ANNEX I

Compilation
of presentations from PNI workshops
and ancillary meetings

Eleventh UN Congress on Crime Prevention
and Criminal Justice
Bangkok, Thailand
18-25 April 2005

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Workshop 1
The Enhancement of International Law Enforcement Cooperation, including Extradition Measures

Organised by
European Institute for Crime Prevention and Control
HEUNI

Workshop 1
The Enhancement of International Law Enforcement Cooperation, including Extradition Measures

AGENDA

Thursday 21 April 2005

10.00 Opening of the workshop: Chairperson
Introduction: Chairperson
Keynote address: Mr. Kunihiro Horiuchi, Director and Secretary General of Asia Crime Prevention Foundation

10.30: 1 Panel: law enforcement cooperation

Moderator: Mr Klas Bergenstrand, Chief of the Security Police, Sweden
Panellists: Director Masamba Sita, UNAFRI: Law enforcement cooperation in Africa
Mr Rob Mcusker, AIC: Law enforcement cooperation in Australia and the Pacific
Professor Edmundo Oliveira, University of Amazonia, Brazil: Cooperation and law enforcement to counter organized crime in the common market countries of South America (MERCOSUL)
Mr Ulrich Kersten, Special Representative of Interpol to the United Nations: The activities of Interpol
Mr Roberto Di Legami, Head of OC Groups Unit, Europol: The experience of Europol

Interaction between the audience and the panellists, guided by the Moderator

11.45 –12.45: statements from the floor

12.45 –13.00: conclusions by the Chairman/Moderator

Break

15.00: 2 Panel: extradition measures

Moderator: Dr Matti Joutsen, Director of International Affairs of the MoJ, Finland
Panelists: ProfessorTakafumi Sato, UNAFEI: Extradition and mutual legal assitance in the Asian and Pacific Region
Mr Andreas Schloenhardt, AIC : Judicial Assistance in the Australian region
Dr Mukelabai Mukelabai, ISS : An overview of initiatives in Southern Africa
Mr Pablo Glasinovic, Director, Specialized Unit, International Cooperation and Extraditions, Public Prosecutor´s Office, Chile: International Criminal Cooperation or Mutual Assistance
Mr Andrew Wells, Senior Legal Adviser, ODC, UN: Activities of the UN in the field of extradition

Interaction between the panellists and the audience, guided by the Moderator

16.30-17.30: statements from the floor

17.30-17.45: Conclusions by the Chairman/Moderator

17.45 -18.00: Overall conclusions and recommendations (Dr Jay Albanese, Chief of the International Center at the US National Institute of Justice)

18.00 Closing of the workshop: Chairman

Workshop 1

Global Crime Report On Crime And Justice: Unafri's Contribution

N. Masamba Sita
Director
UNAFRI

INTRODUCTION

A presentation by UNICRI on Crime trends revealed that the level of organized crime in a country is strongly and inversely related to:

- Performance of Police;
- Quality of the rule of law;
- Level of human development.

It reveals that high perceived prevalence of organized crime is relative to:

- Low performance of Police;
- Low quality of the rule of law;
- Low human development.

This is characteristic of the majority of African countries.

Police statistics from the 3 selected countries – Botswana, South Africa and Uganda are reorganized in 3 categories:

- Offence against the person;
- Offence against the property; and
- Transnational organized related crimes.

Emphasis is focused more on the third category – Transnational Organized Related Crimes, as we are very concerned with organized crime. We have selected the following:

- Immigration Act;
- Theft of motor vehicles;
- Firearms Act
- Terrorism
- Murder (in case of trafficking in human organs)

This led us to consider policy development purposely to acknowledge that there is "national" and "transnational" organized crime, and to show how the 2 categories are related. This is in order to put in place effective measures to combat organized crime both at National and Transnational levels.

When we talk of law enforcement cooperation, we should look, inter-alia at:

- Exchange of good practices that lead member States to do so; i.e decrease in respective countries as indicated in Tables 1, 2 and 3.
- Incorporation of international instruments in the local legislation; and
- UNAFRI's role in assisting its member States to do so.

I. CRIMINAL STATISTICS

NB: Comparisons are somehow biased due, inter-alia, to differences of definitions of offences and years (periods) under consideration.

UNAFRI appeals to African countries to harmonize their legislations with the international Instruments in order to solve, among others, the problem of definition.

A. NATIONAL LEVEL

1. General Trends

1. A general progressive increase in crime against the person and property in:
- Botswana;
- South Africa; and in
- Uganda

2. But violent social fabric and property related crimes considered separately are in general on decrease in South Africa.

Table 1: **BOTSWANA**

	TYPE OF CRIME/YEAR	2001	2002	DECREASE/INCREASE
	A. AGAINST THE PERSON			
1	THREAT TO KILL	136	101	-25.74%
2	MURDER	212	254	19.25%
3	ASSAULT COMMON	10515	11008	4.96%
4	A.O.A. BODILY HARM	5648	6220	10.13%
	B. AGAINST THE PROPERTY			
5	BURGLARY & THEFT	5050	5585	10.59%
6	HOUSEBREAKING & THEFT	6043	6306	4.35%
7	STORE BREAKING & THEFT	5626	5120	-8.99%
8	ROBBERY	1465	2046	39.66%
9	THEFT COMMON	13075	13485	3.14%
10	STOCK THEFT	1103	1168	5.89%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
11	IMMIGRATION ACT	6839	12192	78.27%
12	MOTOR VEHICLE THEFT ACT	738	657	-10.98%
13	DRUGS & RELATED SUBSTANCES	948	825	-12.97%
14	ARMS & AMMUNITION ACT	1002	433	-56.79%
15	TERRORISM	-	-	-

Table 2: **SOUTH AFRICA**

	TYPE OF CRIME/YEAR	2000-2001	2001-2002	DECREASE/INCREASE
	A. AGAINST THE PERSON			
1	THREAT TO KILL	63.7	69.3	8.79%
2	MURDER	49.3	47.4	-3.85%
3	ASSAULT COMMON	564.0	580.0	2.84%
4	ASSAULT GBH (serious)	623.9	584.9	-6.25%
5	A.O.A. BODILY HARM	5648	6220	10.13%
	B. AGAINST THE PROPERTY			
6	BURGLARY & THEFT			
7	HOUSEBREAKING & THEFT (Residential)	687.0	670.3	-2.43%
8	STORE BREAKING & THEFT (Business)	207.2	258.5	-6.90%
9	ROBBERY(with aggravating circumstances)	257.7	258.5	0.08%
10	THEFT COMMON			
11	STOCK THEFT	94.1	92.2	-0.31%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
12	IMMIGRATION ACT	226.7	214.5	-5.38%
13	MOTOR VEHICLE THEFT ACT	454.4	441.3	-2.88%
14	DRUGS & RELATED SUBSTANCES	101.8	117.2	12.97%
15	ARMS & AMMUNITION ACT	33.5	34.3	2.39%
16	TERRORISM	-	-	-

Table 3: **UGANDA**

	TYPE OF CRIME/YEAR	2003	2004	DECREASE/INCREASE
	A. AGAINST THE PERSON			
1	MURDER OTHER THAN SHOOTING	1951	1856	-4.9%
2	ATT. MURDER OTHER THAN SHOOTING	276	304	10.1%
3	MURDER BY SHOOTING	303	348	14.9%
4	ATT. OF MURDER BY SHOOTING	104	135	29.8%
5	AGGRAVATED ASSAULTS	4226	5664	34.0%
6	COMMON ASSAULTS	13211	16635	25.9%
7	ASSAULTS GBH (serious)	4532	4593	1.3%
	B. AGAINST THE PROPERTY			
8	BURGLARY & THEFT	2612	3368	28.9%
9	HOUSEBREAKING & THEFT	1082	1397	29.1%
10	SHOP BREAKING & THEFT	820	824	-0.5%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
11	IMMIGRATION ACT	146	151	3.4%
12	THEFT OF VEHICLES	874	1099	25.74%
13	NATIONAL DRUGS POLICY & AUTHORITY	1043	1219	16.9%
14	FIREARMS ACT	226	186	-18.6%
15	TERRORISM	38	186	389.5%

B. INTERNATIONAL COOPERATION

We consider that National Organized Crime (N.O.C) forms tentacles of Transnational Organized Crime (TOC) and any of the selected crimes may be only a tip of the iceberg in the transnational organized crime scenario.

Diagram 1:

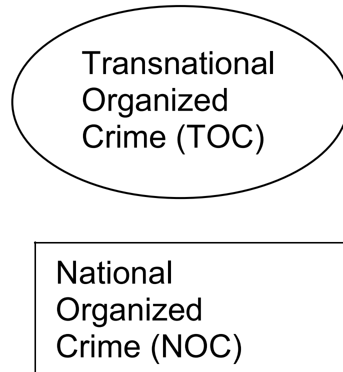
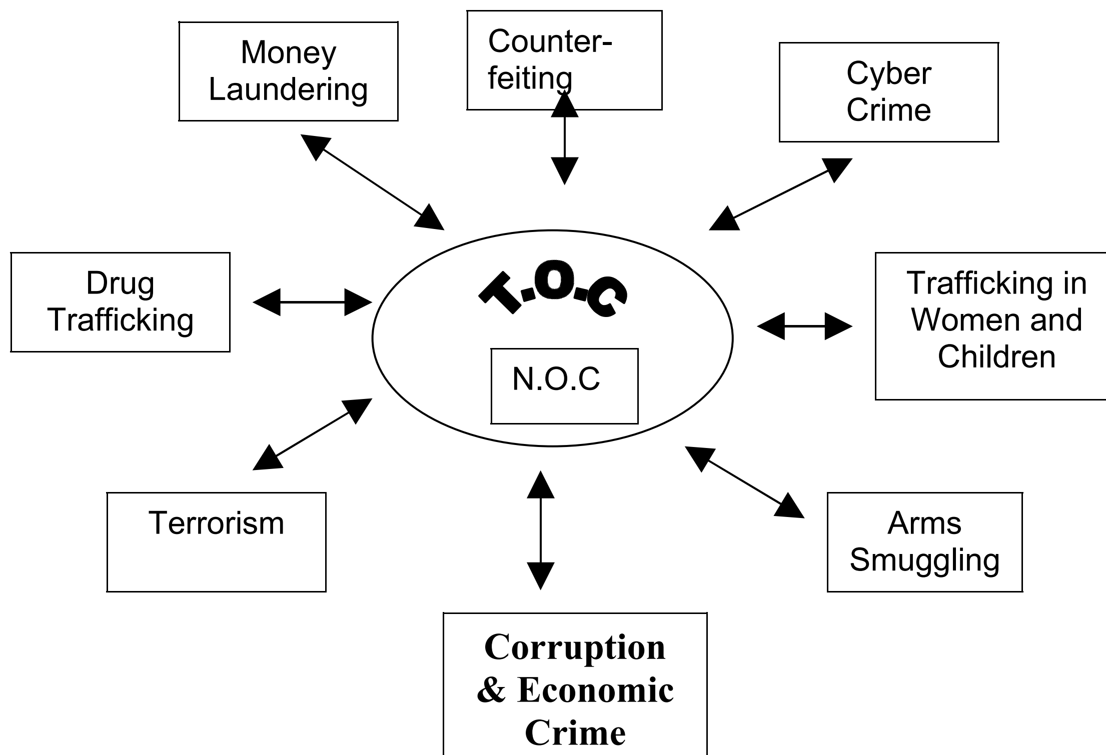


Diagram 2:



II. SOME INITIATIVES

The following initiatives aiming at reducing transnational organized crime have been undertaken. The 2nd AU Ministerial Meeting on Drug Control and Crime (Port Louis, Mauritius, 2004) committed itself to:

- Individually and collectively, among other things, formulate time-bound, measurable programmes of action and targets in order to reduce the incidents and impact of organized crime;
- Develop and strengthen international cooperation and law enforcement including extradition and Mutual Legal Assistance measures.

a) Regional Initiatives:
-AU Convention on Prevention and Combating Corruption;
-Nairobi Declaration on Firearms Management Programme 2002;
-UN Regional Centre for Peace and Disarmament in Africa (Togo, Lome);

b) Sub-regional Initiatives:
- ECOWAS Moratorium, 1998

c) UNAFRI Initiatives:
- UNAFRI Survey on Trafficking in Firearms in Africa, 2001;
- UNAFRI Project on Extradition and Mutual Legal Assistance;

d) International Initiatives:
- UN Convention on Corruption
-UN Convention on Transnational Organized Crime and Protocols thereto;

Patterns of cooperation have started to emerge in the region:
- Bilateral
- Multilateral arrangements between countries
- Among SARPCO for Southern Africa countries
- Among EAPCO for Eastern Africa countries
- Among WAPCCO for Western African countries
- Among African States of Interpol Sub-regional Bureau, Abidjan, Cote d'Ivoire.

There is need to encourage and reinforce these initiatives with relevant substantive technical assistance from UNODC and other stakeholders.

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Botswana Police Service: Annual Report of the Commissioner of the Botswana Police for the Year 2001.

2nd Ordinary Session of the Assembly of the Union (adopted by) African Union Convention on Preventing and Combating Corruption, Maputo (Mozambique), 11th July 2003.

South Africa Police Service Report 2001/2002

Uganda Police: Provisional Annual Crime Report, Year 2004, December 2004.

Uganda Police: Annual Crime Report, Year 2003; June 2004.

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UNAFRI: African Regional Workshop on Illicit Trafficking of Firearms in Africa (Report) June 2001.

Workshop 1

Law Enforcement Cooperation and Judicial Assistance in the Asia and Pacific Region: a background briefing

Rob Mcusker
AIC

OVERVIEW

The level of law enforcement cooperation within the Asia-Pacific region, and especially that which exists between Australia and its immediate neighbours, is high. Cooperation between regional organizations, and between Australian Government agencies and departments with their regional counterparts, is evidenced strongly by the range and combination of dedicated regional meetings, consultations, exchanges of intelligence and information, memoranda of understanding, treaties, and the provision of funding and personnel. In essence, law enforcement cooperation between law enforcement agencies is facilitated and enhanced by the activities of non-law enforcement agencies.

A number of Australian Government Departments and agencies, and regional bodies, are involved in addressing transnational crimes in general, and terrorism in particular, within the Asia-Pacific region and this report details their respective contributions to law enforcement cooperation in that region. For the most part, the report details activities and achievements reported by those departments and agencies in 2003-2004.

There will clearly be differences in terms of capacity by countries within the region to deal with such issues, caused in part by relative economic disparity, but such is also likely to be the case in other regional contexts. However, in terms of counter-terrorism, South-East Asian governments have made great efforts to address this problem[1]. Thus, the key achievements in mutual cooperation, which are summarised in this report, could act as a generic model for those regions in which real difficulties are experienced.

Law Enforcement Cooperation in the Asia-Pacific region by Department, Agency or regional body

1. Attorney-General's Department (A-G's)

The Attorney-General's Department serves the people of Australia by providing essential expert support to the Government in the maintenance and improvement of Australia's system of law and justice.

The Attorney-General's (A-Gs) Department established a Pacific Transnational Criminal Intelligence Network. A-G's introduced:

i) A South Pacific section to provide advice and assistance on strategic, governance and legislative issues in the region to combat terrorism and transnational organised crime and will assist Pacific Island countries to implement the Honiara and Nasonini Declarations.

The South Pacific section will also support non-police Australian officials operating in Papua New Guinea (PNG) within the law and justice sector under the Enhanced Cooperation Program (ECP).

1 For example, the efforts of Indonesia, Malaysia, the Philippines, Singapore, Thailand and Cambodia in counter-terrorism activities have been noted by the Australian Government in 'Transnational Terrorism: The Threat to Australia', www.dfat.gov.au/publications/terrorism

Signed on 30 June 2004, the ECP will operate as a five-year package of assistance supporting, *inter alia*, the areas of policing and law and justice.

ii) The Financial Intelligence Support Team (FIST) to provide legal and strategic policy advice to Pacific Islands countries to implement international money laundering obligations and to ensure that existing and proposed Financial Intelligence Units (FIUs) are provided with the skills necessary to tackle emerging financial crimes.

2. Australian Federal Police (AFP)

The Australian Federal Police (AFP) enforces Commonwealth criminal law, and protects Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Australian Government on policing issues.

In April, 2004 the AFP signed a protocol with Philippines law enforcement authorities to launch a $3.65 million project to help build the country's counter-terrorism capacity through improving Philippines law enforcement agencies in intelligence sharing, bomb investigation techniques and forensics.

To date 208 Australian Federal Police (AFP) officers, along with 94 personnel from eight regional countries, make up the 302-member Participating Police Force (PPF) currently operating in Solomon Islands under the auspices of the Regional Assistance Mission to Solomon Islands (RAMSI). The PPF has 302 members from Australia, New Zealand, Fiji, Tonga, Samoa, Vanuatu, Kiribati, Nauru and the Cook Islands.

As a result of cooperative efforts between the Royal Solomon Islands Police (RSIP) and the PPF:
- 3,730 illegal weapons and 306,851 rounds of ammunition have been seized or surrendered.
- 3,316 people have been arrested and charged with 4,788 offences.
- Internal investigations into the professional standards of the Royal Solomon Islands Police (RSIP) have resulted in 71 arrests, 375 criminal charges being laid and the removal of over 400 people from the RSIP.
- 17 outposts have been established in the provinces in a concerted effort to prevent crime across Solomon Islands and prosecute criminal activities.
- Security & guarding has provided personal protection to key political figures as well as essential security around government infrastructure, the temporary court, remand facilities and Rove Prison.

Achievements of RAMSI to date include:
- The establishment of the RSIP Protection Unit.
- Development of management training for senior police officers.
- Placement of advisors throughout the justice system to strengthen the country's ability to deal with the high volume of arrests being made.
- Completion of a new high security prison in Honiara and a strengthened prison service.
- The development of crime prevention initiatives in schools and within the wider community.

The AFP has been allocated $766.3 million over five years (from 2003-04) to support a comprehensive cooperative program with the Royal PNG Constabulary (RPNGC) to enhance the capacity of the RPNGC to combat serious crime and bring perpetrators to justice.

AFP has been allocated $20.3 million over four years (together with $1.1 million for ASIO) to continue a presence in the Pacific region in general and to contribute to enhancing good governance through the strengthening of law enforcement capacities within the region.

The AFP has been allocated $29.6 million over four years (as part of a $38.3 million initiative over five years) to consolidate the Jakarta Centre for Law Enforcement Cooperation (JCLEC). The Centre will be developed as a resource for the entire Asia-Pacific region in the fight against transnational crime, with a focus on counter-terrorism. The Centre will strengthen regional cooperation and skills with the AFP providing active training and close operational assistance in areas including the management of serious crime (including terrorist offences), financial investigations and close personal protection.

The JCLEC will develop complementary relations with other relevant regional bodies working in the areas of law enforcement and counter-terrorism, such as the South-East Asian Regional Centre for Counter Terrorism in Kuala Lumpur and the International Law Enforcement Academy in Bangkok. In addition, the AFP's Joint Counter Terrorism Teams (JCTT) were deployed to Indonesia to assist the Indonesian National Police on terrorism-related matters under the auspices of the Jakarta Operations Centre (JOC).

The Pacific Transnational Crime Coordination Centre (PTCCC) has been opened in Suva which will become the hub of the Pacific Transnational Crime Unit Network and will manage and coordinate law enforcement intelligence provided by the Network and regional law enforcement agencies.

The AFP has assisted in the establishment of a Joint People Smuggling Investigation Team within the Immigration Bureau of the Royal Thai Police which also has a transnational crime coordination role.

An AFP/Cambodian Joint Transnational Crime Investigation Team provides the AFP with a framework to facilitate its fight against transnational crime, including slavery and sexual servitude.

A Transnational Sexual Exploitation and Trafficking Team (TSETT) has been established, comprising specially trained investigators and analysts, which is coordinated by the AFP's Transnational Crime Co-ordination Centre.

3. Australian Transaction Reports and Analysis Centre (AUSTRAC)

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering regulator and specialist financial intelligence unit.

AUSTRAC's additional funding (amounting to $10 million over the next four years) will finance the following initiatives:

- AUSTRAC will provide expert staff to assist regional FIUs to enhance their capabilities.
- AUSTRAC will also develop and host training programs for staff and analysts in Financial Intelligence Units to facilitate analysis, information exchange and compliance with global AML and counter terrorist financing (CTF) requirements.
- AUSTRAC will develop typologies relating particularly to terrorist financing in South-East Asia.

AUSTRAC has signed Memoranda of Understanding (MOUs) with 37 FIUs including, within the Asia-Pacific region, the Cook Islands, Indonesia, Singapore, Thailand and Vanuatu.

In the 2003/04 financial year, a project designed to provide long-term technical assistance to Indonesia's FIU (PPATK) in developing its capabilities in the receipt, analysis and dissemination of financial transaction report information, was enhanced by the allocation of two AUSTRAC officers to PPATK on a full-time basis.

Through the Pacific Islands Forum Secretariat, AUSTRAC provided desktop computers to FIUs in Fiji, Palau, Vanuatu, Samoa and Tonga, enhancing their capacity to participate in international AML activities.

AUSTRAC will also provide a dedicated officer to develop and deliver financial analysis training as part of the Jakarta Centre for Law Enforcement Cooperation.

AUSTRAC's focus on the South East Asian and Pacific regions in 2004-05 will include:

- Increasing the number of exchange instruments with international counterparts
- Responding to requests for information, hosting visits from international delegations and working with multilateral anti-money laundering and counter-terrorism fora
- Establishing a technical and information technology assistance program directed at developing FIUs in South East Asia.

4. Asia Pacific Economic Cooperation (APEC)

Asia-Pacific Economic Cooperation (APEC) is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region.

APEC dealt with terrorism issues in the main. The key priorities for APEC's Counter Terrorism Task Force (CTTF) established in February 2003 include:

- the Secure Trade in the APEC Region (STAR) initiative to secure and enhance the flow of goods and people through measures to protect cargo, ships, international aviation and people in transit;
- halting the financing of terrorism; promoting cyber security; and
- the energy security initiative.

The CTTF aims to cooperate more closely with international organisations such as the International Monetary Fund (IMF), the Asia Development Bank, the World Bank, the UN Counter Terrorism Committee, the Inter-American Committee against Terrorism and the Association of South East Asian Nations (ASEAN) in order, *inter alia*, to provide training and assistance and to exchange information.

In August 2003 all APEC Member Economies submitted their APEC Counter-Terrorism Action Plan (CTAP). The CTTF continues to work closely with the Finance Ministers' Process to prevent the financing of terrorism. A seminar to provide legal policy assistance to strengthen AML/CTF frameworks was held in October 2003.

APEC has also responded to the need to reduce the impact of terrorist attacks on the region's tourism industry by funding a practical risk management study for governments and tourist operators.

At the second STAR conference (5-6 March 2004) representatives of all APEC Member Economies together with senior executives from major private-sector companies, and officials from international organisations such as the IMO, IMF, World Bank and Interpol discussed maritime security, air transportation security, the mobility of people and measures to prevent terrorist financing.

The development of a Regional Movement Alert System (RMAS) will hopefully allow APEC economies to safeguard their borders from unlawful activities related to terrorism as well as illegal commercial activities. To this end, the Informal Experts' Group on Business Mobility implemented a project which will organise training in document examination and the detection of fraud, establish standards in the security of travel documents and develop standardised codes of conduct for immigration officers.

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5. Association of South East Asian Nations (ASEAN)

The Association of South East Asian Nations (ASEAN) aims to accelerate the economic growth, social progress and cultural development in the region.

ASEAN (comprising, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam) has implemented several projects and initiatives in combating transnational crime such as the ASEAN Workshop on Anti-Money Laundering (July 2003), the ASEAN Workshop on Combating Arms Smuggling (June 2003) and an ASEAN-China Workshop on Law Enforcement Cooperation against Transnational Crime (September 2003).

Prospective projects include an ASEAN Workshop on Combating Sea Piracy and an ASEAN Workshop on Trafficking in Persons, Particularly in Women and Children.

The mechanisms for ASEAN Plus Three (China, Japan and the Republic of Korea) cooperation in counter-terrorism have been initiated.

In July 2004 Australia and ASEAN signed a counter-terrorism declaration in which provided for:

- Enhanced cooperation and liaison among law enforcement and security agencies in relation to counter-terrorism regimes.
- Continued and improved intelligence and information-sharing on, *inter alia*, terrorist financing.
- Strengthening capacity-building efforts through training, education and consultations.
- Providing assistance on transport security and border and immigration control challenges.
- Implementing the measures contained, *inter alia*, in the ARF's Statement on Cooperative Counter-Terrorism Action on Border Security and the ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security, respectively.
- Implementing the measures set out in the Co-Chairs' Statement on the Bali Regional Ministerial Meeting on Counter-Terrorism, and contributing to follow-up activities including the two officials' level ad hoc working groups on law enforcement and legal issues.
- Complying with all binding United Nations resolutions and declarations on international terrorism, and
- Exploring additional areas of mutual cooperation.

ASEAN police and law enforcement officials have agreed to establish national counter terrorism task forces to strengthen regional cooperation in counter terrorism in relation, *inter alia*, to the examination of witnesses and the searching and seizure of evidence.

The following capacity building activities were undertaken:

- Workshop on Combating International Terrorism 20-23 January 2003, Jakarta
- ASEAN Workshop on Counter-Terrorism, 18-20 August 2003, Kuala Lumpur
- Workshop on Counter-Terrorism – Managing Civil Aviation Security in Turbulent Times, 21-25 July 2003, Singapore
- ASEAN-China Workshop on Law Enforcement Cooperation Against Transnational Crime, 24-30 August 2003, Beijing
- ASEANAPOL Counter-Terrorism Workshop on Intelligence Analysis, 22-26 September 2003, Singapore
- Foundation Course for Senior Officials in the Theory of Counter Terrorism Recognition and Multilateral Collaboration, organised by ASEAN and AusAID, 12-13 February 2004, Jakarta
- ASEANAPOL Counter-Terrorism Workshop on Post-Blast Investigation, 16-20 February 2004, Singapore
- ASEANAPOL Counter-Terrorism Workshop on Countermeasures for Explosives and Suicide Bombers, 22-25 March 2004-11-22

The Second ASEAN Regional Forum (ARF) Inter-Sessional Meeting on Counter-Terrorism and Transnational Crime (ISM-CTTC) was held in Manila on 30-31 March 2004 and focused on enhancing transport security.

An ASEAN meeting in Putrajaya on 6 April 2004 discussed the implementation of the ASEAN-China Declaration on the Conduct of the Parties in the South China Sea (2002). The Parties

agreed to explore*, inter alia*, combating transnational crime including, but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea and illegal trafficking in arms.

The ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and its subsidiary body, the Senior Officials Meeting on Transnational Crime (SOMTC), have been implementing the Terrorism Component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime (adopted in May 2002). The programme outlines six areas of cooperation:
1. information exchange
2. cooperation in legal matters
3. cooperation in law enforcement matters
4. institutional capacity building
5. training
6. extra-regional cooperation.

ASEAN immigration authorities have agreed to assist and coordinate with the other ASEAN law enforcement authorities to prevent the movement of terrorists and deter cross-border terrorism by working towards the establishment of intelligence units in their respective agencies to tackle trafficking in persons, human smuggling and terrorism. They have also set up an ASEAN focal point directory for ASEAN immigration authorities to exchange information.

On 9-10 January 2004 the First ASEAN Plus Three Ministerial Meeting on Transnational Crime was held in Bangkok.

Implementation of the following joint undertakings continued:
- Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues and Its Memorandum of Understanding adopted on 4 November 2002 and 10 January 2004, respectively.
- ASEAN-EU Joint Declaration for Cooperation to Combat Terrorism, adopted on 28 January 2003
- ASEAN-US Joint Declaration for Cooperation to Combat International Terrorism, signed on 1 August 2002
- ASEAN-India Joint Declaration on Cooperation to Combat Terrorism, adopted on 8 October 2003.
- 10th ASEAN Regional Forum held in Phnom Penh in June 2003 issued the ARF Statement on Cooperative Counter-Terrorist Action on Border Security.

6. Australian Customs Service

The Australian Customs Service (Customs) manages the security and integrity of Australia's borders.

Key achievements for Customs in regional cooperation in 2003-04 include:
- The signing of bilateral MOUs on customs cooperation with the customs administrations of Fiji (October 2003), Thailand (December 2003) and PRC (April 2004); and
- The hosting of formal bilateral talks with the customer administrations of Korea (October 2003), Japan (April 2004) and Indonesia (May 2004)

Customs also hosted other government delegations from, or sent representatives to visit, more than 20 countries including, within the Asia-Pacific region, the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines and Thailand.

In October 2003, the Australian Government donated a marine vessel to the Fiji Islands Revenue and Customs Authority and Customs provided training to Fiji Customs staff

In conjunction with the Department of Transport and Regional Services Customs delivered training on the new maritime security regime in Indonesia, the Philippines, Papua New Guinea, Thailand and Vietnam.

One staff member has been based in Port Moresby since February 2004 working with Papua New Guinea (PNG) Customs to develop a long-term capacity building plan in areas such as border security and integrity.

Customs signed an MOU with Indonesian Customs on 5 March 2003 and signed a cooperative framework agreement with Japan on 27 June 2003.

The Oceania Customs Organisation conference was held in the Cook Islands in April 2003 and focussed on security and capacity building

Customs assisted other Customs administrations with integrity issues including:

- Delivery of integrity-related technical assistance to PNG
- Assisting PNG Customs service to draft a Code of Conduct and Ethics
- Organising an APEC operational risk management workshop in November 2002 at which 14 member economies increased skill levels in targeting, profiling, operational intelligence, operational risk management and change management
- Co-chairing a meeting of the WCO Regional Integrity Working Group in Malaysia. A key outcome included regional endorsement of an Integrity Development Guide that will be promoted by the WCO, APEC and the Oceania Customs Organisation.
- Contribution to the WCO revision of the Revised Arusha Declaration – a key integrity-related agreement.
- Participation in the customs workshop of the Third Global Forum on Fighting Corruption and Safeguarding Integrity in the Republic of Korea, in May 2003.

Customs attended the Project PRISM (Precursors Required in Synthetic Manufacture) Chemical Working Group meeting in the Hague in December 2002 and a similar meeting in Bangkok in June 2003 on the international trade in safrole-rich oils.

Customs participated in the use of the Customs Asia Pacific Enforcement Reporting System (CAPERS), a secure Internet site through which Customs administrations can pass intelligence and information and enhance capacity in areas such as counter-terrorism and people smuggling.

7. Intelligence Services

The Australian Security Intelligence Organisation (ASIO) gathers information and produces intelligence that will enable it to warn the government about activities or situations that might endanger Australia's national security.

The Australian Secret Intelligence Service (ASIS) is Australia's overseas intelligence collection agency whose mission it is to protect and promote Australia's vital interests through the provision of unique foreign intelligence services.

The Defence Signals Directorate (DSD) is Australia's national authority for signals intelligence and information security.

The Defence Intelligence Organisation (DIO) provides **all-source intelligence assessment** at the national level to support Defence and Government decision-making and the planning and conduct of Australian Defence Force operations.

The Defence Imagery and Geospatial Organisation (DIGO) provides geospatial intelligence, from imagery and other sources, in support of Australia's defence and national interests.

ASIO and ASIS have received significant new resources and have deepened existing links and forged new relationships in the Asia-Pacific region. This has led to a greater pooling of resources and a dramatic increase in the sharing of information. Australia is also providing counter-terrorism intelligence training and advice to countries in the Pacific.

DIO has increased counter-terrorism analytical resources while the DSD has enhanced its capability to collect signals intelligence against terrorists. DIGO also maintains a counter-terrorism capability.

8. Department of Foreign Affairs and Trade (DFAT)

The Department of Foreign Affairs and Trade (DFAT) has responsibility for advancing the interests of Australia and Australians internationally.

In March 2004 discussions were held with China on key security matters including counter-terrorism.

In August 2004, Australia hosted the first meeting for the Legal Issues Working Group established at the Bali Regional Ministerial Meeting on Counter-Terrorism at which the strengthening of anti-terrorism laws and enhancing cooperative arrangements in relation to evidence gathering and extradition were discussed.

In the same month, Australia and Thailand held a combined counter-terrorism exercise (Exercise Wyvern Sun) in Thailand.

In July 2004, the inaugural Regional Special Forces Counter Terrorism Conference held at Bowral brought together special forces and counter-terrorism experts from Indonesia, the Philippines, Malaysia, Singapore, PNG, New Zealand, China, India, Vietnam, Cambodia, Japan, Brunei, Thailand and the US.

A Joint Ministerial Committee meeting between Australia and Singapore was held in Singapore in July 2003 and focused on consolidating the cooperation with Singapore on counter-terrorism.

In August 2003, DFAT organised the second Australia-Indonesia-East Timor Trilateral Foreign Ministers' Meeting in Adelaide, an important outcome of which was the signing of a bilateral MOU with East Timor on counter-terrorism.

Australia has established a network of bilateral counter-terrorism arrangements:

India MOU August 2003
Thailand MOU October 2002
Philippines MOU March 2003
PNG MOU December 2003
Fiji MOU March 2003
East Timor MOU August 2003
Indonesia MOU February 2002
Malaysia MOU August 2002
Cambodia MOU June 2003
Japan Joint Statement on Cooperation to Combat International Terrorism July 2003.

These MOUs set out a framework for bilateral cooperation between law enforcement, intelligence and defence officials as well as other relevant agencies, such as customs and immigration.

The Regional Ministerial Meeting on Counter-Terrorism in February 2004 resolved to enhance regional cooperation on counter-terrorism and identified steps to further strengthen and consolidate regional efforts in the areas of law enforcement, information sharing and legal frameworks.

The Ambassador for Counter-Terrorism chaired the International Counter-Terrorism Coordination Group which worked on a whole of government basis to ensure effective international counter-terrorism cooperation between Australian agencies across a full range of activities.

DFAT supported AusAID and AFP efforts to obtain East Timorese Government approval for a major bilateral policing project. The project will upgrade training and management capacity-building in East Timor's police force.

An MOU in February 2004 between Australia and Nauru facilitated the provision by the Australian Government of a Finance Secretary and Police Commissioner to Nauru with the requisite powers to improve finance and law and order management. A Treaty based on this MOU was concluded in May 2004.

In October 2003 a $20 million package of new anti-trafficking in persons measures was announced and in June 2004 a Government Action Plan to Eradicate Trafficking in Persons was launched.

An MOU between Australia and Thailand covering the Asia Regional Cooperation to Combat People Trafficking Project was signed in December 2003. An Agreement on Bilateral Cooperation between Thailand and Australia was signed in July 2004 and covers issues relating to security and law enforcement.

Also in December 2003, an agreement was signed between Australia and Cambodia to provide assistance to Cambodia in its fight against people trafficking.

In June 2004, the Ambassador for People Smuggling Issues co-chaired, with her Indonesian counterpart, a Bali process senior officials' meeting in Brisbane at which delegates from 47 countries agreed on a future program of work including greater focus on trafficking in persons, child sex tourism, law enforcement and border controls, intelligence sharing on smugglers and traffickers and mutual assistance and extradition relationships.

9. Department of Immigration, Migration and Indigenous Affairs (DIMIA)

The Department of Immigration, Migration and Indigenous Affairs (DIMIA) has responsibility, *inter alia*, for immigration control, ethnic affairs and indigenous affairs.

DIMIA's work with governments, particularly in the Asia-Pacific and Middle East regions, and engagement with international organisations, led to:

- Action to detect and prevent people smuggling and trafficking, including the use of prosecution, the use of return and the strengthening of the management of borders and,
- Assistance in regional capacity building in relation, *inter alia*, to:
    - Information and intelligence sharing
    - Inter-agency cooperation
    - Verification of the identity and nationality of travellers
    - Enhanced understanding of the issues involved in returning illegal immigrants
    - Investment in over 20 Asia-Pacific and Middle Eastern countries including the establishment of document examination laboratories and the provision of technical assistance and equipment and training in, for example, the detection of document fraud.
    - Continued financial support in Indonesia as a transit country for persons engaged in illegal travel to Australia.

EXTRADITION AND MUTUAL LEGAL ASSISTANCE

Mutual Legal Assistance

Mutual assistance by Australia is provided under the Mutual Assistance in Criminal Matters Act 1987. In relation to the Asia-Pacific region, Australia has mutual assistance treaties and agreements with:

- Republic of Korea (Treaty Between Australia and the Republic of Korea on Mutual Assistance in Criminal Matters)

- Republic of the Philippines (Treaty Between Australia and the Republic of the Philippines on Mutual Assistance in Criminal Matters)
- Republic of Indonesia (Treaty Between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters) and
- Hong Kong (Agreement Between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters).

Pursuant to these treaties and agreements, Australia also has the following regulations:
- Mutual Assistance in Criminal Matters (Hong Kong) Regulations 1999
- Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999
- Mutual Assistance in Criminal Matters (Republic of Korea) Regulations 1993
- Mutual Assistance in Criminal Matters (Republic of the Philippines) Regulations 1993

Extradition
Australia's extradition arrangements are contained within the Extradition Act 1988 and its attendant Regulations. In terms of extradition arrangements with countries in the Asia-Pacific region the following Regulations apply:
- Extradition (Commonwealth Countries) Regulations 1998
- Extradition (Transnational Organised Crime) Regulations 2004
- Extradition (Traffic In Narcotic Drugs And Psychotropic Substances) Regulations 1998
- Extradition (Kingdom of Cambodia) Regulations 2003
- Extradition (Republic of Fiji) Regulations 1991
- Extradition (Japan) Regulations 1988
- Extradition (Republic of the Marshall Islands) Regulations 1993
- Extradition (Thailand) Regulations 1991
- Extradition (Republic of the Philippines) Regulations 1988
- Extradition (Republic of Indonesia) Regulations 1994
- Extradition (Republic of Korea) Regulations 1991
- Extradition (Hong Kong) Regulations 1997

Issues
The Asia-Pacific region contains a number of developing nation states, many of which share, to a greater or lesser degree, a range of economic, social and political problems. These include ongoing issues such as the need for economic reform, restructuring of state-owned enterprises and reform of the financial and judicial sector in terms both of its infrastructure and oversight. In addition, further work is required in the criminal justice sector including further law enforcement cooperation and the reduction and control of corrupt practices.

As evidenced in this report, the Australian Government continues to play a prominent and leading role in helping to achieve and maintain the changes necessary to ensure the increasing and long-term stability of the Asia-Pacific region of which it is a part. AusAID (2003) has noted that '[t]he causes of lawlessness in the Pacific are rooted in a complex interplay of factors, including social and political transformation, unemployment, ongoing demographic change and the breakdown of traditional structures'. Its assistance as part of a multi-lateral endeavour in the Solomon Islands, for example, is indicative of best practice in this regard. Prior to the introduction of RAMSI (Regional Assistance Mission to Solomon Islands) in July 2003, the Solomon Islands were beset with a range of problems including non-functioning hospitals, schools and public service, ethnic tension, corrupt politicians and rogue police officers. Since that moment of introduction, as noted above in this report, a secure environment in terms of basic law and order issues, a functioning government and economy have all been established. From this strong foundation, the Solomon Islanders will be best placed to deal with other long-standing issues such as corruption and institution rebuilding.

In a similar vein, Papua New Guinea faces a number of problems across a range of sectors including law and order (both policing and justice issues), budgetary management, border

management and security, primary industry governance and public service management issues. In addition, levels of unemployment, crime (through the activities of armed criminals known as the "raskols") and HIV infection are high and the Economist Intelligence Unit has recently cast Port Moresby as the worst capital city (from a sample of 130 cities) for expatriates to inhabit. However, the Australian Government has responded to this situation through a considered and mutually accepted agreement (the Enhanced Cooperation Program – ECP) which will provide assistance in financial and public sector management, law and order including policing and border protection and maintenance of social and economic infrastructure such as roads, education and health.

Basic policing issues which might pertain in any country within the region will include, in relation to Australia's involvement, the logistics of integrating the Australian Federal Police (AFP) into the host country's law enforcement framework, legal issues, such as the nature and applicability of police powers in the local context and establishing whether the mode of policing should be more, or less, formal in structure and approach. It should be recognised, however, that law enforcement depends upon more than policing efforts. AusAID (2003) argues that '[a] key challenge in the short to medium term is the capacity of law and order institutions to maintain their impartiality and effectiveness, particularly during periods of crisis and unrest. Over the longer term, strong police, legal and judicial systems in large part determine the capacity of countries to combat corruption, achieve growth and attract foreign investment.' Effective law enforcement also requires the solution of long-term, often endemic, economic, social and governance issues. Only by addressing such issues will consolidation of the initial law enforcement efforts be realised.

In short, the disparate nature of the region and its resources will engender varying levels of dysfunction. What is important is that regional solutions to regional problems are understood and tackled through cooperative and well-funded processes.

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Workshop 1

Co-operation and Law Enforcement to Counter Organized Crime in the Common Market Countries of South America (MERCOSUL)

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SUMMARY
The purpose of this background document is to contribute to the inauguration of a new international co-operation style in order to give support to the experience of bringing into practice a unique public security system much necessary to the regional development of the South American Common Market – Mercosul, formed by Argentina, Brazil, Paraguay, and Uruguay, having also Bolivia, Chile and Peru as Associate Members.

