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WORKSHOP ON CRIMINAL JUSTICE REFORM HIGHLIGHTS NEED

FOR RESTORATIVE JUSTICE AS ALTERNATIVE TO PRISON

Measures Discussed Include Mediation, Conciliation, Compensation for Victims, Community Service

The issue of criminal justice reform, including restorative justice, was the theme of a workshop held by Committee I of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice this morning.

The last five years had been a period of intense change and adaptation for most criminal justice systems around the world, Yvon Dandurand, Senior Associate at the International Centre for Criminal Law Reform and Criminal Justice Policy in Canada, said. Providing an overview, he noted that, for many developing countries, the sheer volume of the criminal justice reforms required to keep pace with the rest of the world had been overwhelming. In many parts of the world, justice and law enforcement institutions had been unable to transparently address basic public safety and human security issues. Developing strong justice and public safety capacity was difficult, and the success of comprehensive reforms was often quite precarious. Sustained criminal justice reforms were often difficult to deliver, he added, noting that many reform attempts failed because they did not anticipate the resistance they encountered.

Several panellists addressed the issue of restorative justice, which, they noted, was emerging as an important alternative to prosecution and imprisonment as a means of holding offenders accountable in a manner that responded to the needs of offenders, victims and the community. Relying heavily on incarceration as a response to all crimes was an expensive proposition that could not reasonably be sustained by any country. Restorative justice held considerable promise as a cost-effective alternative to traditional responses to criminal offenders. Creating a “pro-reform environment” that was grounded not in collective fears but in respect for democratic values and human rights was often the most difficult task of all.

Panellists identified challenges they had encountered in reforming national criminal justice systems, including in Chile and Nigeria. A complete legal system must contain three pillars, namely criminal prosecution, the courts and access to justice and the right to defence, Alejandro Salinas Rivera from Chile’s Public Defence Office said. The reform of Chile’s criminal justice system, which began in 2000, included legal assistance services to all accused of offences. In the old criminal justice system, characterized by inquisition, secrecy and written procedures, the

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* 7th Meeting was not covered.

prosecutors and judging authorities had been one and the same. The current system contained a multiplicity of actors on an equal footing.

Nigeria's system of criminal justice had suffered considerably during decades of military rule, Yemi Akinseye-George, Special Assistant to Nigeria's Justice Minister, said. Following a return to democracy in Nigeria in 1999, the Minister of Justice was implementing a 19-point programme to modernize the country's justice sector. The reform programme included improving access to justice by reducing the cost of legislation and promoting legal aid. It also included internal reform of the Ministry of Justice and reducing prison congestion, including through alternative means to administer justice. Reforms of laws that covered the economy were also necessary in order to attract investors.

Addressing another theme of the panel discussion, namely collaboration and cooperation, Raymond Schuster, Assistant Attorney-General of Samoa explained that the once idyllic small islands in the Pacific Ocean were being considered as potential hosts for criminal enterprise from the Northern Hemisphere, including Eastern Europe, the United States and Asia. As border restrictions of developed States became more stringent, the region had become a "backdoor" for smuggling in persons, drugs and other illicit goods. Responding to the challenge, Pacific governments had identified the need to cooperate to address the global issue of transnational crime. They had done that by identifying best practices in legislation and border control policies and improving the way in which they communicated with their neighbours.

In the discussion that followed, speakers focused on different aspects of criminal justice reform, including the role of mediation, the rights of victims and community-based efforts. Describing the role of mediation in Finland, that country's representative noted that, unlike many other countries, mediation in Finland had strong ties to social and youth work. Mediation offered the victims of crime an opportunity to meet offenders and explain the outcome of offences, while, at the same time, giving offenders an opportunity to make amends for the damage caused. Mediation was also being used to resolve conflicts between ethnic groups and between ethnic minorities and the majority population. There were many undeniable advantages to mediation: viable agreements were reached quickly and at low cost; the offenders were motivated to compensate for damages; and the rights of victims were promoted.

Looking at a specific aspect of criminal justice reform, the representative of Pakistan argued that sustainable socio-economic development was impossible without reforming an important subsystem of the criminal justice systems -- police. While no police system was perfect, some were more imperfect than others. A system that did not reflect the vision and aspirations of the citizens and failed to deliver according to their needs and demands was in urgent need of reform. Reform efforts had to establish a police system that was politically neutral, non-authoritarian, accountable and responsive to the community. It must also be professionally efficient and an instrument of the rule of law.

