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

A summary of comments received on the use and application of the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*

Summary

The Economic and Social Council, in its resolution 2016/17, requested the Secretary-General to seek comments on the use and application of the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters as well as on national experiences and best practices on the use of restorative justice programmes in criminal matters. The same resolution also requests the Secretary-General to convene a meeting of restorative justice experts in collaboration with Member States and other relevant stakeholders in order 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, subject to availability of extrabudgetary resources. Pending the availability of such resources, this conference room paper seeks to present a summary of comments received from Member States and other stakeholders in response to UNODC's request.

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I. Introduction

1. The Economic and Social Council, in its resolution 2016/17 titled "Restorative justice in criminal matters", requested the Secretary-General to "seek comments from Member States, relevant intergovernmental and non-governmental organizations, the institutes of the United Nations crime prevention and criminal justice programme network and other relevant stakeholders with experience in restorative justice processes 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 in using and applying restorative justice processes".[1]

2. As part of ongoing efforts towards the implementation of the abovementioned resolution, the United Nations Office on Drugs and Crime (UNODC) sought comments via: (i) a note verbale to all Member States in November 2016, followed by a reminder in December 2016;[2] and (ii) letters to relevant intergovernmental and non-governmental organizations, the institutes of the United Nations crime prevention and criminal justice programme network and other relevant stakeholders with experience in restorative justice processes in January 2017. As of 15 May 2017, UNODC received a total of 59 responses, including from 31 Member States,[3] two United Nations entities,[4] one intergovernmental organization,[5] seven entities of the United Nations crime prevention and criminal justice programme network[6] and 13 non-governmental organizations[7] and five other relevant stakeholders.[8]

3. This conference room paper provides an overview of the replies received, which are presented in two parts. The first part summarizes information received from Member States on main restorative justice programmes in criminal matters as well as information on the key measures related to its implementation, including inter-institutional coordination, awareness-raising, training, data collection, and monitoring and evaluation. The second part contains information and resources provided by intergovernmental and non-governmental organizations, relevant United Nations entities, the institutes of the United Nations crime prevention and criminal justice programme network, and other relevant stakeholders. With the

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[1] Economic and Social Council resolution 2016/17, para. 1.

[2] CU 2016/434/DO/JS and CU 2016/509/DO/JS.

[3] Algeria, Austria, Bolivia, Botswana, Canada, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Ecuador, Egypt, France, Germany, Guatemala, Hungary, Jordan, Kuwait, Mali, Malta, Mauritius, Mexico, Mongolia, Norway, Paraguay, Slovenia, Spain, Switzerland, Thailand, Tunisia, Turkey, and the United States.

[4] Office of the United Nations High Commissioner for Human Rights and the Office of the Special Representative of the Secretary-General on Violence against Children.

[5] Organization of American States.

[6] Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI); Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD); European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI); United Nations African Institute for the Prevention of Crime and Treatment of Offenders (UNAFRI); Naif Arab University for Security Sciences (NAUSS); International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC); and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

[7] Defence for Children International, European Forum for Restorative Justice, Integration for Society, International Juvenile Justice Observatory, International Organization for Victim Assistance, Justice For All — Prison Fellowship Ethiopia, National Association for Community and Restorative Justice, Prison Fellowship International, Restorative Justice Centre, Restorative Practices International, Sociedad Científica de Justicia Restaurativa, Terre des Hommes International Federation, and World Society of Victimology.

[8] Academy of Criminal Justice Sciences, Fresno Pacific University's Center for Peacemaking & Conflict Studies, International Institute for Restorative Practices, James F. Albrecht, and Michael O'Connell.

exception of information provided by United Nations entities, information provided in this paper does not imply any endorsement from the United Nations Secretariat.

II. Information provided by Member States

A. The concept of restorative justice

4. At the meeting of the Group of Experts on Restorative Justice, convened in Ottawa, Canada in 2001 to review and examine the proposals on what later became the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters[9] (hereinafter Basic Principles), the experts had noted that "theories of restorative justice were still evolving" and that, "while the core philosophies of restorative justice were widely accepted, there would not be a universal consensus on every element or aspect in every Member State."[10] Indeed, as the replies provided by Member States indicate, there exists a considerable variance between restorative justice programmes in different jurisdictions. Given such diversity, it is not surprising that the manner in which the countries have defined the concept of restorative justice, if so undertaken, also varies greatly.

5. The Basic Principles did not define the term "restorative justice", but instead defined the terms "restorative justice programme", "restorative process", and "restorative outcome". "Restorative justice programme"[11] refers to any programme that uses restorative processes and seeks to achieve restorative outcomes. "Restorative process,"[12] which may include mediation, conciliation, conferencing and sentencing circles, means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. "Restorative outcome"[13] is defined as an agreement reached as a result of a restorative process and include 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.

6. Several Member states provided information on the concept in their national system.

7. In **Canada**, the concept of restorative justice is not defined in federal law. However, a definition that is reported to be widely relied upon within the criminal justice context is "an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime — the victim(s), offender and community — to identify and address their needs in the aftermath of a crime".

8. In **France**, a restorative justice measure is defined in Article 10-1 of the Code of Criminal Procedure as "any measure that enables a victim and the perpetrator to participate actively in the resolution of difficulties resulting from the offence and in particular to compensation for any prejudice resulting from his or her commission." Article 10-1 further provides that a restorative justice measure can only be used after the victim and the offender have been fully informed of the offence and have expressly consented to participate. It is facilitated by an independent third party trained for this purpose, under the supervision of the judicial authority or, at the request the latter, the prison administration. It is confidential unless otherwise

[9] Economic and Social Council resolution 2002/12, annex.
[10] E/CN.15/2002/5/Add.1, paras. 28-29.
[11] Economic and Social Council resolution 2002/12, annex, para. 1.
[12] Ibid., para. 2.
[13] Ibid., para. 3.

agreed by the parties and except in cases where a higher interest related to the need to prevent or punish offences warrants that information on the conduct of the measure is brought to the attention of the public prosecutor.

9. The French reply noted that procedural devices that are inspired by restorative justice, such as the various reparative measures that can be ordered by a juvenile judge to a child within the juvenile justice system (e.g., a community service order), are similar to restorative justice measures but nevertheless differ, because: (i) it does not meet the requirement of free and voluntary consent or disconnection from the trial; (ii) it does not involve an independent third party as the Judicial Child Protection Services executes and reports the child's compliance to the judge; and (iii) the measure focuses on the offender only and the victim is rarely directly involved in the reparative measure.

10. In **Mexico**, restorative justice programmes are collectively referred to as alternative mechanisms for solution of disputes in criminal matters (*mecanismos alternativos de solución de controversias en materia penal*), which include mediation, conciliation, and restorative boards (*la junta restaurativa*). A restorative board is defined as "a mechanism by which the victim or offender, the accused and, if applicable, the affected community, in free exercise of their autonomy, seek, construct and propose options for solving the conflict, in order to achieve an agreement that addresses the individual and collective needs and responsibilities, as well as the reintegration of the victim or offended and the accused to the community and the recomposition of the social fabric."[14]

11. As relates to scope of application of restorative justice programmes, **Kuwait** noted that the principles of restorative justice cannot be applied in all types of crimes (e.g., cases involving drug-related offences).

12. Some countries shared information on programmes that promote reconciliation between the offender and the victim. These do not necessarily correspond to the definitions on restorative justice described above.

13. **Mongolia** reported that, under Article 25.1 of the Criminal Procedure Law, when an accused or an offender, who committed a misdemeanour for the first time, compensated the victim, and has voluntarily reconciled with the victim, the case will be terminated. If, however, victims are not able to defend their rights and legal interests due to their dependence on the accused, or "for any another reason", the case is not terminated.[15]

14. In **Egypt**, the concepts of *tasaloh* (restorativeness) and *solh* (conciliation) were incorporated into the Code of Criminal Procedure in 1998 pursuant to Law No. 174. *Solh* conciliation is a procedure in which the victim and the accused mutually agree to put an end to legal proceedings. Under Article 18 *bis* (a) of the Code of Criminal Procedure, it can be applied to an enumerated list of offences and misdemeanours and can take place at any stage of the legal proceedings, including after sentencing. If the *solh* conciliation takes place after the implementation of a sentence has already begun, the public prosecutor orders a halt to its enforcement. Thus, successful *solh* conciliation between a victim and the accused terminates the legal proceedings.

[14] Mexico, Ley Nacional de Mecanismos Alternativos de Solución de Controversias en Materia Penal, art. 27 (29 December 2014).

[15] Mongolia, Criminal Procedure Law, art. 25 (10 January 2001).

B. Existing restorative justice programmes

(i) Victim-offender mediation

15. Victim-offender mediation (VOM), also called "reconciliation programmes" in some countries, refers to a process wherein the victim and the offender engage in a discussion of the crime that is facilitated by an impartial third party trained for this purpose, either in a face-to-face meeting or through other indirect means. In some jurisdictions, it can also be initiated at the request of offenders and help facilitate the offender's reintegration into society through reconciliation with victims. VOM may be operated both by governmental agencies and non-profit organisations, and are generally used in the context of cases involving less serious offences.

16. Several trends could be identified from the information received on VOM.

17. First, VOM is the most common type of reported restorative justice programme (18 countries). This frequency of use may be attributable to the relative ease with which VOM can be incorporated into the existing formal criminal justice system.

18. Second, consistent with the Basic Principles, the consent of both the victim and the offender is a precondition in any VOM programmes in all reporting Member States. Furthermore, the victim can withdraw his or her consent at any time in the process.

19. Third, there was a great variety in the way referrals to VOM were made across jurisdictions. Referrals could be made by the police, prosecutors, judge, and/or other authorities in the criminal justice system, such as the victim services office or the probation office. Referrals by the prosecutor was the most common arrangement amongst reporting countries (11 countries), followed by referrals by the judge (seven countries). Eight countries expressly provide that the victim or the offender can request for VOM themselves.

20. Fourth, Member States differed on at which stage of the criminal justice continuum (i.e., police, pre-trial, trial, and post-trial stages) VOM could be applied. In seven countries, VOM could be applied at any stage of the criminal justice. In five countries, it could only be used during the pre-trial stage.

21. Fifth, the reported programmes indicate that VOM is generally applied to cases involving less serious offences (e.g., crimes that did not result in death, offences punishable by imprisonment of less than a certain number of years). Ten countries reported that they could only be used to a restricted list of offences. However, two countries provided that, in theory, VOM could be used for any type of offence.

22. Lastly, the outcome of VOM and its effect on the criminal justice proceedings varies across jurisdictions. Successful completion of VOM terminates, dismisses, or suspends the criminal justice proceedings in seven countries. In four countries, the result of the VOM is taken into account during sentencing. In two countries, whether the case is terminated, dismissed, or suspended upon successful completion of VOM depends on the severity of the offence.

23. The following paragraphs summarize the reported information on VOM programmes in respective countries.

24. In **Algeria**, pursuant to Order No. 15-02 of 23 July 2015, public prosecutors have been empowered to refer criminal cases to VOM. Under Article 36 and 37 *bis*, the public prosecutor, on his or her own initiative or at the request of the victim or defendant, can decide to refer a case to VOM prior to prosecution, when the likelihood of case resolution and reparation is high. The mediation applies to a non-exhaustive list of offences and is subject to agreement by the victim. The mediation

must conclude in a written agreement, signed by the public prosecutor, the registrar and the parties, which is enforceable under the law. Mediation agreement includes the details of the restitution, pecuniary or in kind damages offered as compensation, or other agreed arrangements between the parties. The time limit for prosecution is suspended for the period of mediation, and successful completion of VOM terminates the case.

25. In **Austria**, after pilot projects on restorative justice measures in the 1980s, VOM was incorporated into the Code of Criminal Procedure as part of a "diversion package" (*Rücktritt von der Verfolgung*, or withdrawal of prosecution). VOM is regulated under Section 204 of the Code of Criminal Procedure. VOM and other diversion methods can be applied to offences punishable by imprisonment of less than five years and the offence must not have resulted in death.[16] Successful completion of VOM regularly leads to waiving of criminal prosecution, sentence, and criminal record. For VOM to be used, the offender must: (i) express his or her readiness to account for the behaviour (not necessarily an admission of guilt); (ii) compensate the effects of the crime to make up for the crime, particularly by paying for the damages caused by the act or otherwise contributing to the compensation of the consequences; and (iii) express his or her readiness to refrain from such behaviour in the future.

26. VOM can be applied at any stage of the criminal proceedings, but the offer of VOM is usually made in the early stages. The public prosecutor has the discretion to refer a case to VOM and may carry out an investigation to ascertain whether a case meets the criteria. Approximately 85 per cent of the cases that are referred to VOM in Austria are done so by public prosecutors,[17] but referral by a judge is also possible. Victims and offenders, however, do not have a right to apply for VOM.

27. If the public prosecutor or the judge decides to apply VOM, it is implemented by the Association for Probation Service and Social Work (*Neustart*), an autonomous body financed by the Ministry of Justice with 35 offices throughout Austria. Mediators at *Neustart* are social workers, lawyers or psychologists with extra training or practice. They are required to have professional qualification. The mediator will reach out to the offender and the victim and, mostly through direct face-to-face mediation, try to achieve a settlement or reconciliation without a trial or a conviction. The outcome of VOM may include financial compensation for the damages and the agreement must be written and signed by the parties. The mediator is responsible for processing the entire case, including a final report to the public prosecutor.

28. As of 2015, 74.1 per cent of VOM were successful. According to a separate research, 84 per cent of participants did not reoffend after out-of-court compensation.[18]

29. It is worth noting that in Austria, approximately 20 per cent of all VOM cases involve intimate partner violence.[19] To use VOM for intimate partner violence cases, a special regulation provides that no mediation should take place if the offender blames the victim, downplays or denies wrongdoing, and/or if there is a serious power imbalance, a history of violence, or a lack of emotional stability of the

[16] As of 1 January 2017, there is an exception for cases in which the death was due to negligence, the victim is a relative of the offender, and the offender has experienced significant psychological burden as a result of the death.

[17] Lilliana Drost and others, *Restorative Justice in Cases of Domestic Violence. Best practice examples between increasing mutual understanding and awareness of specific protection needs*, WS1. Comparative Report (JUST/2013/JPEN/AG/4587, January 2015), p. 19.

[18] Veronika Hofinger and Alexander Neumann, *Legalbiografien von Neustart Klienten* (Vienna, Institut für Rechts und Kriminalsoziologie, 2008).

[19] For more information on use of restorative justice programmes in involving violence against women, see paras. 81-82.

victim.[20] If any such risk factors are present in the report of the public prosecutor, a separate personal meeting with both parties and a risk assessment tool help the gauge whether a case is appropriate for VOM.

30. In **Canada**, the legal basis of administration of VOM on the federal level is Section 717 of the Criminal Code, which provides that alternative measures may be used if the offender accepts responsibility for the offence and consents to participate. The Correctional Service of Canada (CSC), the federal government agency responsible for administering sentences of a term of two years or more, offers VOM through the Restorative Opportunities (RO) programme. The RO programme is available to registered victims (or their representatives) as well as non-registered victims who are impacted by the crime. Requests for VOM directly from the offender are not accepted. However, for offenders who are interested and take responsibility for their actions can be referred to the RO programme by a correctional staff member who supports their participation. Once a referral has been made, the RO programme staff and mediators assess the appropriateness and the offender's motivation. The RO programme is administered post-sentencing and is facilitated by a professional mediator in a confidential manner. Most VOM are conducted face-to-face, but indirect options, such as through letters, video messages, or the mediator relaying messages between the offender and victim, are also available.

31. The RO programme receives on average 140 requests for VOM annually. As of 2017, the programme has facilitated 375 face-to-face meetings and has 17 mediators located across Canada.

32. In the **Czech Republic**, the Probation and Mediation Service Act[21] was passed in 2000 to use and apply principles of restorative justice in the criminal justice system. The Probation and Mediation Service (PMS), established in 2001 and now located in all judicial districts of the country, is the public institution in charge of providing VOM, among other services. The PMS can be contacted by victims, offenders, their relatives or others who have been offended by a criminal offence. Mediation can also be requested by public prosecutors, judges, police, social workers, or advocates.

33. VOM usually begins with the mediator meeting the victim and offender separately, after which a joint meeting may be held. Mediation can lead to an agreement on the settlement of the conflict and compensation for damage. The agreement then serves as a basis for the prosecutor's or the judge's decision making.