In the mechanisms of this purpose, the most noticeable trait is the setting of a criminal policy whose mission is to give an efficient answer to the social economical threats and disturbances fomented by the growth of the organized crime, with its various ways of contamination of life quality and fomentation of serious harms to healthy investments in the region.

Before the need of reinforcing the State function in order to impose limits to criminal organizations and networks which give rise to widespread and harmful feelings of insecurity, we trust that, from this preliminary study, in the dynamics of the relation between cost and benefit, good results may outcome to the exercise of citizenship in South America, without the sacrifice of the public welfare.

IDENTIFICATION OF THE THEME
The integration in mass as an alternative to the search of better life quality to attend to the demands of economical competitiveness after the decline of the Cold war established a new era in international relationships, generating inspiration for the emergence of the Common Market of South America - MERCOSUL, founded in 1991 by the Assumption Treaty, comprising Argentina, Brazil, Paraguay and Uruguay, having Chile (in 1996), Bolivia (in 1997) and Peru (in 2003) as Associated Members.

Today MERCOSUL develops firm relationships of political co-operation and economic integration with the Central American Countries and North America. It also begins to systematize rules of intercommunication with Asian and African Countries, the European Union deserving prominence for its important collaboration for new terms of commercial negotiations and the making of agreements for investments [1].

Along with those purposes, the political and economic alterations subject to the consequences and challenges of the globalization in the paradigms of the technical-democratic communities[2], inevitably brought new types of social inquietudes in the process of integration of the MERCOSUL group with importance for the concern with the growing threats of organized crime operations confronting the regional development with social responsibility.

DIFFICULTIES FOR THE ADMINISTRATION OF STRATEGIES OF CO-OPERATION AGAINST ORGANIZED CRIME IN MERCOSUL

I – There exists no consistency of a single safety project nor even a clear conceptual vision that implies in the definition of the planning of the common safety in the extent of the MERCOSUL with appropriate judicial and legislative measures[3].

II - A harmonic coordination of a foreign policy has not yet been organized to develop and to give advantage to the cooperation as to international safety, absorbing the experience of well implanted patterns in other areas of the world that can be put into operation in syntony with the purposes of the internal safety of the Member Countries of the MERCOSUL[4].

III - The increasing challenge of the *infiltration* and *contamination* of the state system by the networks and criminal organizations[5] is clear, as confirmed by the continuous repercussions in the media of financial frauds, money laundering and recovery of illicit assets involving considerable sums of money that circulate outside of the inspection and the legal mechanisms of control.

IV - For effects of just recognition of the culpability by the Criminal Courts, with regard to the consonance with the United Nations Convention on Transnational Organized Crime[6], legal limits have not yet been established that distinguish the distinction between the appropriate punishment for the transnational criminal organization - and the just punishment for the crime practiced by criminal organizations in the national territory considered legitimate.

V - Organized crime and the indexes of violence reduce the competitiveness of companies and avert new commercial and industrial investments in the MERCOSUL where the expenses with personal safety are among the highest of the world. Homicides, kidnappings, assaults, corruption and drug traffic constitute roots of fear to justify the rejection of foreign companies and reveal that MERCOSUL is losing in the question of *safety* for China, India and the Eastern European Countries[7]. Brazil, for instance, spends 32 billion dollars a year in safety, the equivalent of 10,5% of its Gross Domestic Product - GDP. That sum is 4,6 times greater than the expense with health and sanitation in the Country, 5,6 times more than applied in education, 21 times more than employed in the section of transportation and 70 times more than designated to housing and urbanization. Around 10 billion dollars a year related to tourism are refrained from entering Brazil because of the violence and contamination of organized crime.

VI - In the MERCOSUL Countries there are slums and dwellings on stilts where the Police, when entering, arrive in frank technological disadvantage before the heavily armed criminals. There are slums and houses on stilts where the residents are hostages of the ***Bandit State*** which works alongside the ***Legal State*** selling protection, forcing people to buy the "crime insurance" to save their own lives. There are slums and houses on stilts where the residents are abandoning their homes to escape from the fear and of the absolute lack of protection. There are slums and houses on stilts where organized crime arrests, judges and executes in its incessant cycle of oppression.

Dr. Denise Frossard, Judge of the State of Rio de Janeiro, states in conclusion: “inequality walks hand in hand with violence: everyone throws stones at it, but nobody solves the problem" [8].

FORMS OF EXPRESSION OF ORGANIZED CRIME IN THE MERCOSUL COUNTRIES

The networks and criminal organizations may be classified in groups that portray five expression forms.

In the first group are delimited the activities that are well articulated and subject to rules of discipline, which include ethnic groups that appear in the form of Mafia or gangs These include individuals who are devoted to the “grilagem de terra” (illegal public property occupation through document forgery), the drug traffic, traffic of weapons, money traffic, cigarette traffic, traffic of human beings, slavery, exploitation of prostitution, sexual tourism, smuggling, illegal immigration, illicit transactions through the Internet, invasion of computer data, pornography, piracy, games of chance, insurance frauds and falsification of credit cards. It is the example in South America of organizations that operate in the traffic of the paste base of cocaine as middlemen between consumers and suppliers of the drug production cartels.

In the second group are the offenders specialized in illicit activities whose practices, in general, lack complete organizational structure. Examples of these are assaults, fuel adulteration, kidnappings and hijacking which is increasingly more common in South America.

In the third group are the gangs integrated to the crimes of associations of persons and of companies in corporations that practice crimes against the financial system, against the tax order, against the environment and against the public administration in general. Examples of these are the “white collar" criminals.

In the fourth group, the enunciation of organized crime is represented by the criminality within the State, acting like guest of public shelter, according to the frequent reports of the scandals of corruption performed by dishonest inspectors, and, equally of the performance of police officers with behaviors and images associated with extermination groups.

In the fifth group are the terrorist networks and organizations that take advantage of the impact of terror with extreme violence or threats, to satisfy ideologies, religious faiths, and philosophical or political convictions. It was the case of the polemical explosions of two bombs in April, 30, in 1981, during a concert promoted by the “Centro Brasil Democrático” entity, in the Riocentro area, in Rio de Janeiro, in an attack made for the purpose of promoting the intensification of the military dictatorship in Brazil. It is also important to comment the accusations published by the press (“O Globo Newspaper”, Rio de Janeiro, Brasil, October, 29, 2001 edition), which referred to the probable existence of an Al-Qaeda terrorist cell in the border region of Argentina, Brasil and Paraguay.

Through the analysis of these five groups, it should be observed that, in practice, a penal infraction can move from one group to another depending on the origins of its path in the context of the execution of the criminal activity.

VIABILITY OF PROCEDURES TO OVERCOME THE DIFFICULTIES IN THE FIGHT AGAINST ORGANIZED CRIME IN THE MERCOSUL

Verification:

The dialogues among the Countries of the MERCOSUL are already considerable as shown by the awareness evident in the Official reports, Meetings, Protocols and adopted Resolutions. Actually there is no more doubt that the pursuance of the alliance processes and the sign of stability in the MERCOSUL depend on the political disposition to propitiate indispensable conditions of assurance in the control of the penal system in relation to organized crime that progressively materializes with their forms of expression.

Future steps, important precautions:

I to create the Group of Permanent Work for the elaboration of the Brazilian Public Safety System for the MERCOSUL;

II to institute a Database to render feasible the mechanisms of exchange of information on diagnosis and tendencies of the circulation of illicit practices related to organized crime;

III to strengthen the inter-regional cooperation including the union of Countries in other Continents to facilitate the exchanging of experiences and to reflect the common vision on the effectiveness of public safety in the MERCOSUL;

IV to form a specialized nucleus in the confrontment of organized crime through the integration of the police forces of the Member Countries properly qualified with technical and scientific capacity;

V to constitute the Center of Operational Support of the Department of Justice in the MERCOSUL in face of the need for protection of the *ius persequendi* in a way to produce lawful and concrete evidence to the conviction for the authorship or complicity with organized crime;

VI to deal with the appropriate and differentiated typification of the so-called "antecedent crime", as the corruption that, for the adjustment of conducts, may involve great amounts of money destined to the "product crime" in the context of organized crime.

VII put in practice a control instrument to halt the variations of crimes committed through the Internet;

VIII to reorganize the Treaties of Extradition following the recent orientations made by the International Law for the extraterritorial application of the national penal laws;

IX to systematize the judicial and administrative procedures concerning the transference of criminal processes and to the transference of provisional and condemned prisoners;

X to institute mechanisms to amplify the degree of transparency in the public institutions without limiting to the specific course of the penal intervention;

XI To reduce the risks of impunity with the strengthening of independence, alacrity, and celerity of the Criminal Courts to satisfactorily execute the duty of the filtering of the criminal attitudes;

XII to establish rules of precautions for the flow of tourism that generates considerable income and guarantees many jobs in the MERCOSUL.

XIII to regulate the activities of the informal economy market that, in general, gives occasion to more basic forms of organized crime;

XIV to plan the control on the borders of the Countries of MERCOSUL, including standardized Passport;

XV to encourage the scientific and technological development of the Universities as a generating source of income and of the cost-benefit variables capable of guaranteeing success to the schedules of the Governments in the prevention and eradication of the causes of organized crime;

XVI to make efforts to involve the sections of the regional communities in the construction of an efficient system of public safety for the MERCOSUL;

XVII to elaborate a calendar with political strategies of confrontment of organized crime in the MERCOSUL in order to subsidize the institutional implantation of the Free Trade Area of the Americas (ALCA);

XVIII to establish a special procedure of cooperation and work together in the ambit of the UN Safety Council;

XIX to realize within the period from the 24th to the 27th of October, 2005, in the City of Foz de Iguaçu, State of Paraná, Brazil (Brazilian Municipality that forms a border with Paraguay and Argentina), under the Coordination of the Foz de Iguaçu City Hall, the First Forum of International Co-operation on the Control of Organized Crime in the Connections of Productions and Investments in the MERCOSUL.

XX to Discuss with the Mayor of the Foz de Iguaçu, State of Paraná, Brazil (Brazilian Municipality that forms a border with Paraguay and Argentina) the celebration of the First Forum of International Co-operation on the Control of Organized Crime in the Connections of Productions and Investments in the MERCOSUL.

URGENT PROCEDURES TO REDUCE AND CONTROL THE CRITICAL SITUATIONS, RESULTING FROM THE PROJECTION OF ORGANIZED CRIME IN THE MERCOSUL

I – CRITICAL SITUATIONS:

a) Developing infiltration and contamination of the State by the criminal nets and organizations;

b) Organized crime is largely affecting the employment origination and healthy investments on the commercial relationship and industrial production.

II - URGENT PROCEDURES TO REDUCE AND CONTROL THE CRITICAL SITUATIONS:

a) To include in the Conclusions of the 11th Congress about Crime Prevention and Criminal Justice the necessity of institutional support from the United Nations to the celebration of the First Forum of International Co-operation on Organized Crime Control on the Relationship of Productions and Investments in the MERCOSUL;

b) To implement the experiment of a prototype for the reduction and control of organized crime, in the Cities of the three borders: City of Foz do Iguacu (Brazil), Ciudad del Este (Paraguay) and Ciudad del Puerto Iguazu (Argentina).

III - WHO IS ABLE TO PROMOTE THE DYNAMICS OF THE REDUCTION AND CONTROL OF THE CRITICAL SITUATIONS:

a) The Law Enforcement Departments of the Member Nations and Associates of the MERCOSUL;
b) The City Halls of the Cities located on the borders of the MERCOSUL Nations;
c) The European Institute Experts of the United Nations for Crime Prevention and Control (HEUNI), who are able to offer important collaboration for the elaboration of the political strategies agenda to confront organized crime in the MERCOSUL.

IV - WHERE THE REDUCTION AND CONTROL OF CRITICAL SITUATIONS PROCESS SHALL BE DEVELLOPED:

a) It shall be started with the experiment of a prototype for the reduction and control of the organized crime, in the Cities of the three borders: City of Foz do Iguacu (Brazil), Ciudad del Este (Paraguay) and Ciudad del Puerto Iguazu (Argentina).

V - WHEN SHALL THE REDUCTION AND CONTROL OF THE CRITICAL SITUATIONS BE UNDERTAKEN:

10 Beginning with the celebration of the First Forum of International Cooperation about the Control of Organised Crime on the Relationship Productions and Investments in the MERCOSUL, which will take place in the City of Foz do Iguacu (Brazil), during the period from 26 to 28 October, 2005, according to the agreements already initiated with the University and the City Hall of Foz do Iguacu.

FINAL CONSIDERATIONS

There is an increasing preoccupation with organized crime in South America, where there are very few advancements in the "Aims of the Millennium", a series of social actions of strong impact that was established in the year 2000 by the United Nations. In order to put an end to poverty, those objectives should be accomplished by the year 2015 in all of the countries of the planet, and involve the eradication of famine, the guarantee of the access to drinking water, the reduction of infant mortality and the expansion of access to basic education.

The escalation of crime through the networks and organizations that proliferate in the deviations of the social delinquency in all South America reached an unbearable level for society, climaxing inclusively with the murder of Judges, Public Prosecutors, lawyers, Policemen and Journalists who had courageously been carrying out their duties.

Through the actions of the Governments, the State needs to look at the social indicators with the transparency of urgent measures in the area of Education, public safety, penitentiary system and of the administration of the Courts, improving the environment for the progress of healthy investments under the risk of life becoming unbearable to the common citizen, who works, pays taxes and lives within the limits of the law.

Following the 2005 studies of the Caribbean and Latin American Economic Commission (CEPAL), 44% of the South American population live under the poverty line, with less than a dollar a day for survival, without access to drinking water and proper sewage. Human poverty, concentrated in cities with precarious shanty towns and neighbourhoods, makes the Latin American continent one of the most urbanized zones on Earth, even more urbanized than Europe indeed. To break this vicious circle the Latin American Governments need to agenda a decade of priority growth in education, to be able to become competitive on a global scale.

The socio-economic globalization and the globalization of crime with its implications in the pragmatic exercise of human rights are not yet being accompanied by a juridical globalization, as Professor C. G. Weeramantry[9] had adverted. The Court systems have difficulties in reprimanding, with pedagogic efficiency that he who commits a crime must pay for it. But that doesn't mean that prison should continue to be the queen of the express means of penal punishments. Common sense recommends distinct options of alternative punishment where prison would be reserved for the individuals who, when free, constitute real danger or serious threat to the social well-being.

A research sponsored by the International Labor Organization in November 2003, reveals that in the Countries of the MERCOSUL, during the period from 1995 to 1999, the average age of a person to ingress in crime was from 15 to 16 years. However, as from 2002, that index fell to 12 to 13 years as the average age to ingress in crime, exactly because the enlistment of children and adolescents in the criminal life increased considerably in the illicit operations in which they are placed, with imprudence, in view of the absence of healthy policies of the Legal State.

What certainly causes most concern is the tendency to the uncontrollable in relation to the ascension as much as of the Parallel Power of networks and criminal organizations, as of the Transversal Power that represents a crossing of illicit interests of agents of the Public Power with the services of delinquents inserted in the Parallel Power of the banditry. The Transversal Power moves million of dollars, knows how to gamble with impunity and thinks that crime always pays, since its risks, for the profundity of the violence and corruption, can be quite calculated and controlled, whether on the base of open criminality or on the base of the underground criminality.

What has changed with the industrialized crime by the instigation of networks and criminal organizations in the area of the MERCOSUL?

First, crime became more violent. In the beginning of the last decade, 23% of the criminal offences were violent. In the beginning of this decade, their proportion was already 35%. Another change was that the **solitary** criminal became more and more rare and the criminal who operates in gangs, even the beginner, became more and more frequent. The Courts in South America, molded in a liberal model, function with the basic principle of *individual responsibility,* in which respect the demand for the remeasurement of the instrumental function of the Penal Science is, at this moment, great.

That approach was accurately dealt with by Professor Mireille Delmas-Marty in the notable essay "Penal Law as Ethics of Globalisation"[10]. In general it is on the principle that the perpetrator of a crime is an individual. However, that notion is not adequate for gang criminality. That reasoning is useful, for instance, to ascertain a crime of armed robbery, which can be an individual action but does not serve to investigate drug trafficking or a fraud in financial operations that normally are not solitary crimes.

It is observed, then, in the contemporary society of the sphere of the MERCOSUL, that organized criminality involves activities to generate wealth because they infiltrate in the underground of the national and international financial system without being noticed, clearly, the line that divides the territorial from the extraterritorial, competing for that the expansion of the offshore companies, bank accounts transaction in fiscal paradises and the viability of the electronic trade with their transactions through the Internet.

The dynamics of police captivation for crime is another serious verification. It is not to the advantage of the Public Administration to underestimate the capacity of the networks and criminal organizations. Before the certainty of precariousness and deficiencies in the state disposition, the sensation that is had, when one looks at the serious work of good policemen and of good judges in South America is a sensation of impotence, such as "drying ice”.

The tragic consequences that the increase in violence and especially in organized criminality have been imposing on the society in South America, exhibiting the by-product of the perverse relationship between the macroeconomics of the crime and the "disinvestments". The flow of money is what connects all of the modalities of organized crime: from traffic to kidnapping. Where economic power exists, organized crime equally exists, not only because the tendency for crime is inherent to the human being but also because there is the complicity of the State[11].

All this leads to a lack of confidence in the institutions and permits the emergence of a certain inclination to rebellion with risks to democracy.

The fragility of the Public Administration in the MERCOSUL in relation to organized crime has to change. The collection of impotencies will only disappear with the wisdom to discriminate with respect to aims of prevention of small criminality, aims of prevention for large criminality that turns, step by step, each time more international.

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Workshop 1

Enhancing International Law Enforcement Co-operation: A global overview

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Interpol

INTRODUCTION

Since 11 September 2001, since the attacks in Bali, Casablanca, Djakarta, Madrid, etc., other terrorist attacks have targeted our communities throughout the world. This has led national police forces and Interpol to re-focus their resources and has captured international public attention on an almost daily basis. Whether we live in Africa, in the Americas, in Asia, in Europe or in the Middle East, there can no longer be any doubt that terrorism can indeed strike any one of our countries, of our organizations, anywhere in the world and at any moment.

What we have learned from these terrorist acts is that constant police co-operation is vital: before, during and after the attacks. We have also realized that by setting up means of fighting terrorism, we are also creating a framework for fighting all forms of major trans-national crime.

Over recent years, and drawing on experience gained in the fight against terrorism, Interpol has undergone a far-reaching change in order to become a genuine, operational police support organization.

Today, Interpol offers all its 182 member countries essential services in three core areas:

- I-24/7: a global police communications system that is unique; the possibility for law enforcement agencies to communicate with each other in complete security is the essential prerequisite for any form of international police co-operation.
- a vast range of databases containing essential police information and numerous analytical services; once law enforcement agencies are able to communicate with each other, they must – in order to carry out their investigations or their crime prevention activities – have a large range of information available. Interpol has therefore created, and continues to develop, databases on key areas such as nominals, stolen travel documents, DNA, fingerprints, firearms, etc.
- dynamic operational support for police work throughout the world, available around the clock and 7 days a week; here, Interpol has prioritized the following areas of crime: the fight against terrorism, drug trafficking and organized crime, all forms of human trafficking, financial and hi-tech crime, and the apprehension of fugitives.

  Other projects have also been developed: to combat child sexual exploitation on the Internet, traffic in stolen vehicles, traffic in stolen works of art, bio-terrorism, training for police forces, disaster victim identification, and co-operation with other international organizations.

  Finally, Interpol makes a system of notices, intended to alert police services regarding wanted persons, available to its members. The most widely used and best-known type of these is the red notice, which consists of a request for provisional arrest with a view to extradition.

Today, therefore, Interpol offers all its 182 members efficient operational tools that can be implemented worldwide: secure communications (1), access to vital information (2) and operational assistance and support (3).

These tools have been created in a way that permits a rapid, co-ordinated and comprehensive response to the threats faced by the international community today.

The potential of these tools is nevertheless underestimated, and there is still not enough use made of them today.

1. The implementation of I-24/7, Interpol's global police communications network
Interpol's I-24/7 global police communications network is recognized as offering unparalleled, unique possibilities in terms of security, speed, and of transmitting information required for policing work (messages – images – files – general information, etc.). By 15 February 2005, 75% of the Interpol community was connected to the system, i.e. 134 countries. By the end of June 2005, virtually all member countries will be online. The network's effectiveness in terms of traffic is already proven: between 2002, when the former X.400 system was still in operation and the end of 2004, traffic over the Interpol network more than doubled.

The innovative character and the potential of this network also lie in the simplicity of its operation and the fact that it can be easily deployed in order to provide direct access at a theatre of operations. In Argentina, for example, several border control points at the international airports and at the frontiers with Paraguay and Brazil have been connected. In France, the Interpol network has been deployed in all the Regional Units of the Criminal Investigation Police Service and will soon be implemented at the major airports. Around forty countries are currently taking similar steps.

These developments require that the highest possible level of security must be considered a priority. The implementation of the new authorization and authentication system for I-24/7, called "INSYST", now permits Interpol's National Central Bureaus, i.e. the national police services that constitute the liaison between the Organization and the country in question, to extend, manage and monitor the use made by their police services of the tools available via I-24/7 in full security: control over the type of access granted, of entities with access to the system, and the way the system is used.

The Interpol network therefore offers the unique possibility of building up a genuine, planetary network in terms of secure communications and access to essential police services and information for investigations – among which the databases are at the forefront.

2. The development of the Organization's databases
There is a major interest in having databases available on a global level to provide support for those actions and investigations carried out by Interpol members and which today cannot be limited to a national or regional level alone.

Among the various databases developed by Interpol, five of them illustrate current developments and what remains to be achieved: these concern nominals, stolen travel documents, stolen motor vehicles, DNA, and fingerprints.

2.1 The nominals database
Today, this database contains over 166,000 international criminals (i.e. 33% more than four years ago), of which 33,000 are fugitives. Searches of this database have been progressing constantly since 2000, with an extremely marked increase as of 2003. In 2004, some 273,000 searches were carried out. The number of positive matches, or "hits" from the system is also progressing, by around 270% between 2000 and 2004.

The example of the 310 fugitives arrested during 2004 on Germany's account, in 40 different countries, demonstrates the interest of having records in the Interpol database and of the

effectiveness of the system. To achieve this result, Germany made 511 requests over this period by means of Interpol notices issued or the publication of simple Interpol diffusions.

2.2 The stolen travel documents database

Launched in June 2002, this database contains around 5,800,000 stolen travel documents provided by 70 countries as at 15 February 2005.

This database should very rapidly reach several tens of million records. Providing data for it and using it, as encouraged by Interpol's Secretary General, is now highly recommended by the highest national political instances, notably in Africa and in Europe but also by the members of the G8 and by international organizations such as ICAO and the OSCE. This also grants the database universal recognition.

Nevertheless, and even though the number of searches of the database and of "hits" (26,511 searches for 226 hits in 2004) have progressed considerably, utilization remains low. Access to this database has not yet, in fact, been sufficiently de-centralized to the various control points. It can nevertheless be strikingly effective on two conditions: that information is provided, and that it is used by a very large number of agents and officers.

2.3 The stolen motor vehicle database

Today, this database contains around 3,200,000 stolen vehicles, i.e. 24% more than in 2001. Some 84 countries use it regularly. The number of searches on the database has increased by over 37% in the last three years, to exceed one million in 2003 for the first time in the history of Interpol. This progression continued in 2004, with over 1,300,000 searches. The number of hits is also increasing – by over 32% in 4 years (16,000 in 2004). Over 1,300 stolen vehicles are traced throughout the world each month thanks to the use of this database.

The example of South Africa is striking, since a total of 1,966 vehicles stolen there were traced to 38 different countries in 2004. Similarly, and also in 2004, Russia carried out 224,369 searches of this database and traced 1,141 stolen vehicles in 31 different countries. This illustrates the result obtained by a country within its own frontiers by consulting the database.

These two examples are a vivid demonstration of the interest in sharing information on stolen vehicles and of the effectiveness of the database.

2.4 The DNA database

By investing in the area of DNA, Interpol's General Secretariat is pursuing a twofold aim:

- that of having a dynamic, flexible DNA Unit in order to help Interpol member countries adopt and use DNA analysis
- and that of offering an international database for comparing DNA profiles.

After several years of work, a database has been launched. On 15 February 2005, it contained around 14,215 DNA profiles and 24 countries contribute information to it.

This database permits reliable comparison of profiles transmitted by the member countries:

- profiles from crime scenes,
- profiles of persons known to police services,
- profiles from missing persons or bodies to be identified.

On 27 April 2004, the database recorded its first official hit, between a Slovenian and a Croatian profile.

A second hit was made a few months ago, and can be summarized as follows: on 1 June 2004, Switzerland issued a request to the General Secretariat for a yellow notice concerning a missing person. The request contained a DNA profile that was immediately compared in the database. A hit was established with the DNA contained in a black notice issued in April 2004 at the request of Spain. This demonstrates that the concept, and the system implemented, function perfectly.

Very shortly (in March 2005), Interpol's DNA database will be directly accessible via the I-24/7 network. Each country may enter a DNA profile to be instantly compared with the profiles contained in the database, and will then receive an immediate response, either positive or negative.

2.5 The fingerprints database

The General Secretariat has operated an AFIS database since 2000. It is equipped with the latest version of the MetaMorpho system, which permits automatic comparison of fingerprints.

Unfortunately, it is quite evident that the amount of fingerprints provided for this database is still insufficient, even though a growth in the number transmitted was recorded during the first months of 2004.

Today, the database contains over 40,000 fingerprints, but could hold over 300,000.

Of the 182 members of Interpol, and per year:

- 56% transmit no fingerprints
- 36% transmit between 1 and 50
- 8% transmit over 50.

It is therefore essential to achieve progress:

- by multiplying the number of fingerprints sent
- by improving their quality
- by facilitating their transmission, notably by the use of the I-24/7 network

Fingerprints remain one of the most reliable and efficient means of apprehending criminals, and notably those who use different identities. Here are two such examples:

In August 2003, a criminal of Gambian origin was questioned regarding narcotics trafficking in Austria. Interpol Vienna transmitted the subject's fingerprints to the General Secretariat together with information on him. A comparison in the database immediately confirmed that this criminal had also been arrested in other countries (Sweden, Denmark, Switzerland and Germany) for other offences and under other identities.

On 5 June 2004, three men were arrested in Denmark during a seizure of 2 kg of cocaine. Their identities were verified in the General Secretariat's databases, but the searches were negative. It was only when the Danish police sent the offenders' fingerprints to the General Secretariat that the true identity and criminal history of one of the subjects was discovered. His fingerprints corresponded to those of a man who was wanted for a murder committed in the Republic of Serbia and Montenegro in 2002, and who was the subject of a red notice.

In both these examples, the criminals could not have been arrested without the transmission of fingerprints by the countries concerned.

In this connection, the complementarity of all Interpol's databases should be stressed. If one considers that 47% of Interpol members do not make regular use of the stolen vehicle database, that 62% do not yet participate in the stolen travel documents database, that 56% do not transmit fingerprints, and that 87% do not yet participate in the DNA database, it is extremely easy to imagine the extent of their potential and their scope for progression thanks to the introduction of the I-24/7 system.

In addition to those mentioned above, another Interpol database contains approximately 250,000 digital images that have been circulated via the Internet and that show acts of sexual abuse

committed on 10,000 to 20,000 victims who are still minors. The system implemented is based on extremely powerful software that makes it possible to identify matches between victims, between crime scenes, and between various images within a single set of photographs. It provides assistance to the law enforcement services for identifying victims and prevents the duplication of work by providing information relating to identified victims and to countries currently carrying out specific investigations.

3. Operational police support

The Organization has also achieved progress in the area of operational police support, for it is now capable of reacting and responding, in real time, to the policing needs expressed by its member countries.

First of all, by the creation of a Command and Co-ordination Centre operating within the General Secretariat around the clock and every day of the week, in the four official languages. Fully operational since 1 January 2004, the Command and Co-ordination Centre plays a major role in three of the Organization's key priority areas:

- Offering real-time response to urgent requests by member countries
- Co-ordinating the exchange of information
- Assuming crisis management functions.

The first interface between the member countries and the General Secretariat regarding the exchange of police information, the creation of the Command and Co-ordination Centre has made it possible:

- to increase the exchange of information sent from the General Secretariat to the NCBs by over 70%, particularly concerning responses within the framework of criminal investigations
- to reduce the response time to urgent requests from the countries to less than one day.

One of the most innovative aspects of the Command and Co-ordination Centre, however, resides in its capacity for immediate reaction in the case of a major crisis and its involvement in deploying Incident Response Teams with the aim of providing assistance to countries, notably those who have suffered terrorist attacks.

Since the end of 2002, the General Secretariat, in agreement with the member countries in question, has deployed several incident response teams following terrorist attacks in Indonesia, Saudi Arabia, Spain, Uzbekistan, and Bangladesh.

The purpose of these teams and their specific equipment is to provide an entire range of services such as direct access to the databases, assistance in the area of analysis, co-ordination in specific areas such as ballistics, or disaster victim identification.

Where needed, the Command and Co-ordination Centre also facilitates the temporary constitution (for the duration of the crisis) of Crisis Management and Support (CMS) Group, consisting of General Secretariat staff members but also of experts provided by the member countries. This Group is then tasked with co-ordinating all aspects related to managing the crisis, thus acting as an overall, international platform.

This was the concept that made it possible to react rapidly and in an extremely pro-active way to the tsunami disaster and to the requests of the countries concerned. Interpol deployed incident response teams to Thailand, Sri Lanka and Indonesia, and created a Crisis Management and Support Group in order to assist in co-ordinating disaster victim identification teams from throughout the world and in processing and comparing ante-mortem and post-mortem information collected in order to permit the identification of victims.

Another development within operational police support was the creation of the orange notice: this alerts security services at airports or at any other location regarding the circulation or dissimulation of disguised or hidden weapons. Fifteen orange notices were issued during 2004.

Finally, the development of operational police support also includes implementing targeted programmes and projects in areas of crime defined as priorities, i.e.:

- The fight against terrorism
- The fight against drug trafficking and organized crime
- The fight against all forms of trafficking in human beings
- The fight against financial and hi-tech crime
- The apprehension of fugitives

Preventing acts of terrorism and constantly updating information on them constitutes one of Interpol's most important activities. The Sub-Directorate for Public Security and Terrorism continues to gather, store, analyse and diffuse information and details regarding suspected individuals, groups and their activities. Under the aegis of the Fusion Group, international or regional projects and programmes are carried out in South America, Africa, Central Asia, Asia, etc. (Operation Amazon, Operation Kalkan, Operation Pacific, Operation Passage, etc.). Moreover, work is also carried out in the areas of the fight against bio-terrorism and of trafficking in radioactive materials or chemicals.

Interpol continues to intensify co-operation among its member countries and to encourage the exchange of information concerning the fight against the illicit production and the trafficking of narcotic drugs and psychotropic substances. Projects and programmes are also carried out to fight organized crime and corruption (Sydrug – Marco – Nomak – Umbrella, etc.).

Interpol remains determined to eradicate sexual abuse and offences of which children are the victims, and to combat trafficking in women and children. Here, Interpol's activities during the next few years will focus on gathering information regarding paedophiles, trafficking in Asian migrants, and the participation of organized crime in the exploitation of women.

In the area of financial and hi-tech crime, activities will mainly concern financial fraud, money laundering and the financing of terrorism, intellectual property crime and hi-tech crime.

All these activities are aimed at providing Interpol's member countries with tools for preventing and fighting these forms of crime, by increasing the quantity of information in the databases, creating lists of suspects, the diffusion of alerts, publishing guides, drawing up analytical reports, organizing working groups, etc., and ensuring that all this information is available via Interpol's I-24/7 communications network and/or its secure website.

In addition, Interpol carries out numerous other activities with a view to providing the most effective support possible for apprehending criminals or criminal groups throughout the world. This includes establishing Interpol notices, cross-referencing data, the automatic comparison of data from Interpol's criminal documentation system, a system of country-based file monitoring – all these techniques have been developed by the appropriate Sub-Directorates.

Furthermore, these techniques are also applied within the framework of research into perpetrators of war crimes, genocide and crimes against humanity.

Finally, the creation of an Interpol office within the United Nations in New York in October 2004; the Organization's policy of enhancing the capacities of its Sub-Regional Bureaus in San Salvador, Buenos Aires, Harare, Nairobi, Abidjan, and its Bangkok Liaison Office; and the setting up of

service standards at all the National Central Bureaus are all factors that strengthen the dynamic operational support that Interpol is committed to offering its member countries.

CONCLUSION

Interpol's developments within its three core functions: secure, global police communication, the databases, and operational police support are complementary and form a whole. This "whole" converges towards a single objective: that of achieving security and effectiveness when preventing crime, identifying criminals, locating them and apprehending them.

Over the last four years, the number of fugitives registered by Interpol diffusions or notices has increased by 40%, bringing the number of fugitives in the nominals database to over 33,000.

Over the last four years, the number of terrorists in the Interpol databases per year has multiplied tenfold, and today over 8,000 names of suspected or convicted terrorists are accessible around the clock.

Over the last four years, the number of criminals arrested who were the subject of Interpol wanted information has increased by over 70%, to exceed 2,700 persons arrested in 2004.

These are all encouraging signs, and yet this is still not enough. In fact, to enhance international police co-operation and to ensure that the international community can offer a rapid, co-ordinated and full response to the threat it faces today, three steps are necessary.

The first of these has already been achieved: Interpol has made an integrated, global communications system available to its members.

The I-24/7 communications network now provides the unique opportunity of building up a genuine, global network in terms of secure communications and access to services and essential police information for investigations – among which the databases are at the forefront. With the setting up of this system came the adoption of the I-24/7 Security Charter. Maintaining a high level of security is an essential prerequisite for deploying Interpol's new communications system in absolute safety. By working within the framework defined by the I-24/7 Security Charter, the Interpol community is also agreeing to apply a set of common principles aimed at maintaining this high level of security in order to preserve the system's integrity. The primary objective of the Charter is to ensure that all users are committed to respecting the minimum recognized security norms and to guarantee to the Interpol community that these norms are respected. It defines the principles that the entities connected must follow regarding the network's security, the workstations, the access to services provided by Interpol, and how these aspects must be managed. The security-related partnership established between the General Secretariat, the National Central Bureaus and other authorized users contributes towards guaranteeing a completely secure environment, which is essential to the success of Interpol's new I-24/7 system.

Today, accomplishing the second step depends only on greater awareness on the part of the international community regarding the necessity of enhancing the exchange of information on an international level.

Interpol has created, and continues to develop, a number of databases that are an important aspect within international police co-operation. Moreover, the Organization makes many technical solutions available to its members that facilitate, for example, the input of information to these databases (direct access, inter-connection, data transfer).

For all these operations, the Organization acts in accordance with Rules adopted by the Interpol General Assembly and developed over more than twenty years. These guarantee the quality of the information (i.e. that it is reliable, up to date, and that it is examined regularly regarding the

necessity of retaining it), the protection of the information (confidentiality, integrity), and respect for human rights (what is the ultimate purpose of the processing? is it in proportion to the objectives pursued? control?). These Rules today consist of the Rules relating to the processing of information for international police co-operation, the Rules relating to the control of information and access to Interpol's files, and the Rules relating to access by an inter-governmental organization to the Interpol telecommunications network and databases.

Despite the legal guarantees provided by this regulatory framework, the technical solutions implemented by Interpol's General Secretariat, and the fact that a very large number of databases now exist, Interpol channels and the Organization's databases are today under-used by the international community.

Nothing, however, justifies this under-use. The Rules mentioned above, drawn up with due respect for national sovereignty, adopt the principle that it is the source of the information that controls the right to access it or use it. In other terms, the source of an item of information remains the owner of it, and may thus impose restrictions regarding access to it.

Enhancing the fight against international crime is impossible without an increase in the amount of information exchanged: not only on a bilateral or regional level, but also on an international one. Without such an increase, any analytical work will be lacking in scope. And unless it is possible to cross-match more information and to establish links, a number of cases will remain unresolved.

Awareness of the necessity of using the integrated global communications system made available by Interpol, and which offers a unique weapon for the fight against international crime, is thus essential. So, in order to achieve the second step, it should be recommended to the Member States of the United Nations – the vast majority of whom are also members of Interpol – that all the necessary measures be undertaken on an administrative, legislative and/or technical level in order to increase the use made of the information in Interpol's databases.

Of the three steps suggested, the third – that of actually fighting international crime on an international level – is without doubt the most difficult, for it requires co-ordination and resources. Since Interpol is the only international criminal police organization, the best possible use should be made of the institutional structure it provides.

Article 2 of Interpol's Constitution states that the Organization's aims are:
(a)To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights";
(b)To establish and develop all institutions likely to contribute effectively to the prevention and suppression or ordinary law crimes.

Given the scope of the mandate given by the countries represented in Interpol, the flexibility provided for in paragraph (b), the virtually universal character of the Organization and the know-how that it has acquired since its creation, Interpol constitutes the most comprehensive tool to date in order to offer the rapid, co-ordinated and full response mentioned above to the threat which the international community must face up to today.

This response, in fact, takes on two aspects:

- Enhancing co-ordination work; the task of the police officers at Interpol's General Secretariat mainly consists of supplying pertinent information to the members for the cases they are handling, of establishing links between different cases, and of putting various members involved in a single case in touch with one another. To do so, developing the concept of liaison officers and of contact points, holding conferences on specialized crime areas and holding operational meetings are all means used by Interpol to favour such co-operation and the

exchange of information between members of the Organization. This effort must be pursued and enhanced, with the help of the international community.

- Greater support to the countries with the least resources for fighting international crime; sadly, certain countries do not have the means to fight international crime, to carry out complex investigations, or to take action against terrorist or organized crime groups. And yet, as long as these countries lack such resources, they constitute weak links in the fight against international crime. It is for this reason that Interpol has placed particular emphasis on ensuring these countries can access the I-24/7 telecommunications network in the same way as their fellow members, and are trained to use it. It is nevertheless still essential that other initiatives are taken in order for the international community to form a united front and to demonstrate solidarity in the face of international crime.

The 11th United Nations Congress on Crime Prevention and Criminal Justice can thus also be the occasion for a recommendation to the Member States of the United Nations with a view to making full use of Interpol's potential regarding the achievement of the three important stages mentioned above. This recommendation is all the more pertinent since the members of the United Nations – of whom the vast majority are also members of Interpol – already have access to the services proposed by the Organization.

Workshop 1

Enhancing International Law Enforcement Co-operation, Including Extradition

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INTRODUCTION AND BACKGROUND

In preparation of the participation of Europol to the 11th High-level UN Congress on Crime Prevention and Criminal Justice which will be held in Bangkok, Thailand, in April 2005, the aim of this document is to highlight potentials and limits of Europol in the framework of international police cooperation in Europe.

Europol is the European law enforcement organisation which aims at improving the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious forms of international organised crime falling under Europol's mandate[2]. The foundation of Europol was foreseen in the Maastricht Treaty on the creation of the European Union which was signed on 7 February 1992.

Based in The Hague, Europol initiated its activities on 3 January 1994 with a limited scope of action as EDU – Europol Drugs Unit, being its competencies restricted to illicit drugs trafficking.
The Europol Convention was signed on 26 July 1995 and was ratified by all Member States on 1 October 1998. Only as for 1 July 1999 Europol commenced its full activities, after the implementation procedure was finalised.

Europol's involvement can be requested when there exist factual indications that a given OC group is involved and carries out its illicit activities in a trans-national dimension by affecting two or more Member States of the EU. This basically means that Europol can enter into action when the following minimum requirements are met:

1. an OC group operates internationally;
2. the given group affects the Member States of the European Union in a trans-national dimension (two or more Member States are affected by the criminal activities carried out);
3. the types of crime fall under Europol mandate.

Europol is the European law enforcement organisation which handles criminal information by applying an ***intelligence-led policing***, which allows for a ***proactive approach***, as opposed to the ***investigative-led policing*** normally carried out by the law enforcement agencies in the Member States, which normally allows for a ***reactive approach***.

Analysis is, therefore, the basic instrument used at Europol for this purpose. Information is not only *exchanged* but also *shared*, for the benefit of all the participants: finally, it is transformed into **intelligence** (knowledge as processed information designed for action).

Given that it does not have *supranational powers* upon the participating states, Europol operates in a ***support capacity*** by providing expertise, best practices, support and coordination of the investigations carried out by the relevant Member States.

2 Illicit drug trafficking; Illicit trafficking of radioactive and nuclear substances; Illegal immigration networks; Illegal car trafficking; Terrorism; THB including child pornography; Money counterfeiting and other means of payment; Money laundering; Crimes against life, personal integrity and freedom; Crimes against property, public property and fraud; Illicit trading and environmental crimes

The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime, with an emphasis on targeting criminal organisations. Taking into account that criminal organisations very seldom concentrate on a single type of crime, Europol applies a ***horizontal approach*** (criminal organisations are targeted as such, regardless the criminal areas they are involved in) and a ***regional approach*** (by focusing on OC groups originating from or rooted in a specific region).

