Great Britain and Northern Ireland

Mr. John Braithwaite, Professor of Law, Australian National University, Canberra