34. In **Denmark**, a dedicated law[22] on VOM entered into force in 2010. The Danish National Police is the central authority for administration of VOM and is responsible for overall coordination, further development and ongoing evaluation of the programme. A coordinator for VOM is appointed in each of the 12 police districts, who are responsible for local implementation of VOM and liaison with the mediators. Mediators are citizens who are recruited by newspaper announcements, many of whom have prior practical and/or theoretical knowledge of mediation. They receive an additional five-day training prior to facilitating mediations.

35. For VOM to be used, full or partial confession and both parties' consent are required. It is worth noting that VOM is not an alternative to punishment but supplementary to criminal proceedings. However, a judge may consider the results of VOM when imposing a sentence.

[20] Lilliana Drost and others, *Restorative Justice in Cases of Domestic Violence*, p. 20.
[21] Czech Republic, Probation and Mediation Service Act, No. 257/2000 Coll.
[22] Denmark, Act on Victim-Offender Mediation, Act No. 467 of 12 June 2009 and ministerial orders No. 1081 of 15 September 2010 and No. 140 of 6 June 2012.

36. It is possible for victims and offenders to bring a support person to the mediation meetings. The VOM can end with an oral or written agreement, or even simply a notification that the meeting has taken place. The law does not provide for the legal consequences of successful completion or failure of VOM, and thus there is no observation period, supervision, or enforcement scheme. Since 2010, there have been approximately 4,000 VOMs, most relating to acts of violence and robberies.

37. In **France**, restorative justice measures, including VOM, were first incorporated into the Code of Criminal Procedure in 1993 after pilot projects in the 1980s. In 2014, their scope of application was greatly widened by Law No. 2014-896, which provides that restorative justice measures can be proposed at any stage of the criminal proceedings, including at the sentencing stage.[23] A restorative justice measure, which refers to any measure that allows a victim and the offender to actively participate in the resolution of difficulties resulting from the offence and in particular to compensation for any damages, can only be used after the victim and the offender have been informed of the offence and have expressly consented to participate in the measure. The restorative justice measure is implemented by an independent third party trained for this purpose and is supervised by the judicial authority or, at the request of the judicial authority, by the prison administration. Successful completion of VOM and other restorative justice measures does not affect the punishment or the execution of the sentence, but it is within the magistrate's discretion to take the proceedings into account.

38. In **Germany**, VOM was incorporated in Section 46a of the Criminal Code and Section 155a and b the Code of Criminal Procedure, following successful pilot projects in the 1980s. Section 155a of the Code of Criminal Procedure provides that the public prosecutor and the court should consider referring appropriate cases to VOM at any stage of the criminal proceedings, but may do so only if the victim has not expressly objected to VOM. Section 153a lists restorative justice mechanisms, including VOM, and provides that the public prosecutor may, with the consent of the accused and of the court, dismiss the case if the offender agrees to any of these listed mechanisms, including VOM. In cases where the criminal proceedings are already pending before the court at the time when a VOM has been successfully concluded, the court may decide, under Section 153b, to end the proceedings with the agreement of both the prosecution and the accused. In cases where the offence is so serious that it is inappropriate for the court to dismiss the case, the court may take the VOM into consideration as a mitigating factor at the sentencing stage.

39. VOM is offered by state-run or private specialist organizations that hire trained mediators. If private organizations are used, Section 155b provides that the information submitted to them for VOM must be kept confidential and can only be used for that purpose. Two federal states (Brandenburg and Saxony-Anhalt) have state-funded mediation programmes.

40. In **Guatemala**, in accordance with Articles 25 *ter*, *quat* and 108 *bis* of the Code of Criminal Procedure, the Judicial Agency (*Organismo Judicial*) provides VOM. The Judicial Agency also provides specific training for its mediators in order to provide them with the necessary tools to deal with VOM and safeguard the rights of the parties in its implementation. The Guatemalan reply noted that mediation serves as an alternative means of solving disputes and that its use contributes to the dejudicialization of processes and the reduction in judicial proceedings.

41. In **Hungary**, VOM was incorporated into the Code of Criminal Procedure by Section 103 of Act LI of 2006, and is also regulated under the Act CXXIII of 2006 on Mediation Procedure in Criminal Cases. Under Section 221/A of the Code of

[23] France, Code of Criminal Procedure, Article 10-1.

Criminal Procedure, VOM is applicable during the prosecutorial or the judicial phase. Subject to consent of both parties, which is revocable at any stage, the prosecutor, on his or her own initiative or at the request of the offender, the defence counsel or the victim, has the discretion to refer a case to VOM and suspend the case for six months. VOM is applicable only when the suspect confessed before he or she is indicted.

42. Once a case is referred to VOM, the competent agency evaluates the suitability of VOM based on factors such as the nature and gravity of the offence, mode of perpetration, and personal circumstances of the offender. If the case is deemed fit for VOM, the case is referred to mediation. If deemed unsuitable for VOM based on the nature of the offence (e.g., case of a repeat offence), the personality of the suspect (e.g., the offender is deemed particularly violent), or the circumstances indicate that no agreement between the equal parties would be reachable, the referral to VOM is denied and the criminal procedure continues. For criminal offences punishable by less than three years of imprisonment (or five years in exceptional cases) for which a deferral is expected to be beneficial for the future behaviour of the suspect, the prosecutor may decide to defer the indictment for a period between one and two years.

43. VOM is facilitated by mediators, including: probation officers who are qualified mediators; mediators trained at the Law Academy of the Justice Services of the Justice Office, at international mediation organizations, or are vocationally accredited; or mediators holding a mediator qualification from a Hungarian or foreign university.

44. During VOM, parties are entitled to delegate a special legal representative who can participate in the mediation. Parties also have a right to use their mother tongue as well as right to translation and interpretation. All discussions are confidential.

45. For criminal offences punishable by less than three years of imprisonment, successful completion of VOM terminates the criminal proceedings. For offences punishable by more than three but less than five years, the penalty may be reduced and the prosecutor files an indictment. For more serious crimes that are punishable by more than five years, use of VOM is not allowed.[24]

46. Since its introduction in 2007, use of VOM has increased significantly from 1.7 per cent in 2007 to 5.01 per cent in 2014. With the new Code of Criminal Procedure, which will enter into force in July 2018, a further increase in the use of VOM is expected.

47. In **Mali**, VOM has been incorporated into the Code of Criminal Procedure in 2001 by Law No. 2001-080. The magistrate can refer a case to the criminal mediator, except cases involving sexual offences or offences against public property. Within 30 days of the referral, the mediation must take place and the resulting agreement must be approved by the court.

48. In **Malta**, the Restorative Justice Act of 2012 incorporated VOM as Chapter 516 of Laws of Malta. The VOM programme is administered by the Victim Support Unit of the Department of Probation Services. The court, at any stage of the criminal proceedings, can refer a case for VOM to the "Victim-Offender Mediation Committee", which determines the offender's, victim's and the offence's suitability and eligibility for VOM. The public prosecutor or the offender's attorney can also request the Court to refer a case to VOM. In the post-sentencing stage, if the offender is under probation or any other type of suspended sentence, the probation

[24] The new Code of Criminal Procedure, which is scheduled to enter into force on 1 July 2018, will widen the scope of application for VOM to serious crimes as well. However, successful completion of VOM will not terminate criminal proceedings and the punishment will not be reduced without limitation.

officer, the surveillance officer who supervises the offender, the Offender Assessment Board, the Parole Board, or the Remission Board can also request the Court for VOM.

49. An offender is eligible for VOM if he or she formally admits to having committed the offence. In determining the suitability for VOM, the Committee considers the nature of the offence, including the level of harm and extent of violence. Any potential power imbalance between the parties as well as the personal characteristics, their motivation to participate in VOM and the impact of the crime for both the victim and offender are considered. The extent of the offender's contrition or remorse is also taken into account.

50. If a case is successfully referred to VOM, the mediator sets up pre-mediation meetings with each of the parties before the mediation. It is worth noting that the VOM takes place without any legal assistance.[25] Both the offender and victim can terminate the VOM at any time. At the end of a successful VOM, the parties sign a reparation agreement and the mediator forwards a written copy to the referring entity, subject to the parties' consent. The outcome of the VOM, even if successful, does not terminate the proceedings. However, the VOM is taken into account as a mitigating factor if it took place during the pre-sentencing stage.

51. The above-described mediation service went into effect in January 2017.

52. In **Mexico**, the National Law on Alternative Dispute Resolution Mechanisms in Criminal Matters,[26] enacted in 2014, regulates VOM. VOM can be applied from the beginning of the criminal proceedings until before the issuance of the writ of opening to trial or before the conclusions are formulated. Both the public prosecutor and the court can refer a case to VOM, subject to the victim and offender's consent. The victim or the offender can also request VOM. If the authority in charge of VOM deems a case unsuitable for VOM, however, the authority will inform the parties and the referring entity. If a case is appropriate for VOM, a facilitator is assigned.

53. A preparatory meeting, where the facilitator explains the nature, procedure and rules of VOM to each of the parties and also enquires about their interpretation of the conflict, may take place before the mediation session. Others, including legal counsel, may accompany the parties to the mediation. However, legal counsels may not intervene during the VOM. If one or both parties are members of indigenous communities or persons who do not understand the Spanish language, they must be assisted by an interpreter. Either party can terminate the VOM at any time.

54. All mediation sessions are conducted orally and only the reparation agreement, if any can be reached, will be recorded in writing. Successful completion of VOM extinguishes the criminal action and the principle of res judicata applies. When an agreement is not reached, or only partially reached, the participants retain the right to resolve the remaining dispute through legal action. The agreement must be validated, after which becomes valid and enforceable under the law. Failure to comply with the agreement will lead to continuation of the criminal proceedings.

55. In **Norway**, VOM is regulated by the Law on Conflict Management[27] and the Criminal Procedure Act.

56. A case can be referred to mediation once a punishable offence has been reported to the police, when the accused has acknowledged the guilt, and where the prosecution has found the case to be suited for VOM. VOM can be made a condition of suspended sentence or part of the sentence. Most referrals are made by the police,

[25] Malta, Restorative Justice Act, art. 39 (2012).
[26] Mexico, Ley Nacional de Mecanismos Alternativos de Solución de Controversias en Materia Penal (29 December 2014).
[27] Norway, Law on Conflict Management, Law No. 49 of 20 June 2014.

but offenders and victims may request VOM as well. Mediation is always subject to consent of the parties. Parties can be accompanied by one or more support persons but not lawyers. If a party does not attend the mediation, the case is returned to the police for regular criminal justice proceedings.

57. Most VOM ends with a written agreement that is signed by the parties. There is no fixed format for the agreement, but it typically includes details of compensation for damages, an apology, or other types of reconciliatory arrangements. The agreement can fix a deadline for execution of the agreement and the police are informed of the implementation by the deadline.

58. VOM is administered by the Norwegian Mediation Service (*Konfliktrådet*), which has 22 offices across Norway. The law does not specify what types of criminal cases can be referred to mediation, but the most common types of cases are shoplifting and vandalism. In Norway, approximately 7,000-8,000 cases are referred to VOM annually.

59. In **Slovenia**, VOM is regulated by Article 161a of the Slovenian Criminal Procedure Code.[28] For offences punishable by a fine or less than three years of imprisonment, the prosecutor can refer a case to VOM. If special circumstances exist, VOM can also be used for criminal offences of aggravated bodily harm, grand larceny, misappropriation, or damage to property. VOM is always subject to consent of both parties.

60. Upon successful execution of the mediation agreement, the public prosecutor must dismiss the case. If the agreement is not successfully executed, the mediator must inform the public prosecutor. The time limit for fulfilment of the agreement must not exceed three months. If the mediation agreement contains conditions of community service, it is organized and managed by the centres for social work in collaboration with the mediator and prosecutor.

61. In 2015, successful agreement had been reached in 64 per cent of referred cases and the criminal case had been dismissed in 41 per cent of referred cases.

62. In **Spain**, VOM is regulated under Article 15 of the Statute on Victims of Crime[29] on restorative justice services and Article 37 of the Royal Decree 1108/2015 on regulation of Offices for Assistance to the Victims of Crime. VOM is available to victims of crime if the offender acknowledges his or her responsibility and consents to the mediation. VOM must not entail a risk to the safety of the victim and both the victim and offender may revoke their consent at any time of the process.

63. The Offices for Assistance to the Victims of Crime are in charge of informing the victims of restorative justice measures including mediation, proposing to the Court the use of VOM when it considers that it would be beneficial to the victim, and to provide support during the mediation process.

64. **Thailand** reported that VOM is mainly used in cases involving domestic violence. With the help of a facilitator, the concerned parties are brought together and guided through a dialogue. VOM is reported to be a measure to reduce the number of domestic violence cases brought to court.[30]

65. In **Tunisia**, Law No. 2002-93 of 29 October 2002 incorporated VOM into the Code of Criminal Procedure. For certain violations or offences, the public prosecutor, on his or her own initiative or at the request of the offender, the victim or their attorneys, can invite the parties to mediation before the start of criminal proceedings. Subject to the parties' agreement, the public prosecutor has the

[28] Slovenia, Criminal Procedure Act, art. 161a (7 September 2007).
[29] Spain, Estatuto de la víctima del delito, Law No. 4/2015 of 27 April 2015.
[30] For more information on use of restorative justice programmes in cases involving violence against women, see paras. 81-82.

authority to conduct mediation proceedings. Successful completion of VOM terminates criminal proceedings and often results in an award of civil damages.

66. In **Turkey**, VOM in criminal matters is regulated under Articles 253-255 of the Criminal Procedure Code on reconciliation (*uzlaşma*). VOM can be applied after investigation and prosecution of the claim for certain offences. Both the prosecution and the court have the discretion to propose mediation to the accused, the victim or another person who has suffered damages from the offence. If the parties accept, the public prosecutor him- or herself can conduct the mediation or appoint a mediator. The parties can be accompanied by their legal representatives during the mediation.

67. At the end of the mediation, the mediator prepares a report containing the terms of the agreement and submits it to the prosecutor. If the offender fulfils the agreement at once, the "decision on no ground for prosecution" is rendered. If the terms of the agreement are to take place at a future date or is continuous in nature, the decision of "postponing the filing of public prosecution" is rendered.[31] The time limitation of prosecution is suspended from the time that mediation is proposed and completed.

68. The Law Code 6,763 of 2 December 2016 created a Reconciliation Bureau within the Office of the Chief Public Prosecutor and required that mediators take training courses. In 2015, there had been 19,044 cases of mediation submitted to the mediators and 91 per cent (17,319) of them were successful. As of November 2016, there are over 5,700 mediators in Turkey.

(ii) Community and family group conferencing

69. Community and family group conferencing (hereinafter CFGC) differs from VOM in that it involves more parties than the primary victim and the offender. In a CFGC, other persons affected by the offence, such as family members, friends, community representatives, and, depending on the model, the police, are brought together by an impartial third party who acts as a facilitator of the conference. Furthermore, the focus of a CFGC is broader: in addition to the objectives of VOM, conferencing also seeks to enable the offender to recognize the impact that their offence has had on not only the victim and their families but also their own family and friends and provides an opportunity restore the relationships. CFGC is often used to divert children from the formal criminal justice system.

70. Several countries reported on their use of CFGC. The reported programmes are often available in addition to VOM and applied to cases involving minor crimes that did not incur serious damages or those involving children within the juvenile justice system. As CFGC are often successfully provided by community groups or other entities not affiliated with the government, the fact that the use of this restorative justice process is not reflected in national legislation should not be interpreted as absence of such practices.

71. In the **Czech Republic**, the Probation and Mediation Service provides CFGC in addition to VOM. The Czech model of family group conferencing was developed via the "On the Right Path" project, which was implemented from 2012 to 2015.

72. In **France**, Law 2014-896 of 15 August 2014 comprehensively regulates restorative justice measures, including CFGC. The same preconditions apply to all restorative justice measures, namely: the offender and the victim must have been fully informed of the offence and have expressly consented to participate; the restorative justice mechanism is implemented by an independent third party specifically trained for this purpose, and is supervised by the judicial authority, or at the request of the judicial authority, the prison administration. According to the

[31] Turkey, Criminal Procedure Code, Law No. 5271 of 4 December 2004, art. 253(19).

Ministry of Justice's Circular of 15 March 2017 on restorative justice measures, family group conferencing is particularly recommended for children within the juvenile justice system.

(iii) Circle sentencing

73. In circle sentencing, in addition to the participants of a CFGC (i.e., the victim, the offender, their respective families, and affected members of the community), the officials from the formal criminal justice system, such as the judge, defence counsel, prosecutor, and/or police officer also participate in discussing ways to resolve the conflict.