The organisation at present consists of about 500 persons, 81 out of which are Liaison Officers seconded by the Member States and represent various law enforcement agencies such as police, gendarmerie, border police, immigration services and customs.

Current status

Europol has been operating now for five and half years. Although it still is a very young organisation, it is already possible to make an evaluation in order to highlight its strengths and weaknesses.

Strengths

- Europol is ruled by a Convention and other relevant legal instruments. It owns an *international legal personality* and can operate in the international arena based upon a reliable legal framework. This makes its work legally protected, acknowledgeable and fully utilisable from the beneficiaries because information are obtained, utilised and distributed in a *systematic* way;
- Among the many instruments that have been foreseen to properly tackle organised crime, the Conclusions of the European Council held in Tampere (Finland) on 15 and 16 October 1999 have identified several main "milestones" to be put in place as soon as possible[3] and most of them have enhanced the role of Europol;
- Europol is now well known both in Europe and outside due to the constant participation in high-level international *fora*, awareness programs, seminars, meetings and other similar activities as well as by supporting actions both within the Member States and in some Third Countries;
- The Europol Liaison Officers network has been enlarged considerably also including the 10 newly accessed MS. Representatives from non MS with which specific agreements have been signed have been given a liaison office within the organisation. Europol Liaison Officers have been appointed in the U.S.A. and at the General Secretariat of Interpol. A significant number of Operational and Strategic agreements have been concluded with both Third States and Third Organisations and some others are still under way;
- The flow of information via the Europol Liaison Officers network has significantly increased. Data provided to Europol for processing within the legal framework of the Analysys Work Files have reached a considerable improvement and currently 17 Analysys Work Files are open and ongoing at Europol. Numerous Target Groups (sub-projects) within the existing Analysis Work Files have been established, thus allowing a better handling of the information gathered;
- Apart from the Analysys Work File's instrument for the handling of data and information, Europol has recently put in place an ***Information System*** (a data-base) though with still limited functions and still to be updated and enhanced, and an ***Index System*** which allows for the research of entities within all the Analysis Work Files ongoing at Europol;
- Operational and Strategic Reports are provided on a daily basis to the relevant Member States upon request or on Europol initiative. Many other informative documents are delivered constantly for the benefit of the participants. Support is provided to the Member States in line with the requirements indicated by the Convention;
- There is not a common concept of Organised Crime within the Member States of the European Union. Even though, common criteria[4] have been established in order for the Member States of the European Union and some Third Countries to come into a more concrete and structured mechanism for reporting on Organised Crime.

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3 Among them, the establishment of a European Police Chiefs Operational Task Force in cooperation with Europol, but also the establishment of Joint Investigative Teams, of an European Police College, of Eurojust as judicial counterpart of Europol, and specific strategies in the field of crime prevention and fight against drugs and money laundering.

4 Joint Action (98/733/JHA) on 21 December 1998, based on Enfopol 35 issued by the Council on 21 April 1997

Weaknesses

- Europol is rooted under the Third Pillar of the European Union. Judicial and Police Cooperation in Criminal Matters are dealt within the intergovernmental dimension. The decision-making process carried out in this *"sphere of action"* requires unanimity and this represents an hindrance to the fast changes that should be applied in this area;
- Many of the recommendations indicated in Tampere still need to be implemented, and this stands for a clear obstruction to efficient police cooperation in Europe. Important gaps are present in the field of crime prevention as well as in the one concerning the legal mutual assistance in the investigation and prosecution of serious economic crimes. In addition, the establishment of common definitions, incriminations and sanctions for certain serious crimes still remains pending;
- Although Europol is known in the Member States, a lot should still be done in order to spread, till the lowest level of the law enforcement structures, information on how to cooperate jointly in the international arena also taking advantage of the Europol support capacity;
- Europol should continue signing agreements of an operational and strategic nature with more Third Countries and Third Organisations. The conclusion of these agreements will allow for establishing more and more relations with those legal entities considered vital to properly fight OC groups in a more appropriate way and possibly accept new Liaison Officers to be appointed at Europol premises to speed up the communication exchange. The appointment of other Europol Liaison Officers abroad should be foreseen, especially in those areas which need a particular attention (e.g. Balkans);
- The flow of information which relates to international OC groups acting in a trans-national dimension, for those crimes falling under Europol's mandate, should be further enhanced. Furthermore, inclusion of data exchanged via the Europol Liaison Officers into the Analytical Work Files in place at Europol should be always foreseen by the data providers. This could allow for avoiding to lose data and to better exploit the information;
- The Palermo Convention – which gives for the first time a definition of trans-national organised crime – and its three additional Protocols[5] have not yet been ratified by all Member States.

Current changes – new challenges

A new Constitution for Europe

On 29 October 2004 the New Constitution for Europe was signed in Rome (Italy). The venue where the signature took place brings a particular meaning as it mirrors the historic foundation of the European Communities in 1957. The ratification and implementation processes of the new European Constitution are crucial and should now be speeded up as much as possible. Nowadays the rigid "Pillars" structure of the European Union presents a hindrance to smooth procedures in the decision-making process. The new Constitution will hopefully avoid these problems as the "pillars" will disappear; nonetheless, a certain rigidity will continue to apply in the decision-making system whenever dealing with specific cases of a particular importance. As a result, police cooperation will remain a politically sensitive issue and, therefore, protected by some exceptions from the general decision-making procedure. As a consequence, Member States will continue to exercise a considerable power and control over specific sensitive areas to such extent that in some cases, from a practical point of view, the "Third Pillar" will still operate.

The Constitution represents, therefore, an important step forward also for police cooperation issues but it must be taken into consideration that a certain unbalance will continue to exist in this sphere.

Ten new MS joined the EU

New 10 MS have joined the EU in May 2004 and, following the ratification procedure of the Europol's Convention, recently became fully-fledged Members of Europol. According to the

5 Protocol to prevent, suppress and punish trafficking in persons, especially women and children; Protocol against the smuggling of migrants by land, sea and air; Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

requests received, those new MS have joined the Analysis Work Files they were interested in and became Members of the relevant Analysis Groups with complete powers.

The new 10 Member States still need to reach the standards of police cooperation which the “old” 15 Member States have in place even though big efforts have been already done accordingly. In 2007 other two new states (Romania and Bulgaria) will join the Union and Europol have to be ready for receiving them in a proper way.

Joint Investigation Teams

The two terms “Joint Investigative Teams” and “Joint Investigation Teams”, seem to be used alternatively in the legal instruments provided, even though the latter is a more recent expression. In addition, the term “Joint Teams” is commonly used in some legal instruments as well, but the small literal distinction doesn’t affect the basic meaning of the term and it seems clear that all of them relate to the same technical instrument. J.I.T.s denote basically some actions, well defined and finely structured, in fighting organised crime in which the main impetus is given by the multi-agency approach.

Article 30 of the Maastricht Treaty mentions Joint Investigative Teams and this concept is mirrored by many European Councils and by the Europol Convention. Point n. 43 of the Conclusion of the Tampere European Council urges for a fast setting up of this instrument.

Other legal instruments do exist[6], but until the ratification process is finalised, its common effectiveness will not be reached. In the meantime, practical operational guidelines are being prepared.

South Eastern Europe: major threats

As 5 out of the 14 Countries which are usually considered as SEE Countries have joined the European Union last May (Poland, Czech Republic, Slovak Republic, Hungary and Slovenia), and another 2 will follow in 2007 (Bulgaria and Romania), it appears of crucial importance to make the state-of-play of the current situation in terms of international judicial and police cooperation, and to understand which are the possible areas of improvement.

As far as the 7 just mentioned Countries, it must be said that all of them have seconded to Europol Liaison Officers from the different Police Agencies who ensure a fast, protected and regular exchange of information to and from Europol, the quality of which is improving every day.

Unfortunately, however, Europol bases its analysis and investigations on information provided by European Union’s Member States and other supporting partners, which do not include the majority of the Balkan countries: therefore, there are only limited data coming directly from judicial or law enforcement authorities of the remaining South East Europe countries.

The European Union has a number of tools operating in the region that are relevant for the fight against organised crime originating from or linked to the Western Balkans, such as the different police and customs missions managed either by the European Commission or by the Council. Member States also have various agencies in place, including various types of Liaison Officers from the immigration/customs/police services. However, these different instruments developed to address several policies operate under different chains of command. There is limited coordination at all levels.

6 a) The Council Recommendation on 30 November 2000 in respect to Europol’s assistance to J.I.T.s set up by the MS; b) The Council Framework Decision on J.I.T.s issued on 13 June 2002, which basically contains the same legal provisions indicated in Article 13 of the EU Convention on Mutual Legal Assistance in Criminal Matters (Council Act of 29 May 2000) because the latter has not yet been ratified by the MS; c) The Council Act on 28 November 2002 drawing up a Protocol amending the Europol Convention.

A deadline of June 2004 was given for the implementation of the Council Framework Decision of 13 June 2002. In the interim, the position of the MS in relation to the transposition into national laws of the obligations imposed by the Framework Decision, is such that in 16 MS the legislation is now in place and is either in force or due to come into force by 30 June 2004, in 7 MS legislation is in the process of passing through the Parliament, whilst in the remaining 2 legislation is otherwise in progress.

Europol has been authorised and mandated to cooperate with the Western Balkan countries. Due to deficiencies in the field of personal data protection in these countries, no agreements have been concluded yet (even though some agreements are in progress). At present, Europol has no operational relationship with international organisations or EU police and customs missions in the Western Balkans.

The role of Europol as a partner for the Western Balkan region should be further developed. In particular, Europol should be allowed:

- to share regional strategic analysis with the countries of the Western Balkans region and engage in closer cooperation with those investigative services;
- to conclude operational agreements with relevant international stakeholders in the fight against organised crime originating from or linked to the Western Balkans, including the police and customs missions, in order to enable the exchange of criminal information and intelligence;
- As Europol has not yet concluded operational agreements with the States of the Region, the Liaison Officers Network should be strengthened in order to fill the temporary gap before full operational cooperation can be established with each state or territory of the region;
- to establish an agreement with the SECI-Centre in Bucharest[7], with which Europol hasn't been allowed to enter into a cooperation agreement as they lack the required international legal personality.

Extradition procedures

The progressive elimination of border controls within the EU considerably facilitated the free movement of persons, also making it easier for criminals to operate trans-nationally by taking advantage of the different internal legislations.

Mutual assistance in criminal matters is a well-established principle in international judicial cooperation; it operates when a State is unable to continue with an investigation or procedure on its own and requires another State's help. Many legal instruments have been adopted to facilitate judicial cooperation but mutual assistance is still not effective enough.

A Council Act was issued by the EU Council of Ministers on 29 May 2000 establishing the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union. Unfortunately, this important instrument has not yet been ratified and is therefore not applicable.

Resembling the content of the Amsterdam Treaty, which called for the creation of an effective area of freedom, security and justice, the European Council held in Tampere on 15 and 16 October 1999 devoted, among the others, a special chapter entitled ***"A genuine European area of justice"***. For this purpose, four major points were highlighted as achievement's goals for the EU institutions in view of a better access to justice in Europe and a better cooperation in criminal matters:

- Harmonisation of legislation;
- Development of instruments based on the mutual recognition principle of judicial decisions;
- Improvement of judicial cooperation mechanisms;
- Development of relationships with Foreign Countries.

As far as the principle of recognition of judicial decisions is concerned, important steps forward have been made as this issue has been considered a "cornerstone" of judicial cooperation in criminal matters. Concretely, this principle allows for a decision made by a judicial Authority of one Member State to be recognised and executed in another Member State on the basis of mutual confidence.

7 The Regional Center for Combating Transborder Crime.

The EU has adopted therefore a Council Framework Decision on 13 June 2002 (2002/584/JHA) on the European Arrest Warrant and the surrender procedures between the Member States. The European Arrest Warrant is designed to replace the current extradition system[8], to simplify the process with strict time limits and a speed up a judge-to-judge mechanism with normally no ministerial involvement.

It applies to all offences, whenever a person is being prosecuted for an offence punishable by a custodial sentence of over a year or when the person has been sentenced to a prison term (custodial or detention order) exceeding four months. The European Arrest Warrant is meant to replace present extradition procedures for grave crimes and a list of 32 serious offences has been foreseen[9]; crimes on this list have to be executed by the arresting State irrespective of whether or not the definition of the offence is the same, providing that the offence is serious enough and punished by at least 3 year's imprisonment in the Member State that has issued the warrant.

As of 1 July 2004 the Framework Decision was meant to become operational but some delays occurred. On 1 January 2004 the European Arrest Warrant entered into force for eight countries[10] while the other 7 Member States of the European Union failed the implementation deadline. In the meantime other 10 Countries have joined the European Union and should follow the same implementation procedure.

Consequences for Europol

The European Arrest Warrant is a pure instrument for judicial mutual assistance in criminal matters therefore it applies in the field of international judicial cooperation. Europol belongs to the dimension of international police cooperation in criminal matters and the operability of the European Arrest Warrant shouldn't have an immediate effect on it. On the other hand both judicial and police cooperation have strict relationships and affect each other's sphere of action.

The range of crimes falling under Europol's mandate surely complies with the European Arrest Warrant. The procedures to be applied don't engage anyway Europol directly; in fact, provision is made for cooperation with the Schengen Information System and with Interpol, with Eurojust and the European Judicial Network. Europol's involvement could be foreseen, at least by making initially use of the Liaison Officers posted within the structure.

Areas of improvement and recommendations

A proper tackling of OC requires a common action both at political and law enforcement level. Legislative and judicial strategies on one side should be developed in parallel and in a consistent manner.

Possible proposals at political level

- To toughen the implementation of the Tampere conclusions, in particular those concerning the strengthening of Europol's role;
- To adopt measures necessary to implement the Council Decision on the common use of Liaison Officers posted abroad by the law enforcement agencies of the MS, which allows Europol to make use of those Liaison Officers with a particular emphasis of Western Balkans[11];
- To adopt and implement a clear legal instrument concerning Joint Investigative Teams (JIT), in particular the Council Framework Decision issued on 13 June 2002. This is absolutely crucial and guidelines should be provided on the relevant role of Europol. A fundamental point should also include the financing of such teams, preferably with Europol budget, and the use of a common "Model Agreement" for setting up such an instrument;

8 The 1957 European Extradition Convention and the 1978 European Convention on the suppression of terrorism as regards extradition; the Agreement of 26 May 1989 between 12 MS on simplifying the transmission of extradition requests; the 1995 Convention on the simplified extradition procedure; the 1996 Convention on extradition; the relevant provisions of the Schengen agreement.

9 These include being member of a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, corruption, fraud, money laundering, counterfeiting of money, illicit trafficking in arms, ammunition and explosives, etc.

10 Belgium, Denmark, Finland, Ireland, Portugal, Spain, Sweden and the U.K.

11 Council Decision (2003/170/JHA) issued on 27 February 2003 on the Common Use of Liaison Officers posted abroad by the law enforcement agencies of the Member States.

- To urge the Accession into the European Union of some Countries of the Balkan area and to maintain and support the "Stabilisation and Association" Process for the Western Balkans as the major driving force for political, democratic and economic reforms in a region which is considered nowadays one of the most important threats to the stability of Europe and therefore a priority for the EU;
- To continue the process of ratification of the Palermo Convention and its Protocols by all 25 Member States of the European Union in order to have a common legal instrument in the fight against trans-national organised crime, based on the same definition at European Union level;
- To agree on a common definition of Terrorism which, despite the efforts carried out in the aftermath of the terrorist attacks in Europe, is still a pending issue;
- To speed up the process of ratification of the European Convention on Cyber Crime in all the signatory States[12] in order to achieve a common operational platform for the fighting against High Tech Crimes;
- To comply with the content of the "Hague Programme" issued by the Council of the European Union[13] at the end of 2004, especially for some crucial topics dealt within the chapter on security[14].

Possible proposals at law enforcement level

- To make use of the Liaison Officers posted abroad by the Law Enforcement agencies of the Member States, as an important tool to be exploited in the field of Police cooperation at international level. In this respect, the attempt to create a Network among the Liaison Officers posted in the Balkans could be considered as an example;
- To make full use of all those European Union tools operating in the region, that are relevant to the fight against organised crime originating from or linked to the Western Balkans, such as the different police and customs missions managed either by the European Commission or by the Council, and to ensure a proper coordination at all levels;
- To gain closer co-operation with customs agencies, including access to the Customs Information System, as tobacco, oil and alcohol smuggling is a very important area of "business" for organised crime;
- To implement effective information sharing (as opposed to the mere information exchange) across agencies within a country and across national borders, particularly when fighting OC and terrorism. Moreover, this sharing should go beyond traditional Law Enforcement Agencies and should also include national security and intelligence services;
- To examine the possibility of establishing, with due respect to national legal requirements, an EU-wide reporting system on pending OC investigations that would allow Europol and Eurojust to detect and recommend coordination in overlapping situations;
- To direct more efforts toward suspicious financial transactions, identification of criminal proceeds and asset seizures, because money is the "backbone" of organised crime.

Europol's role

- The experience of Europol in the fight against OC has clearly demonstrated that the road ahead lies in the **multi-agency** and **horizontal approach**, which ensures that criminal organisations are targeted as such, regardless of the crime area of involvement.
- To have greater Member States' commitment in Europol projects and Analysis Work Files. These should be used as tools for trans-national scale investigations and Europol should be an instrument at the disposal of investigators, including public prosecutors;
- To make effective the agreement between Europol and Eurojust on the cooperation in the fight against trans-national organised crime;
- To continue the signing of operational and strategic agreements with Third States and Third Organisations in order to reinforce more and more the cooperation against OC.

12 CETS n. 185, Budapest 23.11.2001. Among the signatory States, only 8 have already ratified the Convention.

13 Among the most important recommendations, to: a) Design a common strategy to fight terrorism at a EU level also by making enhanced use of Europol and Eurojust; b) Intensify practical cooperation between police and customs authorities in the MS and with Europol; c) Make sure that Eurojust provide Europol of all necessary high quality information in good time; d) Europol should also be designated by the MS as the central office of the EU for Euro counterfeiting

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Workshop 1

Extradition and Mutual Legal Assistance in the Asian and Pacific Region

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I. INTRODUCTION

This paper addresses the current situation of judicial cooperation in the *Asian and Pacific region*, with special emphasis on extradition and mutual legal assistance, and mainly focuses on the legal systems and policies of several countries in the region.

The regional arm of the United Nations Secretariat for the Asian and Pacific region is the *United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)*, located in Bangkok, Thailand. UNESCAP has 53 member states. For the purpose of this paper, the term the *Asian and Pacific region* tentatively means the following 48 member states of UNESCAP:[15] Afghanistan, Armenia, Australia, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Fiji, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Kiribati, Korea (Democratic People's Republic of), Korea (the Republic of), Kyrgyztan, Lao People's Democratic Republic (the), Malaysia, Maldives, Marshall Islands (the), Micronesia (Federated State of), Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, Papua New Guinea, Philippines (the), Samoa, Singapore, Solomon Islands, Sri Lanka, Tajikistan, Thailand, Timor-Leste, Tonga, Turkey, Turkmenistan, Tuvalu, Uzbekistan, Vanuatu, and Viet Nam.[16]

Perhaps very few people, even those who live in this region, may know the whereabouts of all these 48 countries. However, many people would agree that the Asian and Pacific region is one of the most diverse regions in the world in terms of, to name a few, ethnic groups, religions, languages, government types, legal systems and historical backgrounds.

II. PARTIES TO UN CONVENTIONS IN THE ASIAN AND PACIFIC REGION

As indicated in the official background document for this workshop, provisions on extradition have been included in several international conventions that deal with specific types of crime, and the best-known two examples are the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (hereinafter referred to as the *1988 Convention*) and the *United Nations Convention against Transnational Organized Crime* (hereinafter referred to as the *TOC Convention*). The document also states that the sets of provisions included in these two UN conventions are so extensive that they have been seen to constitute “mini-treaties” on mutual legal assistance. Thus, it will be sensible to identify the party states to the conventions in the Asian and Pacific region.

According to the latest information available as of February 18, 2005, 170 states in the world are parties to the 1988 Convention, and the TOC Convention has 147 signatories and 99 parties.[17] Parties and signatories in the region are as follows (emphasis added to fourteen countries that are parties to both the 1988 Convention and the TOC Convention):

15 See General description (www.unescap.org/about/index.asp) and Members (www.unescap.org/about/member.asp).

16 France, the Netherlands, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America will not be included in the Asian and Pacific region in this paper, although they are member states of UNESCAP.

17 See Monthly Status of Treaty Adherence [1], 1 January 2005 (www.unodc.org/unodc/en/treaty_adherence.html) and United Nations Conventions against Transnational Organized Crime (www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

A. 1988 Convention

35 parties: Afghanistan, Armenia, Australia, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, China, Fiji, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Singapore, Sri Lanka, Tajikistan, Thailand, Tonga, Turkey, Turkmenistan, Uzbekistan, and Viet Nam.

B. TOC Convention

15 parties: Afghanistan, Armenia, Australia, Azerbaijan, China, Kyrgyzstan, Lao People's Democratic Republic, Malaysia, Federal State of Micronesia, Myanmar, New Zealand, Philippines, Tajikistan, Turkey, and Uzbekistan.
15 signatories: Cambodia, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Republic of Korea, Nauru, Nepal, Pakistan, Singapore, Sri Lanka, Thailand, and Viet Nam.

III. BILATERAL EXTRADITION TREATIES AND MUTUAL LEGAL ASSISTANCE TREATIES BETWEEN COUNTRIES IN THE ASIAN AND PACIFIC REGION AND THEIR BASIC LEGAL SYSTEMS

As an American reference librarian stated in her useful guide about researching multilateral and bilateral treaties, "finding bilateral treaties where the U.S. [or your country] is not a signatory is a difficult task and could take a fair amount of time"[18] Sometimes the current legal status or scope of a bilateral treaty could be ambiguous even between possible party states. This is often the case when a state becomes newly independent or merges with another state.[19]

An example is a recent dispute between Thailand and Malaysia on whether they have an enforceable extradition treaty. According to a British news network, "Thai PM Thaksin Shinawatra told reporters he wanted Malaysia to extradite Abdul Rahman Ahmad, also known as Chae Kumae Kuteh."[20] Australian radio reported: Mr. Surakiart [the Thai Foreign Minister] says the two countries have a long-standing treaty that would allow for his extradition. But the Malaysian Prime Minister, Abdullah Ahmad Badawi, has said the suspect is a Malaysian citizen, and that the two countries do not have an extradition treaty.[21] Apparently the two governments had softened their stance by early February, 2005. A global television network of Thailand reported: "Even though Malaysia has an extradition treaty with Thailand, it depends on Malaysia whether or not it wishes to send its citizen to face criminal charges in Thailand," the [Thailand's Office of the Attorney General's] spokesman said.[22] In the meantime, Malaysia's online newspaper reported: Foreign Minister Surakiart Sathirathai has written two letters to his Malaysian counterpart, Datuk Syed Hamid Albar…"I will write back to him and thank him for re-affirming the close relationship between Thailand and Malaysia," Syed Hamid said…"It is just a letter which stated Thailand's interest to have Chae Kumae extradited."…Yesterday, Prime Minister Datuk Seri Abdullah Ahmed Badawi said the Attorney-General's Chambers would study whether an extradition treaty ever existed between Malaysia and Thailand. Abdullah, who is also Internal Security Minister, said he had not been aware of the existence of any extradition treaty between the countries, but noted that there was an arrangement during the British administration of the country that allowed fugitives to be extradited to Thailand. The Thai Government's claim for the extradition of Chae Kumae is anchored on its belief that an agreement between Britain and Thailand in 1911 is still enforceable.[23]

18 See Stefanie Weigmann, International Legal Studies Library at Harvard Law School, Researching Non-U.S. Treaties, May 15, 2001 (www.llrx.com/features/non_ustreaty.html).

19 The U.S. Department of State publishes a comprehensive list of treaties and other international agreements of the United States on record in the Department. The note in the list under the name of "Vietnam" states: The agreements listed below were in force between the United States and the Republic of Viet-Nam (South Viet-Nam). The status of these agreements remains under review by the United States. See Treaties in Force (www.state.gov/s/l/c8455.htm).

20 See Malaysia holds Thailand militant, BBC News world edition, last updated on January 27, 2005 (http://news.bbc.co.uk/2/hi/asia-pacific/4211603.stm).

21 See Thailand to ask Malaysia to hand over suspected militant, online news of ABC Radio Australia, last updated on February 1, 2005 (www.abc.net.au/ra/news/stories/s1293857.htm).

22 See Thai attorney express concern over Malaysian extradition case, MCOT, last updated February 4, 2005, (www.mcot.org/print.php?nid=35483).

23 See Thailand moves to end war of words, New Straits Times, February 9, 2005 (www.nst.com.my/Current_News/NST/Saturday/National/NST32234194.txt/Article/indexb_html).

Identifying all relevant bilateral treaties in the Asian and Pacific region is very difficult, especially with regard to the many countries in the region that were once colonized. Instead of endeavouring to achieve this ambitious goal, it might be useful to give examples by listing bilateral treaties signed and/or ratified by some countries in the region and touch upon their domestic legal systems and policies, on the basis of reliable sources accessible to the public or available to the author in his capacity as a UNAFEI professor. One example is a common law and commonwealth country: Australia. The other three are generally categorized as civil law countries or countries primarily influenced by the civil law tradition: China, Japan and Thailand.

A. Australia

The Australian Legal Information Institute has developed and maintained a comprehensive national Internet database which is supported by the Department of Foreign Affairs and Trade and is freely accessible to the public.[24] Australia has concluded numerous treaties on extradition and mutual legal assistance, mainly with countries of Western Europe and the Americas. Modern treaties negotiated by Australia that are found through a search of the database under the subject of “extradition” or “mutual assistance in criminal matters” and with governments in the Asian and Pacific region are as follows (emphasis added):

- *Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong* [1997]
- *Extradition Treaty between Australia and the Republic of Indonesia* [1995]
- *Treaty on Extradition between Australia and the Republic of the Philippines* [1991]
- *Treaty on Extradition between Australia and the Republic of Korea* [1991]
- *Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters* [1999]
- *Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters* [1999]
- *Treaty between Australia and the Republic of Philippines on Mutual Assistance in Criminal Matters* [1993]
- *Treaty between Australia and the Republic of Korea on Mutual Assistance in Criminal Matters* [1993]

An outline of Australia’s legal system for extradition and mutual legal assistance is as follows:[25]

- Australia’s extradition relations take four forms: bilateral treaties, including modern treaties negotiated by Australia and treaties inherited from the United Kingdom;[26] non-treaty relations with Commonwealth countries under the *London Scheme*;[27] non-treaty relations with non-Commonwealth countries based on understandings of reciprocity; and extradition provisions in multilateral treaties on specific classes of crime.
- The *Extradition Act 1988* may be applied to countries with which Australia has no extradition treaty. Although the principal use of non-treaty application of the Act is to provide for extradition between Australia and other Commonwealth countries, the Act has also been applied to a small number of non-Commonwealth countries on a non-treaty basis. Extradition to New Zealand is governed by a separate regime set out in the Act, on a simple “backing of warrants” system on substantially the same basis as extradition among the States and Territories of Australia, in which all decisions are taken by the courts.[28]

24 See Australian Treaties Library (www.austlii.edu.au/au/other/dfat/).

25 See Report 40 Extradition – a review of Australia’s law and policy, Joint Standing Committee on Treaties, Parliament of the Commonwealth of Australia, August 2001 (www.aph.gov.au/HOUSE/committee/JSCT/reports/report40/report40.pdf); Inquiry Into Australia’s Extradition Law, Policy and Practice, Submission by the Attorney-General’s Department (www.aph.gov.au/house/committee/jsct/extradition/agd.pdf); and Mutual Assistance in Criminal Matters Manual, The Attorney-General’s Department, July 8, 2002 (www.ag.gov.au/agd/www/Criminaljusticehome.nsf/Page/695AEB7823AA0757CA256BA40012127E?OpenDocument).

26 The above-mentioned Report 40 Extradition states in Appendix D – Australia’s extradition relations: Australia regards itself as having succeeded to 20 UK extradition treaties (not counting those which have been displaced by a modern treaty or non-treaty arrangement) which now cover 25 countries…In many cases it is unclear whether these countries regard themselves as having an extradition treaty in place with Australia.

27 The above-mentioned Inquiry Into Australia’s Extradition Law states in Executive Summary: In 1966, the Commonwealth adopted the London Scheme, a non-treaty arrangement under which members would enact legislation to enable them to extradite to each other in accordance with agreed principles.

28 The above-mentioned Inquiry into Australia’s Extradition Law states in Background to Extradition: The reasons for the lesser requirements [for New Zealand] are: the ease and frequency of travel between Australia and New Zealand; the close economic and political relationship between Australia and New Zealand; and the shared legal and political traditions of the two countries.

- The *Mutual Assistance in Criminal Matters Act 1987* came into force in 1988. The Act is administered by the International Branch of the Criminal Law Division in the Commonwealth Attorney-General's Department, which performs the functions of the *central authority* in respect of all incoming and outgoing mutual assistance request. Between the passage of the Act and the amendments introduced in 1996, Australia has undertaken a comprehensive mutual assistance treaty negotiation programme. Following the amendments, treaty negotiations will be undertaken only with countries with which Australia has substantial mutual assistance traffic and where a treaty would significantly facilitate such traffic, or with countries that require a treaty for their own domestic reasons. Also following the 1996 amendments, assistance may be granted to a requesting foreign country with which there is no treaty in force on a reciprocal basis.

B. China

Since 1996, UNAFEI has conducted the *Special Seminar for Senior Criminal Justice Officials of the People's Republic of China*. The 8th Special Seminar was held from February 24 to March 14, 2003 and its main theme was *International Cooperation in Crime Prevention and Criminal Justice*. One of the Chinese participants on this seminar was Mr. Guo Jianan, Director of the Institute for Crime Prevention, Ministry of Justice of China. Director Guo stated in his paper titled *Situation, Problems and Strategies of International Cooperation in Combating Transnational Organized Crime within the Framework of UN Conventions*:

> "Since adopting its "Open and Reform Policy" in 80s of last century, China has also carried such a policy in the area of criminal justice. Its cooperation with other countries in this regard starts from scratch, develops fast and increases dramatically. Up to June of 2002, China has signed treaties on judicial assistance in civil and criminal matters with 18 countries, treaties on judicial assistance in criminal matters with 9 countries, treaties on extradition with 19 countries and treaties on transfer of sentenced person [with two countries".

Treaties that are found in his *List of countries that signed relevant treaties with China* and with countries in the Asian and Pacific region are as follows[29]:

1. Treaty on Extradition[30]
   - Uzbekistan (Took effect on September 29, 2002)
   - [Republic of] Korea (Took effect on April 12, 2002)
   - Thailand (Took effect on March 7, 1999)
   - Kazakhstan (Took effect on January 10, 1999)
   - Mongolia (Took effect on January 10, 1999)
   - Laos (Signed on February 4, 2002)
   - Philippines (Signed on October 30, 2001)
   - Cambodia (Signed on February 9, 1999
   - Kyrgyzstan (Signed on April 27, 1998)

2. Treaty on Judicial Assistance in Criminal Matters[31]
   - Philippines (Took effect on April 28, 2001)
   - Indonesia (Took effect on February 28, 2001)
   - [Republic of] Korea (Took effect on March 24, 2000)

3. Treaty on Judicial Assistance in Civil and Criminal Matters[32]

29 Although this paper relies on a relatively new list of Director Guo, a similar but slightly different table can be found on the website of the Ministry of Foreign Affairs of China. See Table on Dates of Signing and Effective Dates of Bilateral Judicial Assistance Treaties (Updated May 30, 2003) (www.fmprc.gov.cn/eng/wjb/zzjg/tyfls/tyfl/2631/t39537.htm).

30 As for non-Asian and non-Pacific regions, Chinese treaties on extradition with Ukraine, Romania, Belarus, Bulgaria and Russia had come into effect by July 2000; and had been signed with Lithuania, United Arab Emirates, South Africa, Tunisia and Peru by June 2002.

31 As for non-Asian and non-Pacific regions, treaties on judicial assistance in criminal matters with the United States, Bulgaria and Canada had come into effect by March 2001; and had been signed with Estonia, Tunisia and Colombia by June 2002.

32 As for non-Asian and non-Pacific regions, treaties on judicial assistance in civil and criminal matters with Greece, Cyprus, Egypt, Belarus, Cuba, Ukraine, Russia, Romania and Poland had come into effect by June 1996; and was signed with Lithuania on May 4, 1999.

- Laos (Took effect on December 15, 2001)
- Vietnam (Took effect on December 25, 1999)
- Tajikistan (Took effect on September 2, 1998)
- Uzbekistan (Took effect on August 29, 1998)
- Kyrgyzstan (Took effect on September 26, 1997)
- Turkey (Took effect on October 26 1995)
- Kazakhstan (Took effect on July 11, 1995)
- Mongolia (Took effect on October 29, 1990)

As a recent development, the People's Daily reported: China and Thailand on Friday [January 21, 2005] exchanged instruments of ratification of the Treaty between the People's Republic of China and the Kingdom of Thailand on Mutual Legal Assistance in Criminal Matters…The treaty will take effect on Feb. 20. (Emphasis added).[33] An outline of China's legal system for extradition and mutual legal assistance is as follows:[34]

- China launched international judicial assistance in criminal matters when it signed the civil and criminal judicial assistance treaty with Poland in 1987.
- China enacted the *Extradition Law of the People's Republic of China* in 2000 which consists of 55 articles and is the most advanced and comprehensive law in China in the field of international judicial assistance. The Law, bilateral treaties and multilateral treaties form the legal basis for extradition. China can cooperate with a foreign state as a matter of comity or mutual benefit even in the absence of a treaty. The Extradition Law designates the Ministry of Foreign Affairs as a contact point with a foreign state.
- China revised the *Criminal Procedure Law of the People's Republic of China* in 1996 and added one new article on mutual legal assistance to the Law, namely Article 17. This article provides: In accordance with the international treaties concluded or acceded to by the People's Republic of China or on the principle of mutual benefit, the Chinese judicial authorities and their foreign counterparts may seek assistance in criminal justice from each other. Although the simple language of this article enables authorities to interpret it in a flexible manner, some Chinese officials stated that more comprehensive laws on mutual legal assistance should be enacted.

C. Japan

The only treaty that Japan has signed with a country in the Asian and Pacific region is as follows (emphasis added):

- *Treaty on Extradition between Japan and the Republic of Korea* (Entered into force June 21, 2002)

An outline of Japan's legal system for extradition and mutual legal assistance is as follows:

- Japan has only two extradition treaties in force: the above-mentioned recent treaty with the Republic of Korea and the *Treaty on Extradition between Japan and the United States of America* which came into effect in 1980. Japan signed its first mutual legal assistance treaty, namely the *Treaty between Japan and the United States of America on Mutual Legal Assistance in Criminal Matters*, on August 5, 2003. This treaty is expected to be in force in the near future after necessary ratification proceedings.
- Japanese laws allow, even in the absence of a treaty, both the extradition of a non-national fugitive and the provision of mutual legal assistance, even when being requested to carry out compulsory measures including search and seizure, to a requesting state if the state assures reciprocity. Primarily because of such a flexible legal system, that enables Japan as a

33 See China, Thailand establish mutual judicial assistance in criminal matters, People's Daily Online, updated January 21, 2005 (http://english.peopledaily.com.cn/200501/21/eng20050121_171503.html).

34 This brief description is based on the papers of Chinese senior officials who participated in the above-mentioned 8th Special Seminar on international cooperation at UNAFEI in 2003: Mr. Huang Feng, Senior Counselor for the Department of Judicial Assistance and Foreign Affairs, Ministry of Justice; Mr. Zhu Weide, Senior Judge, Supreme People's Court; Mr. Xue Jianxiang, Deputy Chief, Jiangsu Higher People's Court; Mr.Chen Jianhua, Assistant Prosecutor, Supreme People's Prosecution Service; and Mr. Ma. Hanquan, Director, People's Prosecution Service of Shanxi Province.

requesting state to assure reciprocity to a foreign state, Japan has not been very active in concluding extradition or mutual legal assistance treaties[35].

- Japan enacted the *Law of Extradition* with 34 articles which entered into force in 1953 and the latest amendment was made in 1993. A request for extradition is submitted through diplomatic channels.
- The principal law on an incoming mutual legal assistance request is the *Law for International Assistance in Investigation* which entered into force in 1980. The Law was amended in 2004 in order to implement the obligations under the newly signed Japan – U.S. Mutual Legal Assistance Treaty and at the same time facilitate judicial cooperation with other countries. The Law has 26 articles after the amendment and includes newly introduced systems or measures regarding the *central authority*,[36] prisoner transfer for testimony or other purposes and the certification of business records and so on. This amendment is expected to facilitate more active treaty negotiation by the Japanese government in the future.

D. Thailand

The international Affairs Department of the Office of the Attorney General of Thailand issued the forth edition of the manual titled *Laws related to Mutual Legal Assistance in Criminal Matters* in March 2002. According to the list in this manual, Thailand has concluded ten extradition treaties with Asian, European and North American countries and five treaties on mutual legal assistance with European and North American countries. Treaties that are found in this list and with countries in the Asian region are as follows (emphasis added):[37]

- *Treaty Between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition* (Entered into force March 31, 2001)
- *Treaty Between the Kingdom of Thailand and the People's Republic of Bangladesh Relating to Extradition* (Entered into force March 19, 2001)
- *Treaty on Extradition Between the Kingdom of Thailand and the Lao People's Democratic Republic* (Entered into force March 1, 2001)
- *Treaty on Extradition Between the Kingdom of Thailand and the Republic of Korea* (Entered into force February 15, 2001)
- *Treaty Between the Kingdom of Thailand and the People's Republic of China on Extradition* (Entered into force March 7, 2001)[38]
- *Treaty Between the Government of the Kingdom of Thailand and the Government of the Republic of the Philippines Relating to Extradition* (Entered into force December 7, 1984)
- *Treaty Between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia Relating to Extradition* (Entered into force June 18, 1980)

An outline of Thai legal system for extradition and mutual legal assistance is as follows:[39]

- Thailand, which is one of the civil law countries, promulgated the *Extradition Act B.E. 2472* in 1929. Unlike "treaty prerequisite countries", Thailand may extradite a fugitive even in the absence of a treaty. A request for extradition from a foreign state, whether or not there is a bilateral extradition treaty, is sent through diplomatic channels.
- Since the Extradition Act, which has been used for more than seven decades, "is no longer able to cope with modern concepts and the progress of contemporary extradition", the Cabinet

35 Perhaps one of the other possible reasons is that Japan has not had substantial extradition or mutual assistance traffic with foreign states. In spite of above-mentioned flexible legal system and Japan's willingness in assisting foreign states, Japan extradited only 14 fugitives in accordance with requests from foreign states in ten years from 1994 to 2003 and received only 225 mutual legal assistance requests in the same period. See Hanzai-Hakusho (The White Paper on Crime) 2004, Research and Training Institute, Ministry of Justice.

36 The Minister of Justice will be the central authority and directly receive all incoming requests for mutual legal assistance, provided that an applicable treaty to which Japan is a party provides so.

37 As for non-Asian and non-Pacific regions, Thai extradition treaties with the United States, Belgium and the United Kingdom entered into force on May 17, 1991, January 14, 1936 and March 4, 1911, respectively; and mutual legal assistance treaties with Norway, France, the United Kingdom, Canada and the United States had come into force by September 2000.

38 As stated above, the Treaty between the People's Republic of China and the Kingdom of Thailand on Mutual Legal Assistance in Criminal Matters will take effect on February, 20 2005 (emphasis added).

39 See Sirisak Tiyapan, Expert State Attorney, Legal Counsel Department, Office of the Attorney General, Thailand, Extradition and Mutual Legal Assistance in Thailand, Resource Material Series No. 57, Work Product of the 114th International Seminar "International Cooperation to Combat Transnational Organized Crime – with Special Emphasis on Mutual Legal Assistance and Extradition," UNAFEI, September 2001 (www.unafei.or.jp/english/pdf/PDF_rms_all/no57.pdf).

"passed a resolution setting up a Special Committee to review and revise laws related to extradition including the Extradition Act" on April 1, 1997.[40]

- Thailand had executed a mutual legal assistance request from a foreign state in accordance with the "general principle of international law" which includes comity, reciprocity and "rules of due process" until 1992, when Thailand promulgated a new and comprehensive law with 42 sections on this matter, namely the *Act on Mutual Assistance in Criminal Matters B.E. 2535*. Assistance may be granted to a requesting state even in the absence of a treaty "provided that such state commits to assist Thailand under the similar manner when requested." The Attorney General is designated by the Act as the *Central Authority* of mutual legal assistance. A foreign state must submit a request through diplomatic channels unless it has a mutual legal assistance treaty with Thailand.