The workshop, entitled "Enhancing criminal justice reform, including restorative justice", was organized in cooperation with Canada's International Centre for Criminal Law Reform and Criminal Justice Policy.

Also speaking this morning were the representatives of the United Kingdom, Ghana, Algeria, Senegal, Morocco and Turkey.

Also participating in the panel were Daniel Préfontaine, Senior Adviser, International Centre for Criminal Law Reform and Criminal Justice Policy, Canada; Michel Bouchard, Associate Deputy Minister of Justice, Canada; Kent Roach, University of Toronto, Canada; Vincent Del Buono, British Council, Department for International Development, Nigeria; Vivienne O'Connor, Irish Centre for Human Rights, Ireland; and Elias Carranza, Director, Instituto Latino Americano de Naciones Unidas Para La Prevencion del Delito y Tratamiento Del Delincuente, Costa Rica.

Slawomir Redo from the United Nations Office on Drugs and Crime Secretariat made introductory remarks.

Committee I will meet again at 3 p.m. today to continue the workshop.

Background

Committee I of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice had before it a background paper on enhancing criminal justice reform, including restorative justice (document A/CONF.203/10).

Participating in the panel were: Daniel Préfontaine, Senior Adviser, International Centre for Criminal Law Reform and Criminal Justice Policy, Canada; Michel Bouchard, Associate Deputy Minister of Justice, Canada; Yvon Dandurand, International Centre for Criminal Law Reform and Criminal Justice Policy, Canada; Kent Roach, University of Toronto, Canada; Vincent Del Buono, British Council, DFID Nigeria; Yemi Akinseye-George, Special Assistance to Justice Minister of Nigeria; Alejandro Salinas Rivera, Public Defence Office, Chile; Vivienne O'Connor, Irish Centre for Human Rights, Ireland; Raymond Schuster, Assistant Attorney-General, Government of Samoa; and Elias Carranza, Director, Instituto Latino Americano de Naciones Unidas Para La Prevencion del Delito y Tratamiento Del Delincuente, Costa Rica.

The background paper identifies general priorities for criminal justice reform and highlights recent examples of successful efforts to achieve reform. The paper focuses particular attention to attempts to promote victims' rights and sets forth possible action-based agendas, including opportunities for information-sharing and capacity-building.

Describing pressures on criminal justice systems, the paper states that criminal justice systems are under increasing pressure to adapt to new conditions. There is national and international pressure to deal with serious forms of transnational crime, such as terrorism, organized crime, trafficking in humans, drug trafficking and trafficking in firearms. International cooperation is required to fight those forms of crime, and each national system must be brought into compliance with the international commitments of the country in question. National systems are expected to respond to growing public expectations. Many criminal justice systems are facing other difficult challenges, such as corruption, inadequate resources, political interference and inefficiency. Other obstacles include: the crisis of public confidence and rising public expectations; the perception that the criminal justice system is failing vulnerable groups; and the limited capacity of existing systems.

The paper proposes some broad guidelines regarding the optimal means to achieve enhanced criminal justice, including: engaging in comprehensive reforms that are integrated throughout the criminal justice system; coordinating reform at the regional and international levels with appropriate technical and financial assistance; making effective use of limited resources but also providing adequate resources for least developed countries; and ensuring that criminal justice reform is monitored, evaluated and evidence-based.

The paper also offers several recommendations. Criminal justice reforms should include all relevant parts of the domestic criminal justice system and be as integrated and comprehensive as possible. International cooperation should be recognized as essential to the success of criminal reform initiatives, and technical assistance should be offered whenever possible. Reforms should be based on the active involvement of civil society, community groups and institutions not traditionally associated with criminal justice. Other recommendations include the development of mechanisms to ensure accountability and respect for the rule of law, emphasis on crime victims and vulnerable groups such as children consistent with international guidelines and standards, and the increased use of restorative justice processes and principles where consistent with international guidelines and standards.