74. In **Canada**, sentencing circle is one of the restorative processes that are supported by the Aboriginal Justice Strategy (AJS), which supports community-based alternative responses to low-level offences.

75. In **Mexico**, circle sentencing, called a "restorative circle" is one of the three measures that are referred to as "restorative processes" that apply to children within the juvenile justice system under the National Law on the Integral System of Criminal Justice for Adolescents. The child's acceptance of responsibility is a prerequisite. In circle sentencing, the officials from the Justice System for Adolescents (Sistema de Justicia para Adolescentes) in addition to the victim, the child, and the affected community members. Agreements resulting from the restorative circle can be compensation agreements,[32] reparative plans, or suggestions for conditions to fulfil for suspension of court proceedings. For more information on the restorative processes that apply to children in Mexico, please see paragraphs 109-111.

(iv) Indigenous and customary justice forums

76. In many cultures around the world, a restorative justice approach had been developed and used, either in parallel or in the absence of the formal criminal justice system. Many modern forms of restorative justice programmes borrow from indigenous and customary justice practices, which have been used for centuries. The application of restorative justice principles in indigenous or customary justice forums varies considerably in process, outcome, and extent of access to justice. As they have developed in ways that are highly contextual to the group concerned, they serve as an important avenue for restoring the social order within them after an offence has been committed. Recognizing their usefulness, several countries have undertaken steps to strengthen these indigenous and customary approaches.

77. In **Canada**, the Department of Justice Canada funds activities and projects to build capacity among restorative justice practitioners and support programmes, including the Aboriginal Justice Strategy (AJS). The AJS supports community-based alternative responses to low-level offending, which are grounded in restorative justice principles. Services supported by the AJS include: diversion; development of pre-sentencing options; sentencing alternatives (circles); and additional community justice services, including victims support or offender-reintegration services.

78. In the province of Ontario, the Indigenous Justice Division (IJD) was created in April 2015 with a mandate to repair relationships between the Ontario Ministry of the Attorney General and indigenous communities. Funding has been made available for the revitalization of Indigenous Legal Principles and Systems and for the expansion of existing and establishment of new restorative justice programmes.

79. In the province of Nova Scotia, the Nova Scotia Restorative Justice Program (NSRJP) delivers restorative justice services in all communities throughout the

[32] Per Article 96 of the National Law on the Integral System of Criminal Justice for Adolescents, compensation agreements cannot be used for offences involving domestic violence.

province through a government-community partnership, including a programme for indigenous offenders and communities with the Mi'kmaq Legal Support Network. There are four stages in the criminal justice process at which a referral to restorative justice can take place (i.e., pre-charge, post-charge, post-conviction/pre-sentence or post-sentence) and only certain types of offences can be referred at each stage. Once referred, restorative justice programmes are provided by community justice agencies with which the Nova Scotia Department of Justice has entered into service agreements with, including one tribal organization that offers services specifically for aboriginal youth.

80. In the **United States of America**, the U.S. Department of Justice (DOJ) currently funds a New York-based programme called the "Red Hook Community Justice Center", which handles cases from three police precincts. At the Justice Center, cases that under ordinary circumstances would go to three different courts (i.e., civil, family, and criminal courts) are instead applied various diversion and restorative justice programmes. One such programme at the Justice Center, called the "Red Hook Peacemaking Program", uses traditional Native American restorative practices to resolve disputes that originate either from the formal justice system or in the community. According to the Department of Justice, a rigorous independent impact evaluation conducted by the National Center for State Courts found that the Justice Center reduced the number of offenders receiving jail sentences by 35 percent, reduced the adult recidivism by 10 percent, and juvenile recidivism by 20 percent.

(v) Restorative justice programmes and violence against women

81. In line with international standards and norms, mediation or other forms of restorative justice programmes should never be compulsory or forced. As noted in the Basic Principles, restorative processes should be used only with the free and voluntary consent of the victim and the offender. The Basic Principles establish further safeguards to avoid the risk of secondary victimization or impunity, including: (i) the ability of any party to withdraw at any time from the restorative process; (ii) the requirement to take into account any power imbalances and the safety of the parties;[33] and (iii) procedural safeguards such as the right to consult with legal counsel, to be fully informed of rights, the nature of the process and the possible consequences of decisions and not to be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.[34] The Basic Principles also provide that restorative processes should be led by facilitators with adequate qualifications and training, who possess a good understanding of local cultures and communities and receive initial training, and perform their duties in an impartial manner, with due respect to the dignity of the parties.[35]

82. Several international instruments contain specific limitations on the use of alternative dispute resolution mechanisms and restorative justice processes, including negotiation, conciliation or mediation, in cases of violence against women due to the power imbalance and safety risks for women interacting with perpetrators during face-to-face meetings. The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) prohibits "mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence" that are covered by the Convention.[36] In 2013, the Agreed Conclusions adopted by the 57th

[33] Economic and Social Council resolution 2002/12, annex, paras. 7-10.
[34] Ibid., para. 13.
[35] Ibid., paras. 12, 18, and 19.
[36] Council of Europe, Convention on Preventing and Combating violence against women and domestic violence, Istanbul, 11.V.2011, art. 48. Available from

session of the Commission on the Status of Women urged Member States to "take the necessary legislative and/or other measures to prohibit compulsory and forced alternative dispute resolution processes, including forced mediation and conciliation, in relation to all forms of violence against women and girls".[37] Furthermore, in its General Recommendation 33, the Committee on the Elimination of Discrimination against Women recommended that States parties to the UN Convention on the Elimination of all Forms of Discrimination against Women "ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure".[38]

83. Some countries have reported on the use of restorative justice in domestic violence cases.

84. In **Austria**, the public prosecutor or the judge may refer a case to VOM if punishment is not necessary to prevent the offender from committing another crime in the future or to deter the public from that crime. However, VOM is not an option for offences that are punishable with a prison sentence of more than five years and in cases where, if the guilt of the suspect is not considered "severe", and no death has resulted from the offence. VOM can take place only upon the consent of the victim and the offender's willingness to admit his or her responsibility, to provide compensation, and to accept further conditions. As a safeguard to prevent secondary victimization, VOM cannot take place if the offender blames the victim, downplays or denies his wrongdoing, and/or if there is a serious power imbalance, a history of violence, or a lack of emotional stability of the victim.

85. All VOM cases are referred to *Neustart*, a nationwide provider of judicial services financed by the Ministry of Justice. *Neustart* employs a special methodology for IPV cases. VOM for IPV cases begins with separate interviews with the concerned (ex)partners to assess the suitability of the case for VOM. At this stage, mediators often use a risk assessment tool, which include factors such as whether the offender possesses a firearm, whether there has been a history of violence or the risk of another violent incident. If VOM is deemed appropriate, one of two methods is applied. In the first method, called "working in teams of two" (*Arbeiten zu zweit*), two mediators are present during the whole process, including the initial separate interviews. When this method is used, VOM is not held immediately after the separate interviews. In the second method, called "mixed double" (*Gemischtes Doppel*), separate meetings with the victim and offender often take place at the same time in different rooms. Immediately following the separate meetings, both (ex)partners and the two mediators get together for the VOM.

86. In **France**, a restorative justice measure called Circles of Support and Accountability[39] (*Les cercles de soutien et de responsabilité*, or CSR) can be used for offenders of sexual crimes who are: out of custody; present a high risk of recidivism; and are in a situation involving great social isolation. This measure operates through two circles. The first circle, called the "inner circle", consists of volunteers from the community who are specifically recruited and trained. The inner circle meets the offender before his release from prison and considers the modalities of how the released offender can best be integrated, including his everyday needs, so as to reduce the risk of recidivism. The second circle, called the "resource circle", includes volunteer psychologists, police officers, prison officers, social workers, lawyers, and/or previous victims of sexual offences. They intervene at the request of the coordinator or a member of the inner circle in case of particular

http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e.

[37] E/CN.6/2013/11.

[38] CEDAW/C/GC/33, para. 58(c).

[39] Programme for offenders of non-sexual crimes are called Accompaniment and Resource Circles (*Les cercles d'accompagnement et de ressources*, or CAR).

difficulties to suggest solutions based on their professional, or in the case of previous victims, personal experience. This measure aims to appropriately manage the risk of recidivism and assist in the offender's social reintegration.

87. **Thailand** reported on the use of VOM in cases involving domestic violence, whereby through the help of a facilitator, the concerned parties are brought together and guided through the VOM.

88. In the **United States of America**, the Office on Violence against Women (OVW) of the Department of Justice launched a new Research and Evaluation Initiative that focuses on gathering information about effective responses to sexual assault, domestic violence, dating violence, and stalking, as well as on reducing the harmful impact of these crimes on victims and communities. Under this Initiative, OVW announced nine new research projects in September 2016, including an award to the Center for Court Innovation through the Fund for the City of New York to conduct a survey of programmes that use restorative justice to address domestic violence and explore the development of guidelines for such programmes. Moreover, in May 2016, OVW convened a two-day roundtable discussion titled "Restorative Practices in Cases of Intimate Partner Violence" to: study the current limits of conventional responses of restorative justice to intimate partner violence; identify types of relationships that might benefit from an alternative approach; examine current practices in tribal and state court settings that could be replicated; identify limitations with restorative justice approaches and necessary safeguards; and assess practical and political implications.

C. Existing restorative juvenile justice programmes

89. Restorative juvenile justice differs from restorative justice applied to adults. When applying restorative justice processes to cases involving children[40] within the juvenile justice system, it is important to recognize its role as an essential contributor to achieving a progressive and well-functioning juvenile justice system[41] that acknowledges the primacy of alternatives to judicial proceedings and the principle of detention as a measure of last resort, for the shortest appropriate period of time, and avoids, whenever possible, the use of pre-trial detention for children.[42]

90. Under international law, restorative juvenile justice is a key element of an effective, fair and child-friendly juvenile justice system. The Convention on the Rights of the Child (CRC), in its Article 40(3), requires States "to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law". This provision is regarded as imposing a progressive requirement upon States to establish a juvenile justice system that takes into account the child's age, the provision of human rights and legal safeguards as well as the establishment of alternatives to judicial proceedings, such as restorative justice programmes, since the purpose of any action taken against a children in contact with the juvenile justice system should not be retributive or punitive, but rather to foster the well-being of children, promote the child's reintegration and the child's assuming a constructive role in society.[43] In addition to the CRC, there exist many international

[40] As per Article 1 of the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". See United Nations, *Treaty Series*, vol. 1577, p. 3.

[41] "Juvenile Justice Systems" are laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law.

[42] See United Nations, *Treaty Series*, vol. 1577, p. 3, arts. 37(b) and 40(3)(b).

[43] Ibid., art. 40(1).

standards and norms in the area of juvenile justice that reaffirm the importance of a restorative juvenile justice.[44]

91. Restorative juvenile justice takes the child's responsibility seriously and, by doing so, strengthens the child's respect for, and understanding of, the human rights and fundamental freedoms of others, in particular of the victim and other affected community members. Therefore, restorative juvenile justice is a way of treating children in contact with the juvenile justice system with the aim to repair the individual, relational, and social harm caused by the committed offence and contribute to the child's reintegration into society.

92. Restorative justice has been extensively used in the context of juvenile justice practices and programmes, as evidenced by more than half of responding Member States (16 countries) having in place a programme for cases involving children in the juvenile justice system. Many States noted that the implementation and application of restorative juvenile justice practices is an essential part of having a fair, efficient, and humane juvenile justice system whose central aim is to safeguard the rights of the child. In many countries, juvenile justice legislation explicitly provides for one or more measures involving restorative juvenile justice processes at different stages of the legal process (pre-trial, trial, sentencing, as well as post-sentencing stage), which are implemented by various restorative justice programmes (e.g., victim-offender mediation, circles, conferencing). In some countries, the general legal framework governing the use of restorative justice processes also applies to children. Furthermore, it should be noted that there are numerous restorative justice programmes for children that have been developed and are being implemented outside the formal criminal justice system, for instance in schools and within communities. As various types of restorative justice processes are used for children, this section should be read in conjunction with other relevant parts of this report.

93. In **Austria**, VOM and other restorative justice processes for children, defined as persons from age 14 to 18, is regulated by Sections 7 and 8 of Juvenile Court Justice Act of 1988, which refers to Section 198 of the Code of Criminal Procedure on the various types of diversionary measures (i.e., procedures to allow for a withdrawal of the prosecution). Thus, the "diversion package" incorporated into the Code of Criminal Procedure in 2000 applies to both adult and child alleged offenders. For child alleged offenders, VOM (and any other restorative justice measure) is an option if the guilt of the child alleged offender is not considered to be grave (under Section 32 of the Criminal Code) and when offence has not resulted in a death, unless: (i) it concerns the death of a relative due to negligence; and (ii) the applicable punishment does not seem appropriate in light of the significant psychological trauma that the accused has suffered as the result of having caused it. VOM can be used for children only concerning offences that are punishable by less than five years imprisonment or a fine (Section 6 of Juvenile Court Justice Act). Both the public prosecutor and the judge can decide to refer a case to VOM. The Austrian reply notes that, for offences committed by child offenders, the Juvenile Court Justice Act allows for diversion from the formal criminal justice system for a significantly broader range of offences, both in terms of type and severity. In addition to VOM, CFGC can also be used for child offenders.[45]

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[44] General Assembly resolution A/RES/40/33, Rule 11; General Assembly resolution A/RES/45/113; General Assembly resolution A/RES/45/112, paras. 6; 9, 10, 32, 58 and 60; General Assembly resolution A/RES/45/110, paras. 1.2; 1.4 and 2.5; Economic and Social Council resolution 1997/30, paras. 15 and 47; Economic and Social Council resolution 2002/12; Economic and Social Council resolutions 663c (XXIV) and 2076 (LXII), Rules 38.1 and 88.1; General Assembly resolution A/RES/65/229, Rules 57 and 58; General Assembly resolution A/RES/69/194, paras. 6, 7, and 31.

[45] Liliana Drost and others, *Restorative Justice in Cases of Domestic Violence*, p. 23 (see footnote

94. In **Bolivia**, restorative juvenile justice programmes are regulated under Articles 316-321 of the Code for Children and Adolescents[46] (*Código Niña, Niño y Adolescente*, hereinafter CNNA), which include VOM, CFGC, restorative circles that accompany compliance with "socio-educational measures" [47] and the application of diversionary measures. [48] In restorative justice mechanisms, the victim, the child, his or her mother, father, or guardian, one or more support persons and, if applicable, members of the community affected by the crime, participate in the reintegration of the child/adolescent with the support of an interdisciplinary facilitating team. The CNNA provides principles such as a specialized juvenile justice system for children and restorative justice programmes, which are available at all stages of the criminal justice process. In appropriate cases, restorative justice mechanisms are requested by the competent authority, subject to free and voluntary consent of the victim, child, mother, father, guardian or community. They may withdraw their consent at any time of the process. Failure to comply with an agreement is not used as a basis for a sentence or for a more severe socio-educational measure to apply.

95. The Bolivian reply notes that, in the recent years, the Government has gone through a legal reform process related to the restorative juvenile justice, whereby some significant developments, including the restorative justice protocol and delivery of training related to restorative justice practices and mediation, have been made.

96. In **Canada**, at the federal level, the restorative justice principles are used in the juvenile justice context in several provisions of the Youth Criminal Justice Act (YCJA). In particular, Section 19 on conferences, allows decision makers of the juvenile justice system (e.g., youth justice court judges, police officers, prosecutors or youth workers) to convene a conference with various types of actors in order to assist in decision making. Such conferences can give advice on decisions, such as: appropriate extrajudicial measures; conditions for release from pre-trial detention; appropriate sentences; or reintegration plans. However, a conference under the YCJA serves an advisory function rather than as a decision-making mechanism. The recommendations can be accepted by the decision maker only if they are consistent with the YCJA. For example, the prosecutor, judge, or other decision makers will not be able to accept the recommendations of a conference if they would result in an extrajudicial measure or sentence that is disproportionate to the seriousness of the young person's offence.