IV. BILATERAL EXTRADITION TREATIES AND MUTUAL LEGAL ASSISTANCE TREATIES BETWEEN COUNTRIES IN THE ASIAN AND PACIFIC REGION AND THE UNITED STATES OF AMERICA

The United States has conducted one of the most active campaigns to negotiate bilateral extradition treaties and mutual legal assistance treaties (MLATs). The United States had "extradition treaties with about one hundred and eleven (111) countries", had "thirty-one (31) MLATs in force", and had "signed MLATs with another twenty-three (23) countries" as of early 2000.[41] Since the laws of the United States "require that there be an extradition treaty in force before extradition can take place",[42] a country that does not have an extradition treaty in force with the United States will not be granted an extradition request. Although the mutual execution of *letters rogatory* is possible under its laws without a treaty on judicial assistance, the United States has made the negotiation of MLATs in Asia a particular high priority, in part to maximize its ability to address transnational organized crime problems.[43]

Treaties that are found in the above-mentioned *Treaties in Force* of the U.S. Department of State under the category of "extradition" or "judicial assistance" and with governments in the Asian and Pacific region are as follows (emphasis added to seven governments that have both an extradition treaty and a MLAT in force with the United States):

A. Extradition

- Sri Lanka (Entered into force January 12, 2001)
- <u>[Republic of] Korea</u> (Entered into force December 20, 1999)
- India (Entered into force July 21, 1999)
- <u>Hong Kong</u> (Entered into force January 21, 1998)
- Malaysia (Entered into force June 2, 1997)
- <u>Philippines</u> (Entered into force November 22, 1996)
- <u>Thailand</u> (Entered into force May 17, 1991)
- <u>Turkey</u> (Treaty on extradition and mutual legal assistance in criminal matters; entered into force January 1, 1981)
- Japan (Entered into force March 26, 1980)
- Kiribati (Extradition treaty between the United States and the United Kingdom; entered into force January 21, 1977)
- Tuvalu (Extradition treaty between the United States and the United Kingdom; entered into force January 21, 1977)
- <u>Australia</u> (Entered into force May 8, 1976)
- New Zealand (Entered into force December 8, 1970)

40 According to the above-mentioned mutual legal assistance manual, apparently the revision of the Extradition Act had not been finalized by March 2002.

41 See John E. Harris, Director, Office of International Affairs, Criminal Division, United States Department of Justice, International Cooperation in Fighting Transnational Organized Crime: Special Emphasis on Mutual Legal Assistance and Extradition, above-mentioned Resource Material Series No. 57, UNAFEI. Mr. Harris also stated that "many other countries have begun active campaigns to negotiate MLATs, too, notably the Philippines, [the Republic of] Korea, Canada, Australia, and the United Kingdom" (emphasis added).

42 Id.

43 Id.

- Singapore (Extradition treaty between the United States and the United Kingdom; entered into force June 24, 1935. Agreement confirming the continuance in force between the United States and Singapore of the extradition treaty; entered into force June 10, 1969.)
- Pakistan (Extradition treaty between the United States and the United Kingdom, made applicable to India, from March 9, 1942)
- Burma[44](Extradition treaty between the United States and the United Kingdom; applicable to Burma from November 1, 1941)
- Nauru (Extradition treaty between the United States and the United Kingdom; applicable to Australia, including Nauru, from August 30, 1935)
- Fiji (Extradition treaty between the United States and the United Kingdom; entered into force June 24, 1935)

B. Judicial Assistance[45]

- Georgia (Agreement on co-operation in the field of law enforcement; entered into force June 18, 2001)
- China (Entered into force March 8, 2001)
- Singapore (Agreement concerning the investigation of drug trafficking offences and the seizure and forfeiture of proceeds and instrumentalities of drug trafficking; entered into force February 12, 2001)
- Hong Kong (Entered into force January 21, 2000)
- Australia (Entered into force September 30, 1999)
- [Republic of] Korea (Entered into force May 23, 1997)
- Philippines (Entered into force November 22, 1996)
- Thailand (Entered into force June 10, 1993)
- Turkey (Treaty on extradition and mutual legal assistance in criminal matters; entered into force January 1, 1981).

V. REGIONAL MUTUAL LEGAL ASSISTANCE TREATY AMONG ASEAN MEMBER STATES

On November 29, 2004, the Ministry of Law of the Republic of Singapore put out a press release on a newly signed regional mutual legal assistance treaty (emphasis added):[46]

> 1. The Attorney-General Mr. Chan Sek Keong today signed, on behalf of the Republic of Singapore, a Treaty on Mutual Legal Assistance in Criminal Matters amongst countries in this region. Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, and Vietnam also signed the Treaty. The signing ceremony was hosted by Malaysia in Kuala Lumpur.
> 2. The Treaty provides for the parties to provide legal assistance in criminal matters to each other. Such assistance includes the taking of evidence, service of documents and recovery of proceeds of crime. All assistance rendered under this Treaty would be subject to the domestic laws of the respective countries. In other words, assistance will be rendered only if provided for under the domestic laws of a country, and if the relevant safeguards in those provisions are satisfied.
> 3. Singapore views this Treaty as an important step in the fight against terrorism and transnational organized crime. This is the first treaty among ASEAN member states on legal cooperation, and will form the basis for closer cooperation among our law enforcement agencies in tackling serious crimes. It facilitates the investigation of crimes that occurred in Singapore, even where the perpetrators or the proceeds of the crime are outside Singapore.

44 Myanmar is referred to as "Burma" in the documents of the U.S. State Department.

45 For the purpose of this paper, U.S. treaties on judicial assistance will include MLATs both in the form of treaty and agreement and an agreement in the field of law enforcement under the category of "judicial assistance", but exclude agreements on procedures for mutual assistance in connection with matters relating to specific aircraft corporations.

46 See Press Release on Signing of Mutual Legal Assistance Treaty, Ministry of Law (http://notesapp.internet.gov.sg/__48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-677FJL?OpenDocument).

4. The Treaty will come into effect later, after ratification by the respective Governments.

This press release only states that eight *ASEAN (Association of Southeast Asian Nations)* member states signed the treaty on that day and does not say anything about the positions of the remaining two members. However, according to a newspaper article issued the next day in Singapore, "Thailand and Myanmar were involved in negotiations and are understood to be considering signing it [the treaty] as well" (emphasis added).[47]

ASEAN had annually held the *ASEAN Senior Law Officials Meeting (ASLOM)*. Apparently this matter had been touched upon in a couple of ASLOM meetings as one of the legal matters to be discussed. The treaty was "first proposed by Malaysia at the 8th ASLOM"[48] held in Kota Kinabalu, Malaysia on or around July 3, 2003, and at least the Philippines immediately and officially welcomed the proposal.[49] After making this proposal, Malaysia had "initiated and hosted two meetings of like-minded countries to formulate this Treaty"[50] by August 2004, when the 9th ASLOM Meeting was held in Brunei Darussalam. Apparently the signing ceremony of "the first treaty among ASEAN member states on legal cooperation" on November 29, 2004 was the result of this relatively new initiative.

VI. CONCLUSION

- The Asian and Pacific region, comprising 48 countries, is one of the most diverse regions in the world and accordingly legal systems and policies regarding extradition and mutual legal assistance significantly differ between countries.
- Only 14 countries, 29 per cent of all countries in the region, are parties to both the 1988 Convention and the TOC Convention, because most of the other countries have not ratified the latter, which was adopted in November 2000. Although 15 signatories to the TOC Convention are expected to ratify it relatively soon,[51] the remaining countries should be encouraged to sign and ratify it. The international community, especially the United Nations and its PNIs, should provide technical assistance to developing countries that are willing to effectively implement the TOC convention.[52]
- Since the 1990s a bilateral treaty network, both on extradition and mutual legal assistance, has been developed in the region. Efforts made by active countries including Australia, China, the Republic of Korea, the Philippines and Thailand should be commended and encouraged to continue. The positive role that some active non-Asian-Pacific countries, including the United States, have played in the region should also be noted. Although bilateral treaties, by nature, are negotiated and concluded according to the specific needs of the states in question, such treaties facilitate a country in reforming its domestic laws and at the same time they open the gate for future treaty partners. Bilateral treaty negotiations also deepen each country's understanding of the other's legal system and practices.
- Since negotiating and updating numerous bilateral treaties requires significant time, expertise and resources, it may not be feasible to expect all countries in the region to enter into them in the near future. Regional (multilateral) treaties could be a possible solution to this problem,

47 See S'pore signs regional legal assistance pact, the Straits Times, November 30, 2004, at H2.

48 See Joint Press Statement of the 9th ASEAN Senior Law Officials Meeting (ASLOM) 23-24 August 2004, Brunei Darussalam (www.aseansec.org/16336).

49 See ASEAN Treaty on Mutual Legal Assistance - Major Contribution to Regional Efforts to Fight Terrorism, Press Release, Department of Foreign Affairs, the Philippines, July 3, 2003 (www.dfa.gov.ph/news/pr/pr2003/jul/pr327.htm).

50 See above-mentioned Joint Press Statement of the 9th ASLOM.

51 For example, the Japanese Cabinet obtained the approval of the Diet, the sole law-making organ of the State, for the ratification of the TOC Convention in May 2003, and has submitted a bill to the Diet in order to implement the Convention. The bill is under consideration by the Diet and hopefully will be passed in the near future.

52 UNAFEI and the UN Center for International Crime Prevention (CICP) jointly organized a two-day seminar in Osaka, Japan, in August 2002 for senior officials from some 20 countries in the Asian and Pacific region in order to promote the ratification of the TOC in the region. UNAFEI also conducted an international training course on transnational organized crime from September 10 to November 2, 2001 in which 11 officials of Japan and 16 officials from developing countries participated; and ten of them were from the Asian and Pacific region. See Work Product of the 119th International Training Course, Resource Material Series No 59 (www.unafei.or.jp/english/pages/PublicationsRMS.htm).

provided that respective countries have a longstanding close relationship, as in the ASEAN example.

- Commonwealth countries in the Asian and Pacific region[53] have an existing scheme for facilitating extradition. These countries should try to reach out to non-Commonwealth countries. This is especially the case when Commonwealth countries maintain the "treaty prerequisite" policy in judicial cooperation, since it is not feasible if a requesting state is required to negotiate the terms and conditions of a treaty or an agreement with such countries prior to submitting a request, especially when the matter is urgent. Australia's flexible approach in terms of its non-treaty basis judicial cooperation should be commended and other countries should be encouraged to take a similar approach.
- In order to maintain a cooperative relationship, judicial cooperation should not be politicized. If such matters are dealt with from a political point of view, a more powerful country will often prevail over a less powerful one. It will not be a wise policy even for most powerful nations, since judicial cooperation will be successful only when a requested state is willing to cooperate with a requesting state, and officials will be unwilling to cooperate when they are forced to do so. It seems that Malaysia and Thailand handled the above-mentioned sensitive extradition case in a very wise manner by ending the political dispute at the earliest stage possible and allowing the appropriate authorities responsible for criminal justice matters to negotiate without political interference.
- Treaties and domestic laws always leave room for interpretation and many matters arising in practice are not explicitly set forth. Close and friendly communications on a daily basis between designated authorities of countries are indispensable in finding the most constructive solution. The system of a central authority, seen in many mutual legal assistance treaties, notably in U.S. MLATs, is a good practice in this regard. Another possible measure is seconding law enforcement or judicial experts to foreign countries so that they can discuss judicial cooperation matters with their foreign counterparts on a face to face basis.[54] The international community, especially the United Nations and its PNIs, might be able to establish fora to facilitate such face to face communications among officials in charge of judicial cooperation.[55]

53 The Commonwealth is an association of 53 countries. The following 17 Asian and Pacific region countries are members: Australia, Bangladesh, Brunei Darussalam, Fiji Islands, India, Kiribati, Malaysia, Maldives, Nauru, New Zealand, Pakistan, Papua New Guinea, Samoa, Singapore, Solomon Islands, Tuvalu, and Vanuatu. See Members, Commonwealth Secretariat, February 18, 2005 (www.thecommonwealth.org/Templates/Internal.asp?NodeID=20724).

54 Japan's public prosecutors are seconded to its Embassies in China, France, the United Kingdom and the United States to deal with legal matters, including extradition and mutual legal assistance. The Republic of Korea conducts a similar practice. The recent success in concluding the Japan – Korea Extradition Treaty was the result of the significant contributions of successive Korean legal counsellors (prosecutors) working for their Embassy in Tokyo in facilitating the mutual understanding and cooperation between the two neighbouring countries.

55 UNAFEI has itself assumed this mission by conducting numerous international courses and seminars for more than 40 years.

Workshop 1

International Law Enforcement Co-operation, Including Extradition Measures: an overview of initiatives in Southern Africa

Mukelabai Mukelabai
ISS

INTRODUCTION AND BACKGROUND

In this paper Southern African is used to refer to the region that consists of the 13 member states of the Southern African Development Community (SADC).[1] The paper attempts to elucidate some of the challenges facing the sub-region in the area of law enforcement co-operation, including extradition. An attempt is also made to highlight some of the initiatives that have been taken by governments in the sub-region to address the challenges.

The SADC is part of several regional groupings in Africa that, in accordance with the principles laid down in the Lagos Plan and the Abuja Treaty in 1991, is one of the building blocks for the establishment of an African Economic Community. It covers more than 9 million square kilometres.

In economic terms, the SADC region is underdeveloped. Some of the SADC member states fall under the category of least developed countries. [2] The Community has meagre resources available to develop effective programmes relating to education, health or law enforcement. The challenges of underdevelopment are further aggravated by various factors including the sub- region's vulnerability to transnational organised crime. Organised crime groups operating in the region are known to specialise in motor vehicle theft, arms smuggling, drug trafficking, fraud, stock theft, illegal trade in precious stones and minerals, money laundering, poaching and prostitution. Evidence is also emerging of an ever-increasing involvement of organised crime groups in human trafficking.[56] The syndicates are using the region as a source, transit and destination point for illegal migrants. An additional debilitating factor in some of the SADC Member States has been prolonged conflict and wars.[4]

CO-OPERATION IN LAW ENFORCEMENT MATTERS

Notwithstanding the complex political, economic and social challenges facing the sub-region, SADC has achieved considerable success in enhancing law enforcement co-operation. Some of the land mark developments in law enforcement co-operation in the sub-region include the formation in 1995 of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) and the adoption of several regional instruments aimed at countering crime including the Protocol on Combating Illicit Drugs (1996); SADC Protocol on Legal Affairs (2000); SADC Protocol Against corruption (2001); SADC Protocol on the Control of Firearms, Ammunition and other related Materials (2001); SADC Protocol on Mutual Legal Assistance in Criminal Matters (2002); and SADC Protocol on Extradition (2002). It is noteworthy that similar efforts to improve law enforcement co-operation between states and to co-ordinate strategies against transnational crime are in progress in other regions of the African continent. The Economic Community of West

1 SADC member countries are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The Seychelles withdrew from SADC membership in August 2003.

2 Angola, DRC, Malawi, Mozambique and Malawi

56 Eye On Human Trafficking, Issue 2/May 2004

4 Especially in DRC and to a limited extent Angola which has had relative peace since 1992

African States (ECOWAS), for example, has established the West African Police Chiefs' committee through a formal agreement that has been ratified by the Heads of State of the Member States. The agreement facilitates the exchange of criminal information, restitution of stolen goods and police-to-police return of offenders. East African States have a similar sub-regional law enforcement body known as the East Africa Police Chiefs' Co-operation Organisation.[5]

SARPCCO: Objectives and Structure
SARPCCO was established in 1995 at the initiative of the chiefs of police of 11 Southern African countries. These were Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. A twelfth country, Mauritius has since joined. The formation of SARPCCO was primarily motivated by the escalation in cross border criminal activities in the region. The objectives of SARPCCO, as set out in its constitution, are as follows:

- The promotion, strengthening and perpetuation of co-operation and the fostering of joint strategies for the management of all forms of cross- border and related crimes with regional implications;
- The preparation and dissemination of relevant information on criminal activities when necessary to benefit members in their attempts to contain crime in the region;
- The regular reviewing of joint crime management strategies with the purpose of accommodating changing national and regional needs and priorities;
- The efficient operation and management of criminal records and the efficient joint monitoring of cross border crime by taking full advantage of the appropriate facilities available from Interpol;
- The making of relevant recommendations to governments of member countries in relation to matters affecting effective policing in the Southern African region; and
- The execution of any relevant and appropriate acts and strategies for purposes of promoting regional police co-operation and collaboration as dictated by regional circumstances.

The objectives of SARPCCO are pursued through the following structures outlined below:

Council of Police Chiefs
The Council of Police Chiefs (CPC) is the supreme body of SARPCCO. It consists of all Chiefs of Police of Member States. The CPC is responsible for formulating policy on all sub-regional police co-operation matters to ensure the efficient functioning of all SARPCCO structures and the attainment of the organisation's objectives. The CPC fulfils its mandate through issuing directives and prescribing standard operating procedures. It meets once a year but additional meetings may be convened under extraordinary circumstances. The CPC chairman is elected among the police chiefs for a one-year term at the end of which a new chairman is elected on a rotational basis. The implementation of the decisions taken by the CPC is subject to the approval of ministers responsible for policing in each of the Member States. A meeting of the ministers therefore, follows each annual meeting of the CPC.

SARPCCO Secretariat
In 1997, Interpol reinforced SARPCCO by establishing an Interpol sub- regional Bureau for Southern Africa in Harare. The Interpol office also serves as the secretariat of SARPCCO. The head of Interpol's Sub-regional Bureau for Southern Africa is also the head of the SARPCCO Secretariat. A desk has been established at the Bureau to take care of all matters relating to SARPCCO. The desk is manned by Liaison officers who are responsible for co-ordinating matters relating to cross-border crime in the sub-region, including the monitoring of crime trends with the aim of advising police chiefs on crime areas that require attention.

Permanent Co-ordinating Committee

5 EAPCCO members are Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda

The Permanent Co-ordinating Committee (PCC) consists of heads of the Criminal Investigation Divisions (CIDs) of all Member States. The PCC is responsible for formulating strategy to combat crime in the sub-region, creating operational mechanisms, and dealing with any other matter referred to it by the CPC. The PCC convenes as often as it deems it necessary. The PCC has been vested with the authority to create sub-committees or ad hoc task units or even to co-opt heads of other police components according to particular needs. The PCC is accountable to the CPC and reports to its annual meeting or as otherwise requested.

Committees, Sub-committees and Task Units
The following permanent subcommittees have been established under Article 7 of the SARPCCO Constitution:

- **The Training Sub- Committee** is tasked with the responsibility of identifying training needs and putting together relevant curricula for the training of Police officers throughout the sub-region; and
- **The Legal Sub-Committee** has the task of making recommendations in relation to legislation, the ratification of international conventions, deportations and the repatriation of exhibits.

Anti-Terrorism Early Warning Centre for Southern Africa
The Anti –Terrorism Early Warning Centre for Southern Africa was established in 2003. The centre has been created to gather and disseminate police intelligence about terrorist threats in the sub-region. It focuses on terrorist groups, links between them, financial and support networks, and factors that may increase the likelihood of terrorist activity.[6]

MULTILATERAL AND BILATERAL AGREEMENTS ON LAW ENFORCEMENT CO-OPERATION IN SADC

Agreement on Co-operation and Mutual Assistance in the Field of Crime Combating
In an attempt to further improve its capacity to combat cross –border crime, SARPCCO spearheaded the drafting of a multilateral agreement on law enforcement co-operation. The initiative resulted in the signing of An Agreement on Co-operation and Mutual Assistance in the Field of Crime Combating on 30 September 1997 by all Member States of SARPCCO, except Mauritius. The Agreement seeks to create an environment conducive to the development of an advantageous working relationship between the sub-region's law enforcement agencies. In particular, it makes provision for cross- border police operations including search and seizure of exhibits, tracing and questioning of witnesses.

Regional Framework on Extradition and Mutual Legal Assistance in Criminal Matters
Extradition is widely accepted in the SADC region as an important mechanism for regional and international law enforcement co-operation. The development of frameworks for mutual legal assistance and extradition in the SADC region took a piece meal approach. The first step in this regard was taken in 1996 when the SADC Member States signed and adopted the Protocol on Combating Illicit Drugs. The objectives of this Protocol were largely influenced by the principles set out in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The Protocol obliges Member States to establish appropriate mechanism for co-operation among their law enforcement agencies including the introduction of effective extradition arrangements to enable extradition in all cases of drug trafficking and money laundering and introduction of effective mutual legal assistance in all cases of drug trafficking and money laundering.[7]

On 7 August 2000 the SADC Member States signed and adopted a Protocol on Legal Affairs. The Protocol, among others, established the SADC Legal Sector whose objectives include, among

6 See Interpol at Work, 2003 Activity Report

7 See: Article 9 of the Protocol

others, the development, as far as possible, of common strategies and standards dealing with the administration of justice and law enforcement.

The desire by the Community to develop common strategies and standards on countering corruption resulted in the signing and adoption by Member States, on 14 August 2001, of the SADC Protocol against Corruption. Article 10(1) of the Protocol obliges State Parties to " afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic law, have the power to investigate or prosecute the acts of corruption described in [the] Protocol, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption."

The SADC Protocol on the Control of Firearms, Ammunition and other Related Matters which, was signed and adopted by Member States on 14 August 2001 recognises " the importance of regional and international co-operation and regional and international initiatives undertaken to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms and related materials." Member States are obliged under this Protocol to establish appropriate mechanisms for co-operation among law enforcement agencies of the State Parties including the:

- establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;
- establishment of an infrastructure to enhance effective law enforcement, including suitable search and inspection facilities at all designated ports of exit and entry;
- establishment of national focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross- border firearm trafficking; and
- introduction of effective extradition arrangements.

Member States adopted a comprehensive arrangement on mutual legal assistance on 3 October 2002. The signing of the SADC Protocol on Mutual Legal Assistance in Criminal Matters occurred against the background of an international environment in which the issue of organised crime had rapidly moved up on the law enforcement agendas of both governments and international organisations. The importance attached by the international community to increased efforts to fight organised crime is best illustrated by the involvement of more than 120 states in the negotiations that led to the finalisation in July 2000 of the United Nations Convention against Transnational Organised Crime. This Convention, among other matters, provides for expanded international co-operation and mutual legal assistance. A number of countries in the region have demonstrated political will, commitment and readiness to join the international community in countering transnational organised crime by ratifying the Convention.

The SADC Protocol on Mutual Legal Assistance in Criminal Matters reflects the desire by Member States to extend to each other " the widest possible mutual assistance within the limit of the laws of their respective jurisdictions…" The Protocol provides for the following forms of assistance:

- Locating and identifying persons, property, objects and items;
- Serving documents, including documents seeking the attendance of persons and providing returns of such service;
- Providing information, documents and records;
- Providing objects and temporary transfer of exhibits;
- Search and seizure;
- Taking evidence or obtaining statements or both;
- Authorizing the presence of persons from the Requesting State at the execution of requests;
- Ensuring the availability of detained persons to give evidence or to assist in possible investigations;
- Facilitating the appearance of witnesses or the assistance of persons in investigations; and

- Taking possible measures for location, restraint, seizure, freezing or forfeiture of the proceeds of crime.

On 3 October 2002, the SADC Heads of state also signed the SADC Protocol on Extradition. The action of the Community was largely influenced by concerns regarding " the escalation of crime at both national and transnational levels, and that the increased easy access to free cross border movement enables offenders to escape arrest, prosecution, conviction and punishment".

Legal experts have cited several obstacles to the effective administration of the extradition process in the sub-region.[8] The obstacles include, lack of expertise in extradition matters due to limited training opportunities, lack of a common definition of extraditable offences, undue delays in surrendering fugitive, prohibitive expenses associated with extradition, and conflict of extradition laws and practices including matters relating to the extradition of nationals and the death penalty.

The SADC Protocol on Extradition attempts to provide a common definition of extraditable offence. Article 3.1 defines extraditable offence as " offences that are punishable under the laws of both State Parties by imprisonment or other derivation of liberty for a period of at least one year, or by a more severe penalty." The Protocol further states that in determining what constitutes an offence against the laws of the Requested State it shall not matter whether:

- the laws of the State Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and
- the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the State Party, the constituent elements of the offence differ.

Additionally, the Protocol provides that an offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction.[9]

Another source of problems identified by relevant role players in the region in respect of implementation of legislation on extradition is the lack of a common legal position regarding the extradition of nationals. The region is divided on this issue between counties that allow extradition of national and those that do not. Mozambique, and Angola, for example, have constitutions that prohibit the extradition of their nationals. On the other hand, South Africa, Swaziland, and Zimbabwe are among countries that allow the extradition of their nationals. An attempt is being made by countries in the sub-region to address this problem through harmonisation of legislation on law enforcement.

Death Penalty

Countries in the region have divided views on the death penalty and as a result, concern have often been raised where the requested state does not have the death penalty, either generally or in relation to that particular offence. In South Africa, for example, the decision in the case of **Mohamed and Another V. President of South Africa and Six Others** makes it clear that because the death penalty has been determined to be unconstitutional domestically, extradition or deportation to face the death penalty, without any assurances, is also unconstitutional. [10]

The SADC Protocol on Extradition addresses the death penalty as a discretionary ground of refusal with the possibility of assurances. Article 5(c) provides that extradition may be refused "if the offence for which extradition is requested carries a death penalty under the law of the Requesting State, unless that State gives such assurances, as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out".

8 Recommendations of a regional Government Legal expert workshop on extradition and mutual legal assistance, hosted by the Institute for Security Studies, Pretoria, 2004.

9 See: Article 3 of the Protocol

10 CCT 17/01 Unreported 28 may 2001

Channels of Communication

Requests for extradition within the SADC are usually communicated through the diplomatic channel. The law enforcement agency investigating a case requiring the extradition of a suspect refers a request for extradition to its foreign ministry. The request is then sent to the embassy of the requesting state. The embassy, in turn, sends the letters to the foreign ministry of the requested state that dispatches it to the ministry of Justice that then sends it to the competent law enforcement agency for execution. The results of the request are sent back to the requesting authority by the same procedure. Thus, the diplomatic channel involves a certain degree of delay. The procedural steps of executing an extradition request also involve a lengthy process.

The delays associated with extradition have resulted in the search for simpler and quicker methods to secure the return of a person to face prosecution or serve a sentence. Law enforcement agencies in the region often use deportation as alternative processes to obtain extradition. In some cases, suspects, with the connivance of the police, have been forcibly brought within the jurisdictions of countries seeking to bring the suspects to justice in disregard of proper judicial process. Despite being the quickest methods of surrendering a suspect, deportation and other unconventional practices of surrendering suspects, have the disadvantage of being open to legal challenges in the requesting state. Indeed, some jurisdictions do not recognise deportation as an alternative process to obtain extradition. A case in point is that of **Bennett vs. H.M. Advocate**.[11] In that case the applicant, who was a New Zealander residing in South Africa, was wanted for prosecution in the UK. After a decision was made not to seek extradition, the UK police consulted with their counterparts in South Africa. Eventually, Mr. Bennett was deported from South Africa, with arrangements made by the police for travel that included a stop in the United Kingdom where he was arrested.

In relation to a challenge to subsequent proceedings, the House of Lords held that:

> "Where process of law is available to return an accused through extradition procedures the courts of the United Kingdom will refuse to try him if he has been forcibly brought within their jurisdiction in disregard of those procedures by a process to which police, prosecutors or other executives authorities have been knowing parties."[12]

Some courts in the SADC region have also entertained applications by surrendered persons to stay prosecutions that were premised on arguments that they were illegally extradited. For example, in the South African case of the **State vs. Ebrahimi**, a kidnapping from Swaziland to South Africa, it was held that a South African court has no jurisdiction to try a person abducted from another state, by agents of the state. [13]

Expenses

One of the central issues concerning the execution of extradition requests in the region is the cost of proceedings arising out of such requests. In most of the countries in the region, government institutions including the courts and law enforcement agencies operate in an environment of extreme resource constraints including critical shortage of fuel and transport. Additionally, account must also be taken of the enormous surface area that is involved in the conduct of law enforcement operations. Tanzania, for example, covers an area larger than the combined area of Germany, France and the Netherlands. Foreign requests for assistance in carrying out normal operations such as locating and arresting a suspect may easily cause financial hardships and adversely affect the operations of the government agencies involved. Due to the financial implications involved, government institutions may naturally be reluctant to get involved in lengthy and complex extradition proceedings. Under article 18 of the Protocol matters relating to costs associated with extradition are dealt with as follows:

- the Requested State is obliged to make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition;

11 (1993) WLR 90

12 Ibid

13 South African Supreme Court, 16 February 1991(1992) 31 ILM 888

- the Requested State must bear the expenses incurred in its territory or jurisdiction in the arrest and detention of the person whose extradition is sought, and the maintenance in custody of the person until that person is surrendered to the Requesting State;
- if during the execution of a request, it becomes apparent that fulfilment of the request will entail expenses of an extraordinary nature, the Requested State and the Requesting State must consult to determine the terms and conditions under which execution may continue;
- the requesting State must bear the expenses incurred in translation of extradition documents and conveying the person extradited from the territory of the Requested State;
- consultations may be held between the Requesting State and the Requested State for the payment by the Requesting State of extraordinary expenses.

Bilateral and multilateral treaties and other arrangements governing extradition existed between some SADC Member States before the conclusion of the SADC Protocol on Extradition. The most commonly applied extradition agreement in the region is the London Scheme on the Rendition of Fugitive Offenders. The Scheme regulates extradition between Commonwealth countries. It defines an extraditable offence as "an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty." On the other hand the SADC Protocol defines extraditable offence as offences punishable by imprisonment for " a period of at least one year, or by a more severe penalty." The contradiction in the definition of extraditable offence is but just one of many contradictions between the provisions of the SADC Protocol and other agreements regulating extradition in the region. In an attempt to address these contradictions, article 19 of the SADC Protocol provides that the provisions of any treaty or bilateral agreement governing extradition between any two State Parties shall be complementary to the provisions of the Protocol and shall be construed and applied in harmony with the Protocol. In the event of any inconsistency, the provisions of the Protocol shall prevail.

Bilateral Police Agreements

In addition to multilateral agreements on law enforcement co-operation, the sub- region has effective bilateral police agreements. In this regard, the South African Government has concluded a number of bilateral agreements that have facilitated the posting of crime liaison officers in Swaziland, Mozambique and Namibia for the purpose of gathering, managing and coordinating drug and organised crime related information. [14] Additionally, there are many informal direct relationships that exist between law enforcement officials in the region. The informal contacts between police officers in the region have resulted in the establishment of flexible and effective communication channels[15].

Confidence-building Measures

From 1960 to the early 1990s, all countries in the sub-region were directly or indirectly affected by the anti-colonial struggle including the fight against minority rule in South Africa. Poor relations and suspicion generally characterised the relations between police agencies in the sub-region during this period. The sharing of information between police organisations was strictly controlled by Governments operating in an environment where a person could be classified as a criminal or a freedom fighter depending on which side of the border he or she was located. When the anti-colonial struggle ended and apartheid in South Africa was abolished in the early 1990s, one of the immediate challenges facing governments in the region was the development of measures to build mutual trust among their police organisations, as well as between police officers. SARPCCO has taken on the challenge of building mutual trust among police organisation. The promotion of sports and cultural exchange programmes among police organisations in the sub-region is one of the confidence-building measures that SARPCCO has successfully implemented.[16]

Joint Police Operations

14 Paper presented by Minister S. V. Tshwete, at SADC Regional Conference on responses to organised crime, South Africa, 26 February, 2001(Unpublished)

15 Paper by F.J. Msutu (former Head of Interpol sub-regional Bureau, Harare), presentation at SADC Regional Conference on responses to organised crime, South Africa, 26 February, 2001(Unpublished)

16 Ibd

Since the establishment in 1997 of SARPCCO and the Interpol sub- regional Bureau for Southern Africa, several cross-border joint operations have been conducted by police organisations in the sub- region. These operations have focused on the most common trransnational crimes in the sub-region, such as motor vehicle theft, drug trafficking, arms smuggling, illegal dealing in precious stones, and organised crime in general. Some of the notable joint operations undertaken since the formation of SARPCCO and the Interpol sub- regional Bureau include the following: [17]-

Operation Voyager 4 (V4)
This operation was undertaken between South Africa, Mozambique, Zambia and Zimbabwe. It was launched at the beginning of 1997 with the objective of addressing the problem of theft of motor vehicles. During the operation, 1,576 stolen vehicles were seized and 143 suspects arrested.

Operation Midas
This operation was conducted in 1998 between Lesotho, Mauritius. Swaziland and South Africa. Its objectives were to address motor vehicle theft, drug trafficking, firearms smuggling and other transnational crimes. The operation resulted in the seizure of 76 stolen motor vehicles, fourteen firearms, more than 20,000 rounds of ammunition, 116,94 kilograms of marijuana and the arrest of 22 people in connection with these crimes.

Operation Atlantic
This operation was carried out in 1998, involving Botswana, Namibia and South Africa. Its aim was to combat motor vehicle theft and other cross- border crimes. The operation resulted in the seizure of 114 stolen motor vehicles, eleven firearms, 71 rounds of ammunition of various calibres, 27, 910 kilograms of marijuana and the arrest of 23 suspects.

Operation Sesani
This operation was undertaken between Malawi, Mozambique, Tanzania, Zambia and Zimbabwe, with technical support from South Africa. Its objective was to address the problem of transnational organise crime, including motor vehicle theft. The operation commenced in 1998 and was concluded in 1999. It resulted in the recovery of 180 stolen motor vehicles, 47 firearm and seizure of over 400 kilograms of narcotic drugs, and 64 suspects were arrested.

Operation Makhulu
This operation took place in 2000 and covered Botswana, Lesotho, Mozambique, Namibia. South Africa, Swaziland and Zimbabwe. The operation focused on cross- border crime including theft of motor vehicle, drug trafficking, and illegal immigration.

Operation Matokwane
The cultivation and trafficking of cannabis has been and continues to pose a serious challenge to police organisations in the sub-region. The major trafficking route is towards South Africa. The main suppliers of cannabis are located in Lesotho, Swaziland, Malawi, Mozambique, Zambia and Zimbabwe. The cultivation in Lesotho, Malawi and Swaziland occurs on a commercial scale. Most of the cannabis is intended for the European market. SARPCCO has been involved in the collection of intelligence on the cultivation and trafficking of cannabis. The intelligence is used by national police organisations to trace suspects and locate and destroy cannabis crops. During 2001, a regional joint operation, codenamed Matokwane, was conducted in Malawi, Lesotho, Swaziland and South Africa. More than 6 000 tons of cannabis were destroyed during the operation.

Operation Mangochi
This is a joint operation on stolen motor vehicles between Botswana, Kenya, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. It was co-ordinated by the Harare Sub –Regional Bureau and SARPPCCO. The operation was conducted over three phases in 2003. It led to the recovery of 102 stolen vehicles.

17 Interpol at Work, 2003 Activity Report and also F.J.Msutu.

Operation Stone
This is an ongoing intelligence- gathering operation undertaken between Angola, Botswana, Namibia and South Africa. It focuses primarily on collecting and analysing intelligence on criminal groups involved in smuggling of diamonds and other precious stones. Evidence has emerged linking diamonds and other precious stones to a number of conflicts on the African continent. Operation Stone, therefore, seeks to address both the economic and security implications associated with illicit trade in precious stones.

Project Baobab-Africa
This is a regional Interpol project covering the whole of Africa. It aims to contribute to the United Nations efforts to combat terrorism through the collection of intelligence and identification of active terrorist groups in Africa.

CONCLUSION

While the growth in transnational organised crime is an international phenomenon, its rapid growth in the SADC region is a matter of serious concern; particularly that economic deprivation, conflict, and disease are already having a devastating impact on the population. Governments in the region through the SADC have taken a number of positive initiatives to deal with the problem. The development and adoption of protocols dealing with extradition and mutual legal assistance in criminal matters as well as the establishment of SARPCCO forms a firm foundation upon which to build further blocks for regional and international co-operation for combating transnational crime. It is also significant that a number of countries in the sub-region have ratified and are implementing the UN Convention Against Transnational Organised Crime and its protocols. Several challenges, however still confront law enforcement agencies in the sub-region. A major challenge for law enforcement agencies in the region, however, is the problem of inadequate resources for crime prevention. Most law enforcement agencies face problems related to inadequate material resources and logistical support. including transport and radio communication equipment. The lack of appropriate skills including legal expertise frequently acts as a barrier to the effective and efficient exchange of information between law enforcement agencies at the sub-regional, regional and international levels. In this regard, UNICRI, UNAFRI and other international bodies can play a crucial role in the provision of international technical co-operation, including research, exchange of information and training.

Workshop 1

International Criminal Cooperation or Mutual Assistance

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ABSTRACT
Although the need for fluid cooperation with other countries is increasingly indispensable, Chilean culture and legal/institutional practice have not moved at a parallel pace. The Office of the Public Prosecutor (OPP), an institution created in 1997 by constitutional reform, has a key –although not exclusive—role to play in this arena, given that it is tasked with investigating and prosecuting criminal action. The constitutional reform failed, however, to provide domestic regulations to guide international assistance systematically within the context of the new procedural setting. There are some exceptions, nonetheless, for serious transnational offenses such as drug trafficking and money laundering. Another exception is the institution of extradition which has a long-standing tradition on our continent - and in Chile specifically - of more developped statutory regulations - domestic, international conventions, international principles - as well as an ampler legal and political practice.

While this general context, with the exception of extradition, could appear inauspicious for the OPP, the lack of specific regulations is also an opportunity to generate new, more effective practices and processes. In fact, this is facilitated by a wave of reforms to the administration of justice across our hemisphere. In that light, the OPP has encouraged inter-institutional domestic cooperation to bring together the primary players in the reform to work toward common criteria and more expedient channels of communication.

At the international sphere, the main obstacle to cooperation is the tremendous lack of (reciprocal) familiarity with the legislation in force in other countries. That lack of knowledge also encompasses unfamiliarity with relevant institutions and procedures used in other countries, as well as their legal culture. These conditions are compounded by a scarcity or obsolescence of international instruments in effect in our countries in the areas of international cooperation and mutual assistance in the criminal realm. To bridge these difficulties, the OPP has focused on two complementary lines of action, that is : a) Strengthening organizations that bring together prosecutorial officials and b) Direct inter-institutional efforts with neighboring countries.

This document could not have been possible without the valuable assistance of **Ms. Luz María Fernández**, attorney at the Specialized Unit in International Cooperation and Extraditions, regarding the general content of the presentation and in particular extradition.

Also special thanks to **Ms. Katerine Kauffman,** interpreter who works with us, for her excellent translation into English.**.**

Context of the Criminal Procedure Reform in Chile
Throughout history and for over 100 years, Chile's system of criminal justice has been of an inquisitional nature, largely as a result of our Spanish heritage. In the past, all judicial functions were concentrated in the hands of the judge who investigated cases alone in a secret "summary" investigation without any sort of time limit, pressed charges and then in the "plenary" phase --which

was construed as contradictory-- tried the case. The procedure was essentially written, entailed no provisions to allow for diversity of penalty based on the circumstances of an individual crime, nor provided an effective institutional structure for the defense of the accused. In sum, the procedure was not public, did not truly involve opposing parties, failed to safeguard the right to defense and other rights of the accused and protect victims and witnesses.

Although for many years Chile sought to revamp its inquisitional system of criminal justice and replace it with an adversarial one, the magnitude of such sweeping changes and the resources they required led to continued postponements. It was thus not until 1997 that the wheels of legislative action began to turn with a view toward a momentous reform involving changes to the Constitution, the passage of a new Criminal Procedure Code, modification of an array of legal texts, the creation of new institutions such as the Office of the Public Prosecutor (OPP), the Public Defenders Office and the new courts –Guarantee and Oral Trial—all of which required infrastructure and equipment in order to operate effectively.

The criminal procedure reform began to operate in Chile gradually, with the first phase coming into operation in December 2000. The process will culminate on June 16th of this year with the roll-out in the Santiago Metropolitan Region.

The overhaul to the way Chile administers justice is undoubtedly the most important reform the country has undergone in the last 100 years. Moreover, because of the depth and breath of the change and the cultural and legal paradigms involved, may observers have called the transformation revolutionary.

International Criminal Cooperation or Mutual Assistance

1. Evolution of this topic under the criminal procedure reform

Despite the complexities inherent to the implementation of the comprehensive reform described above, it became clear very early on that effectively investigating and prosecuting transnational crime and criminals would have to rely heavily on international cooperation and mutual assistance between States. Moreover, the spillover effect on domestic crime as a result of globalization enhanced the need for international cooperation. By this we mean the assistance one State lends to another in securing information or conducting investigative action within its territory with a view toward initiating an investigation or facilitating a criminal investigation underway in the petitioning State.

These topics are all the more germane in light of our increasingly interconnected and interdependent world: obtaining information or evidence located in other nations, through official channels, that meets the standards of the new procedures and, above all, within the brief deadlines allotted to investigation under Chile reform, are of the essence.

That said, however, given the natural evolution and the gradual roll-out in the parts of Chile where the reform is in effect, an accent was initially placed on bringing legitimacy to the new system quickly. In part, that meant focusing on the types of crime with the greatest social visibility, such as burglary, assault, larceny and rape-- all of which have a domestic connotation and origin. In practice, the need for international cooperation and mutual assistance was relegated to a secondary plane during the first few years of the reform.