Introductory Remarks

Introducing the background paper, SLAWOMIR REDO, Secretariat, United Nations Office on Drugs and Crime, said the theme today was part of an important focus of the United Nations through the use and application of standards and norms. He hoped that the workshop would: achieve information exchange; encourage international research for further development of restorative justice practices; and find opportunities for information sharing with developing countries, post-conflict countries and countries with economies in transition.

MICHELLE BOUCHARD, Associate Deputy Minister of Justice of Canada, said the workshop would focus on reforms, regional cooperation and specific questions regarding restorative justice, youth justice and justice for vulnerable groups, addressing, among other things, capacity-building among and the links of criminal justice reform with the Millennium Development Goals. The International Centre for Criminal Law Reform and Criminal Justice Policy of Canada, which had organized the workshop, had pushed forward the issue of criminal justice reform and had managed to improve criminal justice through cooperation with the United Nations, among others. It had made significant contributions when it came to transnational organized crime, violence against women, terrorism, corruption and computer-related crimes.

He said his country had looked with interest at the possibility of a charter of the rights of prisoners. In the area of capacity-building and institution-building, access to training should be improved for people working in the area of law, including prison guards and judges. One should also look at ways that programmes could be more effective and how to provide support and help for inmates. Canada had played a leading role in the area of restorative justice, which had led to the adoption of a United Nations declaration of guidelines for the use of restorative justice programmes.

He said there was also a need to look at financial and legal frameworks to support victims and to prevent victimization. Member States must attach importance to victims of criminal acts, in

particular women and child victims of trafficking, and concentrate on high-risk groups who were at risk of becoming victims and offenders. Effective social development strategies were needed in that regard.

Criminal Justice Reform Overview

YVON DANDURAND, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, said that, during the workshop, panellists were invited to consider collective experiences with major criminal justice reform. The last five years had been a period of intense change and adaptation for most criminal justice systems around the world. For some of the smaller States and for many developing countries, the sheer volume of the criminal justice reforms required to keep pace with the rest of the world had been overwhelming. In many parts of the world, justice and law enforcement institutions had been unable to transparently address basic public safety and human security issues. Many systems simply lacked a basic capacity to perform their function. Many States had never had a strong justice and public safety capacity. For them, developing that capacity was difficult, and the success of comprehensive reforms to address those challenges was often quite precarious. They needed advice and useful tools.

He said sustained criminal justice reforms were often difficult to deliver. One of the reasons why many attempts at reform were not successful was that they failed to recognize the resistance they were bound to encounter. Another reason was that they tended to focus on a single issue. Justice system reforms must be designed as comprehensive and coherent initiatives even if they could only be implemented incrementally. Another reason for poor results could often be found in the lack of public support for change. Yet another reason for failing attempts at criminal justice reform was either insufficient resources or poor resource planning and management. A prerequisite to successful justice reform was often the upgrading of key agencies' resource management capacity and public accountability. Criminal justice reform had come to mean much more than simply promoting changes to the criminal law. It was now broadly understood to mean a range of activities to develop the capacity of the criminal justice system. Typical activities included measures to strengthen the governance of the justice system, to support strategy formation and promote citizen involvement.

Regarding restorative justice, he said relying heavily on incarceration as a response to all crimes was an expensive proposition that could not reasonably be sustained by any country. Communities, religious organizations and non-profit agencies were playing a major role in developing alternatives to incarceration. A key attribute of restorative justice was the significant involvement of the community in the response to persons whose behaviour had been deemed harmful to the victim and to the community. Restorative justice held considerable promise as a cost-effective alternative to traditional responses to criminal offenders. It was important to build criminal justice institutions that represented all members of society. Creating a "pro-reform environment", which was grounded not in collective fears but in respect for democratic values and human rights, was often the most difficult task of all.

He said a number of strategies might be used to increase the efficacy of locally owned justice reforms. They included: establishing the legitimacy of the proposed reform; finding champions or figureheads committed to reform; providing incentives for change and establishing realistic benchmarks and reform objectives. Even the best-designed reform initiative would fall

short of its objectives if it was not planned adequately. It was unrealistic to expect that all of the required changes would occur simultaneously or that a system's institutional and human resource capacity could be developed overnight.