97. At the province and territory level, each jurisdiction of Canada has developed their own restorative juvenile justice projects and programmes. These include government-run programmes, such as Ontario's Youth Justice Committee Program under the Criminal Law Division of the Ministry of the Attorney General. For instance, the Saskatchewan Ministry of Justice funds and supports restorative justice programmes provided by local communities as well as alternative measures programmes, which also facilitate child extrajudicial sanctions. Data on referral in Saskatchewan shows that about 80 per cent of cases reach an agreement and about 90 per cent of agreements are fulfilled, resulting in significant amounts of

17). In addition, it should be mentioned that any of the provisions of the Juvenile Justice Act, including Section 7 and those parts of Section 8 relevant to VOM also apply to young adults, who are defined as persons from the age of 18 to 21 years of age at the time of the offence committed.

[46] Bolivia, Código Niña, Niño y Adolescente, Law No. 548 of 17 July 2014, arts. 316-321.

[47] Socio-educational orientation programmes are personalized and comprehensive programmes that are designed based on the diagnosis made by an interdisciplinary team for the child/adolescent to follow. The programme is implemented through sessions involving psychological and social intervention with each of the adolescents and their families, using one or more of the socio-educational measures described in Article 323 of CNNA.

[48] Bolivia, Código Niña, Niño y Adolescente, art. 299.

restitution, community service hours, charitable donations, and other outcomes that hold offenders accountable.

98. In **Croatia**, restorative justice principles are incorporated in Articles 71 and 72 in connection with Articles 105 and 107 of the Juvenile Courts Act, which applies to children (persons between age of 14 and 18 at the time of the offence committed).[49] VOM is one of the restorative justice processes used, which is referred to as "out-of-court settlement", and can be applied at any stage of the criminal proceedings. For child alleged offenders, according to the principle of opportunity, the public prosecutor can waive criminal prosecution if a child alleged offender has committed an offence punishable by imprisonment for up to five years or a fine. This decision should be based on the lack of purpose to conduct proceedings against the child taking into account the nature and circumstances of the offence, the child's personal characteristics and previous life, and whether the type and manner of the offence is largely a reflection of the age of the child. In cases in which prosecution is waived, certain obligations can be applied, such as an apology to the victim or compensation for the harm caused.

99. In the case of VOM, it is most often applied in the pre-trial stage. Early intervention is seen to have a preventive effect, as it is the quickest response upon the commission of the criminal offence, which is important for reducing recidivism and contributes to alleviating the burden on juvenile courts. Once the Municipal State Attorney's Office notifies a local Centre of Social Welfare on its decision to refer the case to VOM, it is registered and assigned to a mediator. VOM is facilitated by professional mediators of the Association for Out-of-Court Settlement and Mediation in Criminal Proceedings, who are social workers, teachers, psychologists, and lawyers, all of whom are specially trained and certified in VOM. They are the only mediators authorized to conduct VOM in criminal cases.[50]

100. In the **Czech Republic**, restorative justice processes most often used for children within the juvenile justice system are VOM and CFGC. In addition to the Criminal Code, the Code of Criminal Procedure, and the Probation and Mediation Act, which apply to use of restorative justice processes for adults, special measures for child alleged offenders from age of 15 to 18 are provided in the Youth Justice Act.[51] In the pre-trial stage, the public prosecutor may order, subject to the child's consent, to certain measures that repair the harm done, such as a letter of apology to the victim; reparation of damages; or VOM. If successfully completed, the public prosecutor can waive the prosecution. The court also has the discretion to waive or reduce the severity of punishment if the reparative measures have been carried out. VOM is not excluded by law even if the child offender is already deprived of liberty — he or she can contact the Probation and Mediation Service (PMS) for assistance both before or after release.

101. In **Denmark**, the Act on Victim-Offender Mediation Act applies to both adults and child offenders. Use of VOM for child offenders below the age of 18 requires the parents' consent.[52] VOM can also be used for "offenders" under the age of 15, the age of criminal responsibility, for youth crime prevention purposes.

102. The Government of **Ecuador** has been through a process of updating legislation related to the specialized juvenile justice system with a restorative justice approach. The Council of the Judiciary (Consejo de la Judicatura) has developed a

[49] The Juvenile Courts Act also applies to young adults (persons between age of 18 and 21 at the time of the offence committed).

[50] After successful completion of VOM, the report of the mediation is prepared and signed by the mediator and the director of the Centre of Social Welfare before submission to the Municipal State Attorney's Office. VOM procedures at the Centre are under the supervision of the Ministry of Demography, Family, Youth and Social Policy.

[51] Czech Republic, Youth Justice Act, No. 218/2003 Coll.

[52] Denmark, Victim-Offender Mediation Act, Act No. 467 of 6 June 2012, sect. 2(2).

guide for application of a restorative approach in the juvenile justice system[53] and delivered capacity-building activities on restorative juvenile justice targeting justice and child protection professionals, including an eLearning platform as of 2016. With regard to restorative justice processes, VOM is available for criminal cases involving children within the juvenile justice system. VOM is regulated by the Criminal Code (*Código Orgánico Integral Penal*) in conjunction with Code on Children and Adolescents (*Código de la Niñez y Adolescencia*),[54] and is executed by the Judicial Function Mediation Centre. VOM can be requested any time before the conclusion of the investigation stage and by any party to the court, in order to submit the case to mediation. Once accepted, the judge will refer the process to the Mediation Centre of the Judicial Function. Parents, legal representatives, or guardians of the adolescent will participate in the mediation together with the injured party. In order for mediation to take place, the victim must give his/her consent and the child alleged offender must expressly agree to participate. Successful completion of VOM terminates the criminal court proceedings. However, should the VOM not be successfully completed, the criminal proceedings will continue. In cases where the parties fail to reach an agreement, the statements made during VOM have no evidential value and cannot be relied upon in the court proceedings.

103. The Council of the Judiciary is in charge of setting up and organising specialized mediation centres. It also accredits the mediators and keeps a quantitative record of the cases attended, respecting the privacy principle safeguarding the privacy of the child. As of 2016, there were seven registered mediators and 22 mediators trained in the field of juvenile justice nationwide within Ecuador.

104. In **France**, restorative justice measures have been introduced by Law 2014-896 of 15 August 2014,[55] which apply to both adults and children. When applied to child alleged offenders, restorative justice measures need to be adjusted, for example, the family of the underage child alleged offender and victims needs to be involved in the procedure. According to the Ministry of Justice's Circular of 15 March 2017, when a child is involved, the focus is mainly educative, and the degree of the child's involvement in the process depends on his/her degree of maturity as well as personal situation, in order to evaluate the child's ability to understand the consequences of his/her actions on the victim and his/her will to engage in a restorative justice process. The third independent party entrusted with the implementation of the restorative justice measure may be a member of the Judicial Child Protection Services (Protection judiciaire de la jeunesse, or PJJ). If the request for application of restorative justice measures is being made by the victim or the offender, such requests must be made by child's family member or legal representative. If the measure is requested from the side of the offender, the victim is contacted through the victim assistance association. Concerning the control exercised by the judicial authority during the investigation phase, the service intending to propose a restorative justice measure should approach the juvenile judge (*juge des enfants*) in order to obtain a preliminary agreement. Particularly, when the investigation is conducted by the juvenile judge, the restorative justice measure may be proposed by the magistrate or the appointed PJJ service. Finally, if

[53] Ecuador, Guía para la aplicación del enfoque restaurativo en la justicia juvenil, Resolution No. CJ-DG-2016-075 of 1 June 2016.

[54] Ecuador, Código de la Niñez y Adolescencia, Law No. 2002-100, arts. 345, 348 a, b, c and d.

[55] The law of 2014 complemented and completed a procedural mechanism that already envisaged some measures inspired to the principles of restorative justice, such as, inter alia, the reparative measure for children offenders. See France, Ordonnance 45-175 of 2 February 1945.

the criminal proceeding is interrupted,[56] a restorative justice measure can be proposed.

105. The French reply noted that, among the various restorative justice measures, conferencing (*La conférence restaurative ou conférence de groupe familial*) is particularly recommended when child alleged offenders, as it allows their family to be involved in the process. The reply further highlighted the importance of ongoing training targeting professionals from the direction of the PJJ as well as of carrying out assessments of restorative justice practices.

106. In **Germany**, after pilot projects implemented in the 1980s for children in conflict with the law, the Juvenile Court Act provided for VOM and other restorative justice measures at all stages of the criminal proceedings involving children (age from 14 to 18 at the time of offence committed).[57] Under Section 45 of the Juvenile Court Act, the public prosecutor may dismiss the case if the child attempts to achieve VOM. The judge may also instruct the child to attempt to achieve VOM, which are usually provided by non-profit organizations as well as local Youth Departments (Jugendgerichtshilfe). According to the annually published VOM study by the Federal Ministry of Justice, more than half of the VOMs conducted with children in the years 2013 and 2014 were related to cases of physical injury.

107. In **Guatemala**, application of the restorative justice processes for children in the juvenile justice system is provided for in the Law on Comprehensive Protection of Childhood and Adolescence.[58] Based on the facts of each case, a multidisciplinary team identifies the course of action, prioritizing non-punitive measures and shortened procedures. Formal criminal justice proceedings are considered as a last resort. The multidisciplinary team participates in conciliatory meetings in order to harmonize and promote an amicable environment between the parties involved in conciliation. For less serious offences and misdemeanours, when it is determined that the child alleged offender is in a state of vulnerability and at risk of committing another offence due to psychological or other impairment, the Justice of the Peace is requested to authorize the multidisciplinary team to intervene and follow up on the case in order to verify if the adolescent is complying with the rules imposed by the judges so that effective rehabilitation can be achieved.

108. The Guatemalan reply noted that the application of a restorative justice approach is still in its initial stages. The reply further noted that the Government intends to strengthen the approach, as well as to achieve greater institutionalization and consolidation of progress achieved.

109. In **Mexico**, the use of restorative juvenile justice processes for children between 12 and 18 years[59] is regulated under the National Law on the Integral System of Criminal Justice for Adolescents.[60] There are three restorative justice processes available for child alleged offenders: (i) VOM, (ii) restorative board, and (iii) restorative circle. When used in cases involving child alleged offenders, VOM, which is regulated by National Law on the Integral System of Criminal Justice for Adolescents in conjunction with the National Law on Alternative Dispute Resolution Mechanisms in Criminal Matters, must be conducted orally in a clear and simple manner that is understandable for the child alleged offender. If parties

[56] Ibid., arts. 24-5 and 24-6.

[57] The Juvenile Court Act also applies to young adults (age from 18 to 21 at the time of offence committed).

[58] Guatemala, Ley de Protección Integral de la Niñez y la Adolescencia, Decree No. 27-2003.

[59] The law also applies to persons over the age of 18, who were under the age of 18 at the time of the offence committed.

[60] Mexico, Ley Nacional del Sistema Integral de Justicia Penal Para Adolescentes (16 June 2016), book 1, title I, chap. I.

reach an agreement, the facilitator prepares a written agreement, which is signed by the parties and registered. If the facilitator deems that a face-to-face meeting is unsuitable, the VOM can be conducted via separate meetings.

110. VOM, restorative board, and restorative circles are collectively referred to as "restorative processes" in the National Law on the Integral System of Criminal Justice for Adolescents. All three measures require as a prerequisite the child alleged offender's acceptance of responsibility, nonetheless, it is not used as evidence of admission of guilt in subsequent proceedings. These measures share a common goal of bringing parties together to propose options for resolving the dispute, but differ in the number and type of participants. VOM involves only the victim, the offender and their representatives, while the restorative boards include members of the affected community. Restorative circles are even wider and include officials from the Justice System for Adolescents (Sistema de Justicia para Adolescentes), in addition to the victim, young offender, and the affected community. Agreements resulting from restorative processes can be compensation agreement,[61] reparative plans, or suggestions for conditions that must be fulfilled, in order to achieve a suspension of court proceedings.

111. All three measures require prior preparatory meetings[62] with all the stakeholders who will be participating in the respective process. In such meetings, the facilitator: identifies the nature and circumstances of the dispute; examines the needs and individual perspectives of the participants; and assesses the required conditions. In addition, the facilitator explains the sought restorative outcome, restorative process that is to be used, gathering of necessary information to determine the caused damage and acceptance of the child alleged offender. If the child in contact with the juvenile justice system meets all obligations from the agreement, the competent authority concludes the criminal proceedings and orders the non-exercise or the dismissal of criminal action. If the child alleged offender breaches the agreement without just cause within the deadline prescribed or within six months from the date of ratification of the agreement, the criminal proceedings continue, as if there had never been any agreement.

112. In **Norway**, the use of restorative justice processes in the criminal justice context is prioritized in cases involving children within the juvenile justice system. The Norwegian reply emphasized the importance of diversionary measures and restorative justice programmes as an effective way of reducing the number of children in contact with the justice system, in line with the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (UN Model Strategies on VAC).[63] One of the goals in the Norwegian juvenile justice system is to avoid imprisoning children. Therefore, since July 2014, new non-custodial sanctions for offenders, who were under the age of 18 at the time when the offence was committed, have been implemented. Their application relies on multi-agency cooperation and the involvement of the children's networks. Where appropriate, a time-limited, tailor-made, interdisciplinary plan is drawn up together with the child alleged offender that he or she is obliged to follow. Throughout the implementation of the plan, the child alleged offenders must take responsibility, work on developing him- or herself in a positive direction, and abstain from using alcohol and drugs. The reply reported that results of the new non-custodial sanctions have been positive and that recidivism has been low.

[61] Ibid., art. 96. Compensation agreements cannot be used for offences involving domestic violence.
[62] Ibid., art. 89.
[63] General Assembly resolution A/RES/69/194.

113. In **Paraguay**, the use of restorative justice processes for child alleged offenders became institutionalized after an assessment of the juvenile justice system conducted in 2014. On the basis of the Agreement of the Supreme Court of Justice,[64] a Pilot Plan on Restorative Justice has been implemented in the city of Lambaré since 2014. The Pilot Plan is administered by the Juvenile Criminal Court of Lambaré, in close coordination with the Coordination of Non-Private Measures of Freedom[65] (hereinafter CMNPL), a multidisciplinary technical team consisting of social workers, psychologists and lawyers who specialize in children.

114. The Pilot Plan applies to children between the ages of 14 and 19, who have acknowledged their responsibility and voluntarily agree to participate. Cases involving child alleged offenders are referred to the Justice Advisory Team of the Juvenile Criminal Court, a multidisciplinary advisory team that provides psychological and social support and makes suggestions on applicable socio-educational measures. After a preliminary psychosocial analysis, the Justice Advisory Team prepares a detailed report on the risk and positive factors of the child offender's profile. The report is then sent to the National Service of Attention to Juvenile Offenders[66] (hereinafter SENAAI) for disposition of the judge. Afterwards, an Individual Restorative Plan is drawn up, which provides the conditions that the child alleged offender must meet. Mediation, if considered as part of the process, is initiated and can be carried out at any stage of the criminal proceedings. The Plan is made available to the judge prior to the preliminary hearing of the child alleged offender, so that the conditions set therein can be imposed by the judge, or otherwise taken into account as part of the criminal proceedings. Once approved, the Office of the Ombudsman begins implementation and monitoring of the Plan. The CMNPL presents a monthly report on the progress of the implementation.

115. The above restorative justice measure, which can include VOM and other restorative justice processes, can be carried out at any stage of the criminal proceedings, either as an alternative to punishment or additional measure.

116. In the Canton of Vaud in **Switzerland**, the cantonal police have been implementing the Puero programme since 2007. The Puero programme consists of two parts: (i) local-level networking among the professionals who deal with cases involving children in conflict with the law so as to allow professional to better coordinate with each other; and (ii) extra-judicial conciliation between the child and the victim that allows the former to avoid being processed through the Young Offenders' Court. The extrajudicial conciliation is an alternative to taking legal action for minor offences, which aims to reduce the response time by the authorities as well as to involve the child in reparation. In 2011, an evaluation of the Puero programme was conducted, as part of its efforts to establish a knowledge base of good practices for preventing child violent behaviour. The evaluation report[67] found extra-judicial conciliation to be a "satisfactory tool, complementary to the justice system, dealing with certain acts of violence or delinquency" and that it "has advantages in terms of cost, speed of execution, and reduced rates of reoffending".[68] The evaluation reports that "there is potential for developing this approach, particularly by giving greater emphasis to the restorative justice dimension"[69] and

[64] Paraguay, Agreement of the Supreme Court of Justice, No. 917 of 7 October 2014.
[65] La Coordinación de Medidas no Privativas de Libertad.
[66] La Servicio Nacional de Atención a Adolescentes infractores.
[67] Blaise Bonvin and Jérôme Mabillard, "Evaluation de la conciliation extrajudiciaire et des réseaux en matière de délinquance juvénile (VD) et prospectives pour la justice réparatrice", Research Report, No. 7/13 (J July 2013). Available from http://www.jugendundgewalt.ch/fileadmin/user_upload_jug/4_Projekte/Evaluationsprojekte/7_13f_eBericht_Puero.pdf.
[68] Ibid., Foreword.
[69] Ibid., p. XXVIII.

points out the "advantage of [a] wider adoption in Switzerland of approaches involving restorative justice".[70]

117. In **Thailand**, the Juvenile Procedure Act has introduced restorative juvenile justice into Thai legislation, under which the prosecutors are allowed to withdraw the charges if the director of the juvenile training centre recommends restorative practices. The Thai reply highlighted that the aforementioned provision has significantly fostered the diversion of cases. Since June 2003, the Department of Juvenile Observation and Protection (DJOP) of the Ministry of Justice has been providing community and family conferences (CFGC), which has received support from several concerned agencies. The CFGC is a process involving a multidisciplinary approach and all the stakeholders, who have been affected by the incident, including the child alleged offender and victim, in compliance with the following criteria:[71] (i) the offence committed is not punishable by more than five years of imprisonment; (ii) the child alleged offender has admitted and responsibility and expressed willingness to repair the harm; (iii) victim consents to the conferencing; and (iv) the child alleged offender is a first-time offender (if second time, must be a petty offence).