As the new system came to grapple effectively with the crimes mentioned above, experience increased and the institution evolved, the Office of the Public Prosecutor (OPP) began focusing on the investigation and prosecution of more complex crimes, offenses in which transnational aspects are tremendously salient.

This pattern of evolution within the OPP –transitioning from local crimes to other, more complex transgressions with international connotations – has been repeated in general terms in all of the regions in which the reform has come into effect.

2. Obstacles and General Context

Although events themselves have made the need for fluid cooperation with other countries increasingly indispensable, Chilean culture and legal/institutional practice have not moved at a parallel pace, thus producing a gap that needs to be closed and addressed proactively. We believe that the OPP has a key –although not exclusive—role to play in this arena, given that our office is tasked with investigating and prosecuting criminal action and, therefore, is most keenly interested in a successful prosecution. That success often depends on international cooperation.

In effect and speaking solely to the Chilean case –although a similar phenomenon can be seen across our region—it is clear that the internationalization of the administration of justice has not progressed as quickly as other realms in the globalization process.

For Chilean society, for example, several decades of economic reform and expanded opportunities in international economics and trade have made globalization a widely accepted fact of life, whose beneficial effects we reap on a daily basis. We can see that a similar phenomenon is underway in other spheres, such as culture and the dissemination of habits, ideas, patterns of behavior and sense of aesthetics around the world.

Nonetheless, despite the evolution in International Law and the efforts of multilateral organisms, especially as of the second half of the 20th century, the field of justice clearly lags behind these disciplines. It appears that the belief among our people and institutions persists that the administration of justice is inherent to the sovereignty of states and that, as such, domestic legislation is of an exclusive nature and prevails above any other norm.

Clearly, that increasingly discreet but still deeply rooted antiquated and self-sufficient view of justice is not naturally conducive to international cooperation and mutual assistance in criminal affairs. The key to success thus lies in a change in mindset and, in that context, the OPP, as a completely new institution in Chilean history, one that is called to act in on a different stage, will play a crucial role.

In effect, the new criminal system brings protagonism to a new player, the OPP, and grants it exclusive responsibility for leading criminal investigations. This is thanks to a constitutional reform effected in 1997 which gives the OPP full autonomy and sets it forth as one of the State's flagship institutions.

The reform failed, however, to provide domestic regulations to guide international assistance systematically within the context of the new procedural setting, including the OPP. As a result, the only regulations on international criminal assistance in Chile have to with procedures for judicial letters rogatory and a succinct indication that the Supreme Court and the Ministry of Foreign Affairs shall serve as liaison institutions for such requests. There are some exceptions, however, for especially serious transnational offenses such as drug trafficking and money laundering for which more detailed provisions exist.

This lack of regulation is compounded by the persistence of practices by institutions that have not yet adapted to the logic and demands of the new criminal procedures. Their torpor and tenacity is largely due to the fact that the reform has yet to be implemented in Santiago, the nation's political, economic and administrative capital.

While from the traditional perspective this context could appear inauspicious for the OPP in the areas of cooperation and mutual criminal assistance, the lack of specific regulations is also an opportunity for us, as a new player unfettered by the formalities of the old system, to generate new,

more effective practices and processes in the realm of international cooperation and mutual assistance. With a view toward optimizing criminal prosecution in general and combating transnational crime in particular, these new procedures will meet the demands of the new criminal procedures and be in step with the technologies that modern life affords.

Moreover, the opportunity to generate profound change is facilitated by a wave of reforms to the administration of justice across our hemisphere, with a common focus on respect for the rule of law as a fundamental prerequisite for economic development and the sustainability of democratic governance.

The simultaneous nature of these transformations has led to an active exchange of experiences in the realm of justice, heated debate, the dissemination and replication of successful models and practices and, thus, a level of horizontal cooperation seldom seen in our region. Although this dynamic process is still very much in the making, the OPP has become a model and a standard for other reform processes thanks to the pioneering nature of Chile's reform and its level of consolidation. As a result, in addition to the benefits of personal contacts and a better understanding of legal cultures around the region, we are also seeing a degree of convergence in our systems which will undoubtedly facilitate exchange and transnational action by our legal institutions in the future.

3. International institutions within the OPP and its response with regard to specific issues in the area of criminal assistance and cooperation

To better organize and systematize the flow of international cooperation within the OPP, a specialized unit in "International Cooperation and Extradition" was created in 2004. The new unit reports directly to the National Prosecutor and is tasked precisely with facilitating the organization's investigative efforts when they involve assistance from other countries and coordinating with other prosecutor's offices and prosecutorial institutions to jointly address cases of transnational crime. In addition, the unit is responsible for providing assistance and follow-up to requests for both active and passive extradition.

Initially, in order to ascertain the status and needs for international criminal cooperation and mutual assistance within the OPP, an in-house survey was conducted in the 12 regions in which the reform is operational. The questionnaire had two parts.

The first section sought to identify how often international assistance had been necessary, how often such assistance had been dismissed and the reasons for that decision. It also asked prosecutors to address the most relevant obstacles they had found to having investigations conducted abroad and to propose solutions.

The second section focused on cases in which a request for international assistance had been made, the results of that petition and the way the information was used in court.

The results and conclusions can be summarized as follows:

a) Although relatively few prosecutors stated the need for international cooperation their cases (18.6% of respondents), petitions were on the rise.
b) While in significant number of cases prosecutors felt they could have benefited from international assistance, they refrained from requesting it (66% of the total).
c) In a sizable number of cases, prosecutors reported that they had not moved forward with the request due to the complexities of the procedure, a lack of confidence in the foreign officials who would receive the request, limited expectations for success, the extended time frames needed as compared to the brevity of the investigative phase and, lastly, a lack of clarity in terms of where to direct the petition.

Most importantly, the study shows that although there is need for international criminal assistance in an increasing number of cases, prosecutors are unfamiliar with the appropriate procedures and

legislations involved. This lack of information can pose a major obstacle if not dealt with in a timely fashion. Paradoxically, the lack of acquaintance with other systems included procedures in neighboring countries with which the flow of requests is greatest.

In light of the survey results, growing practical experience within the OPP and conditions across the region, the OPP has identified a series of problems in the area of mutual criminal assistance and cooperation. These emerging obstacles are being addressed by the organization in keeping with the structure and needs of the new system of criminal justice as follows:

A. Obstacles at the domestic level

As indicated earlier, legislative developments in the area of international cooperation have been deficient in terms of supplementing the constitutionally-mandated powers of the OPP. Existing regulations are limited, exceptional and scattered about in different texts. Unfortunately, it does not appear that the political and legislative authorities are truly cognizant of the importance and repercussions of this topic in successfully prosecuting cross-border crime. As such, we do not foresee the issue becoming a priority in the short term. Viewed alone, the lack of regulation is not really a problem and could even be perceived as an advantage. However, when combined with the logic, practices and concepts of the old system of criminal justice, it does pose an obstacle. In effect, the lack of definitions and procedural regulation often hinders the dexterity and speed required by the new system, as people fill the void with requirements and formalities from the old school that impede rapid action.

For example, we initially found that non-judicial letters rogatory received by the Ministry of Foreign Affairs were being sent to the Judiciary, even though their processing was within the sphere of action of the OPP. After protracted consideration and subsequent loss of valuable time, the Judiciary remitted them to the OPP for handling. While this situation has been ameliorated in some cases, a systematic procedure has yet to be established.

We are equally concerned by the role of the Foreign Ministry as the official conduit for these requests and as Central Authority under a series of treaties, as the Ministry is strapped for resources in light of the bounding increase in requests for assistance and cooperation to and from Chile, all of which require expedited processing. In general, we have noted that the preset, short deadlines established under the new system make current procedures and practices unworkable.

Clearly, then, strengthening the institutions involved in international cooperation is of the essence. In that context, the Foreign Ministry plays a crucial role, even while prosecutorial agencies may be designated as Central Authorities in cooperation treaties to make collaboration in criminal matters more expedient and fluid.

How has the OPP grappled with these problems to date?

In light of the absence of regulations on procedures and institutional jurisdiction, the OPP has encouraged inter-institutional cooperation by forming several task forces that bring together the primary players in the reform to work toward common criteria and more expedient channels of communication. In this same vein, a group was recently created within the OPP to work with a team from the Foreign Ministry.

The OPP has understood that in order to perform its duties effectively and efficiently, it must have solid inter-institutional ties with a range of agencies, encourage opportunities for dialogue, and the exchange of information with other institutions, such as Policía de Investigaciones detective force, Carabineros uniformed police, INTERPOL, Customs, etc.

It is important to note that it has not been easy to assemble and coordinate the array of governmental institutions and agencies involved. The task has been all the more complex because the impetus comes from a newcomer to the nation’s institutional stage and, as always, any

reorganization of this magnitude causes friction and resistance by the organizations whose functions are curtailed or modified.

B. Obstacles in the international environment

There are multiple obstacles to cooperation in the international sphere. One obstacle that immediately comes to mind –and was reflected in our in-house survey – is the tremendous lack of (reciprocal) familiarity with the legislation in force in other countries, including those with which we have the greatest levels of criminal interchange, that is, neighboring countries.

The lack of knowledge also encompasses unfamiliarity with relevant institutions and procedures used in other countries, as well as their legal culture.

This reflects not only the backwardness we suffer in legal affairs in terms of globalization, but also the dearth of integration among our countries despite our many similarities and shared roots.

One reason for the deficiency can be found in the institutional instability that has plagued our nations. Those changes have led to constant variations in regulations and officials, with the consequent impairment to mutual understanding and reciprocal ties.

These conditions are compounded by a lack of international instruments in effect in our countries in the areas of international cooperation and mutual assistance in the criminal realm and by the fact that many of the agreements that do exist have become obsolete, as they reflect past times and logics (they refer to crimes that today are irrelevant or contemplate procedures that are now entirely too slow). This hampers fluid contact with our counterparts and noticeably diminishes effectiveness in these proceedings.

It is important to highlight the exceptions to this rather dire scenario, including such agreements as the Inter-American Treaty on Mutual Assistance, the Vienna Convention on Drug Trafficking, and the Palermo Convention on Transnational Organized Crime, all of which have been signed and ratified by Chile and by a substantive number of nations in the Western hemisphere. These agreements address the current needs and obstacles to international cooperation in their respective fields.

Moreover, the Ibero-American Association of Public Prosecutors (AIMP) brings together prosecutorial officials from Latin America, Spain and Portugal. The association has engaged in productive efforts to make criminal assistance more expedient among participating members.

Lastly, a substantive obstacle to fluid cross-border investigation and prosecution is the availability of human resources, infrastructure and equipment.

Fortunately, the constitutional reform that created the OPP in Chile was accompanied by a comprehensive set of measures to allow for its gradual implementation.

Devised in response to a national policy and a long-coveted aspiration for an expedient, efficient system of criminal justice, planning for the reform included participation from an array of sectors (academicians, economists, legal experts, legislators, etc). This made it possible to more accurately identify the full range of resources that would be required to make the reform a success.

Thus, in addition to considering appropriate pay for the new players and bolstered remuneration for members of the Judiciary, unprecedented funding was allocated to training, management, infrastructure and equipment, in the understanding that all of these aspects are essential to the overall success of the system.

The net result of this investment has been a modern system of criminal justice, at the forefront of the legal and technological developments of our times.

These conditions, however, are not necessarily reflected in other countries across the region. The disparity leads to problems in communications, compliance with deadlines, and in meeting the objectives of cooperation.

How has the OPP grappled with these international challenges?

We have placed a priority on strengthening ties with organizations on our own continent and, specifically, with our neighbors in South America. Toward this end, we are working on two complementary lines of action:

a) Strengthening organizations that bring together prosecutorial officials;
b) Direct inter-institutional efforts with neighboring countries.

For example, the OPP joined the Ibero-American Association of Public Prosecutors (AIMP) and the International Association of Prosecutors (IAP) at an early stage, in the understanding that both serve as outstanding platforms for contact and opportunities for joint efforts in areas of mutual interest.

A key topic within the AIMP has been encouraging and facilitating mutual criminal assistance and cooperation. The agreements signed by the members on that topic, as noted above, have been increasingly utilized as the basis for petitions and the granting of assistance.

With a view toward strengthening that line of action and facilitating greater coordination among its members, National Prosecutor Guillermo Piedrabuena ran for office in the organization's most recent round of balloting. He was elected, along with the Attorney General of Paraguay, to lead the organization for the period November 2004-November 2006 and to serve as Chair for the period September 2005-November 2006.

At the regional level, the OPP has sought to promote meetings and direct contacts with its counterparts in neighboring countries in an effort to improve communication.

A system of internships has been created to allow prosecutors from neighboring nations to spend time in other countries to bolster awareness of our different systems and form bonds of trust.

Toward this end, we have sought to forge ties with a variety of cooperation agencies and multilateral institutions active in the field of justice, including the notable support of GTZ, the German cooperation agency.

Within the context of the accent on work with our neighbors, the OPP is organizing the First Meeting of Law Enforcement Officials and Prosecutors from Argentina, Bolivia, Chile, Paraguay and Peru for the month of October 2005. The gathering seeks to share experiences and methods in the work performed by prosecutors and law enforcement officers –key entities in successful criminal prosecution—and establish more expedient channels of communication. Moreover, the conference seeks to provide a mechanism for periodic cooperation and coordination in dealing with cross-border crime.

Extradition

Extradition is a crucial institution in criminal prosecution cooperation between States and will continue to be essential under Chile's new criminal procedure. A long-standing tradition of extradition on our continent --and in Chile specifically—as well as developments in statutory regulations –domestic, international conventions, international principles— and legal and political practice are all conductive to this procedure.

We should note that our system places decisions on active and passive extradition solely in the hands of the Supreme Court, the highest court in Chile. The Ministry of Foreign Affairs serves

exclusively as the conduit for requests to and from other countries. As a result, our procedure is less political and more judicial than those used in other countries.

Another important feature of our system is that it does not limit extradition to countries with which Chile has a treaty in force. Rather, petitions may be granted on the basis of the principles of International Law, which provides a broad base for successful extradition petitions.

The Supreme Court has systematically granted extradition on the basis of reciprocity with the petitioning State. That concept has been interpreted broadly and reflects elements inherent to the principles of international cooperation. It is important to note that Chile, unlike most of the countries in the region, does not have legislation that prohibits the State from extraditing its citizens. Moreover, the Supreme Court has not shirked from extraditing Chilean nationals, even when the corresponding treaty allows for that option. It would seem that the Court favors the modern belief -- albeit with some reservations-- that international cooperation is the cornerstone of extradition, thereby moving away from the principle of reciprocity and toward that of better justice, under which a crime must be judged in the jurisdiction in which it was committed.

The procedural rules that regulate extradition in the new Code are equally favorable, as they are set within a completely different procedural system: one that is adversarial, oral, public and involves new players with defined, differentiated roles. These features are present in the extradition process, making it shorter, with greater presence of the justices and with the OPP serving as the representative of the petitioning State and the public or private defender assisting the accused. This new role for the OPP sets us in uniquely good stead in the area of extradition and tasks us with strengthening it as a tool for international cooperation in criminal prosecution. The International Cooperation Unit will be responsible for providing assistance in these cases, seeking to ensure their expedient processing and efficacy.

The freedom allowed under the new system in the submission of evidence as well as that of the justices to rule based on their knowledge and experience provides greater flexibility in proving and assessing the events upon which the extradition request is based. This is particularly important because the circumstances surrounding the events are often investigated abroad under different procedural rules.

As noted above in the case of criminal assistance, we need to strengthen our collaboration with the Foreign Ministry to secure the nimbleness required in these cases in light of the preset, short deadlines under the new system. In terms of issues on the international stage, we once again see a void of treaties signed by Chile in this arena. This includes recent treaties that reflect modern trends and resolve the problems that extradition currently poses.

The dearth is particularly evident for countries outside the Ibero-American region, as Chile does have extradition treaties in place with most of the latter. Although the lack of specific agreements does not impede extradition, as noted earlier, it does lead to greater hurdles and uncertainties.

CONCLUSION

In sum, it is clear that in mutual assistance in criminal affairs and –to a lesser extent in extradition —both Chile and much of the region are at time of legal/cultural transition between an old inquisitorial systems and new adversarial ones.

As in all transitions, many elements are in flux and even in conflict. Nonetheless, the time is nigh to innovate, adapt, and systematize channels of communication and procedures to grapple with the pressing needs of international cooperation to combat the growing phenomenon of transnational crime.

Although the Office of the Public Prosecutor of Chile has played an active role in this regard, it is clear that without the collaboration and contributions of other institutions, both domestic and

foreign, an integrated system is inconceivable. Without such cooperation, the plethora of scattered regulations and reciprocal ignorance will persist, to the detriment of effective criminal prosecution.

The dream of integration has been revered in Latin America for hundreds of years. Today, thanks to the convergence of profound reforms to the systems used to administer justice, an opportunity exists to bring it to fruition in area that not only affects people's lives, but is also essential to the economic and democratic development of our countries.

Half a century ago, Europe confronted a similar situation in terms of diversity of legislation and imperfect cooperation. Today, those times seem to be anecdotal bygones in light of the European Union and its joint institutions and common procedures.

The EU's success, despite myriad differences and difficulties, is an inspiration to us in our region and a model to be emulated. The Office of the Public Prosecutor of Chile is committed to working toward that goal.

Documentation on Extradition and Mutual Legal Assistance

List Of Documents

1. Model Treaty on Extradition (General Assembly resolution 45/116, as amended by General Assembly resolution 52/88).
2. Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, as amended by General Assembly resolution 53/112).
3. Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters.
4. Model Law on Extradition (2004).
5. Report of the Expert Working Group on Mutual Legal Assistance and Related International Confiscation, Vienna, 15-19 February 1993.
6. Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna, 3-7 December 2001.
7. Report of the Expert Working Group on Effective Extradition Casework, Vienna, 12-16 July 2004.

All the documents are available in the following website: http://www.unodc.org/unodc/en/legal_advisory_tools.html

Workshop 2
Enhancing Criminal Justice Reform, including Restorative Justice

Organised by
International Centre for Criminal Law Reform
and Criminal Justice Policy
ICCLR and CJP

Workshop 2

Enhancing Criminal Justice Reform, Including Restorative Justice

Friday, April 22nd, 2005

AGENDA

Morning Session: Criminal Justice Reform

OPENING REMARKS, INTRODUCTION, AND WELCOME

- Chair *Mr. Matti Joutsen,* Director, Ministry of Justice of FINLAND
- Technical Advisor to the Chair, *Mr. Daniel Préfontaine QC*, Senior Advisor, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), CANADA
- *Mr. Michel Bouchard*, Associate Deputy Minister of Justice, Government of Canada, CANADA

CRIMINAL JUSTICE REFORM OVERVIEW CONTEXT, CHALLENGES AND COOPERATION
Presentation: "Criminal Justice Reform Overview"

- Mr. Yvon Dandurand*, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), CANADA &*
- Prof. Kent Roach, University of Toronto, CANADA

COMPREHENSIVE REFORM PANEL AND DISCUSSION
Presentation: "Security, Justice and Growth: Implementing the Millennium Summit Declaration"

- *Mr. Vincent Del Buono,* Programme Coordinator, Security, Justice and Growth Programme, British Council, DFID NIGERIA
- *Prof. Yemi Akinseye George,* Special Assistant to Justice Minister of Nigeria, NIGERIA

Presentation: "Access to Justice as a Condition for the Efficiency of the Criminal Justice System"

- *Mr. Alejandro Salinas Rivera*, Lawyer, Unit of International Affairs, Public Defence Office, CHILE

COLLABORATION & COOPERATION PANEL AND DISCUSSION
Presentation: "Model Codes for Post Conflict Criminal Justice"

- *Ms. Vivienne O' Connor*, Coordinator, Model Codes Project, Irish Centre for Human Rights, IRELAND

Presentation: "Regional Cooperation in Law and Justice in the Pacific"

- *Mr. Raymond Schuster*, Assistant Attorney General, Government of Samoa, SAMOA

Presentation: "Restorative mechanisms in the new juvenile criminal legislation in Latin America and Spain"

- *Mr. Elias Carranza*, Director, Instituto Latino Americano de Naciones Unidas Para La Prevencion del Delito y Tratamiento Del Delincuente (ILANUD), COSTA RICA

Afternoon Session: Restorative Justice, Youth and Vulnerable groups

INTRODUCTION TO RESTORATIVE JUSTICE
Presentation: "An Overview of Restorative Justice around the World"
- *Mr. Daniel W. Van Ness*, Executive Director, Centre for Justice and Reconciliation at Prison Fellowship International, UNITED STATES

RESTORATIVE JUSTICE PANEL AND DISCUSSION
Presentation: "Establishing a Framework for the Use of Restorative Justice in Criminal Matters in Canada"
- *Mr. David Daubney*, General Counsel, Sentencing Reform Team, Department of Justice Canada, CANADA

Presentation: "Restorative Justice in Thailand"
- *Dr. Kittipong Kattayarak*, Director General, Department of Probation, Ministry of Justice, THAILAND

Presentation: "Restorative Justice in New Zealand"
- *Mr. Andrew Bridgman*, Deputy Secretary, Policy and Legal Group, Ministry of Justice, NEW ZEALAND

YOUTH JUSTICE / VULNERABLE GROUPS PANEL AND DISCUSSION
Presentation: "The UNICEF Juvenile Justice Indicator Project and the Field-Test in the Philippines"
- *Prof. Alberto Muyot,* Project Officer, UNICEF, PHILIPPINES

Presentation: "Critical Reflection on the Development of Restorative Justice and Victim Policy in Belgium"
- *Ms. Tinneke Van Camp*, Assistant, National Institute for Criminalistics and Criminology, Department of Criminology, Ministry of Justice, BELGIUM

Presentation: "Penal Reform"
- *Mr. Joseph Etima*, Commissioner General of Prisons, UGANDA

CONCLUSIONS AND RECOMMENDATIONS, INCLUDING A REVIEW OF BEST PRACTICES AND EXISTING TOOLS
Juvenile Justice and the Link Between Criminal Justice Reform and Social and Economic Development
- *Mr. Elias Carranza*, Director, Instituto Latino Ammericano de Naciones Unidas Para La Prevencion del Delito y Tratamiento Del Delincuente (ILANUD), COSTA RICA

Regional Approaches to Criminal Justice Reform
- *Mr. Charles Goredema*, Senior Research Fellow, Organized Crime and Corruption, Institute for Security Studies, (ISS) SOUTH AFRICA

Restorative Justice and Criminal Justice Reform to Protect Victims Rights
- *Mr. Jan Van Dijk,* Deputy Director, United Nations Interregional Crime and Justice Research Institute, (UNICRI) ITALY

The Need for Evidence Based Approaches and Systematic Evaluation
- *Ms. Toni Makkai*, Director, Australian Institute of Criminology (AIC), AUSTRALIA

Effective Methods and Tools to Support Criminal Justice Reform

- *Mr. Yvon Dandurand, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), CANADA*

Workshop 2

Michel Bouchard
Associate Deputy Minister of Justice
Department of Justice Canada

Good morning everyone, and may I say that I am very pleased to join you today in this workshop addressing criminal justice reforms, including restorative justice. We have many highly respected experts with us today who are going to share with us some of the challenges, the lessons learned and, more importantly, the successes achieved in addressing the issues confronting criminal justice systems today.

As you know, this workshop will take a lessons learned approach and will focus on comprehensive reforms, as well as international and regional cooperation and specific issues of restorative justice, youth justice and vulnerable groups. In particular, we will focus on capacity building as part of governance; the role of technical assistance and links to development, and the Millennium goals.

I would like to take a moment to speak about the value and importance of this work, of the United Nations and in particular the Crime Commission. Canada and the International Centre for Criminal Law Reform and Criminal Justice Policy have worked extremely hard at the UN Commission meetings over the past several years to advance these specific, very human issues. Through positive and cooperative working relations with the UN, the UN network of institutes, many member states, non-governmental organizations and participants, I believe we are making a difference in the administration of criminal justice. Today's Workshop will illustrate some of these successful efforts.

Through cooperative efforts, we have made significant advances and contributions on issues such as Transnational Organized Crime, Implementation of Model Strategies for the Elimination of Violence Against Women, international cooperation against terrorism, Corruption, economic and financial crimes, computer related crimes and, of course, fifty years of standard setting in crime prevention and criminal justice. All of these issues demand action, reforms and cooperative efforts to enhance justice for witnesses, victims and, in particular, populations such as women, children and indigenous peoples. Together, we have delivered substantial reform initiatives in a great number of these areas, and yet we still have much to do.

We have an opportunity today, through this workshop, to share expertise, to learn from each other, to review and evaluate successful reforms and initiatives. We will see what tools are available to assist us. We will see which technical assistance initiatives are being effective. The need for technical assistance, cooperation and collaboration, when attempting to enhance the criminal justice system, is evident and this workshop will help identify some of the solutions.

There is also a need for states to increase the use of restorative justice processes and principles where appropriate and consistent with international guidelines and standards. Today, we will consider ways and means of enhancing the effectiveness of programs in criminal matters regarding restorative justice, juvenile justice, victim and witness protection and support and treatment of prisoners.

I think we would agree that there is a need for technical assistance, cooperation and collaboration when attempting to enhance the criminal justice system. International cooperation is essential to the success of criminal reform initiatives. Financial and technical assistance should be offered whenever possible. In particular, there is a need for technical assistance to developing countries

and countries with economies in transition in order to help build a capacity to deal with crime in all its forms and apply the UN standards and norms. In the area of capacity and institution-building, we should endeavor to facilitate appropriate training for law enforcement officials, including prison officials, prosecutors, the judiciary and other relevant professional groups, taking into account best practices at the international level.

Today, we have an opportunity to focus on identifying appropriate legal and financial frameworks to provide support to victims. There is a need for states to place increased emphasis on crime victims and, in particular, victims of organized crime, especially women, children and migrants who are victims of trafficking in persons. We recognize the need for effective social development strategies as well as effective criminal justice strategies. One method of achieving such a balance may be to focus on groups that are at risk both with respect to victimization and offending. For example, children in conflict with the law may also be children who have been victims of violence and trafficking.

Canada fully supports the priorities identified for consideration by this workshop. We are hopeful that through continued commitment at the individual, community, national and regional levels to significantly advance the enhancement of criminal justice systems so that we continue to make a difference in the world we live in. I would like to reinforce the importance of continuing to work together to address these issues.

I thank you for your time and I look forward to a day of engaging and enlightening discussion that will surely result in regional strategies, initiatives and policies as well as synergies and alliances that will assist us to enhance criminal justice systems everywhere.

Workshop 2

Enhancing Criminal Justice Reforms

Yvon Dandurand
Dean
University College of Fraser Valley, Abbotsford - Canada

During this workshop, we are invited to consider our collective experience with major criminal justice reforms, to consider the evidence, and to reflect on what has made these reforms successful. We now have the benefit of years of experience in the implementation of various international criminal justice and human rights standards in our field. More recently, we have acquired a brand new and, in some cases, sobering perspective on the complexity of the task of implementing some of the new international conventions in the field of criminal justice (international criminal court, organized crime, trafficking in human beings, firearms, corruption, money laundering, drug control). We recently had to accelerate the reforms to our criminal justice systems that were needed in order to contribute effectively to preventing terrorism. Many of us have been involved, although not always successfully, in the rehabilitation of criminal justice institutions in a conflict or post conflict situation. Are we ready to draw some of the lessons we learned from all of that?

It would seem that the success of our reform initiatives is often frustrated by the complexity of the systems involved and our inability to manage change successfully. Models that are effective in one system are not always directly transferable to another system. We often lack the capacity to assess the transferability of various models and to adapt them accordingly. Many of our methods and tools need refurbishing.

The last five years has been a period of intensive 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 has been overwhelming. The message of the Secretary General at the opening of this Congress reminded us that many of the States Parties to the new Conventions have not fully implemented these instruments because they lack the capacity to do so. Regrettably, the States that have the least capacity to proceed with effective reforms are often those that are most vulnerable to emerging security threats.

Ironically, the States which are the least able to develop the capacity of their own justice system, particularly the very components of these systems that are so crucial to effective international cooperation, are the same States which can least afford to be omitted from the newly-formed international cooperation regimes. For them, there is always the frightening prospect of becoming the weakest security point in their region and a prime target for organized crime elements. Therefore, strategies must be developed to assist them in implementing the necessary reforms and developing a basic justice system capacity in an integrated manner. These strategies will likely require broad, evidence-based, system-wide approaches that are capable of generating strong and broad public support.

In many parts of the world, justice and law enforcement institutions are still unable to address basic public safety and human security issues in a fair, effective, credible, and transparent manner. Many systems simply lack a capacity to perform their own basic function. It is important to remember that many States have never had a strong justice and public safety capacity. For them, developing that capacity is difficult and the success of comprehensive reforms to address these

challenges is often quite precarious. They need help, they need good advice, and they need useful tools.

In recent years, globalization has contributed an additional dimension to these challenges. For most countries, globalization holds some enticing promises, but for countries which are not able to adapt quickly to this new reality it also raises the prospect of debilitating social and economic consequences. Globalization and, more specifically, the emergence and expansion of transnational organized crime and the threat of international terrorism confront all justice systems with some new and difficult challenges. For States with a relatively weak criminal justice capacity, these challenges can appear almost insurmountable.

This, in turn, raises broader questions about the nature and extent of international cooperation in bringing about the required reforms, the effectiveness of existing technical assistance methods and tools, and the measures to be taken to enhance criminal justice reform.

Sustainable criminal justice reforms are often difficult to deliver. The lack of reliable crime data and the unavailability of data on the performance of the justice system often prevent the development of knowledge-based solutions. The impact of justice reform is rarely evaluated systematically and we therefore have little reliable information on the proven effectiveness of various practices.

Successful reforms require, as a starting point, a careful assessment of the need for change and an understanding of the resistance that will be encountered. One of the reasons why many attempts at reform are not as successful as they could be is that, all too often, they fail to recognize the resistance they are bound to encounter and the reasons for that resistance.

A second reason for the partial failure of many reform attempts is that they tend to focus on a single issue or only one component of the system as a whole. They tend to ignore the interdependence of the various parts of a justice system and the intricate network of relationships and interactions that exists among them. To increase their chances of success, justice system reforms must be designed as comprehensive and coherent initiatives even if, realistically, they can only be implemented incrementally.

Another reason for poor results can often be found in the lack of public support for the proposed changes. This is why it is important to strengthen the connection between the objectives of the proposed justice system reforms and generally shared social goals. In doing so, one must also be careful not to simply capitalize on public fears as a source of support for justice reforms. Fears are not always rational and building upon them can carry significant consequences for the integrity of the system and the rule of law.

Finally, yet another reason for failing attempts at criminal justice reform is either insufficient resources or poor resource planning and management. A pre-requisite to successful justice reform is often the modernizing and upgrading of key agencies' resource management capacity and public accountability.

Criminal Justice Reform and Development Objectives

The renewed emphasis on public security and justice system reform is partly related to development goals. Justice reforms are fundamental to reducing poverty and achieving the Millennium Development Goals. "Security is (…) a core government responsibility, necessary for economic and social development and vital for the protection of human rights" (OECD, 2004:7). Justice and security sector reforms and capacity development have become important parts of national development strategies.

As was noted by the Caribbean Group for Cooperation in Economic Development, "at a very basic level, the justice sector helps to build a foundation of trust within society, so that people know what

to expect from each other and from organizations and thus can interact with each other in productive rather than destructive fashion." (CGCED, 2000: ii).

Range of Activities

As we all know, criminal justice reform has come to mean a lot more than simply promoting changes to the criminal law. It is now broadly understood as a whole range of activities meant to develop the capacity of a criminal justice system, improve its efficiency and effectiveness, its governance, and its accountability.

Typical activities include: (1) activities to strengthen the governance of the justice system and the various agencies operating within it; (2) activities to support strategy formation and consensus-building around the need for reforms and the nature of the changes to be effected; (3) activities to promote the involvement of citizens and civil society in the preparation, implementation and monitoring of reform projects; (4) activities to promote citizen participation in crime prevention and other aspects of the operation of the system; (5) activities to promote legislative reforms when required; (6) activities to bring national laws and systems in compliance with international standards and treaty obligations; and, (7) institutional strengthening and capacity building activities to bring about organizational change, including training and other programs to modernize existing structures and procedures and to assist with the change process.

The activities are often facilitated through international cooperation and technical assistance activities. Their success often depends on the presence of sound information, good information management systems, proper planning, budgeting, and effective change management practices.

Key Areas of Reform

So many demands are exerted on the criminal justice system that it becomes very difficult to identify and create a consensus around the priorities for change. Some areas, however, seem to impose themselves naturally because they relate directly either to immediate public safety concerns or to the overall credibility of the system. Access to justice, for everyone but also particularly for victims of crime, is certainly one of these areas. Judicial system reforms, sentencing and corrections, police reforms, and youth justice reforms are four other priority areas.

Access to Justice

Access to justice remains a problem for everyone as long as the justice system itself continues to be unresponsive. It is also a problem for all those who feel excluded or marginalized. Women and youth, particularly when they are poor, have very limited access to, and usually a very frustrating experience with, the justice system. Although public legal information programs may help, they are usually ineffective in situations where the system is itself not "public service oriented". Finally, under difficult circumstances, the best guarantee of access to justice is still provided by the retention of legal counsel.

Police Reform

The police are usually the most visible and immediately present aspect of the security system. The performance of the police is absolutely crucial to the performance and credibility of the rest of the justice system. Police reform is a pre-requisite for the establishment of a democratically accountable justice system. In that respect, the police can be a liability and obstacle to efforts to create a civil society and good governance.

Judicial Reform

A strong and independent judiciary and a competent public prosecution system are clearly the cornerstones of an efficient justice system. Any reform that cannot rest on a strong and independent judicial system is likely to fail.

Correctional Reform
Reforms are required to ensure that correctional systems have the capacity to fulfil their mandate in accordance with international standards and norms. These reforms are far more complex than is often assumed and go well beyond the mere formal reaffirmation of the standards or even legislative reforms. Furthermore, some of the required reforms actually reach beyond prison systems and must address sentencing and other criminal law reform issues, as well as the need for alternative to prisons and the need to challenge society's over-reliance on prisons (Griffiths, 2001).

In most developing countries, there is a need to increase the accountability of existing systems by imposing on personnel a duty to act fairly in managing offenders and to ensure that the decision making process is fair and equitable. Reform initiatives can focus on ensuring that the system remains subject to the rule of law and that the courts are prepared to play a role in holding the system accountable, and on establishing and enhancing the role of offices of ombudsmen, correctional investigators, and other human rights mechanisms.

One of the most critical challenges confronting all systems of corrections is prison overcrowding which undermines and severely limits reform initiatives and also creates a number of additional challenges. The report prepared for the Secretary General for submission to the Commission on Crime Prevention and Criminal Justice entitled "Reform of the Criminal Justice System: Achieving Effectiveness and Equity" stated that "…until the problem of overcrowding was resolved, efforts to improve other aspects of prison reform were unlikely to have any meaningful impact". Prison overcrowding also creates a range of other difficulties for societies, including increases in the rates of communicable diseases such as Tuberculosis, Hepatitis B and C, HIV/AIDS that, in turn, place severe demands on health care systems and can have serious public health consequences. The importance of developing initiatives in prisons that are designed to prevent the spreading of HIV/AIDS has been identified by most national strategies to prevent the further spreading of the disease, but little actual programming in that area has taken place.

Special categories of offenders such as sex offenders, the mentally disordered, indigenous peoples, and female offenders also require policies, programs, and facilities specific to their needs.

Restorative Justice
Relying heavily on incarceration as a response to all crimes is an expensive proposition that cannot reasonably be sustained by any country. Communities, religious organizations, and non-profit agencies are playing a major role in the development of alternatives to incarceration, many of which are based on principles of restorative justice. A key attribute of restorative justice is the significant involvement of the community in the response to persons whose behaviour has been deemed harmful to the victim and to the community. Restorative justice holds considerable promise as a cost efficient and effective alternative to traditional responses to criminal offenders. Part of the purpose of the present workshop is to exchange information on evidence-based approaches for the further development of restorative justice practices.

Youth Crime Prevention
Most States recognize the need to focus on youth crime prevention strategies as well as on education and other strategies to promote the positive social and labour force integration of youth. However, not all countries have the same capacity to generate and implement such comprehensive strategies.

A World Bank (2003) study identified several key intervention points for youth development that take into account risk and protective factors. These include improving the juvenile justice system, increasing the control of weapons, and reforming the police.

Most of us can appreciate the damaging, long-term social consequences of failing to implement effective crime prevention strategies that target children and youth and focus on education and

social development. This has led many to argue that interventions to prevent the escalation of youth crime should focus on programs that are designed to engage youth in legitimate activities to achieve their goals and expectations.

Civil Society Involvement, Human Rights and Democratic Values
Broad civil society involvement in the planning and implementation of justice system reforms must be encouraged.

Public support for security reforms and civil society involvement in that process should not be romanticized. The media and large segments of the population, in developed and in developing countries alike, are often prepared to sacrifice individual rights and liberties for the illusion of safety. Genuine public debate around the real nature of the justice and public safety issues that are being confronted and around local solutions must be encouraged. The failure of justice institutions to provide some basic level of public safety can create a climate in which the various public safety advocates, and even the general population, are prepared to support security measures that threaten democratic development and human rights.

It is important to build criminal justice institutions and processes that represent and engage all members of society. Enabling civil society to organize, advocate, and effect change in all aspects of governance is essential to sustainable development. In the field of justice reform, the involvement of civil society is an absolute prerequisite to enhanced human security and ongoing respect for human rights and democratic principles. Creating a “pro-reform environment” which is grounded not in collective fears, but in a respect for democratic values and human rights is often the most difficult task of all.

As was emphasized in a recent OECD policy statement, it is essential that reforms be people-centred and “locally owned.” In that context, the reform process must be one which builds on the existing strengths of the system and through which local strategies are developed. This would seem to dictate that reforms must be introduced in a manner that makes them relevant to local agendas and timeframes.

There are a number of strategies that may be utilized to increase the efficacy of locally owned justice reforms. These include:

> **(1) Establishing the legitimacy of the proposed reform**. If an initiative is identified as being solely the effort of an outside agency or government, the effort is not likely to be legitimized and may not be sustainable. Even when the reform is part of a multilateral international initiative it must not be viewed as externally imposed. It is important that all stakeholders develop a sense of “ownership” of the reform initiative. They should play a primary role in identifying and prioritizing the areas in need of reform. Furthermore, because changes in one part of the system will invariably affect other parts of the system, reforms that are seen as the initiative of only one agency within the system are not likely to receive the broad support they require in order to succeed.
>
> **(2) Finding champions*.*** In identifying key actors in the process, it is important to distinguish between those persons who are “figureheads” and those who are committed to reform and have the requisite influence and authority to enhance the reform process. Investing sufficient time and resources in identifying these persons will increase the likelihood of success of the reform effort.
>
> **(3)** Providing incentives for change. Reform is a difficult task in all systems, due in large measure to the tendency of agency personnel to resist change, to not place their positions and status at risk, and to not challenge the *status quo*. There must be some incentives for senior personnel and individuals at the managerial and line levels to participate in the

reform effort. It is not realistic to assume that there will be enthusiastic support for an initiative merely because it is labelled as "reform."

(4) Establishing realistic benchmarks and reform objectives. Even the best-designed reform initiative will fall short of its objectives if it is not planned adequately. It is unrealistic to expect that all of the required changes will occur simultaneously or that a system's institutional and human resource capacity can be developed overnight. Specific, achievable objectives must be established that hold the best potential for success. Demonstration projects and carefully selected and developed case studies can provide early, visible successes that will increase the momentum of and support for organizational change and reform.

(5) Conducting project evaluations. All justice reform initiatives should include an evaluation component. Independent researchers should conduct this evaluation. There are number of key issues surrounding project evaluation, including the use of an evaluative framework that is not externally imposed but rather reflects the local realities. Further, if the measures of success are too rigid, the reform initiatives may inappropriately be deemed not to produce the desired outcomes.

In many developing countries, there is no real tradition of involving the community in crime prevention and other aspects of the justice system. In countries where the involvement of civil society in the justice and security sector is resisted by officials, and where financial and human resources are lacking, it would make sense to explore different strategies to involve the community in some of the most important aspects of that sector.

The goal is to foster the development of institutions that involve communities and are accountable to them. The linking, and eventually the mutual reinforcement, of formal and informal social controls must be achieved. Harriott (2000) correctly points out that:

> "This is essential to any good policy especially where the legitimacy and moral authority of the state and some of the institutions within the criminal justice system is regarded as dubious. Popular involvement at the community level tends to strengthen the moral authority of the state's control institutions and improves their effectiveness."

Multi-sectoral Approach to Security Reform

Past experience has shown that successful security sector reform must be grounded in multi-sectoral strategies that are based on a broad assessment of security needs of the people and the State. Governments are encouraged to develop workable, multi-sectoral strategies, and to help stakeholders determine what will work best for them.