KENT ROACH, Professor, University of Toronto, Canada, said pressures placed on criminal justice systems included increasing demands for access to justice. Those demands came from many quarters and were placing increasing expectations on criminal justice systems throughout the world. One demand for access to justice was the need to respect the rights of those suspected and accused of crime, basic rights reflected in the 1966 International Covenant on Civil and Political Rights and related standards. The need to respect those rights was particularly great given the increased emphasis on security and anti-terrorism efforts in recent years.

Another demand for access to justice was the need to protect vulnerable groups. The victims of crime, including groups who were disproportionately subject to crime, demanded better protection and an enhanced role in the criminal justice systems, in accordance with the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. There was also national, regional and international pressure to deal with serious crimes, such as terrorism, organized crime, human trafficking and trafficking in drugs and firearms.

He said restorative justice deserved particular attention in the workshop, because it was emerging as an important alternative to prosecutions and imprisonment as a means of holding offenders accountable in a manner that responded to the needs of offenders, victims and the community. Restorative processes, as defined in the 2000 Basic Principles on the Use of Restorative Justice in Criminal Matters, were those in which offenders, victims and others affected by crime participated in the resolution of matters arising from crime.

The second guideline for enhancing criminal justice reform was the need to make the protection of vulnerable members of society a priority. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognized that victims of crime included those who have suffered from abuse of power including infringements of fundamental rights. A third guideline for criminal justice in both developed and developing nations was to recognize the principle of restraint in the use of imprisonment. Consultation with the victims might help protect the vulnerable and, in some cases, result in creative alternatives to imprisonment as a means to prevent re-offending. Restraint in the use of imprisonment was especially important with respect to children.

A fourth and general guideline for enhanced criminal justice reform was the need to incorporate international standards and resources. One example was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which encouraged Member States to take a holistic approach, including consideration of immigration reforms and compensation for victims.

In order to respond to most criminal justice problems, there was a need for comprehensive reform efforts involving all relevant actors. In addition, there was a need for greater coordination at regional and international levels. Furthermore, there was a need to involve the community, civil society and institutions not traditionally associated with the criminal justice systems in reform efforts. Adequate resources were essential to produce enhanced criminal justice reform.

He said strategic monitoring of criminal justice could help produce baseline data and evaluations necessary to ensure that reforms were effective and evidence-based. When criminal justice actors had been found to have engaged in misconduct, it was important they be held accountable in a manner that promoted the rule of law and public confidence in the justice system. The 2000 Basic Principles on Restorative Justice were a valuable tool for Member States to use to integrate restorative processes in their existing criminal justice systems.

Comprehensive Reform Panel

VINCENT DEL BUONO, Programme Coordinator, Security, Justice and Growth Programme, British Council, Department For International Development, Nigeria, noted that, in 2000, the world had committed itself to a number of goals in the Millennium Declaration. Five years on, Asia and Latin America were on their way to realizing the Millennium Development Goals by 2015. To achieve those goals globally, they must be achieved in sub-Saharan Africa, but African poverty and stagnation was the greatest tragedy of the current time. Poverty on such a scale demanded a forceful response. The Nigerian Programme, established in 2002 by the Governments of the United Kingdom and Nigeria, was such a partnership, designed to take forward the Millennium Development Goals. Africa's history had been blighted by two areas of weakness, namely capacity and accountability. While improvements in both were first and foremost the responsibility of African countries, action by the rich countries was also essential.

At the heart of the proper functioning of government, he added, was the establishment of an economic environment that encouraged investment, including in the more abstract forms of infrastructure, such as legal systems to protect basic property rights, human rights and respect for contracts. The proper functioning of governments was also about ensuring that other institutions were in place, namely an independent judiciary, an effective impartial police and prison system and a wide range of financial and regulatory systems.

In the security area, the programme sought to support the transformation of the organization and culture of the Nigerian police by introducing community-based policing, he said. Transforming the Nigerian police from a paramilitary police force into one that responded to communities was a huge task. In Nigeria and in other African countries, parallel informal systems often worked to bring services to citizens in weak or failed States. The programme also sought to increase access to justice by increasing awareness among vulnerable groups of their rights. Rights were only potential if there was no capacity to realize them. A third component of the programme was to stimulate economic growth. One of the principle focuses of the programme was promoting gender equality and the advancement of women to combat hunger, poverty and disease.