118. The **United States of America** reiterated their support as a co-sponsor of ECOSOC Resolution 2016/17. In the Eastern District of Pennsylvania in the United States, the U.S. Attorney's Office, together with state and local authorities, established several "youth courts" in district high schools with a focus on restorative justice in lieu of punitive justice practices. These "youth courts" are designed to divert children out of the cycle of harsh school discipline, leading to law enforcement and justice system involvement. Students are trained to run a courtroom without adult intervention and perform all court roles, including judge, bailiff, clerk, child advocate, and juror. The student jury imposes a disposition (sentence) after questioning the respondent (student offender). For example, the offending student may be asked to write an essay, or engage in community service. The youth courts therefore seek to deliver a restorative outcome rather than a punitive one, and help the offending child understand how he or she can contribute to repairing the harm caused and/or avoid its repetition.

119. Furthermore, the U.S. Attorney's Office for the District of Oregon organized an interactive peer court training programme for 45 high school students from the Chewama Indian School's "Youth Peer Court Program".[72] The Chemawa Youth Peer Court is a programme designed to divert first-time child alleged offenders away from formal juvenile court proceedings into an informal peer-based process in a culturally appropriate setting, using restorative justice principles rooted in indigenous justice systems and practices. The youth who sit on the peer court represent the community harmed by the criminal acts of one of its members. Once a child submits to the peer court's jurisdiction for resolution of a low-level crime that they admit having committed, the peer court develops a recommendation to a judge regarding an appropriate resolution involving both the victim and offending youth. The resulting "accountability agreement" seeks to restore the victim and community relationship. In addition, it aims to help reintegrate the youth back in the community. Children who have gone through the peer court for their crime are also required to serve on the peer court for someone else's accountability agreement. Accountability methods vary depending on the circumstances of the case and can

[70] Ibid.

[71] Thailand, Juvenile and Family Court and Juvenile and Family Case Procedure Act (16 November 2010), arts. 50 and 63.

[72] The Chemawa Indian School is a residential Federal enclave drawing youth from tribes across the United States. See https://www.justice.gov/usao-or/pr/us-attorneys-office-hosts-peer-court-training-high-school-students-chemawa-indian-school.

include restitution, community service, letters of apology, in-person apologies, or public apologies.

D. Implementation measures

(i) Inter-institutional coordination

120. In **Canada**, the federal Parliament is responsible for the enactment of criminal law, while the provinces and territories are responsible for the administration of justice. Thus, coordination between the federal, provincial and territorial governments on matters relating to criminal justice is essential, including restorative justice. Since 1996, there has been an active Federal-Provincial-Territorial (FPT) Working Group on Restorative Justice (WGRJ), which discusses administrative, policy, and evaluation issues regarding the development and implementation of restorative justice. Following the adoption the Basic Principles, the Department of Justice Canada conducted extensive consultations and created two foundational documents in order to guide restorative justice work in Canada: Values and Principles of Restorative Justice in Criminal Matters[73] and Restorative Justice Program Guidelines for Criminal Matters.[74]

121. In **France**, even before the aforementioned Law of 15 August 2014, the Access to Law and Justice and Victim Assistance Service (Le service de l'accès au droit et à la justice et de l'aide aux victims, or SADJAV), the Prison Administration (L'administration pénitentiaire, or DAP) and the Directorate of Judicial Protection (La direction de la protection judiciaire de la jeunesse, or DPJJ) had initiated a process of consultation and experimentation, which resulted in the establishment of a joint reference framework. Analysis and preliminary training on restorative justice were carried out through this framework.

122. In **Spain**, in addition to the extrajudicial mediation, the General Council of the Judiciary (Consejo General del Poder Judicial, or CGPJ) — an autonomous body composed of judges and other jurists — promotes intrajudicial mediation services within all judicial organs in Spain. As a result of CGPJ's work on promoting collaboration agreements between the Ministry of Justice, relevant entities (e.g., professional associations and public universities), and provinces and autonomous communities, intrajudicial VOM is now available in 31 Spanish provinces.

123. In the **United States of America**, the Office for Access to Justice (OAJ) at the U.S. Department of Justice (DOJ) and the Office of Tribal Justice Support in the Bureau of Indian Affairs (BIA) of the U.S. Department of the Interior (DOI) co-sponsored an expert group meeting on the use of traditional Native American justice practices to respond to criminal and delinquent behaviour. This one-day roundtable meeting brought together leaders and experts on the use of traditional justice practices to discuss the benefits and challenges of these programmes and developed recommendations to the U.S. Federal Government on how to support such practices. Continuing this practice of dialogue and consultation, both offices also participated in a listening session at a peacemaking gathering hosted by the Chickasaw Nation in April 2014. The report[75] of this expert group meeting was disseminated to tribal

[73] Canada, Department of Justice, Values and Principles of Restorative Justice in Criminal Matter (2004). Available from http://www.iirp.edu/pdf/RJValues-DOJCan.pdf.

[74] Canada, Department of Justice, Restorative Justice Program Guidelines (2003). Available from http://www.iirp.edu/pdf/RJGuide-DOJCan.pdf.

[75] United States, Department of Justice and Department of the Interior, *Expert Working Group Report: Native American Traditional Justice Practices* (Washington, DC, United States, September 2014). Available from https://www.justice.gov/sites/default/files/atj/legacy/2014/10/09/expert-working-group-report--native-american-traditional-justice-practices.pdf.

criminal justice stakeholders in furtherance of the Tribal Law and Order Act's mandate that both Departments help tribes develop alternatives to incarceration.

(ii) Public information and awareness-raising measures

124. The province of Nova Scotia, **Canada**, hosted a National Restorative Justice Symposium in November 2016. Over 300 national and international participants from across Canada discussed restorative justice issues in various contexts, including criminal justice, human rights, health services, and natural resources.

125. In **France**, the Access to Law and Justice and Victim Assistance Services (SADJAV), the Prison Administration (DAP) and the Directorate of Judicial Protection (DPJJ) formed a joint reference framework, which, inter alia, developed awareness sheets that explain the partnership project. The awareness sheets were disseminated in September 2015 to the courts and decentralized services of the DAP and DPJJ.

126. In **Spain**, the General Council of the Judiciary (CGPJ) has produced and distributed in all judicial bodies brochures and posters containing an explanation of what mediation is and how to access it. In addition, the CGPJ has raised awareness of its work and services at various events with media coverage, including the European Day for Mediation, signing of numerous collaboration agreements, and the launch of the *Practical Guide of Intrajudicial Mediation*.[76] The CGPJ also reported that their website[77] is regularly updated.

127. **Switzerland**, together with the Foundation Terres des hommes, organized the World Congress on Juvenile Justice in Geneva in January 2015. The World Congress was "convened to reaffirm and strengthen the implementation of applicable juvenile justice standards, … serve as a forum for dialogue to facilitate the exchange of good practices, … and promote international cooperation and follow-up in this area".[78]

128. In the State of Pennsylvania, **United States of America**, the Philadelphia Restorative Justice Coalition, which features representatives from government, the courts, service providers, faith-based leaders, and restorative justice practitioners. The Coalition hosted large conferences in spring 2016 and fall 2012.

(iii) Training programmes

129. In the Northwest Territories (NWT) of **Canada**, the NWT Department of Justice has been implementing the Community Justice Initiative since 1994 to assist communities to build capacity to deal with local justice issues. Through this initiative, the Department provided administrative support, training, and resources for the establishment of local Community Justice Committees. The Department has worked in partnership with federal initiatives such as the Aboriginal Justice Strategy, the Victims of Crime Initiative, and the Youth Justice Renewal Strategy in order to enhance programme delivery to the communities.

130. In **France**, government entities have provided various training programmes on restorative justice. In 2011, the National Institute for Assistance to Victims and Mediation (L'Institut National d'Aide aux Victimes et de Médiation, or INAVEM) signed a partnership agreement with the French Institute for Restorative Justice (L'Institut français pour la justice restaurative, or IFJR) to offer training on different

[76] Consejo General del Poder Judicial, *Guía para la práctica de la Mediación Intrajudicial* (7 November 2016) Available from http://www.poderjudicial.es/cgpj/es/Temas/Mediacion/Guia-para-la-practica-de-la-Mediacion-Intrajudicial/.

[77] *See* http://www.poderjudicial.es/cgpj/es/Temas/Mediacion/.

[78] World Congress on Juvenile Justice, Final Declaration (Geneva, Switzerland, 30 January 2015). Available from https://childrendeprivedofliberty.info/wp-content/uploads/2016/11/Final-Declaration-World-Congress-on-Juvenile-Justice-January-2015.pdf.

restorative justice measures. Between 2011 and 2015, eight training sessions were held and 112 persons were trained, including those working in victim assistance and prison administration.

131. A partnership between INAVEM, IFJR and the National School of Penitentiary Administration (L'Ecole Nationale d'Administration Pénitentiaire, or ENAP) has also been providing training courses since 2016 for professionals or volunteers with experience in restorative justice, mediation, facilitation of speech groups and/or mastering listening and maintenance methodologies. Six training sessions were organized in 2016, through which 109 persons were trained. In parallel, ENAP develops specific training modules on VOM and restorative circles.

132. In September 2015, the Directorate of Judicial Protection of Juveniles (La direction de la protection judiciaire de la jeunesse, or DPJJ) organized a seminar in to train and inform professionals of the mechanisms and philosophy of restorative justice. The National School for the Judicial Protection of Youth (L'Ecole Nationale de Protection Judiciaire de la Jeunesse, or ENPJJ) also organized a study day in June 2016 for the benefit of professionals working in the field of juvenile justice.

133. **Paraguay** reported that the Ministry of Justice, in partnership with the Swiss non-governmental organization Terres des Hommes, hosted the First International Seminar on Restorative Justice in Paraguay in December 2014. More than 70 criminal justice officials were trained on the fundamental principles of restorative justice.

(iv) Data collection

134. In **Canada**, the Department of Justice Canada has conducted public opinion research on the use of restorative justice, and is currently developing an online, searchable map and directory of existing restorative justice programmes in Canada. Justice Canada is also conducting an electronic survey to collect operational data in order to address information gaps.

(v) Monitoring and evaluation

135. **Canada** reported that research is underway to evaluate the impact of participating in restorative justice processes on indigenous victims.

136. **Switzerland**'s Youth and Violence prevention programme, under the leadership of the Federal Social Insurance Office (FSIO), evaluated the Canton of Vaud's Puero programme.[79] The evaluation of the use of extra-judicial conciliation contracts between victims of violence, implicated minors and their families shows that reoffending rates of children in conflict with the law who have signed such contracts have improved (0 per cent, as opposed to 7 per cent on average).[80]

137. The **United States of America** reported that, in 2016, the National Institute of Justice (NIJ) has been awarded a grant to the Fund for the City of New York to evaluate the use of restorative justice practices, including victim-offender mediation and family conferencing in New York City schools. The project, which is conducted in partnership with the New York City Department of Education, will focus on use of restorative justice practices in a school district with one of the highest suspension rates in New York City as well as elevated rates of neighbourhood crime and

[79] For more information on the Puero programme, see http://www.jugendundgewalt.ch/fileadmin/user_upload_jug/4_Projekte/Evaluationsprojekte/7_13f_eBericht_Puero.pdf.

[80] Blaise Bonvin and Jérôme Mabillard, "Evaluation de la conciliation extrajudiciaire et des réseaux en matière de délinquance juvénile (VD) et prospectives pour la justice réparatrice" (See footnote 67), p. XXVI.

violence. The results will be disseminated in peer reviewed journals as well as practitioner-oriented formats.

II. Information provided by relevant United Nations entities, intergovernmental organization, the institutes of the United Nations crime prevention and criminal justice programme network, relevant non-governmental organizations, and other relevant stakeholders

138. This section presents an overview of information provided by two United Nations entities, one intergovernmental organization, seven institutes of the United Nations crime prevention and criminal justice programme network, 13 non-governmental organizations, and five other relevant stakeholders. The substantive focus and the manner in which information was shared between replies vary considerably. Due to the large volume of information provided, only a summary of information received is presented in this section. For more information on each resource, please refer to the corresponding footnote.

139. The materials contained in this section reflect the views of the responding entity, which do not necessarily coincide with the views of Member States. With the exception of replies from the relevant United Nations entities, the following information does not imply any endorsement by the United Nations Secretariat.

A. United Nations entities

140. The **Office of the United Nations High Commissioner for Human Rights** (OHCHR) shared several resources. One publication titled *Human rights and traditional justice systems in Africa*[81] examines traditional justice systems in sub-Saharan Africa from a human rights perspective. The report notes that traditional justice systems, which are "generally based on customary practices, traditions and rules of communities that have, over time, been deemed to be customary law",[82] have historically served as an alternative or as a complement to the formal criminal justice system and often employs restorative processes that seek restorative outcomes.

141. OHCHR also shared a report to the Human Rights Council titled *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities: Study by the Expert Mechanism on the Rights of Indigenous Peoples*.[83] The report presents information on, inter alia: the discussion concerning the definition of restorative justice; the relationship between restorative justice, customary law and indigenous juridical systems; restorative justice and the right to self-determination; and the use of restorative justice for the purposes of peace and reconciliation. The report also contains Expert Mechanism Advice No. 6 (2014), which, inter alia, recommends States to "work with indigenous peoples to develop alternatives for indigenous children in conflict with the law, including the design and implementation of

[81] *Human rights and traditional justice systems in Africa* (United Nations Publication, Sales No. E.16.XIV.1).
[82] Ibid., p. 1.
[83] A/HRC/27/65.

culturally appropriate juvenile justice services and the use of restorative justice approaches".[84]

142. The following references, which are broader in scope but include elements of restorative justice programmes in criminal justice matters, were also shared by OHCHR: (i) *Transitional justice and economic, social and cultural rights*;[85] (ii) *Rule-of-law tools for post-conflict States: Reparations programmes*;[86] (iii) *Rule-of-law tools for post-conflict States: Truth commissions*;[87] (iv) *Rule-of-law tools for post-conflict States: Archives*;[88] and (v) *Rule-of-law tools for post-conflict States: Amnesties*.[89]

143. The **Office of the Special Representative of the Secretary-General on Violence against Children** (SRSG on VAC) stressed that the topic of restorative justice is of high importance to her mandate. Taking note of the particular vulnerabilities that children face throughout the criminal justice process, rather than benefitting from restorative programmes and other non-custodial alternative measures, the SRSG on VAC shared the following three reports that help advance the Basic Principles.

144. First, the thematic report titled *Prevention of and Response to Violence against Children within the Juvenile Justice System*,[90] issued jointly by the Office of the SRSG on VAC, OHCHR and UNODC in 2012, urges countries to develop and use effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, including restorative justice processes and diversion.

145. Second, the thematic report titled *Promoting Restorative Justice for Children*,[91] which was informed by an international expert consultation held in June 2013 in Indonesia in cooperation with the Governments of Indonesia and Norway, examines the potential of restorative justice programmes to facilitate conflict resolution and provide appropriate protection to children involved with the justice system.

146. Third, a report titled *Safeguarding the rights of girls in the criminal justice system*,[92] promotes the implementation of the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and addresses the significant barriers faced by girls in accessing justice, whether they are victims of crime, witnesses or alleged offenders.

