

## Lima Declaration on Restorative Juvenile Justice

### Introduction

The First World Congress on Restorative Juvenile Justice was organised by the Foundation Terre des hommes (Lausanne), in cooperation with the Public Prosecutor of Peru, the *Pontificia Universidad Católica of Perú* and the Association *Encuentros-Casa de la Juventud* and was held in Lima from 4-7 November 2009. About 1000 participants from 63 countries on five different continents representing governments, the judiciary, civil society, in particular NGO's, and organisations of professionals working with or for children, the media, the academic world and UN agencies attended the Congress to discuss different aspects of restorative juvenile justice guided by the objectives of the Congress:

- to reflect upon the concept of Restorative Juvenile Justice and to undertake a critical viability analysis;
- to examine the methodology and instruments of Restorative Juvenile Justice;
- to evaluate the situation of the victim in Restorative Juvenile Justice and the need for her/his protection and reparation of damages;
- to exchange experiences and lessons learned and good practices of Restorative Juvenile Justice worldwide;
- to elaborate and present some recommendations for the development and implementation of Restorative Juvenile Justice.

In the discussions in panel sessions, specialised conferences and workshops the participants were guided and inspired by, amongst others, the UN Convention on the Rights of the Child and General Comment no. 10 of the CRC Committee on "The rights of the child in juvenile justice", the African Charter on the Rights and Welfare of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Resolution 2002/12 of the UN Economic and Social Council (ECOSOC) on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters, the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes (ECOSOC Resolution 2005/20), the Handbook on Restorative Justice Programmes of the UN Office against Drugs and Crimes (UNODC) and relevant regional human rights instruments.

This Declaration reflects the deliberations during the Congress and contains a set of Recommendations for further actions to promote, develop and implement the restorative approach as an integral part of Juvenile Justice.

### Basic Rights of the Child and the Principles of Juvenile Justice

The participants to the Congress want to underline that (the practice of) Restorative Juvenile Justice (RJJ) has to respect the fundamental rights of children as enshrined in the CRC, more specifically elaborated for Juvenile Justice in General Comment No 10 of the CRC Committee, and has to be in full compliance with the relevant international standards such as the UN Minimum Standards on the Administration of Juvenile Justice (Beijing Rules) and the recommendations and guidelines mentioned above.

The participants in the Congress recall in particular the aims of Juvenile Justice as set out in art. 40 (1) CRC:

- to treat children in conflict with the law in a manner consistent with the promotion of the child's sense of dignity and worth;
- to reinforce the child's respect for the human rights and fundamental freedoms of others;
- to promote the child's reintegration and the child's assuming a constructive role in society.
- In their efforts to achieve these goals States shall take into account the relevant provisions of international instruments, such as the rule that retro-active justice is prohibited, and shall in particular ensure the implementation of the following rights of the child:
  - the right to be presumed innocent until proven guilty according to the law;
  - the right to be promptly informed about the charges against her or him;
  - the right to legal or other appropriate assistance;
  - the right to have the matter determined without delay by a competent, independent and impartial authority or legal body;
  - the right not to be compelled to give testimony or to confess guilt;
  - the right to examine or have examined adverse witnesses;
  - the right to have the decision that the child has committed the alleged offence and the measures imposed reviewed by a higher authority or legal body;
  - the right to have free assistance of an interpreter;
  - the right to full respect of her or his privacy at all stages of the proceedings.

Furthermore the CRC requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the law, the establishment of a minimum age of criminal responsibility and to take measures (when appropriate and desirable) for dealing with these children without resorting to judicial proceedings while ensuring that human rights and legal safeguards are fully respected. In order to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence the States shall make available a comprehensive set of measures such as supervision, counselling, probation, educational and vocational training programmes and other alternatives to institutional care. This is in line with the rule in art.37 (b) CRC that deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time. This article contains further specific rules for the use of this measure of last resort.