YEMI AKINSEYE-GEORGE, Special Assistant to the Justice Minister of Nigeria, continuing the preceding presentation, explained how cooperation between the Justice Programme of the British Council and the Federal Minister of Justice was able to bring reform in the justice sector in Nigeria. The Minister of Justice was implementing a 19-point programme aimed at modernizing the justice sector. It had been developed in 1999 after the return of democracy to Nigeria. The system of criminal justice had suffered considerably during decades of military rule.

The programme for reform included improving access to justice by reducing the cost of legislation and promoting legal aid. It also included internal reform of the Ministry of Justice and

reducing prison congestion, including through alternative means to administer justice. Reforms of laws that covered the economy were also necessary in order to attract investors. The British Council had helped in disseminating information in order to get support for the programme among the people. A Committee on Justice Reform had been established, which included representatives of all stakeholders, including the human rights commission.

Support for reform of legal aid had resulted in the drafting of the Bill for the Reform of Legal Aid. As it had been found that the legal aid system in the United Kingdom was too expensive, the model from South Africa was adopted. The work of the Legal Aid Council was also upgraded and given more power to intervene. Currently, the Programme was assisting in redesigning processes and procedures. There had also been support for the internal reform of the Ministry itself, particularly for the Department of Planning, Research and Statistics, which had been moribund under military role, but ought to be the intellectual powerhouse of the Ministry of Justice.

Apart from the British Council, support had been received from the MacArthur Foundation and the Open Society Institute for West Africa. There were discussions with the Ford Foundation for support for a programme on domestic violence. A Justice Improvement Fund had been established, which was now part of the regular budget of the Ministry.

Addressing criminal justice reform in Chile, ALEJANDRO SALINAS RIVERA, Lawyer, Unit of International Affairs, Public Defence Office, Chile noted that, in 2000, Chile had begun a reform of its criminal justice system, putting it more in line with the country's Constitution. The public defenders' office provided legal assistance services to all accused of offences. Access to justice was an essential element for strengthened criminal justice systems. Integrating international standards was also crucial for guaranteeing the efficiency and trustworthiness of criminal justice systems. The old criminal justice system had been characterized by inquisition, secrecy and written procedures. The prosecutors and judging authorities had been one and the same, leading to imbalance among the parties to the case. The current system was adversarial, public and oral. New actors were in place, including the defenders' office, the judicial system and pre-trial personnel. There was a multiplicity of actors on an equal footing. The new system also promoted discussion of the law as a way of finding the most appropriate solution to a case.

On the rights of the defendants, he noted that under the new system, the defendant was entitled to a series of rights including the right to be informed of the charges, to be assisted with council, to have the possibility of private exchanges with council, the right to be informed of the reasons for pre-trial detention and the right to remain silent. The right to defence had many aspects, including the right to be part of the process from the beginning of any legal action, the right to know the charges, the right to challenge those charges, the right to present evidence, the right to participate in defence strategy and the right to an attorney. The defendant also had the right to free legal assistance.

The public defenders' office was decentralized, providing defence to all who needed it, he said. It was not a service for poor people, but for all accused of an offence. Services were provided through a public and private subsystem. In 2004, his office had handled some 117,626 cases. There had been a huge growth in public confidence and trust in the programme since its implementation. Clients included anyone accused or implicated in committing a crime without a

legal adviser, whatever their financial means. In general, services were provided free of charge. The purpose was to give defendants access to the best possible legal services. Concluding, he said a complete legal system must contain three pillars, namely criminal prosecution, the courts and access to justice and right to defence.

Collaboration and Cooperation Panel

VIVIENNE O'CONNOR, Project Coordinator, Model Codes Project, Irish Centre for Human Rights, elaborating on a case study, Model Codes for Post-Conflict Criminal Justice Project, said that, in post-conflict situations, the legal system was often wholly ineffective. Transitional law reform was, therefore, necessary. The United Nations had been participating in efforts to reform the justice system, among other places, in Cambodia, East Timor, Kosovo, and the Thai Border Relief Operation. Those efforts often were not effective, either. In Kosovo, for instance, it had taken two years to implement a regulation that criminalized organized crime. Often, there were deficiencies in national legislation that conflicted with international law, and there was a lack of resources. There was also a lack of strategic vision and comprehensiveness, and there often was failure to account for conditions "on the ground".

