

We are pleased to share this information with you and encourage you to use these documents for research purposes. Please ensure that all credits are acknowledged when using all or any of the information in these documents. Commercial reproduction is strictly prohibited.

**11th United Nations Congress on Crime Prevention and Criminal Justice  
Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice  
Bangkok, Thailand April 18 to 25, 2005**

**Enhancing Criminal Justice Reform, Including Restorative Justice  
Workshop #2 Friday, April 22<sup>nd</sup>, 2005**

**PRESENTATION: CRIMINAL JUSTICE REFORM OVERVIEW**

PROF. KENT ROACH

**SPEAKING NOTES**

---

**Introduction**

The topic of today's workshop is "Enhancing Criminal Justice Reform including Restorative Justice" and I would like to review some of the themes that emerge from the background paper prepared for this workshop as informed by the regional preparation meetings and that hopefully will assist our deliberations today.

**Pressures on Criminal Justice**

When discussing the task of enhancing criminal justice, it is important to have some sense of the multiple pressures that are being placed on criminal justice systems. These pressures include increasing demands for access to justice. These demands for access to justice come from many quarters and are placing increasing expectations on criminal justice systems throughout the world.

One demand for access to justice is 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 these rights is particularly great given the increased emphasis on security and anti-terrorism efforts in recent years.

Another demand for access to justice is the need to protect vulnerable groups whether they be racial, ethnic, religious minorities or those with disabilities who experience high rates of crime victimization or the victims of gender-based violence and abuse of children. The victims of crime, including groups who are disproportionately subject to crime victimization, demand better protection and at times an enhanced role in the criminal justice system. They look to the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as well as to other international standards relating to the rights of women, children and the rights of minorities to be free from discrimination.

There is also national, regional and international pressure to deal with serious crimes such as terrorism, organized crime, human trafficking and trafficking in drugs and firearms. International co-operation is required

to fight these crimes and national systems must comply with international commitments. The Rome Statute creating the International Criminal Court speaks to demands for accountability for the most serious crimes. Such forms of accountability cannot always be achieved within domestic systems of criminal justice.

There is also an increasing recognition of the important role of criminal justice in achieving good governance and Millennium Development Goals such as peace, security, poverty alleviation, human rights, democracy, good governance and the protection of the vulnerable. This is especially the case with respect to least developed countries and societies in conflict. In such contexts, there is a need for capacity building and compliance with basic international and regional standards. At the same time, these developments should proceed on the basis of an increasing awareness in many developed nations that putting more money into policing, prosecutions and prisons have not necessarily produced greater satisfaction with criminal justice or an increased sense of security of justice.

### **Restorative Justice**

Restorative justice deserves particular mention in this workshop because it is emerging as an important alternative to prosecutions and imprisonment as a means of holding offenders accountable in a manner that responds to the needs of offenders, victims and the community. You will hear more detailed presentations on restorative justice later in the day, but at this preliminary stage, it should be mentioned that restorative processes, as defined in the 2000 Basic Principles on the Use of Restorative Justice in Criminal Matters, are those in which offenders, victims and others affected by crime participate, often with the help of a facilitator, in the resolution of matters arising from crime. Restorative justice draws on existing traditional, indigenous and religious ways of dealing with disputes and as such recognizes that that state is not the only source for the delivery of effective and equitable justice. At the same time, restorative justice often complements a well functioning and credible criminal justice system.

### **Guidelines for Effective Criminal Justice Reform**

The background paper prepared for this workshop attempts to articulate four broad guidelines for enhancing criminal justice reform including restorative justice which build on best practices and international standards.

One of these guidelines is the need to recognize and respect diversity both between member states and within member states. Reforms that may be appropriate and possible in some countries may not be feasible elsewhere. In addition, diversity exists within as well as between different member states. Women, children, the elderly, indigenous populations and various minorities may be disproportionately affected by crime and/or by the criminal justice system. In many countries, specific groups be highly over-represented in the prison population stemming from a number of factors including disproportionate attention from branches of the criminal justice system such as the police. Australia, Canada and New Zealand are all confronted with significant over-representation of indigenous persons in prison systems. You will hear later today presentations from both Canada and New Zealand on attempts to deal with this problems, efforts that draw on restorative justice as a means of responding to the needs of offenders, victims and communities and reducing reliance on imprisonment. The Australian Royal Commission into Aboriginal Deaths in Custody demonstrates how a symptom such as Aboriginal deaths in custody or indeed Aboriginal overrepresentation in prison can be traced back to social, economic, cultural and family dislocation as well as decisions made throughout the entire criminal process including legislative decisions to criminalize certain behaviour, police and prosecutorial decision-making, interim release or bail decisions, the trial process and sentencing options. At all these stages of the criminal process there is a need for cultural sensitivity and respect for indigenous ways of dealing with disputes and offending. Restorative justice responses to crime are promising in part because they can draw on and incorporate indigenous ways of dealing with disputes and offending.