One of the lessons learned is that reform projects require a consensus for change and may therefore be feasible only within narrow windows of opportunity. Furthermore, a review of projects in this sector by the Inter-American Development Bank (IDB) concluded that:

> "Given the long-term nature of the task of institution building, such efforts are likely to extend beyond any one project cycle. Such projects are likely to entail coordination among multiple agencies from both the judicial and executive branches of government, and sometimes also the legislature. Many of the projects are multi-disciplinary in nature." (Biebesheimer and Payne, 2001: 2)

Integrated (Sector-wide) Approach to Reform

Successful justice system reforms are usually not limited to one aspect of that system but rather involve many ministries and agencies as well as more than one branch of government. To be effective, there often must be a holistic framework to guide a *sector-wide approach* that addresses criminal justice policy generally, including policing policies, sentencing reform, bail reform, a fine

payment system, conditional release policies and programs, and alternatives to incarceration. The horizontal integration of projects and activities within the justice and security sectors is also crucial.

The UK Government's new approach to justice system reform, for example, focuses on a sector, rather than on a single institution. This, according to the Security Sector Reform Policy Brief recently released by DFID, "recognises the integral linkages between areas such as police reform, judicial reform and penal reform – each of which, if approached in a fragmented way, would not be sustainable" (2003: 12). The DFID policy brief on security sector reform identifies "Safety, Security and Access to Justice" as one of the five main components of security system reforms.[57]

Integrated approaches do not necessarily preclude the possibility that an intervention may be targeted at an individual component of a system or at a single process within that agency (e.g. informational management system for the courts). A given reform may also be addressing a more general issue across the system as a whole. It does not matter what strategy is used as long as the reform initiative is carefully planned as part of a broader strategy to enhance the capacity of the system as a whole and its governance. Effective coordination horizontally, across the system, remains one of the essential preconditions to the success of any such initiative.

Partnerships

Broad, multi-sectoral, integrated approaches can only be implemented on the basis of effective partnerships and common understandings of, and commitment to, the goals of the proposed reform and an agreed upon reform process. The success of justice and security sector reforms will necessarily depend on the strengths of the partnerships upon which these reforms are based.

New linkages can be explored between agencies that, although often collectively characterized as a system, rarely collaborate. New partnerships should be fostered and encouraged, including those between security and justice sector agencies and other institutions, or between these agencies and the private sector (e.g. with a tourism bureau, with the airline industry, etc.).

Regional Approaches

Regional approaches are often recommended. The OECD (2004) suggests that the common security needs faced by a region should whenever possible be identified. The are many reasons why the OECD and others recommend regional approaches, including the fact that: (1) as security challenges often involve cross- border (transnational) issues, they are part of a "regional security complex"; (2) it can be helpful and more effective to have collective responses to security issues; (3) unaddressed security issues can lead to conflict within the region and weak points that can be exploited by criminal elements and others; and, (4) the need for capacity development is often better addressed by initiatives at the regional and sub-regional levels, particularly when regional programming can produce economies of scale and a greater harmonization between security systems that will invariably be called upon to cooperate in defending the region against outside security threats.

There are also some potential disadvantages to regional approaches to assistance for security system reform. Greene (2003:8) cautioned that a regional approach may: (1) encourage inappropriate regional generalisations; (2) be based on inadequate analysis of specific national challenges, strengths, needs and opportunities; (3) encounter some national resistance based on regional politics; and, (4) introduce a bias in the identification of priorities for action and entail significant opportunity costs for specific national programs.

It is evident that regional approaches, if they are to be more than a collection of disparate projects at the national level, require careful planning and meticulous design, as well as careful execution. The pre-conditions to success, including the required political commitment to the objectives of the reform, are often hard to maintain over time and across the region.

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57 The other four are: peace support operations; small arms and light weapons; disarmament, demobilisation and reintegration, and private security,

Nevertheless, regional approaches to promote international cooperation are often the only effective approaches in dealing with external, transnational security issues/threats. This perspective was reflected in the major treaty initiatives designed to fight against terrorism (the 12 global conventions against terrorism) or organized crime (the UN Convention against Transnational Organized Crime and its three supplementary protocols) and the UN conventions against narcotics, all of which have one primary objective: harmonizing the efforts of each country and removing obstacles to international security cooperation in the fight against these transnational security threats.

In some cases, a regional or sub-regional project may offer a particularly promising and cost-effective way of promoting coordinated approaches to fight transnational security threats and preventing crime displacement from one country to another. For example, a Special Meeting of the OECS Authority on the Economy (October 2002) recommended that serious consideration be given to regionalizing some of the critical functions of government in order to make them cost effective. A regional police and a regional prison service are likely candidates and the organization is looking at possible scenarios for the regionalization of these services.

Long Term Approach
Most of the problems faced by developing countries in relation to their justice and security sectors are not amenable to short-term interventions, but rather require changes in culture and attitudes that can only occur over a long period of time. They require human resources and institutional capacity development that would take years, if not decades, to accomplish even in well-developed and prosperous countries. Improvements in capacity, quality, and effectiveness, when achieved, will tend to be slow in developing. Capacity development projects, as a rule, require a longer-term commitment than traditional projects. Justice system reform must therefore be viewed as a long-term process that requires persistence over time.

Taking a long-term view does not imply that justice system reforms should only be in pursuit of long-term objectives. On the contrary, the need to develop and maintain strong relations with dedicated partners, to have project accountability mechanisms in place, to overcome well-engrained resistance to change, and to periodically renew the commitment of all partners through the experience of success illustrates the importance of having a careful mix of long-term and short-tem initiatives that will help maintain the momentum of the reform process.

In many instances, the institutions concerned have to implement change very slowly and have to “learn to walk before they run”. Since the success of these reforms will be dependent to a great extent upon the success of the associated capacity-building initiatives, the timing of each initiative will have to take into account the capacity of the system to absorb the changes and the potential disruption that reforms may cause established processes. The accumulated experience clearly emphasizes the need for what is generally referred to as “confidence building measures”.

Technical Assistance
Implementing reforms requires interventions over the long term that will encourage and support cultural, as well as structural, organizational and technological transformation.

Capacity development often requires assistance in reforming organizations and institutions and developing their capacity to achieve their goals efficiently and effectively. Assistance must be based on a careful assessment of the existing capacity of the organization or institution, the factors (political, organizational, psychological, financial, technical or technological) that limit that capacity, the forces that can support the necessary reforms and the obstacles or the resistance which could undermine the required changes. It cannot be assumed that all stakeholders are in favour of improving the capacity, performance, or effectiveness of the system. There are often complex reasons why a system’s relative “incapacity” has been cultivated, tolerated, and even supported. These reasons often involve a powerful group (or groups) benefiting in one way or another from the *status quo,* weak as it is.

Kaufmann (2003:24), is his work on governance for the World Bank, concluded that it is now necessary to move beyond the traditional approach to public sector reforms and to rethink orthodoxy on legal and judicial reforms. He adds:

> "Although donor programs supporting the traditional and largely unsuccessful legal and judiciary technical assistance projects of the past is yet to be fully abandoned, a salutary move away from narrow support for hardware, study tours, traditional training, focus on marginal improvement in narrow organizational issues such as caseload management, and the like is beginning to take place—even if slowly. In the next phase it will be important to face up to the enormous difference in the nature, performance, and vulnerability of legal and judiciary institutions across emerging countries. These vast differences have major strategic and practical implications." (Kaufmann, 2003: 24)

The manner in which assistance is offered in the justice and security sectors is often as important as the type of assistance offered. In most developing countries, these sectors are generally not amenable to reform but rather are essentially conservative elements of society that typically offer fierce resistance to any change, particularly when a reform initiative is implemented by parties who are perceived as threatening their power and autonomy under the *status quo*. Many components of these sectors are characterized by the presence of a strong sub-culture that does not value outside input or influence.

The various agencies involved are inter-related and inter-dependent. Change in one part of the system affects other parts of it. At the same time, however, it is somewhat misleading to characterize the various components of the justice sector as part of a "system", as they often tend to be isolated from each other, to compete at least as often as they cooperate, and to frequently work at cross-purposes.

When the assistance provided attempts to address specific security problems in a piecemeal manner, without addressing broader systemic and structural issues, or without sufficient sector-wide buy-in and coordination, such assistance generally fails to improve the security system's capacity, efficiency and governance.

Capacity Development

Training is often viewed as a key component of capacity development and it often is. Training activities can also provide an entry point that can lead to further collaboration. In itself, however, training rarely produces appreciable results. The question has been examined in relation to the technical cooperation programs in human rights in the administration of justice delivered by the United Nations Office of the High Commissioner on Human Rights. A recent global review of the OHCHR activities regarding the administration of justice reveals the need to put training activities into a wider perspective, the need to "get under the skin of the institutions":

> "Requests for assistance in the field of training are interesting because they provide access to an organization. Knowledge of Human Rights law is a primary and central condition for compliance with these laws. As such it is of vital importance, but it is no more than a primary condition. If changing police conduct is the goal, as some of the evaluations indicated, much more has to be done. Institutional development is the next concern. Efforts have to become directed towards changing the culture and structure of the police and prison system, the quality and training of police and prison leadership, the improvement of operational practice, the selection and training of police officers and prison staff and the improvement of system of accountability. If the behaviour of the police and in prisons is to be changed, support for the institutional development of the police is unavoidable." (Flinterman and Zwamborn, 2003: 41)

The use of outside expertise in training programs is often crucial. However, it should also be evident that a continued reliance on external "experts" who fly in, deliver a training or development program, and then fly out, does little to build local capacity or effect meaningful change. The same holds true for retired experts who sometimes are not current in their field, lack appropriate knowledge and skills, and have little or no understanding of the cultural, political, social, or economic context in which they are attempting to provide assistance.

The issue of the *transferability* of techniques, structures, procedures, strategies, and legislation requires far more attention than it has received to date. However successful a particular practice or method may have been in a given country, it does not follow that it will be useful or effective in a different development context. Comparative evaluations of various practices and the identification of the conditions and specific features responsible for their success in a given context can help identify and address these transferability issues.

Drawing the Lessons

Although is obviously possible to draw some general lessons from our collective experience, we should remain alerted to the fact that different context and different circumstances call for different methods and different approaches. Today, this workshop is going to focus on a number of case studies of criminal justice reform initiatives that were undertaken in a variety of context. Their respective focus is different and so are their approaches. Each one of them brings new elements to our understanding of how we can enhance our efforts to reform criminal justice systems, make them more effective. These case studies have been grouped under four categories: (1) comprehensive reforms; (2) reforms based on regional or international cooperation, including initiatives to rehabilitate criminal justice systems in a conflict or post conflict situation; (3) reforms focused based on a restorative justice approach; and, (4) reforms aimed at increasing the protection offered to some of society's most vulnerable groups.

Following these cases studies we will try to identify best practices and draw some conclusions on how best to enhance criminal justice reforms and improve their effectiveness.

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WORKSHOP 2

Acceso a la Justicia: condición para elfortalecimiento del sistema de justicia criminal

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i. rEFORMA PROCESAL PENAL EN cHILE: ANTECEDENTES

La reforma al antiguo sistema de justicia criminal chileno nació como una crítica al sistema inquisitivo, secreto y escriturado existente, en el cual había un órgano único que investigaba, acusaba y juzgaba, sin que hubiera como contrapartida un órgano que defendiera al imputado en todas las etapas del procedimiento. El sistema procesal fue criticado por establecer un sumario secreto y conducido por el mismo órgano que tenía el monopolio del poder punitivo del Estado: el juez.

Por sus características el antiguo sistema vigente en Chile implicaba una desigualdad enorme entre las partes que actuaban en él y es por ello que se impulsó una reforma destinada a proteger de mejor manera los derechos de todas las personas involucradas en el proceso penal, incorporado los estándares internacionales vigentes en la materia.

En la nueva estructura del proceso penal se contempla la existencia de **distintos actores**. En primer lugar, el **imputado**, que es la persona a quien se le atribuye la participación en un hecho que la ley sanciona con una pena. En segundo lugar, el **defensor**, aquél abogado que asiste y representa jurídicamente al imputado. La **víctima**, quien es el directamente ofendido por el delito. El **Ministerio Público** es el único órgano encargado de investigar y acusar, que opera a través de sus **fiscales**. Finalmente, los **tribunales** que son los terceros imparciales encargados tanto de proteger los derechos constitucionales y legales de los imputados, como de juzgar. Fueron creados dos tipos de tribunales con la reforma: los **juzgados de garantías** –encargados de proteger los derechos de todos los actores en la etapa de investigación -y los **tribunales orales en lo penal** –integrados por una panel de tres jueces, que conocen del juicio oral y dictan sentencia-.

Sin embargo, no basta con una separación de las funciones y roles para que exista una **igualdad entre los distintos actores**, sino que, además, es necesaria la existencia de mecanismos que la garanticen. Estos mecanismos son el juicio oral y público y la existencia de una defensa fuerte y efectiva. Con el **juicio oral y público** se pretende garantizar y obligar la existencia de un **debate jurídico** sobre los hechos, disposiciones legales y consecuencias jurídicas que implica la comisión de un hecho que reviste caracteres de delito y la aplicación de una pena. Por otro lado, la existencia de una **defensa** efectiva y fuerte permite que en este debate exista la posibilidad que el imputado esté en un plano de igualdad frente a los tribunales y al Ministerio Público.

II. EL IMPUTADO Y SUS DERECHOS

1. ¿quién es imputado en el nuevo proceso penal?

El imputado es toda persona a quien se le atribuye participación, como autor, cómplice o encubridor, en la comisión de un delito.

Una vez que el fiscal ha formalizado una acusación en contra del imputado, éste pasa a llamarse **acusado**.

2. ¿Cuáles son los derechos del imputado/acusado?

- Los **principales derechos** del imputado son:
- Derecho a un juicio oral y público.
- Derecho a la presunción de inocencia. Vale decir, ser tratado como inocente durante todo el juicio y no tener la obligación de probar su inocencia, la cual sólo puede ser desvirtuada mediante pruebas idóneas proporcionadas por el órgano acusador (Ministerio Público).
- Derecho a ser juzgado por el tribunal independiente e imparcial que señale la ley y que se encuentre establecido con anterioridad a la fecha de comisión del delito.
- Derecho a ser informado. Esto es, a que se le comunique de manera específica y clara acerca de los hechos que se le imputan y los derechos que le otorgan la Constitución y las leyes.
- Derecho a ser asistido por un abogado desde los actos iniciales de la investigación, a formular los planteamientos y alegaciones que considerare oportunos, e intervenir en todas las actuaciones judiciales y en las demás actuaciones del procedimiento.
- **Derecho a no ser privado de libertad o detenido sin que exista una orden judicial, salvo en casos de detención por delito flagrante.**
- Derecho a que se le exprese específica y claramente el motivo de su privación de libertad y, salvo el caso de delito flagrante, a que se le exhiba la orden que la dispone.
- **Derecho a entrevistarse privadamente con su abogado de acuerdo al régimen del establecimiento de detención, el que sólo contemplará las restricciones necesarias para el mantenimiento del orden y la seguridad del recinto.**
- Derecho a guardar silencio o, en caso de consentir en prestar declaración, a no hacerlo bajo juramento.
- Derecho a no ser sometido a tortura ni a otros tratos crueles, inhumanos o degradantes.

3. ¿Desde cuándo son exigibles estos derechos?

Los derechos del imputado conferidos por la Constitución Política de la República y las leyes son exigibles **desde la primera actuación en el procedimiento** y hasta la completa ejecución de la sentencia, vale decir, desde que se realice alguna diligencia o gestión ante o por un tribunal, el Ministerio Público o la policía en la que se atribuya a una persona responsabilidad en un delito, hasta el cumplimiento íntegro de lo ordenado por el tribunal.

III. EL DERECHO A LA DEFENSA

El imputado es el principal interesado en los resultados del juicio, ya que sobre él recaerán los efectos de la decisión del tribunal. Es por ello que su intervención es imprescindible durante toda la tramitación del procedimiento.

El derecho a la defensa es un derecho que comprende varios aspectos, todos ellos garantizados en el Código Procesal Penal.

1. Derecho a intervenir en el procedimiento desde que se inicia la persecución penal

El imputado tiene derecho a intervenir desde la primera actuación de procedimiento, hasta la completa ejecución de la sentencia y en todas las actuaciones judiciales, salvas las excepciones expresamente previstas en el Código Procesal Penal, formulando los planteamientos y alegaciones que considerare oportunos.

2. Derecho a conocer el contenido de la imputación

Es obvio que si no se conoce el contenido de la imputación, malamente se puede ejercer una defensa eficaz. Por ello es que las actuaciones de todos los órganos instalados por la Reforma Procesal Penal son públicas.

Este derecho se encuentra garantizado en diversos momentos durante el curso del proceso. Así, por ejemplo:

- Al ser detenido por la policía, es deber de sus agentes dar a conocer la orden judicial, que contiene los hechos y razones que justifican la detención.
- Si el imputado quisiere declarar voluntariamente durante la investigación ante los fiscales del Ministerio Público, es deber de éstos comunicarle detalladamente cuáles son los hechos que se le atribuyen, con todas las circunstancias de tiempo, lugar y modo de comisión, que se conozcan, las normas legales aplicables y demás antecedentes que consten en al investigación.
- En la audiencia de formalización de la investigación, que tiene por objeto, precisamente, dar a conocer al imputado, en presencia del juez de garantía, que se desarrolla actualmente una investigación en su contra respecto de uno o más delitos determinados.
- Previo al inicio del juicio oral, el fiscal deberá formular una acusación, en la que debe constar quién es el acusado, los hechos que se le imputan y su participación en ellos, los preceptos legales aplicables, los medios de prueba que usará y la pena que se solicite aplicar.

3. Derecho a contradecir las alegaciones de la acusación

Este derecho significa que cada parte en el juicio tiene derecho a oponerse o contradecir las alegaciones o peticiones de la parte contraria, no sólo durante el desarrollo del juicio oral sino que en todas y cada una de las actuaciones de investigación. Es por ello que las decisiones más importantes se dictan en audiencias orales en las que deben participar todos los intervinientes del proceso penal.

En el caso del imputado, éste tiene derecho a oponerse a las alegaciones del fiscal y del querellante si existiere, y a suministrar al juez los antecedentes necesarios para formar su convicción.

4. Derecho a formular sus propias alegaciones

El imputado tiene derecho a hacer valer las alegaciones que estime convenientes para su defensa. Dentro de las formas que estas alegaciones pueden ser presentadas está la declaración voluntaria que está regulada en detalle en el Código Procesal Penal. Para resguardar la voluntariedad de dicha declaración existen los siguientes resguardos:

- Derecho a no autoinculparse, esto es, a guardar silencio.
- En caso de declarar voluntariamente, el derecho a no hacerlo bajo juramento
- Derecho a que su declaración sea prestada en audiencia judicial
- Derecho a no ser interrogado bajo ninguna clase de coacción, amenaza o promesa
- Derecho a descansar si el interrogatorio se prolonga por mucho tiempo, o si se le han dirigido una cantidad importante de preguntas
- Derecho a aclarar o complementar sus dichos.

5. Derecho a presentar sus pruebas

Para que las alegaciones del imputado convenzan al tribunal, es necesario que exista la posibilidad para el imputado de probarlas. El derecho a la prueba consiste en:

- Derecho a que se reciba prueba, siempre que exista controversia sobre los hechos.
- Derecho a proponer todos los medios de prueba de que disponga.
- Derecho a que la prueba propuesta sea admitida.
- Derecho a que la prueba admitida sea practicada y que a todas las partes se les permita intervenir en su práctica

- Derecho a que la prueba practicada sea valorada por el tribunal, es decir, que éste señale qué hechos y por qué medios ha tenido por acreditado el fundamento de sus decisiones.

6. Derecho a la autodefensa

Esto significa que es el imputado el que tiene el derecho de decidir la línea de su defensa, es decir, es el que tiene la primera y última palabra respecto al contenido y la dirección de su propia defensa. Esto sin perjuicio, que por la complejidad del sistema legal moderno, sea necesario contar con la asesoría de un abogado. Pero en definitiva el abogado defensor deberá siempre respetar y actuar según las instrucciones de su defendido.

Además, si el imputado prefiere defenderse personalmente sin la asistencia de un abogado, puede pedirlo al tribunal, quién lo concederá sólo si no perjudica la eficacia de su defensa.

7. Derecho al defensor técnico

El imputado tiene el derecho garantizado en la ley a designar abogado desde la primera actuación del procedimiento dirigido en su contra y, en todo caso, la designación de este abogado deberá ser efectuada antes de la primera audiencia judicial a que fuera citado.

La presencia del abogado defensor es un requisito de validez de ciertas actuaciones, lo que significa que si el abogado no está presente, dichas actuaciones son nulas. La ley señala los casos en que la ausencia del abogado defensor hace nulas las siguientes audiencias:

- Audiencia de control de la detención
- Audiencia en que se pide la prisión preventiva
- Audiencia en que se decide sobre la suspensión condicional del procedimiento
- Audiencia de formalización de la investigación
- Audiencia de preparación del juicio oral
- Audiencia de juicio oral

En los casos en que el abogado defensor no comparezca a las actuaciones recién señaladas, el tribunal podrá además tomar alguna de las siguientes determinaciones:
Postergar la realización de la audiencia para una nueva fecha.
Nombrarle un defensor público de turno al imputado para esa audiencia.

8. Derecho al defensor de confianza

Este derecho a nombrar un defensor de confianza le asiste al imputado desde la primera actuación de procedimiento dirigida en su contra, de manera de que sólo si éste no ha designado uno elegido por él mismo, se procederá a nombrar un defensor penal público de turno.

Las facultades del defensor de confianza son las mismas que posee el imputado, salvo aquellas que la ley le confiere expresamente al imputado.

El defensor designado libremente por el imputado tiene la obligación de representarlo en todas las actuaciones del procedimiento. La renuncia del defensor no lo exonera de su responsabilidad en el caso, pues si lo hiciere, de todas formas mantendrá la representación en todos los actos inmediatos y urgentes que fueren necesarios para impedir la indefensión del imputado.

9. Derecho al defensor penal público

De este derecho surge que el imputado debe contar con un defensor técnico que asegure la igualdad de su participación en el procedimiento. Sin embargo, esta designación de defensor público sólo se efectuará si el imputado no ha señalado con anterioridad a la primera audiencia judicial un defensor de su confianza.

Si el imputado no ha solicitado o nombrado un defensor antes de la primera audiencia judicial, es obligación del fiscal solicitar al juez de garantías que cite a una audiencia en la que se designe un defensor público. Es importante destacar que la ley no sólo considera que el imputado carece de defensa cuando no dispone de abogado, sino que también cuando el designado no cumple con su función o lo hace de manera ineficiente.

10. Derecho a la asistencia jurídica gratuita

Esta garantía consiste en que la atención a las personas será gratuita cuando la persona carezca absolutamente de toda posibilidad de pagarla, en cambio, a aquellas personas que dispongan de medios económicos, se les cobrará un arancel o precio en proporción a los medios de que disponga.

La defensoría deberá establecer un arancel o tabla de precios de sus servicios para aquellas personas que tengan recursos económicos y, para ello, se tomarán en cuenta los costos técnicos y el promedio del precio que cobran otros abogados de la plaza.

IV. ¿QUÉ ES LA DEFENSORÍA PENAL PÚBLICA?

La Defensoría Penal Pública es un servicio público descentralizado, creado por Ley, que tiene por objeto proporcionar defensa penal a los imputados o acusados por delito y que carezcan de abogado.

Durante el año 2004 la Defensoría Penal Pública ha cumplido su mandato legal de proporcionar defensa penal de alta calidad a los imputados o acusados por un crimen, simple delito o falta, en la totalidad del país, con la excepción de la Región Metropolitana.

El accionar de este organismo ha estado marcado por su convicción de que *sin defensa, no hay justicia*.

La Defensoría Penal Pública se hizo cargo, durante 2004, de 65 mil 173 causas, que involucraron a 76 mil 643 imputados. El ejercicio de defensa penal pública implicó llevar adelante 492 mil 493 gestiones durante el año.

El trabajo anual se realizó con una dotación de 439 funcionarios y un presupuesto que superó los 20 mil 538 millones de pesos (aproximadamente USD 35 millones)[58].

Uno de los hitos del año 2004 ha sido el inicio de la operación del sistema mixto de prestación de defensa penal, el que tal como fue concebido, contempla que una parte mayoritaria de la defensa se otorgue a través de abogados externos al servicio -elegidos mediante un sistema de licitación pública-, adicionales a los defensores locales contratados directamente por la Defensoría Penal Público. Así, la defensa directa de los imputados estuvo a cargo de 137 abogados licitados (externos) y 74 defensores locales (funcionarios de la Defensoría Penal Pública).

1. ¿Cómo se organiza la Defensoría?

La Defensoría Penal Pública está organizada en una Defensoría Nacional y catorce (14) Defensorías Regionales, una en cada región del país, excepto en la región Metropolitana donde hay dos (2). En cada defensoría regional existen Defensorías Locales.

El Defensor Nacional es el jefe superior de servicio y debe cumplir con una serie de requisitos que están establecidos por ley.

Sus principales funciones son:

- Dirigir, organizar y administrar la defensoría.

58 Tipo de cambio $580 por USD1.

- Fijar los criterios de actuación de la defensoría.
- Fijar con carácter general los estándares básicos de actuación de los defensores.
- Nombrar los defensores regionales y determinar la ubicación de las defensorías locales.
- Dar cuenta anual de su gestión.

Por su parte, el Defensor Regional es el encargado de la administración de los medios y recursos necesarios para la prestación de la defensa penal pública en la región correspondiente.

Sus funciones principales son:

- Dictar las normas e instrucciones generales necesarias para el funcionamiento de las defensorías regionales y locales.
- Conocer, tramitar y resolver los reclamos que presentan los beneficiarios de la defensa penal pública.
- Disponer las medidas que faciliten y aseguren el acceso expedito a la defensoría regional y a las defensorías locales, así como la debida atención de los imputados y acusados.

Las Defensorías Locales son las unidades operativas en las que se desempeñan los defensores locales de la región. Para ser nombrado defensor local se requiere ser ciudadano con derecho a voto, poseer el título de abogado, y no tener alguna incapacidad o incompatibilidad para el ingreso a la administración pública.

2. ¿Cómo presta servicios la Defensoría Penal Pública?

La defensoría penal pública presta sus servicios de defensa de dos formas: a través de un sistema público y uno privado.

a) Subsistema Público de Defensoría Penal Pública

Este sistema opera a través de las Defensorías Locales. Por razones de economía las Defensorías Locales no están situadas en todas las ciudades, sino sólo en aquellas cuya población exceda los 50.000 habitantes. Para prestar servicios en las ciudades con menos de cincuenta mil habitantes, los defensores locales deben trasladarse a ellas cada vez que sea necesario.

El defensor local deberá asumir la defensa del imputado que no tenga abogado desde la primera actuación del procedimiento dirigido en su contra y, en todo caso, debe intervenir antes de la primera audiencia judicial a que fuera citado.

Además, asumirá la defensa siempre que falte abogado defensor por cualquier causa y en cualquier etapa del procedimiento, y mantendrá la defensa hasta que la asuma aquel abogado de confianza que el imputado o acusado designe, salvo que el imputado haya sido autorizado por el juez para defenderse personalmente.

b) Subsistema Privado de Defensoría Penal Pública

Este sistema opera a través de personas naturales o jurídicas, públicas o privadas, con o sin fines de lucro, que cuenten con abogados capaces de asumir la defensa penal. Estos abogados tienen que ser seleccionados mediante licitaciones convocadas por los defensores regionales.

Los defensores públicos licitados reciben una remuneración pagada por la Defensoría Penal Pública por la prestación de sus servicios de defensa.

Los defensores licitados están sujetos al control y evaluación de la Defensoría Regional respectiva. Los criterios para controlar y evaluar el servicio de estos defensores son:
Calidad de los servicios prestados, su prontitud y la atención que reciban los beneficiarios
Orden y eficiencia en la administración de los recursos

Eficacia de los métodos de control internos

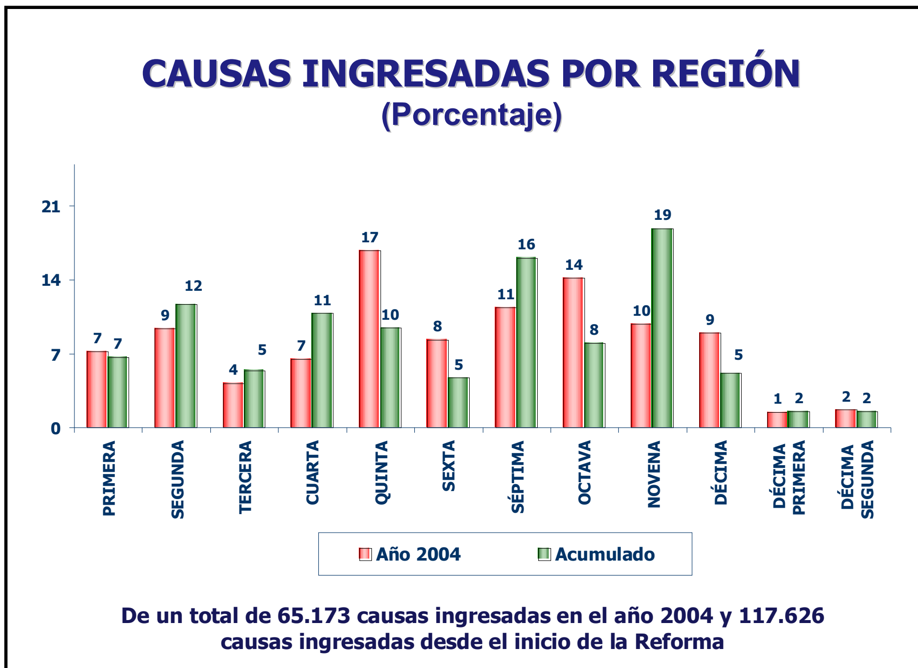
3. Causas e imputados bajo la competencia de la Defensoría Penal Pública.
Al 31 de diciembre del año 2004 habían ingresado a la Defensoría Penal Pública 117.626 causas, contemplando todo el período desde el inicio de la Reforma.

En el año 2004, ingresaron 65.173 causas, lo que significa un 234% más que el total de causas ingresadas en el año 2003.

Esto se explica fundamentalmente por las nuevas regiones que se incorporaron a la Reforma a finales del año 2003, en la Cuarta Etapa de implementación de la Reforma.

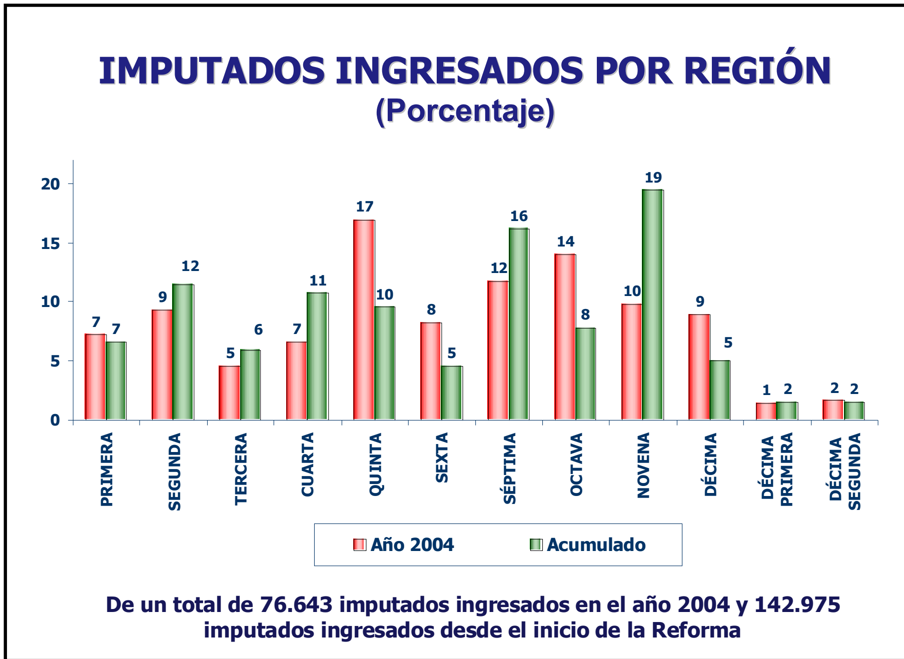
La tendencia al incremento de causas debiera mantenerse hasta que finalice la gradualidad de la reforma, con la incorporación de la Región Metropolitana, en junio del año 2005.

El ingreso mensual de causas en el año 2004 guarda una estrecha relación con los tamaños poblacionales de las regiones. Es decir, las regiones más grandes tienen un mayor ingreso mensual de causas, como es el caso de las Regiones de Valparaíso y del Bío Bío.

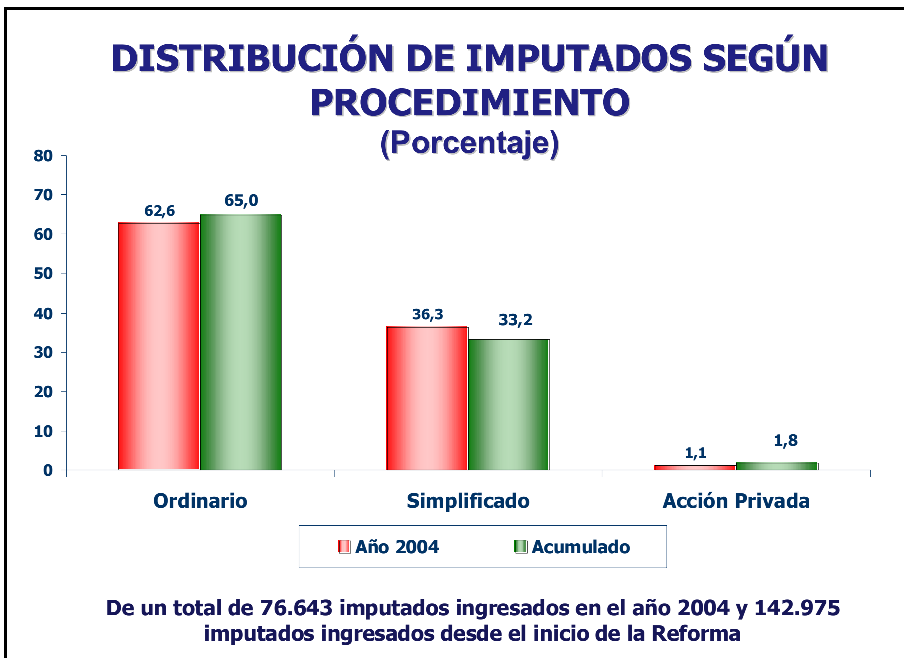


Las causas ingresadas a la Defensoría han involucrado a 76.643 imputados (personas) durante el año 2004 y 142.975 desde el inicio de la reforma hasta el 31 de diciembre de 2004.

El número de imputados ingresados el año 2004 representa un incremento de un 228% con respecto a los ingresos de imputados del año 2003. Al igual que con las causas, este incremento se explica por la incorporación de nuevas regiones a la reforma.



La mayoría de los imputados es enjuiciada por medio del procedimiento ordinario que contempla el Código Procesal Pena alcanzando cerca del 62% en el año 2004. No obstante, el procedimiento ordinario ha mostrado un leve descenso respecto de los años anteriores a favor del procedimiento simplificado. Este incremento de los juicios simplificados se debería a la búsqueda de parte de los fiscales de procesos más cortos y de mayor seguridad en la obtención de alguna pena.



4. ¿Quiénes son los beneficiarios de la Defensoría Penal Pública?

Son todas las personas imputadas o acusadas en un proceso penal, que carezcan de abogado de confianza que asuma su defensa.

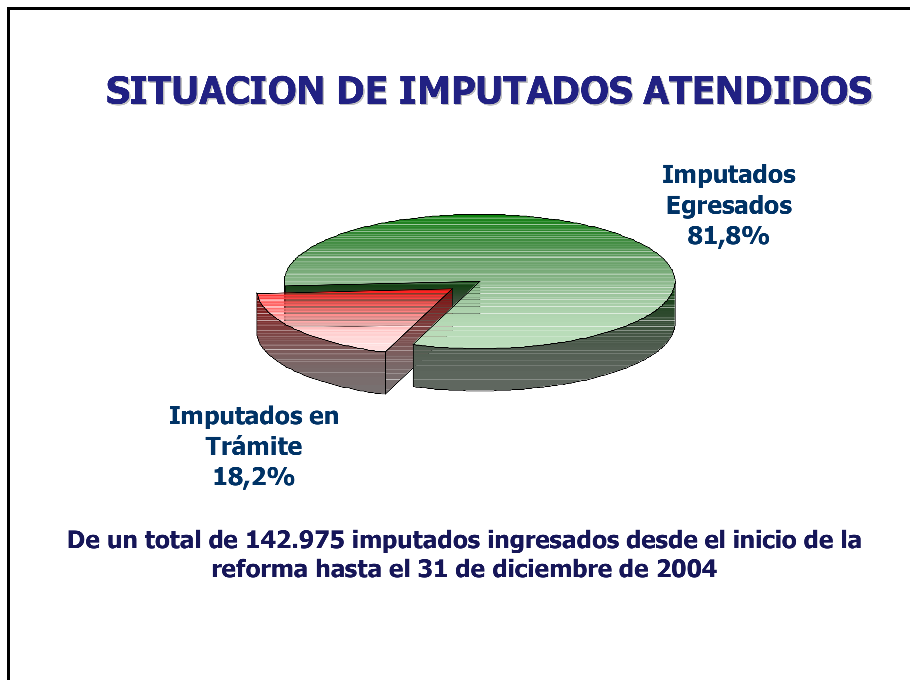
La regla general es que la defensa penal pública es **gratuita**, ya sea la prestada por los defensores locales o por los defensores públicos licitados.

Por excepción, los beneficiarios que tengan recursos suficientes deberán pagar por los servicios recibidos, ya sea total o parcialmente. La defensoría deberá establecer un **arancel o tabla de precios** de sus servicios para aquellas personas que tengan recursos económicos y, para ello, se tomarán en cuenta los costos técnicos y el promedio del precio que cobran otros abogados de la localidad. La determinación del precio se realizará una vez que se ponga término a la defensa penal pública.

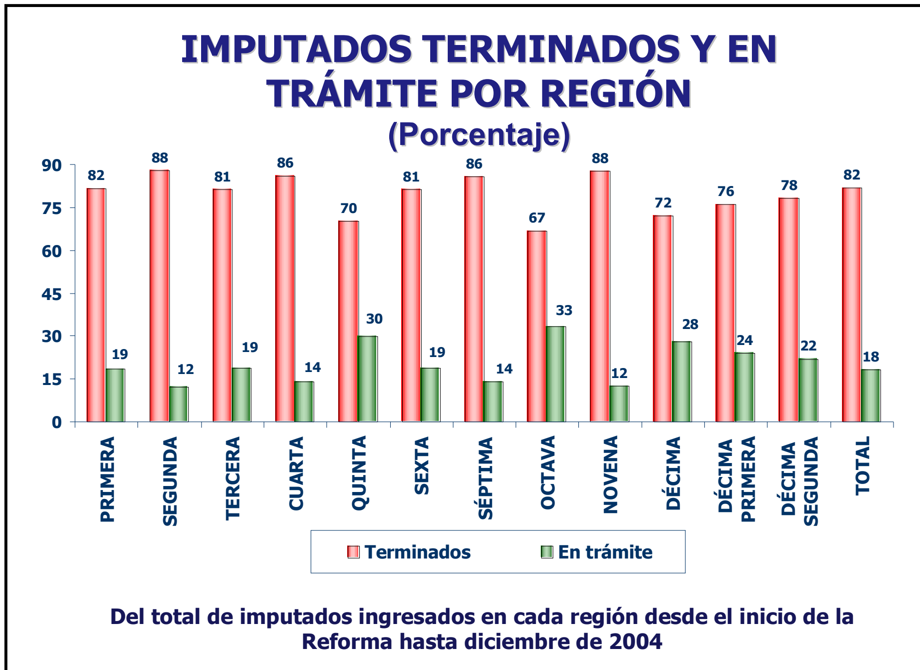
De la decisión que se adopte en cuanto al precio, se podrá reclamar ante el Defensor Regional y, en todo caso, ante el juez que se encuentre conociendo del asunto.

5. Formas de término de causas

Del total de imputados ingresados hasta el 31 de diciembre del año 2004, el 81,8% posee sus causas finalizadas por la Defensoría. Si se considera sólo los imputados ingresados en el año 2004, se obtiene que, del total de ingresados (78.100 imputados), el 70% terminó durante el mismo año. Este es porcentaje es superior al 66,5% de los imputados terminados durante el año 2003 e ingresados durante el mismo año y el 61,6% de términos ocurridos durante el año 2002 e ingresados ese año. Esto muestra una mayor eficiencia del sistema lo que puede explicarse por los procesos de aprendizaje de sus distintos actores.