She said one of the lessons learned was that, in all post-conflict situations, reform must be based on international norms and standards. Laws must be legally sound to provide adequate guidance to criminal justice actors. As a tool for the transitional law reform process, the Model Codes had been developed. Those Model Codes were a compendium of laws, including a draft penal code, a draft procedure code, a detention act and a draft law enforcement powers act. They had been drafted with exigencies of a post-conflict environment in mind and were consistent with international standards. They were potentially universally applicable.

The Codes could be used as tools to fill gaps in pre-existing legal frameworks, she continued. They could address new crimes, such as trafficking and organized crime and could put in place procedures for witness protection, surveillance, search and arrest. They would help bring existing law in line with international human rights and criminal justice standards and could serve as building blocks for the creation of transitional laws. They were a valuable resource for the creation of specialized tribunals such as those dealing with economic crimes.

RAYMOND SCHUSTER, Assistant Attorney General of Samoa, said the Pacific Ocean, in all its beauty and presence, had embraced the world in its complexity and diversity. Increasingly, the once idyllic collection of small isles on a vast sea was being considered as potential hosts for criminal enterprise from the Northern Hemisphere, from Eastern Europe, from the United States and from Asia. The region's response had been to open channels of communications between Pacific governments, law enforcement agencies, central banks and a range of regulators and law officers. The reason for the move to regional collaboration was to address situations in which the proceeds of crime had been sent to Pacific destinations to be cleansed through offshore financial centres.

As border restrictions of developed States became more stringent, the region had become a backdoor for smuggling in persons and drugs. Examples of cooperation included the formation of South Pacific police, formalized channels of information and information sharing, and the improvement of border controls. Other measures included the adoption of computerized border

alert systems, anti-terrorism and money-laundering legislation and legal assistance. Samoa had enacted an anti-terrorism and money-laundering system in 2002, and had established a national transnational crime unit. That unit was responsible for cross-border crime control and was a member of similar regional units. The coordination of law enforcement and technical assistance had led to a coordinated approach to investigations and a greater degree of information exchange.

Another problem was the ease of sending funds into the region, he said. Clearly the banking systems were obvious receptors of potentially illicit funds. Where countries had offshore finance centres, the combination of supranational bodies such as the Financial Action Task Force, the Organisation for Economic Cooperation and Development Harmful Tax Project and the other such initiatives had ensured that the secrecy/confidentiality so integral to the offshore finance industry was, however, subject to a statutory override, which was based on specific thresholds identifying possible criminal activity. The “name and shame” strategy adopted by groups of developed countries naming developing countries was not an effective productive strategy when dealing with poor but sovereign countries. Clearly, the willingness to collaborate produced far more effective outcomes in any sector, be it trade, agriculture or criminal justice. The Pacific had identified the need to cooperate to address the global issues of transnational crime; terrorism and criminal activity. It had done that by identifying best practices in legislation, border control policies and the way it communicated with its neighbours.

ELIAS CARRANZA, Director, Instituto Latino Americano de Naciones Unidas Para La Prevención del Delito y Tratamiento Del Delincuente (ILANUD), Costa Rica, addressed restorative mechanisms in the new juvenile criminal legislation in Latin America and Spain. He said the Convention on the Rights of the Child, which had been ratified by all countries of Latin America, established a mechanism for restorative justice for minors. Many countries in the region now had legislation in place that was in line with the Convention on the Rights of the Child, and Argentina, Chile, Colombia and Mexico had pending draft codes.

He said one of the purposes of the mechanism of restorative justice had to do with an early end of a case or non-prosecution of a case. In that regard, most countries in the region had chosen remission and conciliation. There were different non-custodial sentences, especially ones that included community service and compensation for damages.

Restorative justice mechanisms had been applied in juvenile offender codes, he added. Those codes were especially important in the region, because 65 per cent of the population was under 35 years old, and 42 per cent was under 18 years old. It was important to use the alternative mechanisms as a true alternative to prison sentencing, as crime and imprisonment had been on the rise. That had raised many alarms, among them many false alarms, which always resulted in reforms aimed at strengthening the laws, and which increased prison populations.