The second guideline for enhancing criminal justice reform is the need to make the protection of vulnerable members of society a priority. The vulnerable members of society may include women, children and the elderly, but can also include offenders and prisoners. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognizes that victims of crime include those who have suffered from abuse of power including infringements of fundamental rights.

One approach to the sexual violence against women and children and in particular the danger of re-victimization in the criminal justice system has been reform of substantive and procedural aspects of the criminal law. These include restrictions on the admissibility of the complainant's prior sexual conduct and confidential records, the former also being embraced in the rules of the International Criminal Court. Child victims are particularly vulnerable to re-victimization in the criminal justice system and the Draft Guidelines for Child Victims and Witnesses of Crime provide that interference with the child's private life should be limited only when necessary to ensure fair and equitable outcomes. Reforms to the treatment of female and child victims can increase the reporting of sexual violence to the authorities but also need to maintain a balance between the rights of the accused to have relevant evidence considered and the rights of victims and witnesses including rights of women and children. The Draft Guidelines for Child Victims and Witnesses of Crime also contemplate special assistance for children not only with respect to criminal justice processing, but also with respect to health, social and other services necessary for the child's reintegration.

Reforms to assist the most vulnerable members of society must respect the diversity of member states. Some reforms such as publication bans and the use of video-taped evidence may presume a level of development and criminal justice services that are not available in all member states. In Columbia, 32 Houses of Justice have enjoyed success in bringing together a range of services for the victims of domestic violence. About a quarter of the 300,000 cases that come in a year to a Columbian House of Justice are sent to court, but the Houses provide psychological, medical and victim services in the broadest range of cases.

A third general guideline for criminal justice in both developed and developing nations is to recognize the principle of restraint in the use of imprisonment. Such restraint is required at all stages of the criminal process, including decisions whether the accused must be imprisoned pending trial. Reliance on financial bail may discriminate against indigent accused. Consultation with the victims at this stage may help protect the vulnerable and in some cases result in creative alternatives to reliance on imprisonment as a means to prevent re-offending.

Restraint in the use of imprisonment is especially important with respect to children. Approval of the Convention on the Rights of the Child and related standards in Latin America has resulted in a process in which many countries in the region have amended their laws to recognize the needs of children and to establish a range of sanctions that makes imprisonment exceptional. Alternative to imprisonment for young offenders can include both restorative proceedings which can hold the child accountable for offending behaviour while at the same time recognizing the social, economic and cultural determinants of crime and the important role that families, schools and communities can play in preventing re-offending. Another alternative to imprisonment which deserves careful study is home confinement which can allow offenders to be punished outside of prison while still attending school or work as appropriate.

A fourth and final general guideline for enhanced criminal justice reform is the need to incorporate international standards and resources. Domestic policy makers must become increasingly familiar with international standards and resources. This is particularly so with respect to priority crimes that have commanded much international attention. One example is the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children. It encourages member states to take a holistic approach that includes

not only the criminalization of human trafficking but immigration reforms and compensation for victims. Further still, donor countries can assist in addressing underlying issues such as poverty, underdevelopment and lack of equal opportunity.

International standards and resources can also make an important contribution to establishing criminal justice in post-conflict societies. Later today, you will hear a presentation on the development of Draft Transitional Codes for criminal justice in post-conflict societies. Over 30 truth commissions have been established in post-conflict societies and they can bring together offenders, victims and others affected by crime. At times, truth commissions involve referrals to community and customary processes that can be conducted in a manner consistent with the Basic Principles of Restorative Justice including concerns for imbalances of power between the participants. At the same time, however, truth commissions can make recommendations for subsequent prosecutions for the most serious crimes including genocide, war crimes, crimes against humanity or gross violations of humanity. Truth commissions can draw on restorative principles but should be seen as complements to, rather than replacements of, credible domestic, regional and international courts of criminal justice.