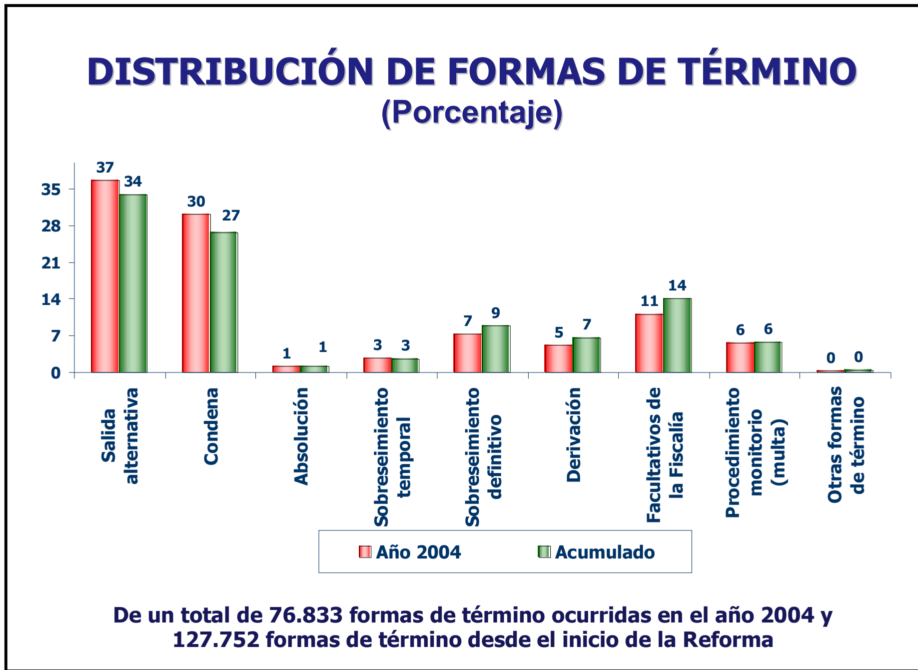
En todas las regiones, incluyendo la última etapa, el número de imputados terminados superaba a los imputados con causas vigentes al 31 de diciembre de 2004.



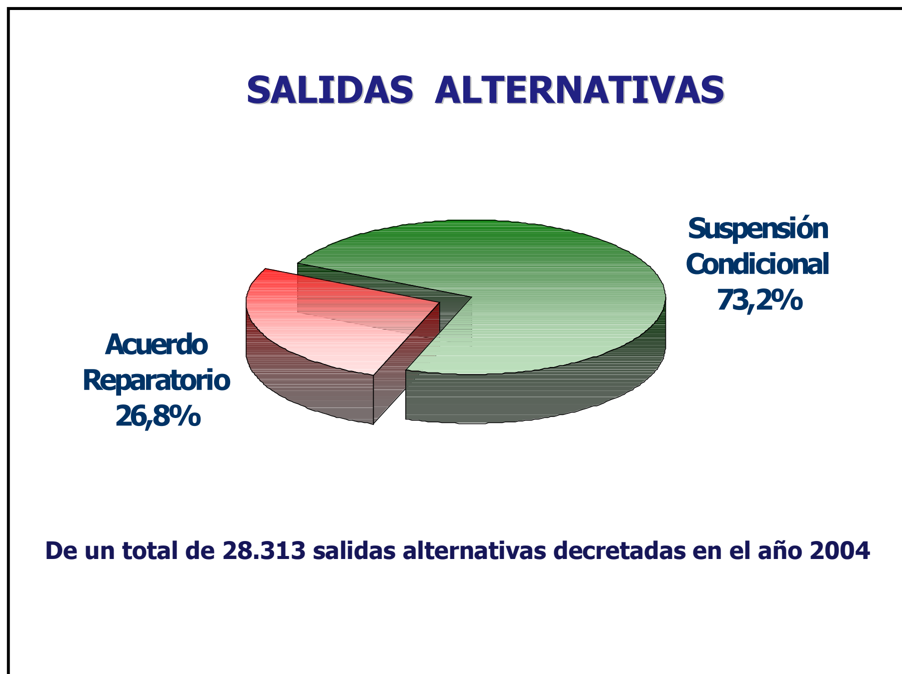
Las salidas alternativas y las condenas son las dos principales formas procesales de término de las causas, alcanzando en forma conjunta a cerca del 60% de todas las formas de término.

En los cuatro años de implementación de la Reforma, ambas formas de término han mostrado tendencias distintas. Las salidas alternativas han tendido a incrementarse, pasando del 29% en el año 2001 al 34% en el año 2003 y al 36,6% el 2004. En el caso de las condenas, éstas mostraron un descenso entre los años 2001 y 2003, pasando desde el 29% al 22%, pero se incrementaron a un 30% en el año 2004.

El alto porcentaje de salidas alternativas pone de manifiesto la confianza que estas instituciones generan en los actores del sistema. Además, significa que los involucrados en el conflicto penal también ven que estos recursos son instrumentos válidos de resolución, amén de verse reducidos los tiempos empleados para dilucidar la situación procesal, Con esto se enfrenta adecuadamente uno de los grandes cuestionamientos al sistema judicial, a saber, su lentitud.



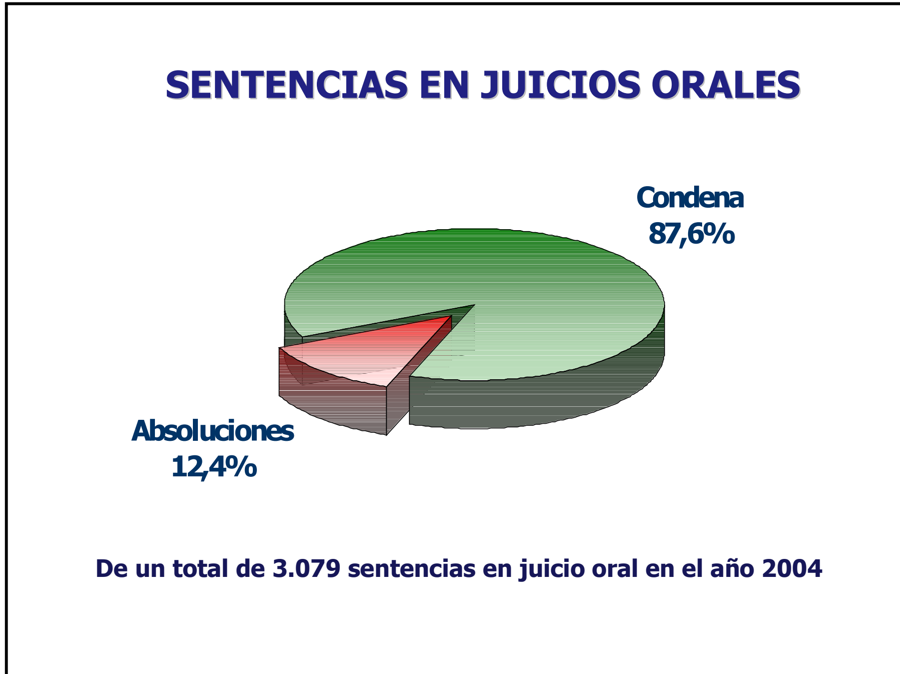
De las salidas alternativas, la más frecuente ha sido la suspensión condicional del procedimiento que más que duplica a los acuerdos reparatorios. Cabe destacar que el porcentaje de suspensiones condicionales se ha ido incrementando en forma relativa con respecto a los acuerdos reparatorios a medida que ha transcurrido la reforma. Por ejemplo, en el año 2001, los acuerdos reparatorios representaban prácticamente la misma cantidad que las suspensiones condicionales. En cambio, durante el año 2004, éstas últimas casi triplicaron a las primeras.

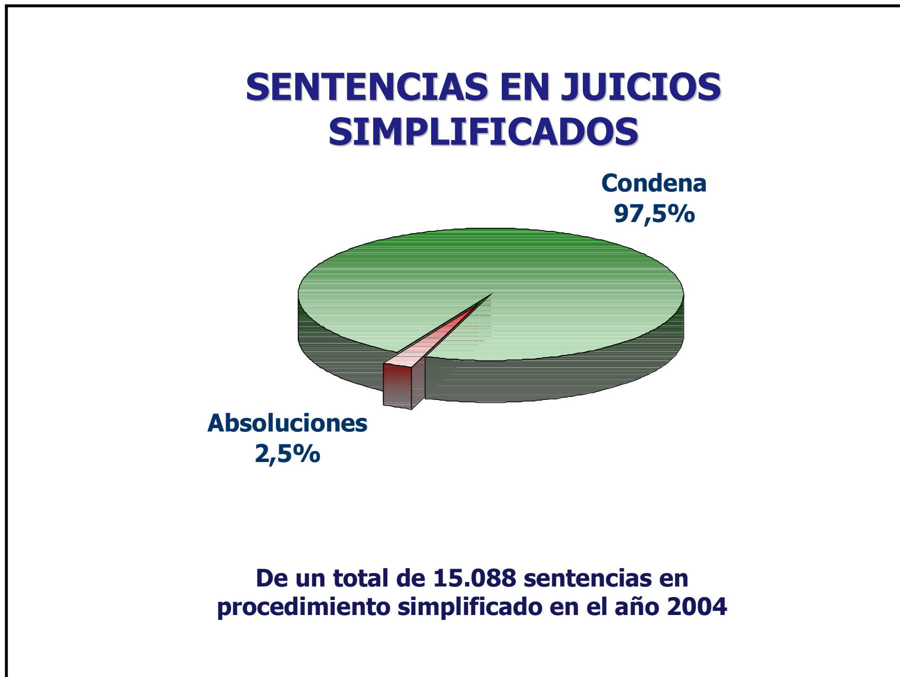


La mayoría de las sentencias finaliza en condena (aproximadamente el 96%). Sin embargo, la manera en que se distribuyen las condenas y absoluciones en los distintos procedimientos posee importantes diferencias.

En el juicio oral es donde se observa el mayor porcentaje de absoluciones, alcanzando el 12,4% durante el año 2004, aunque proporcionalmente representan muy pocos casos dentro del total de las formas de término.

En el procedimiento simplificado, el porcentaje de absoluciones es menor, alcanzando un 2,5% del total de de sentencias para el año 2004. Finalmente, en el procedimiento abreviado las absoluciones son mucho más escasas, alcanzando sólo el 1,6% del total de sentencias.

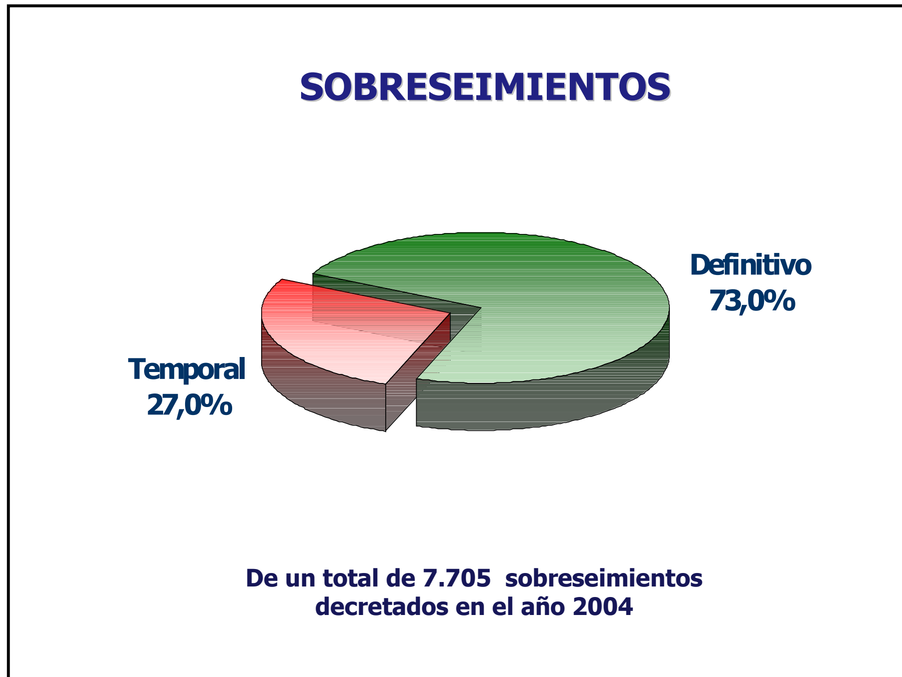




Es importante mencionar que el alto porcentaje de condenas no significa siempre un resultado desfavorable para la defensa. En efecto, dentro del procedimiento ordinario, aproximadamente el 60% de las condenas posee penas menores a las solicitadas por el Ministerio Público.

Los sobreseimientos representaron en el año 2004 el 10% del total de formas de término. Si bien el Código Procesal Penal contempla diversas causales para decretarlos, es importante destacar que un elevado porcentaje (73%) es por aplicación del sobreseimiento definitivo, cuyo efecto más relevante es que se pone término al procedimiento y tiene el efecto de cosa juzgada (*res iudicata*). Lo anterior se debe fundamentalmente a que durante el desarrollo de la investigación se determina que no hubo delito o que el imputado es inocente o que el imputado está exento de responsabilidad. En efecto, cerca del 50% de los sobreseimientos definitivos decretados tuvo esta última motivación. Le sigue el ser un hecho no constitutivo de delito con el 16% y la extinción de la responsabilidad penal con el 10% durante el año 2004.

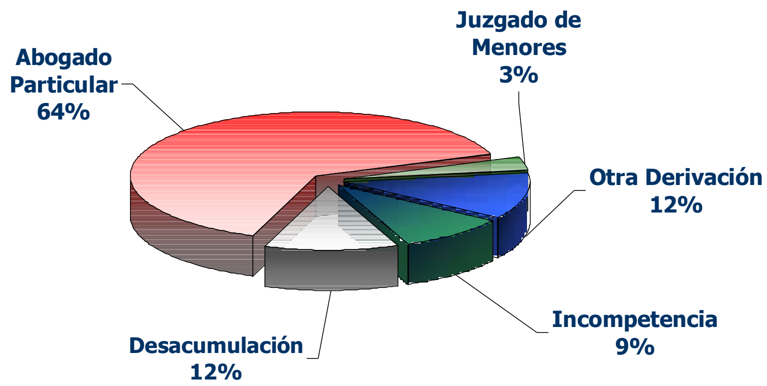
Respecto de los sobreseimientos temporales, que alcanzan 27% del total de sobreseimientos, se observa que la principal causa es la rebeldía del imputado, con el 96,2% del total de causas para el año 2004.



Las derivaciones no corresponden a una forma procesal de la causa, sin embargo, son una forma de término al servicio de defensa proporcionado por la Defensoría Penal Pública, debido fundamentalmente al traspaso de la causa a un abogado particular o a un juzgado de menores. Es importante mencionar que las derivaciones han ido disminuyendo en estos tres años de funcionamiento de la Reforma Procesal Penal. En el año 2001, las derivaciones representaban el 20% del total de las formas de término, en el año 2003 el 8% y en el año 224 éstas alcanzaban sólo al 5,2%. Esto puede ser interpretado con una señal a favor a los servicios públicos de defensa en el sentido que la inmensa mayoría de los imputados desea mantenerse con los servicios proporcionados por la Defensoría Penal Pública. De hecho, el año 2001, el 8,9% de los imputados decidía seguir la defensa con abogados particulares, en cambio, en el año 2004, sólo el 3,3% tomó dicha decisión.

Dentro del total de derivaciones, la principal forma es la derivación hacia un abogado particular alcanzando el 63,9% durante el año 2004. El resto de las derivaciones da cuenta de que el conflicto no es de naturaleza penal o que debe ser conocido por tribunales ajenos al sistema. En tal sentido es que la segunda forma de derivación es la incompetencia, con el 9,4% seguido de la derivación hacia un juzgado de menores, con el 3,1%.

DERIVACIONES



De un total de 4.008 derivaciones en el año 2004

Workshop 2

MODEL CODES FOR POST CONFLICT CRIMINAL JUSTICE OVERVIEW

Vivienne O'Connor
Irish Centre for Human Rights
national University of Ireland Galway

"It is by reintroducing the rule of law and confidence in its impartial application that we can hope to resuscitate societies shattered by conflict."[59]

INTRODUCTION
Establishing the rule of law in conflict and post conflict environments is currently a central focus of both the United Nations and regional organizations. As part of the multitude of issues that come under the umbrella term "rule of law" is that of the "applicable law."

The term "applicable law" refers to the legal framework that applies in a given territory. As noted in the Report of the Secretary-General on "Justice and the Rule of Law: The United Nations Role" in August 2003, and in the 2000 report entitled "Report of the Panel on UN Peace Operations" (more widely known as the "Brahimi Report"), numerous difficulties arise when addressing the issue of the applicable law in the context of a conflict or post conflict environment. In some cases, the pre-existing law does not comply with minimum international human rights and criminal law standards or it may contain discriminatory provisions. It may also be opposed by the local population on account of its association with the former regime. In other cases, the law may be outdated and ill-equipped to deal with current law and order problems. In almost all instances, some form of law reform is necessary in the very early stages of a peace operation to ensure that there is an adequate legal basis to prosecute crimes that are occurring, particularly "newer" crimes that are not contained in the pre-existing legislation. Just as important, the legal framework in place should not violate the fundamental human rights of the local population.

In the past, initial law reform has proved to be a lengthy and time consuming process, conducted while many crimes go unpunished in the territory because of a lack of a legal basis for the police to act. This process has also required starting over in each peace operation, effectively "re-inventing the wheel" each time.

THE CODES PROJECT
The United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the United Nations Office of the High Commissioner for Human Rights and the United Nations Office on Drugs and Crime, are coordinating a project, inspired by the Brahimi Report that seeks to provide tools to assist in the abovementioned process of legal reform.

The tools that have been developed are a set of codes that focus on criminal law legislation as a means to enable the more effective delivery of criminal justice. The codes – a criminal code, procedure code and detention/prison code – have been developed through a community of experts from around the world. The "Transitional Criminal Code" (TCC) contains general provisions on substantive law, as commonly found in national penal codes, such as criminal liability, grounds for defense, jurisdiction and penalties. It also contains a list of offences in the "Special Part". The definitions contained in the TCC are those crimes most commonly found in a conflict and post

59 Address of the United Nations Secretary-General, Kofi Annan, to the General Assembly (21 September 2004) (available at www.un.org/apps/sgstate.asp?nid=1088).

conflict environment, and that are frequently missing from the national legislation. The "Transitional Code of Criminal Procedure" (TCCP) consists of provisions on all aspects of criminal procedure, from investigation to appeal. It also contains provisions on issues such as juvenile justice, extradition and international cooperation, witness protection and redress for victims. The "Transitional Detention Act" deals solely with detention, both pre-trial detention and detention upon conviction. It contains a mix of both general principles and also standard operating procedures applicable to the relevant detention authority.

The goal was to create a package of draft codes that draw upon the lessons learned in past peace operations and that are tailored to the exigencies of a conflict or post conflict environment. The target audience of the codes is national and international personnel (whether acting as part of an assistance or an executive mission) engaged in the law reform process in such environments.

These codes were developed through the blending of different legal systems to create a coherent legal framework. The codes are also drafted with the exigencies of its environment of application. Consequently, it takes into account factors that are often present, such as a lack of resources and personnel. Rather than drawing from one legal system, the codes developed represent a cross-cultural model inspired by a variety of the world's legal systems (common, civil, and Islamic law). Sources cited for provisions throughout the codes reflect this rich blending of various legal traditions.

The package of codes contains two important elements in addition to the legal provisions of the codes. First, the legal text is accompanied by a set of extensive commentaries. These commentaries are a vital component of the transitional codes package. They explain the choices of wording and approaches adopted by the expert panel, elaborate upon the content of the legal provisions, articulate why the provisions are of particular consequence in a conflict or post conflict environment, and provide practical information from past and current peace operations on the experience in previously applying similar provisions.

Second, in addition to the codes and commentaries, an accompanying document, entitled "Guidelines for Application," has been drafted, which is an equally indispensable tool. In the first instance, it discusses the project in an in-depth manner and seeks to provide an understanding of how the codes could be used in a practical sense. Looking at the issue of the applicable law more broadly, it also sets forth a methodology for assessing and approaching the criminal law framework in a conflict or post conflict environment. Finally, the "Guidelines for Application" provides a succinct summary of the structure and provisions of the model codes.

POTENTIAL USES OF THE CODES

As mentioned above, the codes provide a valuable tool that policy-makers, lawmakers, practitioners and those engaged in the law reform process in conflict and post conflict states - both national and international personnel- can look to for inspiration where the criminal law in place is deficient or unsuitable for some reason, and consequently in need of reform.

Where the pre-existing law contains "gaps," such as is commonly found in conflict and post conflict environments, the codes could be used to fill them. An example would be the situation in which certain crimes do not exist on the statute books but are being perpetrated at large. This would be more common with "newer" crimes or crimes that are prevalent particularly during or after a conflict, such as trafficking in persons, people smuggling, organized crime, money laundering, or incitement to crime on account of hatred.

In addition to criminalizing such acts, procedures will also need to be put in place to adequately investigate and prosecute them. In the case of organized crime, for example, experience has shown that measures to protect victims, witnesses and their families are an essential component of criminal procedure legislation. Covert or other technical means of investigation are also often required to give the police the necessary tools to investigate organized crime.

The criminal legislation in many conflict and post conflict environments clearly violates international human rights standards and criminal law standards. For example, in Kosovo, early on in the mission, it was clear that a lack of provision in the law for the review of detention, commonly referred to as *amparo* or *habeas corpus*, was in violation of international standards. In East Timor, according to *UNTAET Regulation 1999/1 on the Authority of the Transitional Administration in East Timor,* a number of provisions of the penal code were deemed to be no longer applicable as they violated international standards on human rights. In order to bring the law in line with these standards, it would be necessary to delete objectionable provisions and replace them with standards that comply with human rights norms. At the same time, however, the new standards must be workable and practicable in the particular environment in which the laws will apply.

This is no easy task. In the first instance, it would be necessary to ascertain what the international standards are. This would then require a process of "translation" of these general norms from the abstract into concrete legislative provisions that can actually be applied in circumstances of great instability, widespread criminality and minimal capacity of the justice sector. The model codes are a valuable asset, as this process has already been thoroughly undertaken in the course of their drafting. As part of the drafting of the codes, a study was carried out to determine the baseline standards of human rights and criminal law. Thereupon, substantive provisions were created that made these standards real by translating them into readily-applicable legal provisions. The result is not the "gold standard" for protection of human rights in a peaceful, well-functioning society, but rather provisions that are workable and practicable in a conflict or post conflict environment while still being fully compliant with international norms. Commentary to the substantive provisions of the codes will give comprehensive guidance on how baseline standards can be increased as conditions permit. The commentaries also contain discussion on the core substance and parameters of the particular human rights norm and point to relevant standards and case law to assist the user in furthering understanding of the meaning of the provision.

In some conflict or post conflict environments, the law in force might have been that of a former dictatorial or oppressive regime and therefore might be politically objectionable to the local authorities in power or the population at large. A decision could be made by the legislative authorities to create a "transitional law" pending more extensive revision of the criminal legislation. Where such a decision is made, the codes could be a valuable source of inspiration in creating transitional legislation. Given the fact that there is no "one size fits all" model, it is unlikely that the codes would be used in their entirety, but the provisions used could be adapted to the particular context in which they were to apply.

In cases where a special chamber or division or a tribunal is being set up either as part of the domestic system or as a stand-alone body to handle, for example, international crimes (genocide, crimes against humanity and war crimes) or serious crimes (organized crime, terrorism, economic crime) the codes may be used as a source of inspiration. For example, in Bosnia an economic and organized crime division was established within and as part of the existing criminal justice system, as well as a war crimes division. In Sierra Leone, a special court was set up to deal with past crimes that occurred in the course of the conflict.

It is also likely that additional uses for such a set of codes will unfold over time. During the consultation and vetting process, for example, input received from legal experts suggested that the utility of the codes should not be limited to conflict or post conflict environments. Many were of the view that the codes could be useful in weak states, unstable states or states which may not have conflict *per se,* but experience the same justice system resource issues as those of post conflict states.

THE DRAFTING, CONSULTATION AND PRESENTATION PROCESS

The codes were initially drafted over a period of 18 months by a multi-disciplinary team of experts from various legal systems with experience in different post conflict settings. Following this phase of the project, the process sponsors began an exhaustive consultative process that has involved over 250 experts to date, including international and national judges, prosecutors, defense lawyers, police, corrections officials, human rights advocates, military lawyers and international, comparative and criminal law scholars. Among the elements of this consultation have been the following:

USIP and ICHR, with the support of the UN's Office of the High Commissioner for Human Rights, convened a three-day conference in Geneva, Switzerland in June 2003 to review the draft codes. The 80 participants included a wide range of rule of law experts, hailing from 24 countries, and representing legal systems in the Middle East, Europe, North America, Africa, and Asia.

Organized into working groups, these 80 specialists continued to work on and revise the codes over a four-month period after the Geneva meeting. During this period, over 40 additional experts were consulted and invited to provide comments on the draft codes.

A number of meetings were convened in Galway, Ireland, in February 2004. The first meeting reconvened the original panel of experts to consider the recommendations made in relation to two of the three model codes - the Transitional Criminal Code and the Transitional Code of Criminal Procedure - during the post-June 2003 consultation period. The second meeting focused on the third of the model codes, the Transitional Detention Act. At this meeting, experts on corrections and detention standards and prison management conducted a line-by-line review of the Act, as well as expanded the commentary to aid its application in the field.

A roundtable discussion centering on the possible application and use of the model codes in an Asian context was co-hosted by the Asia Pacific Centre for Military Law and the Institute of Comparative and International Law at the University of Melbourne, Australia in March 2004.

In June 2004, a meeting took place at the UN Office of the High Commissioner for Human Rights. At this meeting, legal experts from the European Commission met with members of the codes drafting team to provide substantive input on the provisions of the model codes.

Field research was conducted in Timor Leste and Kosovo. Individual consultations on the codes were conducted with both international and national judges, prosecutors, defense counsel, academics, human rights advocates and individuals engaged in law reform.

A series of meetings that sought to assess the potential utility of the codes in a regional context and to test their compatibility with a variety of different legal systems commenced with an Africa roundtable discussion in Abuja, Nigeria in June 2004. The meeting brought together scholars and practitioners from militaries, police forces, the corrections sector, national judiciaries and legislatures, and the human rights community, hailing from Botswana, Liberia, the Democratic Republic of the Congo, Sierra Leone, Uganda, Nigeria, Zambia, Zimbabwe, Tanzania, Ghana and Sudan. The Africa roundtable members reconvened in London in September 2004 in partnership with the United Nations Association of the USA.

In July 2004, a second roundtable meeting was held in partnership with the International Institute of High Studies in Criminal Sciences (ISISC) in Siracusa, Italy, this time focusing on Islamic countries. At this meeting, experts from Morocco, Egypt, the United Arab Emirates, Syria, Libya and Sudan reviewed the substance of the model codes from a Shari'ah law perspective.

The final roundtable meeting was held in September 2004 in Bangkok, Thailand in cooperation with the Judge Advocate General's Department of the Thai Military and the United Nations Association of the USA. A team of justice, police and military experts from various Asian countries, including Thailand, Sri Lanka, Nepal, Hong Kong, China, Bangladesh, Fiji, the Philippines, and

Malaysia examined the potential utility of the codes and their compatibility with Asian legal systems.

The “Guidelines for Application” of the codes was presented to a group of 80 rule of law specialists at the United Nations Office of the High Commissioner for Human Rights “Rule of Law Tools Workshop” for comment and input in September 2004.

Consultation was also sought on the “Guidelines for Application” along with the Transitional Detention Act, at the International Corrections and Prisons Association Annual General Meeting in Beijing, China, in October 2004.

In January 2005, the International Peace Academy, in collaboration with USIP and ICHR, organized a one-day roundtable on the model codes in New York, which brought together a number of UN Member State Permanent Representatives, legal advisors and military attaches, as well as UN officials and members of the non-governmental and academic communities.

In addition to these consultations, presentations on the model codes have been made at a number of different meetings and conferences for reactions and input, including the United Nations Commission on Crime Prevention and Criminal Justice in Vienna, Austria (May 2004); and the European Commission’s Workshop on Criminal Justice in the Framework of Training Activities in Civil Crisis Management in Madrid, Spain (May 2004); and the “Challenges to Peace Operations: Into the 21st Century” Conference, held in Abuja, Nigeria in June 2004. In July 2004, the model codes were presented for input to 60 Iraqi judges, lawyers and academics as part of “Raising the Bar: Legal Education Reform in Iraq” in Siracusa, Italy. At the same venue, the codes were also presented to members of the Afghan judiciary as part of the Interim Training of Afghan Judiciary being conducted by ISISC in cooperation with the International Development Law Organization.

NEXT STEPS ON THE CODES PROJECT

Individual consultations on the model codes, with a variety of experts from different disciplines and regions of the world, are still ongoing. New elements and suggested amendments to the codes are currently being incorporated, and commentaries to the codes are being augmented based on the substantial input received over the course of the consultation process. Finalization and publication of the transitional codes package is scheduled for 2005. Following this, efforts will be made to monitor and advise on the use of the codes, as well as gather input for future potential revisions and refinements.

In addition to the three codes to be published in 2005, work is underway on the development of a Police Act – the “Transitional Law Enforcement Powers Act” – and a set of Standard Operating Procedures/Implementing Regulations for police operating in a conflict or post conflict environment. The need for the creation of both documents came about as a result of a meeting held in Galway, Ireland, in February, 2004 that gathered 22 experts on post conflict policing, including civilian police officers and officials from several current and former UN missions.

The Transitional Law Enforcement Powers Act (TLEPA), similar to the type of Police Act found in many civil law systems, focuses on the maintenance of public order, as opposed to criminal investigation. Thus, it contains provisions on issues such as public gatherings, road blocks, arrest and detention otherwise than in connection with a criminal offence, and use of force and firearms, to name but a few. The Standard Operating Procedures/Implementing regulations will set forth detailed procedures for police to follow when taking actions relating to criminal investigation (and will therefore have a close relationship to the Transitional Code of Criminal Procedure), and also when taking actions relating the maintenance of public order, pursuant to the TLEPA. The TLEPA is currently being drafted and vetted by international policing experts. A vetting meeting is scheduled for July 2005. Preliminary work has commenced on the creation of the Standard Operating Procedures, with widespread vetting due to commence in the middle of 2005.

Workshop 2

MECANISMOS RESTAURATIVOS EN LAS NUEVAS LEGISLACIONES PENALES JUVENILES: LATINOAMÉRICA Y ESPAÑA

Rita Maxera
ILANUD

Este trabajo analiza los mecanismos de desjudicialización (alternativas al juicio) y las sanciones no privativas de libertad de contenido restaurativo, contemplados en las nuevas legislaciones penales juveniles adecuadas a los principios de la Convención de los Derechos del Niño, vigentes en los países latinoamericanos y en España.

Cabe notar que la Convención sobre los Derechos del Niño no habla de "justicia restaurativa", concepto que es posterior a ella. Al respecto, el documento E/CN.15/2002/5/Add.1 del Consejo Económico y Social de las Naciones Unidas titulado *Justicia restaurativa. Informe del Secretario General. Adición, Informe de la reunión del Grupo de Expertos sobre Justicia Restaurativa*, trae las siguientes definiciones:

1. Por "programa de justicia restaurativa" se entiende todo programa que utilice procesos restaurativos e intente lograr resultados restaurativos;

2. *Por "proceso restaurativo" se entiende todo proceso en que la víctima, el delincuente y, cuando proceda, cualesquiera otras personas o miembros de la comunidad afectados por un delito, participen conjuntamente de forma activa en la resolución de cuestiones derivadas del delito, por lo general con la ayuda de un facilitador. Entre los procesos restaurativos se puede incluir la mediación, la conciliación, la celebración de conversaciones y las reuniones para decidir sentencias;*

3. Por "resultado restaurativo" se entiende un acuerdo alcanzado como consecuencia de un proceso restaurativo. Entre los resultados restaurativos se pueden incluir respuestas y programas como la reparación, la restitución y el servicio a la comunidad, encaminados a atender a las necesidades y responsabilidades individuales y colectivas de las partes y a lograr la reintegración de la víctima y el delincuente.

El trabajo que estamos presentando es esencialmente jurídico, pero sería necesaria investigación empírica, para conocer mejor las posibilidades de las soluciones restaurativas en materia de justicia penal juvenil en los países de la región y promocionar aquéllas que han obtenido mejores resultados.

De los principios contenidos en la Convención sobre los Derechos del Niño, y los otros instrumentos de las Naciones Unidas que la integran y desarrollan en esta materia, las Reglas Mínimas para la Administración de la Justicia de Menores (Reglas de Beijing), las Reglas Mínimas para la Protección de los Menores Privados de Libertad, y las Directrices para la prevención de la Delincuencia Juvenil (Directrices de Riad), se derivan las siguientes características del nuevo modelo de justicia penal juvenil, llamado "modelo de responsabilidad"[60]:

- El reconocimiento de los niños, niñas y adolescentes como sujetos de derecho en etapa específica de desarrollo, que significa también la adquisición paulatina de responsabilidades de tipo jurídico, entre ellas la penal a partir de determinada edad y distinta de la responsabilidad penal de los adultos.
- La inclusión de opciones para minimizar la intervención penal evitando el proceso o el juicio (alternativas al proceso, mecanismos de desjudicialización)

60 A partir de 1990 el Proyecto ILANUD/COMISIÓN EUROPEA realizó el diagnóstico jurídico y sociológico de la situación de los sistemas de justicia penal juvenil en todos los países de la región y desde allí cada uno comenzó su proceso de reforma. En forma paralela al estudio en América Latina con los mismos instrumentos se hizo un estudio comparativo con España e Italia.

- El establecimiento de una amplia gama de sanciones (medidas) con una finalidad pedagógica y entre las cuales las que impliquen privación de libertad deben ser excepcionales, reservadas para los delitos más graves y utilizadas en tanto no sea posible aplicar una sanción diferente.
- Las garantías del debido proceso sustancial y formal de los adultos, más las garantías específicas que corresponden a los adolescentes en razón de su edad. Estas garantías están reconocidas expresamente, y normados los actos del procedimiento para que posibiliten su efectividad, tomando en cuenta la situación específica de las personas adolescentes,
- La especialidad de todos los órganos del sistema de justicia penal juvenil.
- La participación de la víctima en el proceso, tomando en cuenta también la finalidad pedagógica de la intervención penal.

CUADRO 1
PAISES LATINOAMERICANOS EN LOS QUE SE ENCUENTRA VIGENTE UNA LEGISLACIÓN PENAL PARA ADOLESCENTES PLENAMENTE ADECUADA A LOS PRINCIPIOS DE LA CONVENCIÓN SOBRE LOS DERECHOS DEL NIÑO

PAIS	NOMBRE DE LA LEY	VIGENCIA
BOLIVIA	CODIGO DEL NIÑO, NIÑA Y ADOLESCENTE	2000
BRASIL	ESTATUTO DE LA NIÑEZ Y LA ADOLESCENCIA	1990
COSTA RICA	LEY DE JUSTICIA PENAL JUVENIL	1996
ECUADOR	CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA	2003
EL SALVADOR[61]	LEY DEL MENOR INFRACTOR	1995
ESPAÑA	LEY ORGÁNICA REGULADORA DE LA RESPONSABILIDAD PENAL DE LOS MENORES	2000
GUATEMALA	LEY DE PROTECIÓN INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA	2003
HONDURAS[62]	CODIGO DE LA NIÑEZ Y LA ADOLESCENCIA	1996
NICARAGUA	CODIGO DE LA NIÑEZ Y LA ADOLESCENCIA	1998
PANAMÁ[63]	RÉGIMEN ESPECIAL DE RESPONSABILIDAD PENAL PARA LA ADOLESCENCIA	1999
PARAGUAY	CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA	2001
PERU [64]	CODIGO DE LOS NIÑOS Y ADOLESCENTES	2000
REPÚBLICA DOMINICANA	CÓDIGO PARA EL SISTEMA DE PROTECCIÓN Y LOS DERECHOS FUNDAMENTALES DE NIÑOS, NIÑAS Y ADOLESCENTES	2004
URUGUAY	CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA	2004
VENEZUELA	LEY ORGANICA DEL NIÑO Y DEL ADOLESCENTE	2000

- Como puede verse en el cuadro, algunos países legislaron la materia en códigos integrales; otros en leyes especiales. Los años consignados corresponden a la entrada en vigencia de la ley o código y no a su aprobación.
- Colombia espera aprobación la Ley de la Niñez y la Adolescencia del 2004.

61 Después de la Ley del Menor Infractor se promulgó La ley de Ejecución de las Medidas y posteriormente 2 leyes antimaras, La primera declarada inconstitucional, la segunda del 2004, vigente.

62 Cuenta con Ley Antimaras del Año 2003. Consiste en una reforma al artículo 332 del Código Penal que tipifica el delito de Asociación ilícita.

63 La Ley 46 del 2003 modifica la Ley 40 de 1999, Régimen Especial de Responsabilidad Penal para la Adolescencia. Las principales son las siguientes: aumento del máximo de la pena privativa de libertad de 5 a 7 años para los delitos de homicidio doloso, violación sexual y tráfico ilícito de estupefacientes; ampliación de la duración máxima de la detención provisional de 2 a 6 meses y ampliación de la lista de delitos que admiten detención provisional y pena privativa de libertad.

64 El Código de la Niñez y Adolescencia de Perú de 1992 fue reemplazado por un nuevo Código (2002) que en lo que interesa a nuestro tema conserva las mismas instituciones e incorpora disposiciones especiales para el "pandillaje pernicioso" entendido como lo define el artículo 193 de ese cuerpo normativo: "Se considera pandilla perniciosa al grupo de adolescentes mayores de 12 (doce) años y menores de 18 (dieciocho) años de edad que reúnan y actúan para agredir a terceras personas, lesionar la integridad física o atentar contra la vida de las personas, dañar bienes públicos o privados u ocasionar desmanes que alteren el orden interno".

- En México están en proceso de aprobación un Proyecto de reforma a la Constitución Política referente a la responsabilidad penal juvenil y un Anteproyecto de Ley del sistema de justicia penal para adolescentes.
- En Chile el Proyecto de Ley que crea un sistema de responsabilidad de los adolescentes por las infracciones a la ley penal, alcanzó en el 2004 aprobación de la Cámara de Diputados.
- En la Argentina en el año 2000 se presentó el 1er. Proyecto de responsabilidad penal juvenil adecuado a los principios de la Convención sobre los Derechos del Niño. En el 2002 perdió estado parlamentario. Desde esa fecha muchos anteproyectos han sido elaborados sin que ninguno se concrete en una iniciativa legislativa. En algunas provincias del país se han llevado a cabo reformas de tipo procesal.

CUADRO 2
LAS ALTERNATIVAS AL JUICIO (desjudicialización)

PAIS	REMISION	CONCILIACION	CRITERIO DE OPORTUNIDAD REGLADO	SUSPENSIÓN DEL PROCESO A PRUEBA
BOLIVIA	SI	NO	NO	NO
BRASIL	SI	NO	NO	NO
COSTA RICA	NO	SI	SI	SI
ECUADOR	SI	SI	NO	SI
EL SALVADOR	SI	SI	SI	NO
ESPAÑA	SI[65]	SI	SI	NO
GUATEMALA	SI	SI	SI	NO
HONDURAS	SI	SI	SI	NO
NICARAGUA	NO	SI	SI	NO
PANAMÁ	SI	SI	SI	SI[66]
PARAGUAY	SI	SI	NO	NO
PERU	SI	NO	NO	NO
RÉPUBLICA DOMINICANA	NO	SI	SI	DI
URUGUAY	NO	SI	SI[67]	SI
VENEZUELA	SI	SI	NO	SI

El siguiente cuadro presenta las diversas alternativas al juicio de carácter restaurativo previstas en las legislaciones de los países que estamos analizando.

Los mecanismos de salida anticipada del proceso (desjudicialización) son similares aún cuando algunas veces no se denominan de la misma manera. La diferencia fundamental entre la remisión y el criterio de oportunidad es que la primera va acompañada justamente de la **remisión a programas de apoyo**. En la legislación salvadoreña se habla de “renuncia de la acción” como equivalente al principio de oportunidad.

A continuación se detallan las principales disposiciones referentes a las instituciones que posibilitan la desjudicialización, alternativas al juicio, fórmulas de solución anticipada que impliquen reparación del daño, en cada uno de los países en los que tiene vigencia una que responda a las características de un modelo de responsabilidad.

BOLIVIA

65 En la legislación española recibe el nombre de Desistimiento de la incoacción del expediente por corrección en el ámbito educativo y familiar (artículo 18).

66 En la Legislación panameña se regula como la suspensión condicional del proceso.

67 Recibe el nombre de prescindencia de la acción penal.

La **remisión** es la forma de desjudicialización contemplada en la legislación específica. No toma en cuenta a la víctima y aún cuando la remisión se acompañe de una medida socieducativa no está contemplada la reparación del daño.

BRASIL
La **remisión** no contempla la reparación a la víctima. Sin embargo, al prescribir que podrá aplicarse cualquiera de las medidas prevista en la ley podría el juez ordenar la reparación del daño.