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[84] Ibid., annex, para. 11.

[85] *Transitional justice and economic, social and cultural rights* (United Nations Publication, Sales No. E.14.XIV.3).

[86] *Rule-of-law tools for post-conflict States: Reparations programmes* (United Nations Publication, Sales No. E.08.XIV.3).

[87] Office for the United Nations High Commissioner for Human Rights, *Rule-of-law tools for post-conflict States: Truth commissions* (HR/PUB/06/2).

[88] *Rule-of-law tools for post-conflict States: Archives* (United Nations Publication, Sales No. E.15.XIV.1)

[89] *Rule-of-law tools for post-conflict States: Amnesties* (United Nations Publication, Sales No. E.09.XIV.1).

[90] Special Representative of the Secretary-General on Violence Against Children, Office for the United Nations High Commissioner for Human Rights and United Nations Office on Drugs and Crime, *Prevention of and Response to Violence against Children within the Juvenile Justice System* (New York, 2012)

[91] Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children* (New York, 2013).

[92] *Safeguarding the rights of girls in the criminal justice system* (United Nations Publication, Sales No. E.15.I.10).

B. Intergovernmental organization

147. The Organization of American States (OAS) shared a table of 12 regional and country-level initiatives that are being implemented in various OAS Member States on the issue of restorative justice in criminal matters.

148. On the regional level, the following initiatives were reported: (i) the Sycamore Tree Project, Communities of Restoration by Prison Fellowship International (Brazil, Colombia, Bahamas, Bermuda, United States, Bolivia, Chile, El Salvador, Guatemala, Belize and Costa Rica);[93] and (ii) *Cumbre Judicial Iberoamericana*[94] by OAS.

149. In Brazil, the following initiatives are currently being implemented: (i) *Prevençao da Violência Urbana Juvenil* (CE); *Núcleo de Justiça Restaurativa* (PI); *Tribunal de Justiça do Estado do PA*; *Defensoria Pública do Estado do PA*, FASEPA; *Prefeitura Municipal de São José do Ribamar* (MA) — *Projeto restauraçao*; *Núcleo de Práticas Restaurativas de Parnamirim e Núcleo de Educação de Natal* (RN) by Terres des Hommes;[95] (ii) *Justiça e Educação: uma parceria para a Cidadania* by 1ª Vara de São Caetano do Sul — São Paulo;[96] (iii) *Justiça para o Século XXI* by 3ª Vara da Infância e da Juventude de Porto Alegre — Rio Grande do Sul;[97] and (iv) *Conselho Nacional de Justiça* by the Federal District of Brazil.

150. In Colombia, OAS is implementing a programme titled *Tribunales de Tratamiento de Drogas*.

151. In Costa Rica, an initiative titled *Programa de Justicia Restaurativa* is being implemented by Poder Judicial de Costa Rica: Juzgados de San José (Pavas), Heredias, Pérez Zeledón y Pococí de Limón and OAS.[98]

152. In Jamaica, OAS, the Ministry of National Security and the Department of Correctional Services of Jamaica are implementing a programmed titled "A New Path: Promoting Productive Alternatives for Juvenile Remandees and Offenders in Jamaica"[99].

153. In Mexico, a programme titled *Programa de Justicia Terapéutica* is being implemented by Juzgados o Tribunales do Tratamiento de Adicciones, Programas de Tratamiento Bajo Supervisión Judicial and Cortes de Violencia Familiar o Tribunales en Justicia Juvenil.[100]

154. In Peru, a programme titled *Proyecto Justicia Juvenil Restaurativa* is under implementation by Instituciones públicas: Poder Judicial, Academia de la Magistratura, Ministerio Público — Fiscalía de la Nación, Ministerio de Justicia, Ministerio del Interior — PNP, Ministerio de la Mujer y de Desarrollo Social, Gobiernos locales y regionales. Instituciones privadas y de la sociedad civil:

[93] See http://restorativejustice.org/we-do/sycamore-tree-project/.
[94] See http://www.cumbrejudicial.org/web/guest/inicio.
[95] See www.tdhbrasil.org.
[96] See http://www.mpdft.mp.br/portal/pdf/unidades/promotorias/pdij/XXICongressoNacional_ABMP/1%20Experiencia%20%20Eduardo%20Rezende%20Melo%2008.05%20-%20G7.pdf.
[97] See http://www.justica21.web1119.kinghost.net/arquivos/bib_264.doc.
[98] See https://www.poder-judicial.go.cr/justiciarestaurativa/images/documentos/penal/EN-ResumenEjecutivoPJR-Penal.pdf.
[99] See http://www.oas.org/dsp/english/links/Three_pager_A%20New_Path_revised.pdf.
[100] See http://www.stj.gob.mx/tribunal-tratamiento-adicciones.php and https://www.pjenl.gob.mx/TTA/.

COMETA, Universidad Pontificia Católica del Perú and Parroquia Virgen de Nazaret, El Agustino.[101]

155. In Venezuela, Fundación Santa Tereza is implementing a Project titled *Proyecto Alcatraz*.[102]

C. Institutes of the United Nations crime prevention and criminal justice network

156. The **United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders** (UNAFEI) shared its Resource Material Series No. 93,[103] which is a collection of materials prepared for the 156th International Senior Seminar. The theme of the 156th Seminar, held from 15 January to 14 February 2014, was "Protection for Victims of Crime and Use of Restorative Justice Programmes". The reports of the seminar, titled *Support for Victims*[104] and *Issues Concerning the Introduction of Restorative Justice Programmes in Criminal and Juvenile Justice Systems*,[105] are also included in the Resource Material Series.

157. The **Latin American Institute for the Prevention of Crime and the Treatment of Offenders** (ILANUD) shared a publication titled *Juvenile Criminal Justice — Between Retributive Justice and Restorative Justice*.[106] The publication builds upon a the development of a regional course on specialised training in juvenile restorative justice, which took place in San Jose in 2011. Representatives from the judicial systems of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama took part to the initiative.

158. The **European Institute for Crime Prevention and Control, affiliated with the United Nations** (HEUNI) shared two publications in response to UNODC's request for information: (i) the Rapporteur's Report of the United Nations Programme Network Institutes Technical Assistance Workshop on "Criminal Justice Reform: Lessons Learned Community Involvement and Restorative Justice", held in Vienna, Austria on 17 April 2002; and (ii) a book titled *Restorative Justice Theory and Practice: Addressing the Discrepancy*[107] by Theo Gavrielides, which examines the gap between theoretical and practical development of restorative justice.

159. The **United Nations African Institute for the Prevention of Crime and Treatment of Offenders** (UNAFRI) shared a document titled *Restorative Justice in Africa: Maximising the benefits of traditions in justice administration*, in which the utility of restorative justice in resolution of civil and criminal cases was highlighted.

160. The **Naif Arab University for Security Sciences** (NAUSS) provided a research paper titled *War of Minds: the Missing Components in Restorative Process with Terrorism*,[108] which reflects NAUSS' vision of priority of issues to implement

[101] See http://www.justiciajuvenilrestaurativa.org/otras_publicaciones/Hacia_un_Sistema_de_Justicia_Juvenil_con_enfoque_Restaurativo.pdf.

[102] See http://www.proyectoalcatraz.org/home_esp.php.

[103] See http://www.unafei.or.jp/english/pages/RMS/No93.htm.

[104] See http://www.unafei.or.jp/english/pdf/RS_No93/No93_RS_Group_1.pdf.

[105] See http://www.unafei.or.jp/english/pdf/RS_No93/No93_RS_Group_2.pdf.

[106] Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y Tratamiento del Delincuente, *Justicia Penal Juvenil: Entre la Justicia Retributiva y la Justicia Restaurativa* (San José, Costa Rica, 2012).

[107] Theo Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* (Helsinki, Finland, 2012).

[108] Mohamed Alsaraa,,"War of Minds: the Missing Components in Restorative Process with Terrorism", Naif Arab University for Security Sciences, scientific paper presented in the "*Conference Room Paper*" on the issue of restorative justice prepared by (UNODC), Response to UNODC's letter for comments, 14 February 2017.

restorative justice process in the region and makes recommendations to achieve conciliation.

161. The **International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme** (ISPAC) shared their observations on the emerging use of restorative justice programmes in Italy. ISPAC also noted that: the topic of restorative justice in criminal matters is gaining more attention; it is important to distinguish restorative justice from other forms of sanctions, such as community service or probation; and that there are several scientific research projects that aim to develop restorative justice programmes in cases for which it is less frequently applied, such as environmental or corporate crimes.

162. The **Raoul Wallenberg Institute of Human Rights and Humanitarian Law** (RWI) shared a report titled *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States*,[109] which provides statistical and narrative overviews of the juvenile justice systems in all ASEAN countries, including the application of restorative justice. The study aims to identify issues of common concern across Member States, with the view that it may lead to new initiatives and dialogue that may enhance the protection of children in conflict with the law.

163. RWI also provided information relating to its support to criminal justice reform in China, including an empirical research on the implementation of conditional non-prosecution in the Haidian District of Beijing. RWI also shared that they have commissioned a background paper on juvenile justice in China more generally, which includes exploration of the use of restorative justice in China.

D. Non-governmental organizations

164. **Defence for Children International** (DCI) shared a summary of its activities on restorative justice in Colombia, Costa Rica, Palestine and Sierra Leone. Drawing on these and other activities in the field of justice for children, DCI made several recommendations, including: (i) States should apply a multi-stakeholder approach to restorative justice to ensure full and effective implementation and success, in particular by strengthening collaboration with existing mechanisms and initiatives both in formal and informal justice systems; (ii) States should develop and provide continuous training and education to all stakeholders involved in restorative justice programmes; and (iii) States must safeguard the effective monitoring of existing juvenile criminal laws and juvenile restorative justice programmes.

165. The **European Forum for Restorative Justice** (EFRJ) shared the following information: (i) an overview of restorative justice in Europe, including its observation that "general support … for restorative justice as an alternative or addition to the normal criminal justice processes" was found; (ii) 18 research and development projects[110] conducted by, or with the support of, the EFRJ; and (iii)

[109] Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States* (Sweden, 2015). Available from http://rwi.lu.se/measure_of_last_resort.pdf.

[110] (i) Daniela Bolívar, Ivo Aertsen and Inge Vanfraechem (eds.), "Victims and Restorative Justice: An empirical study of the needs, experiences and position of victims within restorative justice practices", Country report (Leuven, Belgium, European Forum for Restorative Justice, 2015). Available from http://www.euforumrj.org/projects/previous-projects/victims-and-restorative-justice/; (ii) Daniela Bolívar and others, "Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice", (Leuven, Leuven Institute of Criminology, 2015), available from https://www.law.kuleuven.be/linc/english/research/researchdaphnesexualviolence.html; (iii) Katrien Lauwaert and Ivo Aertsen (eds.), "Desistance and Restorative Justice: Mechanisms for

two new EFRJ projects on restorative justice on victims of road traffic offences and implementation of restorative justice with child victims.

166. Based on its research and experiences, EFRJ noted that, since the development of Basic Principles, the field of restorative justice in Europe has become more diverse in its application, including in terrorism, domestic violence, sexual offences, conflicts in intercultural settings, and road traffic offences, and that restorative justice is being delivered in an increasing range of contexts, including in crime prevention, desistance from offending and prisons. EFRJ also noted that a review of

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desisting from crime within restorative justice practices" (Leuven, European Forum for Restorative Justice, 2015), available from http://www.euforumrj.org/projects/previous-projects/desistance-and-restorative-justice/; (iv) Katinka Lünnemann and Annemieke Wolthuis, Restorative Justice in Cases of Domestic Violence. *Best practice examples between increasing mutual understanding and awareness of specific protection needs*, WS1. Comparative Report (JUST/2013/JPEN/AG/4587, November 2015). Available from http://www.verwey-jonker.nl/publicaties/2015/restorative-justice-in-cases-of-domestic-violence-; (v) IARS, "Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals (RJE)" (2014). Available from http://www.rj4all.info/content/restorative-justice-europe-safeguarding-victims-empowering-professionals; (vi) European Forum for Restaurative Justice, "Developing judicial training for restorative justice: Towards a European approach" (2014). Available from http://www.euforumrj.org/developing-judicial-training-for-restorative-justice-towards-a-european-app/; (vii) Malini Laxminarayan, "Accessibility and Initiation of Restorative Justice" (Leuven, European Forum for Restorative Justice, 2014). Available from http://www.euforumrj.org/projects/previous-projects/accessibility-and-initiation-of-restorative-justice/; (viii) European Forum for Restorative Justice, "How can Peacemaking Circles be implemented in countries governed by the "principle of legality?" (2013). Available from http://www.foresee.hu/en/segedoldalak/news/592/65b5c7d1ea/5/; (ix) "ALTERNATIVE-Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies" (2012-2016). Available from http://www.euforumrj.org/projects/previous-projects/alternative/; (x) "Mediation and restorative justice in prison settings" (2012). Available from http://www.euforumrj.org/projects/previous-projects/mediation-and-restorative-justice-in-prison-settings/; (xi) Estelle Zinsstag, Marlies Teunkens and Brunilda Pali, "Conferencing: A way forward for Restorative Justice in Europe" (Leuven, European Forum for Restorative Justice, 2011). Available from http://www.euforumrj.org/projects/previous-projects/conferencing/; (xii) Italy, Ministry of Justice, "Restorative Justice and Crime Prevention" (2010). Available from http://www.euforumrj.org/projects/previous-projects/restorative-justice-and-crime-prevention/; (xiii) Brunilda Pali and Christa Pelikan, "Building social support for restorative justice" (Leuven, European Forum for Restorative Justice, 2010). Available from http://www.euforumrj.org/projects/previous-projects/building-social-support-for-restorative-justice/; (xiv) Clara Casado Coronas, "Restorative Justice: An Agenda for Europe. Supporting the implementation of Restorative Justice in the South of Europe, role of EU" (JLS/2006/AGIS/147, 2006). Available from http://www.euforumrj.org/projects/previous-projects/agis-3-restorative-justice-an-agenda-for-europe/; (xv) European Forum for Restorative Justice, "Developing standards for assistance to victims of terrorism" (2008). Available from http://www.euforumrj.org/projects/previous-projects/developing-standards-for-assistance-to-victims-of-terrorism/; (xvi) European Forum for Restorative Justice, "COST Action A21: Restorative Justice Developments in Europe" (2006 - 2010). Available from http://www.euforumrj.org/projects/previous-projects/cost-action-a21-restorative-justice-developments-in-europe/; (xvii) European Forum for victim-Offender Mediation and Restorative Justice, "Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe" (JAI/2003/AGIS/088, 2003). Available from http://www.euforumrj.org/projects/previous-projects/agis-2-meeting-the-challenges-of-introducing-victim-offender-mediation-in-c/; (xviii) European Forum for victim-Offender Mediation and Restorative Justice, "Working towards the creation of European training models for practitioners and legal practitioners in relation to restorative justice practices" (JAI/2003/AGIS/129, 2004). Available from http://www.euforumrj.org/projects/previous-projects/agis-1-european-training-models/.

[110] Frieder Dünkel, Philip Horsfield and Andrea Păroşanu (eds.), *Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*, vol. 1, *European Research on Restorative Justice* (Brussels, 2015). Available from http://www.ejjc.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf.

the Basic Principles would be timely, and that international standards and guidance in this area may need to be more inclusive of the sources of harm and be flexible in its response to such harms.

167. **Integration for Society** shared information on its social rehabilitation centres for ex-offenders and help centres for victims of crime.

168. The **International Juvenile Justice Observatory** (IJJO) shared numerous resources, including a summary of its activities in Europe, Asia, North America, and Latin America (in Colombia, Mexico, and Uruguay in particular) and several series of publications.

169. One series of publications, developed jointly by the IJJO and the European Council for Juvenile Justice (ECJJ), consists of: (i) *Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*,[111] which contains an analysis of existing restorative practices in 28 EU Member States; (ii) *Protecting Rights, Restoring Respect and Strengthening Relationships: A European Model for Restorative Justice with Children and Young People*,[112] which provides information on the European Model for Restorative Justice with Children and Young People and analyses good restorative practices and key features of its effectiveness, including case studies in Belgium, Finland and Northern Ireland; and (iii) the *Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People*,[113] which provide guidance to restorative justice practitioners and other criminal justice professionals to allow for clear and efficient implementation of the principles and methods illustrated in the European Model for Restorative Justice with Children and Young People.