He said that research had shown that, the younger the population was, the more offences were committed. More time spent outside school or family equalled an increase in offences. The higher the urbanization rate, the higher the crime rate. There was also a direct relationship between inequity in income distribution and crime. Inequality in income distribution was on the rise both between and within countries. In Latin American countries, the inequality gap had also widened. More efficient criminal justice was needed with restorative mechanisms, as well as economic and

social policies that contributed to a more equal distribution of resources between and within countries, with a special emphasis on the young populations.

Statements

PATRICIA SCOTLAND (United Kingdom) said she had not been surprised to hear that the British legal assistance system was too expensive for Nigeria. She would look at attempts to address that problem. Restorative justice was a way of making a major contribution to enhanced cooperation in the justice system. Research indicated that, from a victims' perspective, the restorative justice approach had real benefits. There was, however, no one-size-fits-all model and it was necessary to look at cultural and other contexts in which systems were put in place. The United Kingdom supported the United Nations basic principles on the use of restorative justice programmes.

She stressed the need to be realistic in the way in which restorative justice processes were used. In that regard, it was important to ensure that developments were based on research-based evidence. Robust analysis was needed in order to develop best models. She commended those who had put the subject on the agenda, as restorative justice had real benefits not only for the offenders but also for the victims.

WILLIAM KWADWO ASIEDU (Ghana) said that "treatment" was effective in minimizing crime. Vulnerable groups posed less threat to society and, therefore, alternatives to imprisonment should be imposed in order to mitigate the impact on them. The effects of imprisoning vulnerable groups included: the provision of special facilities and care which was costly; the contamination of juveniles by adult prisoners; and the stigmatization of children born in prison. Alternatives to imprisonment, such as probation, parole, community service and so forth were found to be effective. Juvenile offenders must be kept out of prison as much as possible.

He said restorative justice was an emerging alternative to imprisonment, which compensated the victim with the aim of restoring him or her to a previous standing. It involved a meeting between the victim and offender. If the offender was to be punished, it would be non-custodial punishment beneficial to both society and the victim. It was part of the culture in his country to resolve issues at the community level and, as much as possible, cases were taken out of the police station and courts. Elders and opinion leaders tried to resolve cases with the victims and offenders coming to a mutual understanding. The courts normally accepted the settlements reached. Restorative justice enabled the victim to forgive the offender and the offender to show remorse.

AARNE KINNUNEN (Finland) noted that, unlike many other countries, mediation in Finland had strong ties to social and youth work. One of the most valued results of the mediation process was that the offender and the victim discussed the conflict and discharged their emotions. Mediation offered the victims of crime an opportunity to meet the offender and explain the outcome of the offence. At the same time, the offender had an opportunity to learn to take responsibility for his or her actions, to apologize and to seek to make amends for the damage caused. Mediation had been viewed as most rewarding among young offenders in view of its contribution to preventing re-offending. The objective of the victim-offender mediation process was a written agreement in

which the offender acknowledged the offence and agreed to make a material amends or work service.

Mediation had not been harnessed as a continuation or by-product of the criminal justice system, he added, but endeavoured to remain a genuinely voluntary manner of settling human conflict. The Finnish experience suggested that there should not be strong formal links between mediation and the system of sanctions. It was essential that the issue of participating in the mediation process and of withdrawal from it at any time remained matters to be decided by the parties concerned. Consideration of the interests of both the offender and the victim in the mediation process was important as the outcome of mediation might have a substantial impact on the legal status of the parties. Research showed that both victims and offenders were satisfied with mediation processes in criminal matters. Research also indicated a high rate of adherence to agreements concluded as the outcome of mediation procedures.

To date, there had been no legislation governing mediation in Finland, he said. An interdepartmental process of preparing legislation was currently ongoing with a view to building a comprehensive victim-offender mediation structure. In Finland, the development of restorative justice had extended beyond the use of victim-offender mediation. The notion of “social mediation” had been applied on a trial basis for preventing and resolving conflicts between ethnic groups and between ethnic minorities and the majority population. The results of the trial had been encouraging. There were many undeniable advantages to mediation. Viable agreements were reached quickly and at low cost. The offenders had been motivated to compensate for damages, and the rights of victims had been promoted.

