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# **GENERAL DISCUSSION PAPER**

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## **I. INTRODUCTION**

The main theme of the 123rd International Senior Seminar was “The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process specifically considering Restorative Justice Approaches.” During this seminar, we had seven general discussion sessions to identify and clarify problems and to find practical solutions and future prospects for various issues related to the protection and support of victims of crime and restorative justice approaches with the active participation of all participants, visiting experts from overseas and UNAFEI faculty members.

The essential parts of the discussions were crystallized as the following selected recommendations.

To implement the recommendations, the relevant agencies of the United Nations and UNAFEI may provide necessary assistance.

## **II. PART 1 : SUPPORT AND PROTECTION OF VICTIMS OF CRIME**

There has been little attention paid to victims of crime in criminal justice systems until recently and their main role has been limited merely to being “witnesses”. However, people have acknowledged the importance of support and protection for victims because victims not only face loss of life, physical injury, loss of property and various kinds of damage, but also suffer emotional shock and stress as well as secondary victimization.

Under these circumstances, “The Principles of Justice for Victims of Crime and Abuse of Power” was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985. The Principles require nations and nationals to have sympathy and respect for the victim.

Therefore, the following goals should be achieved in order to fully implement support and protection for victims of crime.

- (1) To give victims due legal status and establish systems for supporting the interests of victims such as participation in criminal proceedings.
- (2) To provide immediate medical, material, social and psychological support to victims suffering from post crime trauma.
- (3) To ensure that the institutions involved in the process of victim support do not marginalize any segment of society.
- (4) To make all kinds of relevant information to victims available promptly and free of charge.
- (5) To provide necessary protective measures for victims/witnesses who are worried about offender’s retaliation in order to ensure their safety and realize justice.

### **A. Recommendations**

1. In the countries from where the participants come, the areas of concern in victim support are so wide and varied that in order to embark on a programme of such magnitude would be too ambitious and the scant resource availability will be a serious impediment. As such it is recommended that in each of the countries only those areas should initially be targeted which are of very high concern and carry serious sensitivity. These programmes could then be gradually expanded to cover other areas as awareness amongst the public takes place and resources are available.

2. With due consideration to each country’s context, we need to set up pilot projects for victim support and assistance. These should include governmental and non-governmental organizations and involve the local communities. Balance, coordination, collaboration, and networking in service delivery among relevant agents would be the keys in addressing individual needs of victims.

3. Since better development of victim support and assistance requires better understanding of victims, there is a need to plan and conduct systematic training of facilitators. Experts from countries with advanced victim support systems, e.g., the U.K., the U.S., etc. should be invited with help from the donor countries for imparting training to trainers of facilitators. Services of locally available experts, e.g., psychiatrists and sociologists, should be utilized as well.

4. As formal intervention tends to require a lot of resources, where appropriate, we may utilize more

informal support and assistance by communities. Traditional wisdom and customs should not be disregarded or disqualified since community development and mobilization may have potentialities to extend more appropriate services for victims in crime than institutionalized systems. In several developing countries, the informal social support systems are very strong and dependable but may with time whither away without being replaced by better or more effective ones. Therefore there is a need to strengthen and formalize the traditional systems. Relying purely on borrowed concepts would prove detrimental to the values propounded by the United Nations Declaration on the subject.

5. Basic information about criminal proceedings (such as the arrest of the offender, prosecution, schedule of trial, release on bail, sentence, escape and release of the offender from custody or correctional institutions) should be provided to victims by the competent authorities like the police, public prosecutor, court or correctional institution through any such means that are accessible to the victim i.e. letter, fax, email etc. Other information should be provided upon request by an application of the victims and decided by the police, public prosecutor, the court, or correctional institution considering that disclosure of some information could hinder criminal investigation and proceedings and violate the rights to privacy of offenders and others, and have a negative impact on the victims themselves and society.

6. The criminal justice system exists not only to punish the criminals but also to help the victims of crime. Every country recognizes that the victims should be given an opportunity to play a more active role at every stage of criminal proceedings. In order to positively reflect victims' rights at trial, we recommend the introduction of "private accessory prosecutions" if necessary, where the victims can participate in criminal trials as private prosecutors in addition to public prosecutors. To what extent the victim can exercise their rights at trial should be discussed in the respective countries based on their own criminal justice systems.