170. The following two publications were also provided by IJJO, which have been developed as part of IJJO's project titled "Improving Juvenile Justice Systems in Europe: Training for Professionals": (i) *Can anyone hear me? Improving juvenile justice systems in Europe: A toolkit for the training of professionals*;[114] and (ii) *Can anyone hear me? Participation of children in juvenile justice: A manual on how to make European juvenile justice systems child-friendly*.[115]

171. IJJO also shared a publication titled *Alternatives to Detention for Juvenile Offenders: Manual of Good Practices in Europe*,[116] which was developed from a project titled "J.O.D.A. — Juvenile Offenders Detention Alternatives in Europe".

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[111] Frieder Dünkel, Philip Horsfield and Andrea Păroşanu (eds.), *Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*, vol. 1, *European Research on Restorative Justice* (Brussels, 2015). Available from http://www.ejjc.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf.

[112] Tim Chapman and others, *Protecting Rights, Restoring Respect and Strengthening Relationships: A European Model for Restorative Justice with Children and Young People*, vol. 2, *European Research on Restorative Justice* (Brussels, 2015). Available from http://www.ejjc.org/sites/default/files/vol_ii-eu_model_-_european_research_on_restorative_juvenile_justice.pdf.

[113] Tim Chapman and others, *Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People*, vol. 3, *European Research on Restorative Justice* (Brussels, 2015). Available from http://www.ejjc.org/sites/default/files/vol_iii_-_toolkit_-_european_research_on_restorative_juvenile_justice.pdf.

[114] International Juvenile Justice Observatory, *Can anyone hear me? Improving juvenile justice systems in Europe: A toolkit for the training of professionals* (Brussels, 2016). Available from http://www.oijj.org/sites/default/files/toolkit_improving2.pdf.

[115] International Juvenile Justice Observatory, *Can anyone hear me? Participation of children in juvenile justice: A manual on how to make European juvenile justice systems child-friendly* (Brussels, 2016). Available from http://www.oijj.org/sites/default/files/manual_participation_of_children_in_juvenile_justice_-_improving_project.pdf.

[116] International Juvenile Justice Observatory, *Alternatives to Detention for Juvenile Offenders:*

172. The following three publications were developed under the EUROsociAL II Programme, a technical cooperation initiative of the European Commission, led by the International and Ibero-American Foundation for Administration and Public Policies (FIIAPP): (i) *Manual of Tools on Restorative Justice*;[117] (ii) *Proposals and Recommendations to the Bill on National Law of Justice for Adolescents of Mexico on Alternative Mechanisms for the Settlement of Disputes and Precautionary Measures*;[118] and (iii) *Methodological Guide for the Application of Restorative Justice Practices in Custodial and Non-custodial Measures in the Juvenile Justice System in Colombia*.[119]

173. IJJO also shared a paper[120] written by the North American Council for Juvenile Justice (NACJJ), which contains information on the conceptual, legislative, policy, and political frameworks on restorative justice as well as 10 recommendations for improving the implementation of restorative justice for children. Among others, the NACJJ recommends that: (i) "a set of specific indicators should be developed and applied at the national level, to establish minimum standards of quality for restorative services"; (ii) "inter-agency cooperation should be ensured through appropriate policy-design"; and (iii) "government agencies and other entities responsible for delivering the restorative service should gather and collect information on the implementation of restorative juvenile justice" and "be subject to regular monitoring and inspections of their practices".[121]

174. The **International Organization for Victim Assistance** (IOVA) shared a paper titled *Healing Aspects of Reparations and Reparative Justice for Victims of Crimes against Humanity*[122] by Dr. Yael Danieli. The paper examines the concept of "reparative justice" within the context of victims and survivors of massive trauma, such as crimes against humanity. In particular, the author provides that reparative justice is a "process that acknowledges and addresses victims' concerns at any point of their relationship with the justice system",[123] and makes the distinction between viewing reparation as only an outcome and viewing it as both a process and an outcome.

175. **Justice For All — Prison Fellowship Ethiopia** (JFA-PFE) shared information on its work on restorative justice in Ethiopia. From 2008 to 2009, a pilot project on restorative justice was conducted in the six districts of Oromia. Based on the

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Manual of Good Practices in Europe (Brussels, 2016). Available from http://www.oijj.org/sites/default/files/alternativestodetentionforjuvenileoffenders.pdf.

[117] Osvaldo Vázquez Rossoni, *Manual de Herramientas en Prácticas y Justicia Restaurativa* (Colombia, 2015). Available from http://sia.eurosocial-ii.eu/files/docs/1438261508-Manual_Herramientas_Practicas_y_Justicia_Restaurativa%20(integrado%2025%20junio%202015).pdf.

[118] Carlos Tiffer, *Propuestas y recomendaciones al proyecto de Ley Nacional de Justicia para Adolescentes de Mexico en cuanto a mecanismos alternos de solución de controversias y medidas cautelares* (México, 2015). Available from http://www.oijj.org/es/docs/publicaciones/propuestas-y-recomendaciones-al-proyecto-de-ley-nacional-de-justicia-para-adolesc.

[119] Osvaldo Vázquez Rossoni, *Guía Metodológica de Aplicación de Prácticas y Justicia Restaurativa en las sanciones privativas y no privativas de libertad en el Sistema de Responsabilidad Penal para Adolescentes en Colombia* (Bogotà, Colombia, 2015). Available from http://www.oijj.org/es/docs/publicaciones/guia-metodologica-de-aplicacion-de-practicas-y-justicia-restaurativa-en-las-sanci.

[120] North American Council for Juvenile Justice, "NACJJ Paper on Restorative Justice", (n.p., n.d.). Available from http://www.nacjj.org/sites/default/files/nacjj_paper_on_restorative_justice.pdf.

[121] Ibid., p. 4.

[122] Yael Danieli, "Healing Aspects of Reparations and Reparative Justice for Victims of Crimes against Humanity", in *Reparation for Victims of Crimes Against Humanity*, Jo-Anne M.Wemmers, ed. (New York Routledge, 2014), pp. 7-21.

[123] Ibid., p. 7.

findings that it has contributed to reduced rates of recidivism, JFA-PFE reported that it has been advocating for use of restorative justice at the national level. A "Restorative Justice Working Manual" has since been developed, which is available in Afan Oromo, Amharic and English languages. A "Restorative Justice Committee" has also been established. Currently, JFA-PFE is also undertaking to replicate the experience in Oromia in other regional states of Ethiopia, namely Amhara.

176. The **National Association for Community and Restorative Justice** (NACRJ) submitted a letter containing its recommendations on the issue of restorative justice in criminal matters. Noting the "merger of restorative justice with 'transitional justice' models for helping countries cope with periods of mass violence and resulting trauma", NACRJ observes that "findings about the interactivity between restorative justice for typical crimes and transitional justice for addressing large-scale issues for nations rebuilding themselves in the wake of oppression or violence" would be beneficial.[124]

177. In addition, NACRJ observed that the following issues should be considered in the overall framing of restorative and community justice practices: (i) sensitivities to cross-cultural adaptations and the incorporation of indigenous communal traditions that correspond to restorative practices; (ii) recognition that restorative justice dialogue (victim offender mediation, community/ family group conferencing, peacebuilding circles, and related approaches) falls on a wider menu of options which do not involve victims and offenders of the same crimes coming together; (iii) understanding how the restorative resolution of crimes can often overlap community justice models for prevention work and community building strategies that address root "quality of life" issues with the aim of strengthening communities; (iv) awareness that most restorative programming should be victim-focused, yet many programs tend to be offender-centric, and the importance of ensuring that all persons victimized or impacted by harms deserve equal attention and effective services; and (v) the need to involve "specific references to best practice documents" when discussing best practices in providing services in ways that cause no additional harm or disrespect.[125]

178. **Prison Fellowship International** submitted a document containing comments on: (i) a brief history behind the development of the Basic Principles and its use and application, particularly in academic contexts, training, and legislative assistance; (ii) observations concerning national experiences and best practices in relation to restorative justice processes; and (iii) lessons learned from current and past efforts in this area.

179. In relation to the use and application of the Basic Principles, the **Prison Fellowship International** noted that the Basic Principles has been useful in training criminal justice officials concerning the concept of restorative justice and how it may be implemented within criminal justice systems. During its provision of training programmes in the Philippines, Nicaragua, Russia, Costa Rica, Colombia, Bolivia, Malaysia, and Panama, the Prison Fellowship International has found that the review of the Basic Principles gave "a new and deeper understanding of restorative justice because it provides an opportunity for discussion of issues, such as: protecting the due process rights of defendants; reducing the possibility of coercion or power imbalances that harm the victim; understanding the appropriate role of justice system personnel in referring and receiving back matters to

[124] National Association of Community and Restorative Justice, "Re: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", Response to UNODC's letter for comments, 13 February 2017.

[125] Ibid., p. 2.

restorative justice practitioners; confidentiality; and how to respond to failures in reaching or completing an agreement."[126]

180. The Prison Fellowship International also shared its affiliates' experiences and best practices in restorative justice processes in their respective countries. Information on restorative justice initiatives in twelve countries — Brazil, Colombia, Germany, Kazakhstan, Malawi, Mexico, the Netherlands, Norway, Portugal, Rwanda, Spain, and Zimbabwe — were provided.

181. Lastly, the Prison Fellowship International shared the following observations: (i) the Basic Principles appears to be an effective and important document providing guidance concerning the philosophy of restorative justice and protection of due process safeguards for parties participating in restorative justice programmes; (ii) there continues to be experimentation with restorative justice practices and that in most countries, they are restricted to minor crimes and to young and inexperienced offenders, in spite of research that shows restorative justice to be more effective in cases of serious crimes; (iii) there may be value in developing best practices and guidelines concerning how restorative justice programmes may be used so as to increase desirable outcomes, such as reduced recidivism; (iv) restorative justice is underused despite evidence that it is highly effective; and (v) restorative justice continues to be a "source of hope and inspiration that justice can be done differently".[127]

182. **Restorative Justice Centre** (RJC) submitted several resources, including: (i) information on restorative justice jurisprudence and implementation in South Africa; (ii) a presentation by RJC at the 2016 Annual Conference of the South African Association of Mediators titled "Charting progress, mapping the future: restorative justice in South Africa — 10 years on"; and (iii) a summary of a paper titled *Restorative justice as a tool for peacebuilding: a South African case study*[128] by Dr. Sarah Henkeman.

183. RJC observes that, in the past ten years, the South African superior courts have ruled on several cases[129] involving restorative justice, within the context of the Truth and Reconciliation Commission's work and the constitutional value of *ubuntu*.[130] In particular, RJC notes that the series of court judgments relating to restorative justice have, inter alia: recognized that the community, rather than criminal justice agencies, as the "prime site of crime control"; affirmed the validity of community-based sentences that allow the option of restoration in a way that imprisonment do not; and affirmed the importance of restitution or compensation to victims as well as centrality of restoring relationships.

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[126] Daniel Van Ness, Prison Fellowship International, "Comments of Prison Fellowship International concerning the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", Response to UNODC's request for comments, 16 February 2017, p. 4.

[127] Ibid., pp. 9-10.

[128] Sarah Henkeman, "Restorative Justice as a tool for peacebuilding: a South African case study", PhD thesis, University of KwaZulu Natal, Durban, 2012.

[129] RJC shared that the South African superior courts have ruled on restorative justice int he following nine cases: (i) *S v Shilubane* 2008 (1) SACR 295 (T), [2005 [JOL 15671(T)] (North Gauteng); (ii) *S v Maluleke* 2008 (1) SACR 49 (T) (North Gauteng); (iii) *S v Thabethe* 2009 (2) SACR 62 (T)) (North Gauteng); (iv) *S v Saayman* 2008 (1) SACR 393 (E) (Eastern Cape); (v) *S v Thabethe* 619/10 (Supreme Court of Appeal); (vi) *Dikoko v Mokhatla* 2006 (6) SA 235 (CC) (Constitutional Court); (vii) *S v M* (Centre for Child Law Amicus Curiae) 2007 (12) BCLR 1312 (CC);[2009(2) SACR 477 (CC)] (Constitutional Court); (viii)*Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) (Constitutional Court); and (ix) *Le Roux vs Dey* (CCT 45/10) [2011] ZACC 4 (Constitutional Court).

[130] The term *ubuntu* refers to "an African word meaning humanity to others. It also means 'I am what I am because of who we all are'." See Republic of South Africa, Department of Justice and Constitutional Development, "Restorative Justice. National Policy Framework", Revision (September 2015). p. 14.

184. RJC also noted that, in their view, "despite a positive policy and jurisprudence environment, the level of implementation of restorative justice has declined in the past ten years. Despite this, there are significant developments in practice, such as a much stronger recognition of the need to connect restorative practices at the interpersonal level to structural issues, and a broadening of practice into other arenas besides criminal justice."[131]

185. **Restorative Practices International** (RPI) shared the following four publications: (i) a booklet titled *Restorative Approaches in Education*[132] by University of Edinburgh; (ii) a publication titled *Restorative Justice: Cases and Practices Towards Judicial Dispute Resolution in Second Municipal Circuit Trial Court, Sibalom, Antique: a Philippine Experience*[133] by Judge Lunel Junco Gabayoyo; (iii) Queensland Youth Justice Forum Report 2015;[134] and (iv) Queensland Youth Justice Forum Report 2016.[135]

186. **Sociedad Científica de Justicia Restaurativa** (SCJR) shared comments on the various aspects of restorative justice. Some of the points raised by SCJR in its submission include: (i) that restorative justice should not be synonymous with criminal mediation, but that restorative justice is a "philosophy and criminal mediation [is] only one way to put this in practice"; (ii) that restorative justice also encompasses indirect meetings, as face-to-face meetings between the victim, the offender and/or the community may not always be possible nor advisable in some cases; (iii) that restorative justice processes must be flexible and be able to adapt to each case and its unique circumstances; and (iv) that in minor offences, restorative justice processes "will be considered an alternative" to formal criminal justice systems but in serious offences, it would be considered complementary.[136]

187. **Terre des Hommes International Federation** shared numerous resources, including: academic papers, international declarations, draft legislation on restorative justice in Afghanistan and Palestine, and various working documents with information on restorative justice models in Afghanistan, Brazil, Burkina Faso, Burundi, Ecuador, Egypt, Haiti, Mali, Mauritania, Moldova, and Palestine.

188. The academic papers submitted are: (i) an article titled *What Works in Managing Young People who Offend? A Summary of the International Evidence*[137] published as part of the United Kingdom's Ministry of Justice Analytical Series; and (ii) an article titled *The Restorative Approach to Juvenile Justice*[138] by Fabrice Crégut.

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[131] Mike Batley, Restorative Justice Centre, "Comments on the issue of Restorative Justice", Response to UNODC's request for comments, 14 February 2017.

[132] The University of Edinburgh, "Restorative Approaches in Education", Moray House School of Education Election Briefing, April 2016.

[133] Lunel Junco Gabayoyo, "Restorative Justice: Cases and Practices Towards Judicial Dispute Resolution in Second Municipal Circuit Trial Court, Sibalom, Antique: a Philippine Experience", Response to UNODC's request for comments, 9 February 2017.

[134] Queensland Youth Justice Forum, "Youth Justice Forum 2015. Summary and Recommendation", Response to UNODC's letter for comments, 9 February 2017.

[135] Queensland Youth Justice Forum, "Youth Justice Forum 2016. Summary and Recommendation", Response to UNODC's letter for comments, 9 February 2017.

[136] Sociedad Científica de Justicia Restaurativa, Response to UNODC's letter for comments, 24 January 2017, p. 1.

[137] Joanna R Adler and others, "What Works in Managing Young People who Offend? A Summary of the International Evidence", Ministry of Justice Analytical Series, 2016. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498493/what-works-in-managing-young-people-who-offend.pdf.

[138] Fabrice Crégut, "The Restorative Approach to Juvenile Justice", October 2016. Available from https://www.tdh.ch/sites/default/files/reparation_et_justice_juvenile_fcregut_en_1.pdf.

189. The declarations shared are: (i) the *Final Declaration of the World Congress on Juvenile Justice*,[139] the outcome document of the World Congress on Juvenile Justice held in Geneva, Switzerland from 26 to 30 January 2015; and (ii) the *Ibero-American Declaration on Restorative Juvenile Justice* (*Declaración Iberoamericana de Justicia Juvenil Restaurativa*),[140] signed by the Conference of Ibero-American Ministries of Justice (Conferencia de Ministros de Justicia de Los Países Iberoamericanos, COMJIB) in 2015.