MOHAMED AMARA (Algeria) said the reform of justice must take into account the social and political reality of the country. There was not one model for justice, nor one model for justice reform. However, any justice system must guarantee the independence of the judiciary, ensure equal access for all citizens to the system and be compatible with human rights. The verdicts must be of the best possible quality. Any justice reform must seek to apply legislation for the good of the country and its citizens and make sure that human resources were well used and trained. There was also a need for reform of the penitentiary system, taking into account international standards. Since 1999, a reform process had been under way in his country.

He said the idea of restorative justice was nothing new in his country and went back to fundamental religious principles. One way of restorative justice in his country had, until recently, been applied by the “Djamaa” or “Council of Wise Man” system. He wondered whether restorative justice was the one and only means whereby problems faced by justice would be solved, or whether it was one means amongst others.

IBRAHEMA SAMBE (Senegal) said his country had adopted a 10-year justice sectoral programme, which would be implemented with donor assistance from 2003 to 2013. The programme aimed to facilitate access to justice through the setting up of jurisdictions, the offer of services and the availability of adequate equipment. A “chain” of criminal service allowed for a clear understanding of the different prosecutorial measures taken.

On the issue of reparations, Senegal had a law on non-custodial sentencing, which stressed public service works, he said. Senegal also had a law on mediation, as well as a law that allowed

public prosecutors to propose mediation to the perpetrator and the victim. If the parties agreed, mediation was undertaken under the direction of the prosecutor. If there were no agreement, the case continued and might go to court. Most offences were not of a serious nature, and conciliation was often reached in those cases. Senegal had also established so-called houses of justice, which were not jurisdictions unto themselves, but were institutes in which retired magistrates handled small neighbourhood level disputes. Despite such efforts, however, more could be done to improve the criminal justice system. A committee had been set up to reform the penal code. Senegal had a good culture of cooperation and was ready to share experience with other countries.

MUHAMMAD SHOAIB SUDDLE (Pakistan) said there was extensive literature on the direct relations between good governance and economic and social development. As the police force was a subsystem of the criminal justice system, which, in turn, was an integral part of the overall governance process, it followed that it was not possible to have sustainable economic and social development without reforming the police.

He said no police system was perfect, but some were more imperfect than others. A system that did not reflect the vision and aspirations of the citizens and failed to deliver according to their needs and demands needed urgently to be reviewed and reformed. Reform efforts had to establish a police system which was politically neutral, non-authoritarian, accountable and responsive to the community. It must also be professionally efficient and, last but not least, be an instrument of the rule of law.

He then went on to describe police reform in his country, which had emerged as a top priority in the Government's commitment to strengthening the rule of law. In the last five years, Pakistan had viewed police reform as a critical developmental priority.

MUSTAPHA HALMI (Morocco) said his country had been undergoing a reform of its criminal justice system since 2003, which was based on the principles of the Universal Declaration of Human Rights. The time limits for legal proceedings had been well-defined, especially cases involving arrests. Prisoners' rights were closely monitored, including through periodic visits by judges, investigators and law enforcement officials. Prisons were also closely monitored, and the legislature paid attention to the rights of arrested persons. A new law had been established regarding juvenile offenders.

Another part of the reform process was its emphasis on the need to guarantee access to lawyers and the elaboration of measures to respect the dignity of persons, he said. Morocco's criminal justice system took into account the provisions of the various human rights instruments and the need to maintain the public interest.

NECAT NURSAL (Turkey) said fundamental principles such as equality without any discrimination before the law and the use of judicial power by independent courts were basic essentials of the Turkish criminal justice system. Describing the situation in his country, he said that, among other things, an accused person had the right to access defence counsel as soon as he was taken into custody. If the accused was under 18 years old, the interrogation was not to be carried out by the law enforcement officers, but rather by the public prosecutor in the presence of defence counsel. Pre-trial detention was not to exceed six months during preliminary investigation and not to exceed two years during the trial stage.

He said that, if the committed crime required an application by the victim for prosecution, law enforcement officials, public prosecutors or the judge might set in motion mediation between the parties and, if the victim waived prosecution, the case could be dismissed. There were a number of alternative sanctions and restorative justice in the Turkish Penal Code, and there was a range of non-custodial sentences, including community work, enforcement at home, enforcement on weekend, compulsory residence, compulsory education, reparation of damages, compensation of victims and reconciliation.

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