### **Action-Based Agendas**

The last part of the background paper prepared for this workshop discusses and proposes 8 specific recommendations to guide action-based agendas and the provision of technical assistance for project ideas and proposals.

In order to respond to most criminal justice problems, whether it be prison overcrowding or a failure to protect the vulnerable from sexual violence, there is a need for comprehensive reform efforts that involve all the relevant actors in the criminal justice process. Each actor whether police, prosecutors, judges, defence lawyer or correctional officials must be aware of the effects on their actions on others within the systems and policy-makers should attempt to achieve comprehensive and integrated reforms whenever possible.

In addition to the need for greater domestic co-ordination, there is a need for greater co-ordination at regional and international levels. Transnational crimes are obvious examples, but there is a role for international and bi-lateral assistance to help states enhance their own justice system over a wide range of areas. Later today you will hear about a 5 year 30 million pound United Kingdom-Nigeria justice and growth project that involves among other matters projects concerned with community-based policing.

In addition to domestic, bi-lateral and international co-ordination, there is a need to involve the community, civil society and institutions not traditionally associated with the criminal justice system in reform efforts. Religious institutions, the military and private police may in some countries fulfill functions normally associated with criminal justice. The support of the community, the media and civil society groups is often necessary for effective criminal justice reform. The Thai experience with restorative justice demonstrates the potential both for broad community education and outreach and a multidisciplinary approach of offending that involves not only police, prosecutors and probation workers but also community members, doctors and psychologists. Study visits, training and national seminars broadcast on public television all have played a valuable role in introducing restorative justice in Thailand in a manner that draws on community traditions and resources.

Adequate resources are essential to produce enhanced criminal justice reforms. Informal justice may only replicate power imbalances within and among countries unless there is a credible, capable, fair and efficient criminal justice system to operate as a backdrop. At the same time, many developed countries have learned that the devotion of considerable resources to policing, prosecutions and prisons have not reliably reduced crime or public anxiety about crime. All justice systems must be concerned with the cost effective management of

resources. Such management can often be achieved by diversion of cases away from the criminal justice when safe and appropriate. The most cost effective proceedings and sanctions should be used for those cases that are prosecuted. Sentence length can also be linked with prison capacity in order to ensure an integrated approach to the management of limited resources, as well as integration throughout the justice system.

Strategic monitoring of criminal justice can help produce base line data and subsequent evaluations that are necessary to ensure that reforms are effective and evidence-based. Drawing on the experience of organizations such as the Red Cross that visit prisons, monitoring can also play a role in promoting accountability and respect for international standards in all parts of the justice system.

When criminal justice actors have been found to have engaged in misconduct, it is important that they be held accountable in a manner that promotes the rule of law and public confidence in the justice system. Restorative justice processes can in some cases be used as part of a disciplinary process. A restorative approach will involve the community and hopefully help restore public confidence in the criminal justice system. A restorative approach to misconduct within the justice system may also attempt to rehabilitate and reintegrate the wrongdoer in order to prevent similar wrongs in the future.

Projects that focus on the victims of crime may be an effective way to help advance respect for international standards with respect to vulnerable groups such as women, children and minorities. A victim centred approach may also help serve as a link to a broader development agenda consistent with Millennium goals. Within a victim centred approach, it may make sense to focus limited resources in an attempt to break cycles of victimization and re-offending that impose great costs on society and criminal justice systems. It is consistent with international standards with respect to both crime victims and restorative justice to recognize that some offenders may also be victims of crime. This may particularly be the case with respect to children, women and some minorities. An approach that recognizes connections between offending and victimization is also consistent with restorative justice.

Finally, you will hear much today about the important role that restorative justice can play in enhancing criminal justice reforms. The 2000 Basic Principles on Restorative Justice are a valuable tool for member states to use to integrate restorative processes where appropriate in their existing criminal justice systems. As you will hear, there are opportunities for information exchange among member states and training, technical assistance and research with respect to integrating restorative processes and practices at various stages of the criminal justice system. At the same time, restorative processes will not be appropriate or result in agreement in all cases. Restorative justice complements rather than replaces the need for effective, efficient and integrated criminal justice systems that respects international standards.