190. The **World Society of Victimology** (WSV) provided information on its work in advocating for greater compliance with victims' rights instruments (e.g., United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[141]) as well as its recommendations[142] made to the 12th United Nations Congress on Crime Prevention and Criminal Justice in 2010. In the latter, WSV drew attention to, among others, a model 'draft' convention on justice and support for victims of crime and abuse of power.

191. WSV also shared its observation that "restorative approaches can be very appropriate but not always", and pointed to the "gaps in our knowledge on what restorative justice approaches work for who and what approaches do not, and under what circumstances some achieve a better sense of justice for victims and some do not." Furthermore, WSV urged "caution on the use of restorative justice programmes to deal with gendered violence and other violence where there is and remains after a power-imbalance (forged on inappropriate social norms) that negatively impacts victims of such violence."[143]

E. Other relevant stakeholders

192. The **Academy of Criminal Justice Sciences** (ACJS) provided its observations on the use and application of restorative justice programmes since 2000, as well as information on the implementation of restorative justice in the United States since 2000.

193. In particular, the ACJS submission points out the following issues in consensus in the field of restorative justice: (i) that the description provided in the UN documents do not acknowledge the "concept that criminal justice processes are located in a system of relations, and that the failure of cordiality and restoration within those relations which provides the occasion for criminalized harms to occur";[144] (ii) that much interest and development are underway in "understanding the conditions and formats by which restorative processes might be used to respond to sexual harms and domestic violence"; (iii) the lack of consensus in the field as to what counts as "restorative", in particular that there has been "a rapid expansion of what are considered to be restorative processes even if they do not employ voluntary face-to-face encounters between all those affected by a criminal harm coming

[139] World Congress on Juvenile Justice, Final Declaration (Geneva, Switzerland, 30 January 2015). Available from https://childrendeprivedofliberty.info/wp-content/uploads/2016/11/Final-Declaration-World-Congress-on-Juvenile-Justice-January-2015.pdf.

[140] Conferencia de Ministros de Justicia de Los Países Iberoamericanos, Declaración Iberoamericana de Justicia Juvenil Restaurativa.

[141] General Assembly resolution A/RES/40/34.

[142] *Recommendations to acknowledge 25th anniversary of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and establish an Expert Group to report to the UN Commission of Crime Prevention and Criminal Justice, Salvador, Brazil, 12-19 April 2010* (A/CONF.213/NGO/11).

[143] World Society of Victimology, "Basic Principle on the Use of Restorative Justice Programmes in Criminal Matters", Response to the UNODC's letter for comments, 28 January 2017.

[144] Academy of Criminal Justice Science, "Response to UNODC RE: ECOSOC resolution 2016/17 of 26 July 2016", Response to the UNODC's letter for comments dated February 2017.

agreements about consequences"; and (iv) that "restorative justice is found to be more effective than retributive alternatives with respect to recidivism when it is offered", but that "there continues to be barriers to the uptake of restorative justice which are related to net-widening effects, concerns about due process, lack of clarity about the identity of restorative justice, lack of appropriate messaging to those interested in retribution especially with respect to accountability expectations in restorative justice".[145]

194. In the case of the United States, ACJS noted that restorative justice has been implemented with or without specific legislative authority. According to a 2015 study done by Silva and Lambert,[146] 32 out of 50 states in the United States have statutory support for the use of restorative justice. Vermont and Colorado have the most extensive statutory restorative justice systems, with 21 and 37 statutes, respectively. Of the statutes, 21 states mention victim-offender meetings in any form, 12 states specifically mention victim impact panels and classes, five states community boards, and three states sentencing circles.[147] Statutes of 23 states are specifically for children in conflict with the law, and 23 states also provide for both children and adults.[148]

195. The **Fresno Pacific University's Center for Peacemaking & Conflict Studies** shared the evaluation report[149] of the Fresno County Community Justice Conference Program (CJC). The CJC is a restorative justice project of the Fresno County Juvenile Court, the Probation Department, District Attorney's Office, Public Defender's Office and Fresno Pacific University's Center for Peacemaking & Conflict Studies, wherein children and young people charged with first-time misdemeanour offences engage in restorative processes with their families and victims of their offences. Over 1,500 cases have been resolved in this manner since 2008.

196. The CJC evaluation report showed that children and young people who participated in CJC had lower rates of recidivism when compared with those charged with similar offences but had their cases handled solely through the formal criminal justice system ("control group"). Within three months of the offence, 26 per cent of the control group reoffended, whereas only 6 per cent of CJC participants reoffended. Two years after the offence, 13 per cent of the control group reoffended, compared to only 2 per cent of CJC participants.[150]

197. The CJC evaluation report also found that victims whose cases were dealt with by CJC were compensated at a higher rate as the victims whose cases were resolved solely by the court. While the Fresno County collected slightly over 6 per cent of the restitution ordered by the Juvenile Court in misdemeanour cases, CJC cases collected 76 per cent of the restitution ordered by the Juvenile Court.[151]

198. The evaluation further showed that the costs of cases diverted to CJC were substantially lower than the costs of cases processed solely through the court system. According to the evaluation, a case that was diverted to CJC costed an average of 1,225.75 USD, while a case processed only by the court system costed on average 9,537.70 USD if the case is resolved before trial, and the child or young person is placed on probation for one year rather than being deprived of liberty. If

[145] Ibid., p. 2.
[146] Shannon M. Silva, S. & Carolyn G. Lambert, "Restorative Justice Legislation in American States: A Statutory Analysis of Emerging Legal Doctrine", *Journal of Policy Practice*, No. 14 (2015), pp. 77-95.
[147] Ibid., p. 85.
[148] Ibid., pp. 87-88.
[149] Fresno County Community Justice Conference Program, Evaluation Report. Available from https://www.fresno.edu/sites/default/files/CJC%20evaluation%20Report%20-%20Berkeley.pdf.
[150] Ibid., p. 2
[151] Ibid., p. 13.

the case goes to trial or the child/young person is imprisoned, the cost difference was even greater.[152]

199. The **International Institute for Restorative Practices** (IIRP) shared the following five publications: (i) *Defining Restorative*;[153] (ii) *Restorative Justice Conferencing: Real Justice® & the Conferencing Handbook* (2010);[154] (iii) *The Restorative Practices Handbook: for Teachers, Disciplinarians and Administrators* (2009);[155] (iv) *Restorative Circles in Schools: Building Community and Enhancing Learning* (2010);[156] and (v) *Family Power: Engaging and Collaborating with Families* (2012).[157]

200. IIRP also shared a DVD titled *Burning Bridges*, a documentary about the arson of Mood's Bridge, a historic covered bridge in Bucks County, Pennsylvania, United States. In the aftermath of the crime, a restorative conference involving the six young men who burned down the bridge was held with their families and members of the community.

201. **James F. Albrecht**, Professor of Criminal Justice and Security at Pace University, shared a paper titled *Challenges Facing Contemporary Law Enforcement: Enhancing Public Confidence and Trust in the Police by Incorporating the 'Left Realism' Theory of Justice into Modern Policing Policies and Practices*.[158] The paper examines and identifies practical options for enhancing the involvement of the public, citizens and victims of crime in the criminal justice process so as to allow effective restorative justice practices. In particular, the author provides that, "since the victims belong to the community, the response to crime should be undertaken at the local level," and that "options proposed to enhance community input have included restorative justice practices, victim-offender mediation processes, target hardening, and youth, family and victim support mechanisms".[159]

202. **Michael O'Connell,** the Commissioner for Victim's Rights of South Australia, shared a paper titled *Victims of Sex Offences: Restorative Justice a Panacea?*,[160]

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[152] Ibid., p. 4.

[153] Ted Wachtel, "Defining Restorative", International Institute for Restorative Practices (2013). Available from https://www.iirp.edu/pdf/Defining-Restorative.pdf. The IIRP defines "restorative practice" as "a social science that studies how to build social capital and achieve social discipline through participatory learning and decision-making". The IIRP distinguishes between the terms "restorative practice" and "restorative justice". In particular, the IIRP views the latter as a subset of the former, in that restorative justice is reactive, consisting of formal or informal responses to crime and other wrongdoing after it occurs, whereas the IIRP's definition of restorative practices also includes the use of informal and formal processes that precede conflicts and wrongdoing and contribute to preventing them.

[154] Ted Wachtel, Terry O'Connell and Ben Wachtel, *Restorative Justice Conferencing: Real Justice® & the Conferencing Handbook* (Bethlehem, Pennsylvania, USA, International Institute for Restorative Practices, 2010).

[155] Bob Costello, Joshua Wachtel and Ted Wachtel, *The Restorative Practices Handbook: for Teachers, Disciplinarians and Administrators* (Bethlehem, Pennsylvania, USA, International Institute for Restorative Practices, 2009).

[156] Bob Costello, Joshua Wachtel and Ted Wachtel, *Restorative Circles in Schools: Building Community and Enhancing Learning* (Bethlehem, Pennsylvania, USA, International Institute for Restorative Practices, 2010).

[157] Elizabeth Smull, Joshua Wachtel and Ted Wachtel, *Family Power: Engaging and Collaborating with Families* (Bethlehem, Pennsylvania, USA, International Institute for Restorative Practices, 2012).

[158] James F. Albrecht, "Challenges Facing Contemporary Law Enforcement: Enhancing Public Confidence and Trust in the Police by Incorporating the 'Left Realism' Theory of Justice into Modern Policing Policies and Practices", Research paper, Response to UNODC's letter for comments, 23 January 2017.

[159] Ibid., p. 7.

[160] Michael O'Connell, "Victims of Sex Offences: Restorative Justice a Panacea?" in

which examines the positive and negative aspects of using restorative justice in theory and in practice, particularly in cases involving sexual offences. The paper notes that "although restorative justice is often presented as a victim-oriented reform of criminal justice procedures, there is limited research and theory into the experiences of victims within restorative justice".[161]

203. Furthermore, the paper points out several flaws of restorative justice programmes, including: (i) victims' satisfaction with the process and the outcome generally being lower than that of the offenders; (ii) varying views of victims on the sincerity of offenders' apologies, scepticism of offenders' motives and perception that the process being too lenient on the offender; and (iii) mixed results on the impact of restorative justice on recidivism. In addition, the author observed that, in his experience as the Commissioner for Victim's Rights of South Australia: (i) the victims often did not have the same access to legal advice as did the offender; (ii) the offender could appeal to the formal court proceeding if he or she could not work out or agree to a suitable outcome, whereas the victim could not; and (iii) there were no enforcement mechanisms of the offenders' undertakings. Based on the foregoing, the author concludes that "restorative justice offers the promise of a better justice for victims, but it is not a panacea", and that "it is crucial that we avoid unrealistic expectations of restorative justice".[162]

III. Conclusion

204. As noted in ECOSOC resolution 2016/17, restorative justice programmes can contribute to a wide range of beneficial outcomes. As an effective and flexible alternative to formal criminal proceedings, restorative justice programmes can contribute to alleviating the burden on the criminal justice system as well as reducing the rate of recidivism. Many offenders, and in particular children within the juvenile justice system, do not fully comprehend the impact of their actions on their victims and communities and the importance of acting in accordance with the law. By giving an opportunity to be considered responsible members of society, restorative justice programmes allow the offenders to experience first-hand the extent of harm they have caused and be held accountable, which increases the likelihood of their reintegration into the community. In addition, unlike the formal criminal justice proceedings, restorative justice programmes gives the victims of crime and affected members of the community an opportunity to play a central role in both the process and the outcome.

205. The information received in response to UNODC's request for comments on the issue of restorative justice in criminal matters reveals that, in the past 15 years since the adoption of the Basic Principles, there has been considerable increase in the development and use of restorative justice programmes around the world. Most reported programmes are applied in cases involving minor offences and cases involving children within the juvenile justice system. While not all reported measures are expressly referred to as a "restorative justice programme", or corresponds to the definitions contained in the Basic Principles, the principles and elements of restorative justice are being implemented in all regions of the world.

206. The reported information further shows that there is great diversity in the implementation of restorative justice programmes. The most common type of restorative justice programmes is victim-offender mediation (VOM), followed by community and family group conferencing (CFGC) and restorative circles or

Victimological Advances in Theory, Policy and Services, Tod Tollefson, ed. (Fresno, California, Dumont Printing, 2015).

[161] Ibid., p. 225.

[162] Ibid., p. 233.

boards. Diversity in implementation can be observed even within one type of programme. For example, in the case of VOM, while the basic elements — the victim and the offender participating together, either in a face-to-face meeting or another indirect manner, to address the harm caused by the offence with the help of a neutral third party who has been specifically trained for this purpose — are present in most VOM schemes, the details of each scheme vary significantly, including in the types of offences that are eligible for VOM, referral methods, or the consequences of a successful completion of VOM.

207. Several recurring observations were made by respondents to UNODC's request for comments.

208. First, many replies noted that, although the use of restorative justice has significantly increased since the adoption of Basic Principles, it is still underused or not well-known in many parts of the world. Given the potential of restorative justice to complement the formal criminal justice system, including as an alternative to it particularly for minor offences and children within the juvenile justice system, various replies highlighted the importance of promoting its use in appropriate cases and raising awareness of its benefits and advantages. In this regard, policymakers as well as the media and civil society have a key role to play in ensuring that the relevant stakeholders, including the community, accept and support restorative justice programmes.

209. Second, several replies commented that there has been an expansion in what is understood to be a restorative process since the adoption of Basic Principles. It was further noted that there continues to be experimentation with the use of restorative justice in criminal matters. In this regard, States could consider, wherever appropriate and applicable, further developing or revising their policies and procedures and widening the application of programmes and in doing so, ensure compliance with international standards in the area of crime prevention and criminal justice, and in particular those relating to juvenile justice, in order to foster its use in a manner that is consistent to achieving fair, humane, and accountable criminal justice systems.

210. As the concept of restorative justice continues to evolve and its application increase, it is critical that States ensure that relevant actors within the criminal justice system, including police, prosecutors, judges, legal aid providers, social workers, parole officers, and victim services providers, receive adequate training and continued education on implementation of restorative justice programmes in order to ensure that the aims of restorative justice programmes, including lower rates of recidivism, avoidance of resorting to formal criminal proceedings and detention, and empowerment of victims, are achieved. Adequate training is particularly critical in the context of cases involving violence against women and children within the juvenile justice system in effectively responding to the specific needs of victims of violence against women as well as children.

211. Third, many replies emphasized the need to carefully balance, or prioritize, the rights and needs of victims vis-à-vis those of offenders when using restorative justice programmes. It was pointed out that one of the aims and potential benefits of restorative justice programmes was ensuring that the rights, interests, and the dignity of all parties concerned were respected, especially when compared to the formal criminal justice system. Despite the centrality of this aim, respondents noted that many programmes tend to be more offender-centred than victim-focused.

212. In this respect, adequate safeguards should be put in place to protect the well-being of the victim against the risk of re-victimisation and secondary victimization when applying restorative justice processes. Facilitators involved in the restorative justice processes must therefore receive specialised training that is not limited to the principles and practice of restorative justice, but also about the dynamics of

violence, domination and power in order to, among others, be able to properly discern when a particular case is unsuitable for restorative justice. Furthermore, an overview of available models of restorative justice and its legal frameworks that support such programmes at the regional, national, and local levels need be a part of the training curriculum. These safeguards are particularly important for cases involving child victims of crime. While international standards do not exclude the use of restorative justice for child victims, significant legal and procedural safeguards must be in place before implementing this option.

213. Lastly, many respondents noted that, based on their implementation and/or research on the topic, many questions concerning the use of restorative justice in specific contexts, including domestic violence, sexual offences, or crimes that cause harm to a group rather than individuals, remain unanswered. As the use of restorative justice programmes increases, and its concept and scope continue to evolve, how restorative justice can be applied to specific types of crimes each involving different dynamics is becoming an even more important enquiry. In this regard, further discussion on and, where relevant, development of specific guidance, including a review of lessons learned and good practices, may be beneficial in order to ensure that restorative justice programmes are used in a way that meets its aims and in line with the relevant international standards and norms.

214. Given the above observations as well as the desired outcomes of restorative justice programmes, including protection of the victims' rights and interests, unburdening the criminal justice system, lower rates of recidivism, and better reintegration of offenders, further discussion on the international level on the topic may be timely, in line with ECOSOC resolution 2016/17, and in particular its paragraph 2, in which the Secretary-General was requested "to convene a meeting of restorative justice experts … in order 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", subject to extrabudgetary resources.