7. Besides, in order to secure the victims' rights and prevent abuse of power and ensure judicious use of discretion by public prosecutors, we have to establish adequate measures or systems in cases where public prosecutors have decided not to prosecute the suspect. Private prosecution is one thing, and a review system of non-prosecution cases is another thing. Every country in which a private prosecution system is adopted has to pay meticulous attention to ensure that the victim should not be placed in a disadvantageous situation because of poverty or/and lack of legal expertise. In countries where private prosecutions are not available, there should be some appropriate measures to complain or appeal against the decision of non-prosecution by public prosecutors. The decision of non-prosecution by public prosecutors should be reviewed by other appropriate authorities in the countries concerned. As characteristics of society and culture differ from country to country, we have to carefully consider which system is suitable to be adopted in our respective societies.

8. The police and other criminal justice related authorities should provide protective measures to victims/witnesses in danger such as escort services, quick response to their calls and necessary arrangements to protect them from offenders who threaten witnesses.

9. All countries are aware of their responsibility for protecting victims from intimidation, harassment, retaliation and/or any harm by offenders, because victims are part of our society and justice cannot be realized without cooperation and participation of victims. We should introduce measures to protect victims such as providing separate waiting rooms between offenders and victims/witnesses, and partitions in courtrooms. A video link should also be introduced if financial circumstances of the respective countries enable this.

### **III. PART 2 : RESTORATIVE JUSTICE APPROACHES**

As victim protection and support gained ground, the restorative justice approach also emerged as a new concept to tackle problems which the criminal justice system was failing to address. The restorative justice approach is one which considers the loss caused by crime through the active participation of the victim, offender and the community.

“The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century” was adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Vienna in April 2000. It encourages the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties. Based on this Declaration, the working group of the Commission on Crime Prevention and

Criminal Justice drafted in 2002 the "Basic principles on the use of restorative justice programmes in criminal matters" as a United Nations standard for restorative justice.

Although restorative justice has been defined in numerous ways, we reached a common understanding about restorative justice from practical aspects as follows. Restorative justice provides a process with opportunities for victims, offenders and the community affected by a specific offense and is a means to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.

We also identified the aims and goals of restorative justice as follows:

- (1) Healing victims of crime and all parties affected by crime
- (2) Repair the harm caused by crime
- (3) Reintegration of victims and offenders into the community
- (4) Asking an offender to be accountable
- (5) Deliberative democracy (decision making process)

Based upon the above-mentioned definition, the aims and goals of restorative justice and discussion on various issues related to the practical application of restorative justice approaches, we chose the following recommendations for the vital points of introducing and utilizing restorative justice approaches.

### **A. Recommendations**

1. When each country initiates restorative justice approaches, pilot programmes which correspond with problem-oriented approaches should be started, considering the feasibility and efficacy of such approaches.
2. Each country should consider the following points in practicing restorative justice approaches:
  - (i) The state should try to solve general problems such as lack of awareness and constraints of resources when introducing restorative justice approaches.
  - (ii) The state should ensure a fair process and outcome for the parties concerned in restorative justice approaches.
  - (iii) The state should take effective measures ensuring justice and ensure parties have equal bargaining power.
  - (iv) The state should protect the human rights of offenders under the due process of law such as:
    - (a) The right to equal protection under the law
    - (b) The right to freedom from torture and cruel treatment
    - (c) The right to be presumed innocent
    - (d) The right to be tried by an impartial court
    - (e) The right to assistance of legal counsel.
3. Though the research so far conducted has proven that restorative justice approaches are useful in prevention of re-offending, and provided results to the satisfaction of the parties to a large extent, there is still a need for more research on restorative justice approaches and practices widening the scope, particularly in the field of domestic violence.
4. Since restorative justice is a new concept, adequate information about restorative justice should be provided not only to the general public but also persons working for the criminal justice system in order to enhance awareness. Appropriate training should be given to facilitators and other persons concerned with restorative justice approaches.
5. When the restorative justice process such as the victim offender reconciliation programme (VORP), victim offender mediation programme (VOM), victim offender dialogue programme (VOD) and family group conferencing (FGC) are implemented, the following guidelines should be observed in these programmes and conferences.
  - (i) Participation should be voluntary.
  - (ii) Appropriate preparation should be carried out for each particular situation.
  - (iii) Trained facilitators and mediators should guide the process.
  - (iv) Appropriate follow-ups should be carried out to confirm the implementation of the agreement.
  - (v) There should be feedback loops to determine the impact of the process on the participants.