## Major Concerns

During the Congress, and with references to the rights and principles mentioned earlier, participants expressed their serious concerns at the status and the quality of the rules and practices in Juvenile Justice. Many children in conflict with the law do not receive justice in accordance with the provisions of the CRC and other relevant international standards. They are (too) often deprived of their liberty either in the context of pre-trial detention (often without any information about the charges against them) or in the context of the execution of a sentence. Furthermore concerns were expressed, based on research, regarding the limited or even negative contributions of the classical sanctions, in particular of the deprivation of liberty, to achieving the aims of juvenile justice as set out in art. 40 (1) CRC. Efforts to deal with children in conflict with the law without resorting to judicial proceedings, as clearly recommended in the CRC, are in many countries either very limited or even non-existent. However,

available information shows that alternative measures, including restorative justice programmes, do contribute to the child's reintegration and the child's assuming a constructive role in society

## **Restorative Juvenile Justice**

### **a. 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.

### **b. 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 CRC 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 NGO's 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 media should be involved in these campaigns with attention not only for the important role of local radio but also for the growing importance of new communication tools such as internet and mobile phones.

### **c. 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.



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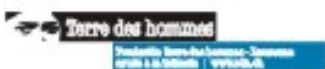
The victim and the child offender should, subject to national law, have the right to legal counselling and the child offender and the child victim should have the right to the assistance of a parent or guardian.

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.

#### **d. Recommendations for actions.**

1. We call on the UN Committee on the Rights of the Child to systematically recommend the States Parties to the CRC to undertake the necessary measures for the integration of restorative processes as a possibility for dealing with children in conflict with the law at all stages of the administration of juvenile justice.
2. We recommend the Interagency Panel on Juvenile Justice to further strengthen its technical assistance for the support of governments in their efforts to develop and implement the restorative juvenile justice approach, while referring to Resolution 2009/26 of the ECOSOC encouraging UN Member States to provide this Interagency Panel with the necessary resources and to fully cooperate with the Panel.
3. We recommend the UN Office against Drugs and Crime to increase, as a follow-up to its Handbook on Restorative Justice Programmes, its efforts to promote the use of restorative justice approaches in dealing with offences committed by children and to assist States in their efforts in this regard where appropriate.
4. We recommend UNICEF to continue and increase its efforts to support and provide technical assistance to States in the development and implementation of restorative juvenile justice programmes, in particular by providing training to all actors in the field of juvenile justice.
5. We recommend States parties to the CRC and States that signed the CRC to undertake, as part of their comprehensive national policy on juvenile justice, the necessary measures to include restorative justice programmes as an integral part of the administration of juvenile justice while taking into account the observations, suggestions and rules above under a – c, and to call on the Interagency Panel on Juvenile Justice, UNICEF and UNODC for technical assistance in that regard. These measures should include awareness raising campaigns, with the involvement of national and local media, informing the public about the nature and the benefits for the victim, the offender and the society of a restorative juvenile justice policy and the promotion of the involvement of parents and the community.
6. We recommend States engaging in a process of introducing restorative juvenile justice to undertake pilot projects together with a thorough evaluation and to decide on the basis of the outcome of these projects on the country wide introduction of restorative juvenile justice and on the legislative measures to provide a solid basis for a sustainable practice of restorative juvenile justice as the main





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characteristic of its juvenile justice system, while ensuring that human rights and legal safeguards are fully respected in line with the basic principles adopted by ECOSOC.

7. We recommend States when developing and implementing restorative juvenile justice to pay special attention to vulnerable children such as children in street situation, taking into account their specific daily reality, their problems and needs and children and adolescents involved in gangs, armed groups and paramilitary groups.
8. We recommend States to develop and implement adequate and ongoing training for all the key actors in the administration of juvenile justice, with special attention for changing the conventional legal approach and to establish and/or support the services necessary for implementing restorative juvenile justice programmes while using existing networks as much as possible. These services should practice an interdisciplinary approach, for instance by establishing multidisciplinary teams, in conducting restorative juvenile justice among others with the view to address also the emotional needs of both the victim and the juvenile offenders.
9. We recommend States to establish or strengthen the systematic collection of data on the nature of and the responses to juvenile delinquency in order to inform its policies in that regard with a view to adjusting them as necessary and to conducting or supporting research on the nature and the impact of the various responses to juvenile delinquency.
10. We recommend States and the relevant UN agencies to initiate and/or support the development and implementation of regional projects of restorative juvenile justice in different parts of the world.

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