COSTA RICA
La conciliación es el único mecanismo de desjudicialización de carácter restaurativo.
Artículo 61. Partes necesarias La conciliación es un acto jurisdiccional voluntario entre el ofendido o su representante y el menor de edad, quienes serán las partes necesarias en ella.
Artículo 64. Procedencia La conciliación procederá en todos los casos en que es admisible para la justicia penal de adultos. [68]

ECUADOR
La conciliación y la suspensión del proceso a prueba tienen carácter restaurativo.
Conciliación[69]: Artículo 345**.** El Procurador podrá promover la conciliación siempre que la infracción no sea de aquellas que autorizan el internamiento preventivo según el artículo 330 de este Código. Para promover la conciliación se realizará una reunión con la presencia del adolescente, sus padres o representantes legales o personas que lo tengan bajo su cuidado y la víctima, el procurador expondrá la eventual acusación y oirá proposiciones. En caso de llegarse a un acuerdo preliminar el Procurador lo presentará al Juez de la Niñez y Adolescencia, conjuntamente con la eventual acusación.

Suspensión del proceso a prueba
Artículo 349. En el caso de los delitos de acción pública de instancia particular, el Procurador o el Juez de Niñez y Adolescencia, podrán proponer la suspensión del proceso a prueba, siempre que cuenten con el consentimiento del adolescente. (...)

El auto de suspensión del proceso a prueba contendrá los antecedentes y fundamentos de hecho y de derecho de la suspensión; la medida de orientación o apoyo familiar determinada; la reparación del daño;…

EL SALVADOR
Tres de los mecanismos tienen carácter restaurativo**.** Implica la remisión, en el caso de El Salvador acuerdo de partes y reparación del daño. Por su parte, en el caso de la conciliación puede decirse que prácticamente la admite en todo tipo de delitos o sea tiene el ámbito de aplicación más amplio de las legislaciones que se analizan. Sin embargo, fue eliminada como mecanismo de desjudicialización en el ámbito de aplicación de la Ley Antimaras. La renuncia a la acción una institución equivalente al principio de oportunidad reglado, también prevé la reparación del daño como una de las causales para su procedencia.

La remisión
Artículo 37. El juez podrá examinar la posibilidad de no continuar el proceso, cuando el delito estuviese sancionado en la legislación penal con pena de prisión cuyo mínimo sea inferior a tres años, con base en el grado de responsabilidad, en el daño causado y **en la reparación del mismo.**

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68 El Código Procesal Penal de Costa Rica establece (artículo 36) que la conciliación procede en las contravenciones, en los delitos de acción privada, de acción pública a instancia privada y los que admiten la suspensión condicional de la pena. O sea aquellos delitos cuya pena mínima no exceda de tres años (artículo 59 Código Penal). Por su parte la Sala Constitucional Voto N° 711-98 de las 16:09 horas del 6 de octubre de 1998 respondiendo a una Consulta Judicial Facultativa de Constitucional relativa a la aplicación de este instituto y la congruencia con el art. 155 del Código de la Niñez y la Adolescencia. indicó que la conciliación no procede cuando la víctima es menor de edad.

69 La legislación ecuatoriana indica que las obligaciones establecidas en el acuerdo conciliatorio pueden referirse a la reparación del daño causado o la realización de ciertas actividades concretas destinadas a que el adolescente asuma su responsabilidad por los actos de los que se le acusa.

Si el juez considera que no procede la continuación del proceso, citará a las partes a una audiencia común y previo acuerdo con ellas, resolverá remitir al menor a programas comunitarios con el apoyo de su familia y bajo el control de la institución que los realice, **si no existiere acuerdo entre las partes**, se continuará con el proceso.

La conciliación
Artículo 59. Admiten conciliación todos los delitos o faltas excepto los que afecten intereses difusos de la sociedad.

El arreglo conciliatorio procede de oficio, a instancia de parte, a petición del ofendido o víctima, siempre que existan indicios o evidencias de la autoría o participación del menor, y no concurran causales excluyentes de responsabilidad; sin que ello implique aceptación de la comisión por parte del menor.

La conciliación procede ante la Fiscalía General de la República o ante el juez de menores, mientras no se haya decretado la resolución que aplique medidas en forma definitiva al menor.
Artículo 60. La conciliación es un acto voluntario entre el ofendido o la víctima y el menor, quienes son las partes necesarias en la conciliación. Para el cumplimiento de las obligaciones de contenido patrimonial podrá obligarse a cualquier persona. No podrá autorizarse la conciliación cuando vulnere el interés superior del menor.

La renuncia de la acción
Artículo 70. La Fiscalía General de la República podrá renunciar de la acción por hechos tipificados en la legislación penal, como faltas o delitos sancionados con pena de prisión cuyo mínimo no exceda de tres años. Tendrá en cuenta las circunstancias del hecho, las causas que los motivaron o **la reparación del daño.**

En los casos señalados en el inciso anterior, si la **reparación del daño fuere total**, la Fiscalía deberá renunciar de la acción. La renuncia impide promover la acción ante el tribunal de menores.

ESPAÑA
En un mismo artículo la ley española regula dos mecanismos de desjudicialización de contenido restaurativo, la conciliación y la reparación a la víctima. La conciliación no implica compensación económica y la reparación del año consiste en obligaciones de hacer a cargo del adolescente y en beneficio de la víctima, el afectado o la comunidad. Estas posibilidades son totalmente independientes del acuerdo al que pueden llegar las partes sobre la responsabilidad civil derivada del delito o falta.

Sobreseimiento del expediente por conciliación o reparación entre el menor y la víctima
Artículo 19.

- También podrá desistir el Ministerio Fiscal de la continuación del expediente, atendiendo a la gravedad y circunstancia de los hechos y del menor, de moco particular a la falta de violencia o intimación graves en la comisión de los hechos, y a la circunstancia de que además el menor se haya conciliado con la víctima o haya asumido el compromiso de reparar el daño causado a la víctima i al perjudicado por el delito, o se haya comprometido a comprometido a cumplir la actividad educativa propuesta por le equipo en su informe.
- El desistimiento en la continuación del expediente sólo será posible cuando el hecho imputado al menor constituya delito menos grave o falta.
- A efectos de lo dispuesto en el apartado anterior, se entenderá producida la conciliación cuando el menor reconozca el daño causado y se disculpe ante la víctima, y ésta acepte sus disculpas, y se entenderá por reparación el compromiso asumido por el menor con la víctima o perjudicado de realizar determinadas acciones en beneficio de aquéllos o de la comunidad, seguido de su realización efectiva. Todo ello sin perjuicio del acuerdo al que

hayan llegado las partes en relación al ejercicio de la acción por responsabilidad civil derivada del delito o falta, regulada en esta Ley.

- El correspondiente equipo técnico realizará las funciones de mediación entre el menor y la víctima o perjudicado, a los efectos indicados en los apartados anteriores, e informará al Ministerio Fiscal de los compromisos adquiridos y de su grado de cumplimiento.
- Una vez producida la conciliación o cumplidos los compromisos de reparación asumidos con la víctima o perjudicado por el delito o falta cometido, o cuando una u otros no pudieran llevarse a efecto por causas ajenas a la voluntad del menor, el Ministerio Fiscal dará por concluida la instrucción y solicitará del Juez el sobreseimiento y archivo de las actuaciones, con remisión de lo actuado.
- En el caso de que el menor no cumpliera la reparación o la actividad educativa acordada, el Ministerio Fiscal continuará la tramitación del expediente.
- En los casos en los que la víctima del delito o falta fuere menor de edad o incapaz, el compromiso al que se refiere el presente artículo habrá de ser asumido por el representante legal de la misma, con la aprobación del Juez de Menores.

GUATEMALA

El acuerdo conciliatorio en la legislación guatemalteca, puede darse entre la persona ofendida y los padres, tutores o responsables del adolescente lo que hace dudar del carácter socio-educativo que también debe perseguir la conciliación. Los adultos responsables pueden apoyar el acuerdo o asumir obligaciones que consten en el mismo, pero no sustituir la voluntad del adolescente presuntamente responsables de la conducta delictiva.

Conciliación

Artículo 185. Admiten conciliación todas las transgresiones a la ley penal donde no exista violencia grave contra las personas.

Artículo 186. Naturaleza de la conciliación. La conciliación es un acto voluntario entre la parte ofendida y el adolescente **o sus padres, tutores o responsables.** Para el cumplimiento de las obligaciones de contenido patrimonial podrá obligarse cualquier persona.

No podrá autorizarse la conciliación cuando se vulnere el interés superior del adolescente.Artículo 190. Obligaciones. En el acta de conciliación se determinarán las obligaciones pactadas, entre las cuales se contemplará la reparación del daño a la víctima o a la parte ofendida, **se señalará plazo para su cumplimiento y se constituirán las garantías**, si fuera necesario.La certificación del acta de conciliación tendrá la calidad de título ejecutivo.

Remisión

Artículo 193.. El juez podrá examinar la posibilidad de no continuar el proceso, cuando la acción contenida estuviere sancionada en el Código Penal, con pena de prisión cuyo mínimo sea inferior a tres años, con base en el grado de participación en el daño causado y **la reparación del mismo.**

Si el juez considera que no procede la continuación del proceso, citará a las partes a una audiencia común y previo acuerdo con ellos resolverá remitir al adolescente a programas comunitarios, con el apoyo de su familia y bajo control de la institución que los realice, si no existiere acuerdo entre las partes se continuará el proceso.

HONDURAS

La legislación hondureña contempla la indemnización a la víctima para la procedencia del criterio de oportunidad; sin embargo, no se precisa si se trata de una obligación a cargo del adolescente o de sus representantes.

La conciliación

Artículo 220. La conciliación procederá en cualquier etapa del proceso anterior a la apertura del juicio y será aplicable cuando en las infracciones cometidas no haya existido violencia contra las personas.

La conciliación será un acto voluntario que en ningún caso podrá entenderse como que el niño es responsable de la infracción que se le imputa. La conciliación no tendrá lugar cuando en cualquier forma vulnere los intereses del niño.
Por medio de la conciliación podrá pactarse la remisión del asunto.

El criterio de oportunidad
Artículo 224. Por el criterio de oportunidad el Ministerio Público podrá solicitar al Juzgado de la Niñez competente, o al que haga sus veces, que se abstenga de conocer de la acción deducida o que admita su desistimiento **si media justa indemnización para la víctima**, en su caso, y siempre que concurra alguna de las causales siguientes:

a) Que se trate de acciones u omisiones en que la responsabilidad del niño es mínima;
b) Que el niño haya hecho cuanto estaba a su alcance para impedir la comisión de la infracción o limitar sus efectos;
c) Que el niño haya resultado gravemente afectado por la acción u omisión; o,
d) Que la infracción cometida no haya producido un impacto social significativo.

El criterio a que este artículo se refiere se aplicará cuando las infracciones no merezcan, de acuerdo con el Código Penal o la ley especial de que se trae, pena de reclusión que excede de cinco (5) años. El Juez podrá otorgarlo aún con oposición de la víctima, quien podrá hacer uso de los recursos correspondientes.

NICARAGUA
Sólo la conciliación tiene contenido restaurativo.

Conciliación
Artículo 145. La conciliación es un acto jurídico voluntario entre el ofendido o su representante y el adolescente, con el objeto de lograr un acuerdo para la reparación del daño causado por el adolescente.

El arreglo conciliatorio procede de oficio, a instancias del acusado o a petición del ofendido, siempre que existan indicios o evidencias de la autoría o participación del adolescente sin que ello implique aceptación de la comisión del hecho por pare del acusado. Artículo 148. La conciliación no procederá en los delitos cuya pena merezca medidas de privación de libertad.[70]

PANAMÁ
Ni el criterio de oportunidad, ni la remisión implican en la legislación panameña reparación del daño. Tienen contenido restaurativo la conciliación y la suspensión condicional del proceso.

Conciliación
Artículo 69. La conciliación es un acto voluntario entre la persona ofendida o su representante y el adolescente o la adolescente. Los adolescentes y las adolescentes tendrán derecho a que sus padres, tutores o representantes los acompañen durante la audiencia de conciliación. Los adolescentes que hayan cumplido los dieciséis años tendrán derecho a que sus padres, tutores o representantes no se encuentren presentes durante la audiencia de conciliación.
Para el cumplimiento de las obligaciones de contenido patrimonial, el adolescente o la adolescente podrá ser acompañado por cualquier persona.

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70 La indicación de los delitos que serán sancionados con una medida de privación de libertad están especificados en el artículo 203 del Código de la Niñez y la Adolescencia, y son los siguientes: asesinato atroz, asesinato, homicidio doloso, infanticidio, parricidio, lesiones graves, violación, abusos deshonestos, rapto, robo, tráfico de drogas, incendio y otros estragos, envenenamiento o adulteramiento de aguas potable, bebidas, comestibles o sustancias medicinales. También en el incumplimiento injustificado de medidas no privativas de libertad.

La suspensión condicional del proceso
Artículo 96. El juez penal de adolescentes puede decretar, **de oficio**, la suspensión el proceso, sujetándola a condiciones determinadas en los casos que reúnan las siguientes características:

1) El hecho punible admite la vía de la conciliación; y
2) El adolescente **ha realizado esfuerzos por reparar el daño causado**, o el acto cometido no puso en grave peligro ni la integridad física de las personas ni sus bienes.

PARAGUAY
Solo está prevista la remisión como salida anticipada.

Remisión
Artículo 242. En todas las etapas procesales, el Juzgado Penal de la Adolescencia podrá examinar la posibilidad de no continuar el proceso, cuando el hecho punible estuviese sancionado en la legislación penal con pena privativa de libertad que no supere los dos años, basándose en el grado de responsabilidad, en el daño causado y en la **reparación del mismo.** (...)

PERU
Sólo regula la remisión y no queda claro a cargo de quién está la reparación del daño.

Remisión
Artículo 206. El Fiscal podrá disponer la Remisión cuando se trate de infracción a la ley penal que no revista gravedad y el adolescente y sus padres o responsables se comprometan a seguir programas de orientación supervisados por el PROMUDEH o las instituciones autorizadas por éste y, si fuera el caso, **procurará el resarcimiento del daño a quien hubiere sido perjudicado.**

REPÚBLICA DOMINICANA
La legislación dominicana remite al Código Procesal Penal para la aplicación de los mecanismos de desjudicialización.

Formas de terminación anticipada del proceso
Artículo 243. El proceso penal de la persona adolescente puede terminar en forma anticipada por aplicación:

a) Del principio de oportunidad de la acción pública;
b) La **conciliación**; y
c) La suspensión condicional del procedimiento.

El ministerio público de niños, niñas y adolescentes podrá terminar de forma anticipada el proceso penal conforme a los criterios, procedimientos, reglas y efectos establecidos en los artículos 34 al 43 del Código Procesal Penal y en las infracciones que allí se indican.

URUGUAY
Este es la única salida con contenido reparador. Cabe notar que regula de manera detallada el mecanismo de la conciliación.

Obligación de reparar el daño a satisfacción de la víctima (conciliación)
Artículo 83. En cualquier etapa del proceso previa conformidad del adolescente y de la víctima o a petición de parte, el Juez podrá derivar el caso a mediación suspendiéndose las actuaciones por un plazo prudencial. Alcanzado un acuerdo, previo informe técnico y oidos la defensa y el Ministerio Público, el juez deberá valorar razonablemente desde la perspectiva exclusiva del interés superior del adolescente, el sentido pedagógico y educativo de la reparación propuesta, disponiendo en caso afirmativo, la clausura de las actuaciones. Tal decisión será preceptiva en caso de opinión favorable del Ministerio Público. El mismo efecto tendrán los acuerdos conciliatorios celebrados en audiencia.

VENEZUELA
La posibilidad de conciliación en los delitos que afecten intereses colectivos o difusos y la reparación social del daño resulta novedoso.

La conciliación
Artículo 564. Cuando se trate de hechos punibles para los que no sea procedente la privación de libertad como sanción, el Fiscal del Ministerio Público promoverá la conciliación. Para ello, celebrará una reunión con el adolescente, sus padres, represententes o responsables y la victima, presentará su eventual acusación, expondrá y oirá proposiciones. Parágrafo Primero: En caso de hechos punibles que afecten intereses colectivos o difusos **propondrá la reparación social del daño.** (…)

LAS SANCIONES NO PRIVATIVAS DE LIBERTAD
El cuadro siguiente detalla las diversas sanciones no privativas de libertad previstas en las legislaciones de cada uno de los países que estamos analizando. Particularmente en la medidas de "prestación de servicios a la comunidad" y de "reparación del daño" surgen las posibilidades de una Justicia Restaurativa

CUADRO 3
LAS SANCIONES NO PRIVATIVAS DE LIBERTAD

País	Orientación y apoyo	Amonestación	Libertad Asistida	Prestac. Servicios Comunidad	Reparación del daño	Órdenes de Orientac.
BOLIVIA	NO	SI	SI	SI	NO	SI
BRASIL	NO	SI	SI	SI	SI	SI
COSTA RICA	NO	SI	SI	SI	SI	SI
ECUADOR	SI	SI	SI	SI	SI	SI
EL SALVADOR	SI	SI	SI	SI	NO	SI
ESPAÑA	NO	SI	SI	SI	NO	SI
GUATEMALA	NO	SI	SI	SI	SI	SI
HONDURAS	SI	SI	SI	SI	SI	SI
NICARAGUA	SI	SI	SI	SI	SI	SI
PANAMÁ	NO	SI	NO	SI	SI	SI
PARAGUAY	NO	SI	NO	SI	SI	SI
PERÚ	NO	SI	SI	SI	NO	NO
R.DOMINICANA	NO	SI	SI	SI	SI	SI
URUGUAY	SI	SI	NO	SI	SI	SI
VENEZUELA	NO	SI	SI	SI	SI	SI

A continuación se detallan aquellas sanciones no privativas de libertad de carácter restaurativo. Consideramos que la prestación de servicios a la comunidad tiene contenido restaurativo y algunas legislaciones tiene previsiones muy importantes en este sentido.

BOLIVIA
Prestación de servicios a la comunidad
Artículo 243. Consiste en tareas prestadas gratuitamente por el adolescente en beneficio de la comunidad, en entidades asistenciales, hospitales, escuelas u otros establecimientos similares, así como en programas comunitarios o estatales, por un período no mayor a seis meses.

Las tareas serán asignadas de acuerdo con las aptitudes del adolescente y deberán ser efectuadas en jornadas máximas de ocho horas semanales con las garantías previstas en el presente Código. Estas jornadas podrán cumplirse los días sábados, domingos y feriados o en días hábiles de la semana, de manera que no perjudiquen la asistencia a la escuela o la jornada normal de trabajo.

En ningún caso y bajo ningún concepto será aplicada esta medida sin que el Juez explique al adolescente los fundamentos y alcances de la misma.

BRASIL
Obligación de reparar el daño
Artículo 116. Tratándose de actos infraccionales con efectos patrimoniales, la autoridad podrá determinar, si fuera el caso, que el adolescente restituya la cosa, promueva el resarcimiento del daño, o por otra forma compense el perjuicio a la víctima. Parágrafo único: Habiendo manifiesta imposibilidad, la medida podrá ser sustituida por otra adecuada.

Prestación de servicios a la comunidad
Artículo 117. La prestación de servicios comunitarios consiste en la realización de tareas gratuitas de interés general por un período que no exceda de seis meses, junto a entidades asistenciales, hospitales, escuelas u otros establecimientos similares, bien se a en programas comunitarios o gubernamentales.

Parágrafo único: Las tareas serán atribuidas de acuerdo a las aptitudes del adolescente, debiendo ser cumplidas en una jornada máxima de ocho horas semanales, los sábados, domingos o feriados, o en días hábiles, de modo que no perjudiquen la frecuencia a la escuela o la jornada normal de trabajo.

COSTA RICA

Prestación de servicio a la comunidad

Artículo 126. La prestación de servicios a la comunidad consiste en realizar tareas gratuitas, de interés general, en entidades de asistencia, públicas o privadas, como hospitales, escuelas, parques nacionales y otros establecimientos similares.
Las tareas deberán asignarse según las aptitudes de los menores de edad, los cuales las cumplirán durante una jornada máxima de ocho horas semanales, los sábados, domingos y días feriados o en días hábiles, pero sin perjudicar la asistencia a la escuela o la jornada normal de trabajo.

Los servicios a la comunidad deberán prestarse durante un período máximo de seis meses.
La medida se mantendrá durante el tiempo necesario para que el servicio fijado se realice efectivamente o sea sustituido.

Reparación de daños[12]

Artículo 127. La reparación de los daños a la víctima del delito consiste en la prestación directa del trabajo, por el menor de edad en favor de la víctima, con el fin de resarcir o restituir el daño causado por el delito. Para repararlo, se requerirá el consentimiento de la víctima y del menor de edad; además, la aprobación del Juez.

Con el acuerdo de la víctima y el menor de edad, la pena podrá sustituirse por una suma de dinero que el Juez fijará, la cual no podrá exceder de la cuantía de los daños y perjuicios ocasionados por el hecho. La sanción se considerará cumplida cuando el Juez determine que el daño ha sido reparado en la mejor forma posible.

ECUADOR

Reparación del daño causado

Artículo 369. (...) 4.- Esta medida consiste en la obligación del adolescente de restablecer el equilibrio patrimonial afectado con la infracción, mediante la reposición del bien, su restauración o el pago de una indemnización proporcional al perjuicio provocado;

Servicios a la comunidad

Artículo 369 5.- Son actividades concretas de beneficio comunitario que impone el Juez, para que el adolescente infractor las realice sin menoscabo de su integridad y dignidad ni afectación de sus obligaciones académicas o laborales, tomando en consideración sus aptitudes, habilidades y destrezas, y el beneficio socio-educativo que reportan;

EL SALVADOR

La reparación del daño no está contemplada como sanción

Servicios a la comunidad

Artículo 13. Los servicios a la comunidad son tareas de interés general, que el menor debe realizar en forma gratuita.

Las tareas a las que se refiere la presente disposición, deberán asignarse en lugares o establecimientos públicos, o en ejecución de programas comunitarios, que no impliquen riesgo o

12 Resulta interesante que en primer lugar la reparación consiste en trabajo a favor de la víctima sustituible por una compensación económica. Además, se requiere la aceptación de la víctima.

peligro para el menor, ni menoscabo a su dignidad, durante horas que no interfieran su asistencia a la escuela o a su jornada de trabajo.

ESPAÑA
Prestaciones en beneficio de la comunidad
Artículo 7. (…) j. La persona sometida a esta medida, que no podrá imponerse sin su consentimiento, ha de realizar las actividades no retribuidas que se le indiquen, de interés social o en beneficio de personas en situación de precariedad. Se buscará relacionar la naturaleza de dichas actividades con la naturaleza del bien jurídico lesionado por los hechos cometidos por el menor.

GUATEMALA
La prestación de servicios a la comunidad
Artículo 243. La prestación de servicios a la comunidad consiste en realizar tareas gratuitas, de interés general en entidades de asistencia, públicas o privadas, como hospitales, escuelas, parques nacionales y otros establecimientos similares.

Las tareas deberán asignarse según las aptitudes de los adolescentes, procurando, cuando fuere posible, relacionar la naturaleza de la actividad con la del bien jurídico lesionado por el adolescente. Las tareas se cumplirán durante una jornada máxima de ocho horas semanales, los sábados, domingos y días feriados o en días hábiles, pero sin perjudicar la asistencia a la escuela o la jornada normal de trabajo.

Los servicios a la comunidad deberán prestarse durante un periodo máximo de seis meses.

La sanción se mantendrá durante el tiempo necesario para que el servicio fijado se realice efectivamente o sea sustituido. La sanción será supervisada y orientada por la persona que el juez designe, quien elaborará un plan individual para el adolescente.

La obligación de reparar el daño
Artículo 244. La reparación del daño consiste en una obligación de hacer del adolescente, a favor de la víctima, con el fin de resarcir el daño causado o restituir la cosa dañada por la conducta delictiva.

Cuando el adolescente mayor de quince años realice un acto que afecte el patrimonio económico de la víctima, el juez podrá determinar, teniendo especial cuidado en su situación económica, que éste restituya la cosa, promueva el resarcimiento del daño o compense el perjuicio causado a la víctima. Cuando dicho acto sea cometido por un adolescente de trece a catorce años de edad, el juez podrá también determinar la reparación del daño, quedando solidariamente obligados los padres, tutores o responsables.

El juez sólo podrá imponer esta sanción, cuando la víctima y el adolescente hayan dado su consentimiento. Si ambas partes acuerdan sustituir el trabajo por una suma de dinero, el juez procederá a fijar la cuantía que se considere equivalente a los daños y perjuicios ocasionados por el delito o falta. La sanción se considerará cumplida cuando el juez determine que el daño ha sido reparado de la mejor forma posible.

La reparación del daño excluye la indemnización civil.

HONDURAS

Servicios a la comunidad
Artículo 193. ...consistirán en tareas de interés general que le niño deberá realizar en forma gratuita. Dichos servicios en ningún caso podrán exceder de seis (6) meses.

Las tareas a que se refiere el párrafo anterior deberán cumplirse durante horas que no interrumpan su asistencia a la escuela o al trabajo y se prestarán en establecimientos públicos o durante la ejecución de programas comunitarios que no impliquen riesgo para el niño o menoscabo a su dignidad.

Obligación de reparar el daño[71]
Artículo 194. La obligación de reparar el daño (...), nacerá cuando resulte afectado el patrimonio de la víctima. En tal caso, la autoridad competente podrá ordenar la devolución de la cosa, su reparación o el pago de una justa indemnización.

NICARAGUA
Prestación de servicios a la comunidad
Artículo 199. La prestación de servicios a la comunidad consiste en realizar tareas gratuitas, de interés general en entidades de asistencia pública como hospitales, escuelas y parques.

Las tareas deberán asignarse según las aptitudes del adolescente y se cumplirán durante cuatro horas semanales, como mínimo, procurando realizarse los sábados, domingos y días feriados o en días hábiles, pero sin perjudicar la asistencia a la escuela o la jornada normal de trabajo y que no impliquen riesgos o peligros para el adolescente ni menoscabo a su dignidad.

Los servicios a la comunidad deberán prestarse durante un período máximo de seis meses.

Reparación del daño
Artículo 200. La reparación de los daños a la víctima del delito consiste en resarcir, restituir o reparar el daño causado por el delito. Para repararlo, se requerirá del consentimiento de la víctima.
Con el acuerdo de la víctima la medida podrá sustituirse por una suma de dinero que el Juez Penal de Distrito del Adolescente fijará, la cual no podrá exceder de la cuantía de los daños y perjuicios materiales ocasionados por el hecho. La medida se considerará cumplida cuando el Juez penal del Distrito del Adolescente determine que el daño ha sido reparado en la mejor forma posible.

PANAMÁ
Prestación de servicios sociales a la comunidad.
Artículo 133. La prestación de servicios sociales a la comunidad consiste en realizar, de modo gratuito, tareas de interés general en las entidades de asistencia pública, ya sean estatales o particulares, tales como hospitales, escuelas y parques.

Las tareas asignadas deberán guardar proporción con las aptitudes del adolescente o de la adolescente y con su nivel de desarrollo biopsicosocial. Igualmente, la prestación de servicios sociales a la comunidad deberá contar con orientación psicológica, la cual se realizará periódicamente.

Estas sanciones podrán tener lugar en días hábiles o en días feriados, pero en ningún caso podrán tener una carga superior a las ocho horas semanales, ni podrán interferir con la asistencia a la escuela o con la jornada normal de trabajo.

La prestación de servicios sociales a la comunidad no tendrá una duración mayor de dieciocho meses.

71 Si bien el juez puede ordenar la reparación en los delitos con efectos patrimoniales no se establece la necesidad de aceptación de la víctima.

Reparación de daños
Artículo 134. La reparación de daños consiste en una obligación de hacer, por parte del adolescente, a favor de la persona que haya sufrido perjuicio o disminución en su patrimonio por razón de la conducta infractora. La obligación de hacer que se le asigne al adolescente o a la adolescente, siempre deberá tener por finalidad resarcir el daño causado o restituir la cosa dañada por su conducta, sin menoscabar la situación socioeconómica del adolescente o de la adolescente.

El juez penal de adolescentes sólo podrá imponer esta sanción, cuando la víctima haya dado su consentimiento y el adolescente o la adolescente y el adulto responsable hayan manifestado su acuerdo. Si ambas partes acuerdan sustituir el trabajo del adolescente o de la adolescente por una suma de dinero, el juez procederá a fijar la cuantía que se considere equivalente a los daños y perjuicios ocasionados por el acto infractor.

El adulto responsable que manifieste su acuerdo en imponer esta sanción, está solidariamente obligado a la reparación del daño. En todo caso, el juez de cumplimiento podrá considerar la sanción cumplida cuando el daño haya sido reparado en la mejor forma posible.

La reparación del daño excluye la indemnización civil por responsabilidad extracontractual, a menos que la persona ofendida la haya solicitado y el juez, concedido de modo expreso.

PARAGUAY
Reparación del daño
Artículo 200. (...) g) reparar, dentro de un plazo determinado y de acuerdo con sus posibilidades, los daños causados por el hecho punible;

Imposición de obligaciones
Artículo 205.

a) reparar, dentro de un plazo determinado y **de acuerdo con sus posibilidades**, los daños causados por el hecho punible;
b) pedir personalmente disculpas a la víctima;
c) realizar determinados trabajos;
d) prestar servicios a la comunidad; y,
e) pagar una cantidad de dinero a una entidad de beneficencia.

Las obligaciones no podrán exceder los límites de la exigibilidad.

El Juez deberá imponer la obligación de pagar una cantidad de dinero solo cuando:
el adolescente haya realizado una infracción leve y se pueda esperar **que el pago se efectúe con medios a su propia disposición;** (...)

PERÚ
Prestación de Servicios a la Comunidad.-
Artículo 232. La Prestación de Servicios a la Comunidad consiste en la realización de tareas acordes a la aptitud del adolescente sin perjudicar su salud, escolaridad ni trabajo, por un período máximo de seis meses; supervisados por personal técnico de la Gerencia de Operaciones de Centros Juveniles del Poder Judicial en coordinación con los Gobiernos Locales.

REPÚBLICA DOMINICANA
Prestación de servicios sociales a la comunidad
Artículo 332. La prestación de servicios sociales a la comunidad consiste en realizar de modo gratuito, tareas de interés general en las entidades de asistencia pública o privada, tales como hospitales, escuelas, parques, bomberos, defensa civil, cruz roja y otros establecimientos similares, siempre que estas medidas no atenten contra su salud o integridad física y psicológica.

Las tareas deben guardar proporción con las aptitudes de la persona adolescente y con su nivel de desarrollo biopsicosocial y deberá contar con atención integral continua. (...)

URUGUAY
Trabajos en beneficio de la comunidad
Artículo 82 Los trabajos en beneficio de la comunidad se regularán de acuerdo a las directivas que al efecto programe el Instituto Nacional del Menor. Preferentemente podrán realizarse en hospitales y en otros servicios comunitarios públicos. No podrán exceder de seis horas diarias. La autoridad administrativa vigilará su cumplimiento, concertando con los responsables de su ejecución, de forma que no perjudique la asistencia a los centros de enseñanza, de esparcimiento y las relaciones familiares, en todo lo cual se observará el cuidado de no revelar la situación procesal del adolescente.

VENEZUELA
Servicios a la comunidad
Artículo 625. Consiste en tareas de interés que el adolescente debe realizar de forma gratuita, por un período que no exceda de seis meses, durante una jornada de ocho horas semanales preferentemente los días sábados, domingos y feriados, o en día hábil pero sin perjudicar la asistencia a la escuela o la jornada normal de trabajo.

Las tareas a las que se refiere este artículo deberán ser asignadas, según las aptitudes del adolescente en servicios asistenciales o en programas comunitarios que no impliquen riesgo o peligro para el adolescente o menoscabo para su dignidad.

COMENTARIO FINAL
Todas las legislaciones analizadas incorporan mecanismos de desjudicialización, principio fundamental de una ley de responsabilidad penal juvenil.

Las primeras legislaciones aprobadas con posterioridad a la Convención –las de Brasil y Perú- establecieron la "remisión" como única forma de salida anticipada del proceso. La remisión se incorpora al derecho penal juvenil de los países de tradición romano germánica a través de las "Reglas Mínimas de las Naciones Unidas para la administración de la justicia juvenil" (Reglas de Beijing), adoptadas por las Naciones Unidas en 1985. Las legislaciones posteriores incorporan otros mecanismos como el principio de oportunidad, la conciliación y la suspensión del proceso a prueba. La característica común es que en todas las legislaciones se trata de mecanismos procesales.

En las legislaciones salvadoreña y venezolana casi todas las formas de desjudicialización toman en cuenta la reparación a la víctima.

La conciliación está contemplada en todas las legislaciones que hemos analizado, con excepción de Brasil, Perú y Bolivia. Los países que la incorporan limitan generalmente su campo de aplicación a los hechos no violentos. La procedencia más amplia la contempla la Ley del Menor Infractor de El Salvador, que solamente no la admite en el caso de delitos o faltas que afecten intereses difusos de la sociedad; sin embargo, la reciente Ley Antimaras del 1° de abril del 2004, declara improcedente la posibilidad de la conciliación en los casos regidos por ella.

La legislación venezolana admite la posibilidad de conciliación en el caso de hechos punibles que afecten intereses colectivos o difusos y la posible reparación social del daño en esos casos, previsión que es novedosa y única en la legislación analizada.

En lo referente a las **sanciones no privativas de libertad de carácter restaurativo**, se destaca la previsión de la ley de Paraguay en la que se indica que el adolescente debe reparar de acuerdo con sus posibilidades, los daños causados por el hecho punible o pedir personalmente disculpas

a la víctima o realizar determinados trabajos o prestar servicios a la comunidad o pagar una cantidad de dinero a una entidad de beneficencia. Dispone también que el juez deberá imponer la obligación de pagar una cantidad de dinero solo cuando se trate de una infracción leve y se pueda esperar que el pago se efectúe con medios a su propia disposición.

Consideramos que la **prestación de servicios a la comunidad** tiene siempre una finalidad restaurativa ya que persigue que el adolescente comprenda que la colectividad o determinadas personas han sido lesionadas por su conducta delictiva y que los servicios que presta constituyen su reparación. Su carácter educativo es incuestionable y puede contribuir realmente al proceso de inserción comunitaria del adolescente. Es importante tomar nota de la disposición de la ley española que recomienda relacionar la naturaleza de dichas actividades con la naturaleza del bien jurídico lesionado por los hechos cometidos por el menor.

Como última reflexión podemos afirmar que:
Acertadamente, el preámbulo del *Proyecto revisado de la Declaración de Principios sobre la utilización de programas de justicia restaurativa en materia penal*[72], dice que " … el enfoque restaurativo da a las víctimas la oportunidad de obtener reparación, sentirse más seguras e intentar cerrar una etapa, permite a los delincuentes comprender mejor las causas y los efectos de su comportamiento y asumir una genuina responsabilidad y posibilita a las comunidades comprender las causas profundas de la acción delictiva, promover el bienestar comunitario y prevenir la delincuencia". Este principio es compatible con las finalidades del modelo de responsabilidad penal para los adolescentes que establece la *Convención de las Naciones Unidas sobre los Derechos del Niño,* y con las legislaciones de los países de América Latina que hemos analizado, siempre y cuando se respeten las garantías específicas de las que los adolescentes gozan por su especial condición de menores de edad. Esto significa, para la víctima, que la posibilidad de acceder al mecanismo restaurativo cederá cuando resulte contrario al "interés superior del adolescente" entendido como la garantía a favor de la persona menor de edad, que obliga a tomar la decisión que más favorezca el reconocimiento de los derechos del adolescente, en este caso el infractor frente a los derechos de la víctima.

Fortalecer la utilización de mecanismos de justicia restaurativa, y hacerlo primordialmente con la población joven es hoy más que nunca importante en el caso de los países de América Latina. En efecto, las personas de entre 0 y 35 años de edad constituyen el 65% de la población total de la región, con países que tienen porcentajes aún más altos (CELADE 1950-2050), y como sabemos la criminología ha verificado que a mayor población joven corresponde más delito. También la criminología ha verificado que mayor tiempo fuera de la escuela y la familia = más delito, y el porcentaje de niños, niñas y jóvenes en edad escolar fuera de la escuela en nuestros países es muy alto. Y finalmente, también la criminología ha verificado que existe correlación directa entre la inequidad en la distribución del ingreso y el delito, e ILANUD ha verificado esto específicamente para el caso de los homicidios y los delitos contra la propiedad, y la información del Banco Mundial y de la Comisión Económica para América Latina y el Caribe CEPALC nos dice que a nivel mundial la distancia del ingreso entre los veinte países de más altos ingresos y los veinte de más bajos ingresos se ha más que duplicado en el curso de los últimos cuarenta años (World Bank 2000:3), y que, asimismo, desde 1980 hasta la actualidad todos los países de América Latina -con la sola excepción del Uruguay- mantuvieron y en la mayoría de los casos ensancharon la brecha de la inequidad en la distribución del ingreso (CEPALC 2000:51). Estamos en presencia de un sistema económico mundial que distribuye inequidad entre países de altos y de medianos y bajos ingresos, y al interior de los países, con graves consecuencias sociales que se manifiestan también en materia de criminalidad.

De manera que la prospectiva de los países de América Latina para el corto y mediano plazo es mala, y se requerirá no solamente justicia penal para mejorar la situación, sino por sobre todo políticas adecuadas que contribuyan a lograr una distribución más equitativa del ingreso, y mucha justicia restaurativa para reducir la violencia de la criminalidad y de la respuesta penal.

72 Resolución 200/14 del Consejo Económico y Social, anexo, modificado por el Grupo de Expertos sobre justicia restaurativa.

CITAS

CELADE, 1950-2050

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Workshop 2

AN OVERVIEW OF RESTORATIVE JUSTICE AROUND THE WORLD

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ABSTRACT
Restorative justice has become a global phenomenon in criminal justice systems. Resonating with, and in some cases drawing from, indigenous conceptions of justice, it offers both an alternative understanding of crime and new ways of responding to it. Restorative processes include victim-offender mediation, conferencing and circles; restorative outcomes include apology, amends to the victim and amends to the community. Restorative interventions are being used by police, prosecutors, judges, prison officials and probation and parole authorities. Restorative interventions have developed somewhat differently from region to region, but in many cases, countries have found it useful to adopt appropriate legislation. Human rights and other objections or critiques of restorative justice have been raised. Due in part to this, the UN has endorsed the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

"We brought the needle to sew the torn social fabric, not the knife to cut it. "
Bantu proverb

Introduction
In only twenty-five years, restorative justice has become a worldwide criminal justice reform dynamic. Well over 80 countries use some form of restorative practice in addressing crime; the actual number could be closer to 100.[73] While in many of these countries, restorative programmes are experimental and localized, in an increasing number of others restorative policies and programmes play a significant part in the national response to crime.

This paper will provide an overview of the current use of restorative justice around the world. It is a survey of the field, and necessarily will only touch on subjects that could be, and have been, treated far more extensively elsewhere. It is hoped that the footnotes and references will be of use to persons seeking more detailed or elaborate information.[74]

Roots of restorative justice
Restorative justice is both a new and an old concept. While the modern articulation (including the name) has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes of conflict resolution. The recent rediscovery of those processes in different parts of the world has stimulated, informed and enriched the development of restorative practices. But there have been other influences as well. Some of these have critiqued criminal justice practice

73 In 2001, the Centre for Justice and Reconciliation at Prison Fellowship International identified 80 countries in which some form of restorative justice intervention was being used. (Van Ness, 2001, at 13). The estimated increase by 20 nations is based on two factors: the growing number of countries in which restorative approaches are being tried and the growing literature on the subject which is bringing existing restorative practices to the attention of observers.

74 A survey is only as complete as the information available, of course. One of the tasks of the Centre for Justice and Reconciliation at Prison Fellowship International is to monitor worldwide developments related to restorative justice. We do this by following newspaper accounts, collecting newsletters, networking with consortiums and associations of practitioners, trying to stay on top of the burgeoning literature on the topic, and through our own involvement with the more than 100 national Prison Fellowship affiliates. My colleague, Lynette Parker, ensures that most of this information finds its way onto the pages of Restorative Justice Online (www.restorativejustice.org), and it is from there that much of this survey is derived.

in ways that are congruent with the restorative justice critique; others have offered new perspectives and programmes that have pointed the way toward deeper understanding of restorative practices.

Indigenous justice processes have significantly shaped restorative justice in at least three ways. Two hallmark restorative justice programmes are adaptations from indigenous practices: conferences (from traditional Maori practices in New Zealand) and circles (from First Nations practices in North America). Second, the underlying philosophy of indigenous processes that justice seeks to repair the torn community fabric following crime has resonated with and informed restorative justice. (Blue and Blue, 2001) Third, some indigenous forms of justice have been incorporated into the formal response to crime (see, for example, Golub's comparison of non-state justice systems in Bangladesh and the Philippines. 2003).

The rise of restitution in the 1970s, together with the victim rights and support movements of the 1980s, exposed the incompleteness of the criminal justice system's focus on the offender. Proceedings whose sole purpose is to determine whether accused individuals have violated the law and if so, how to punish them, leave out the parties most affected by the criminal acts: victims. The movements to secure restitution for victims, to provide them with support and assistance, and to give them a voice in the criminal justice process have underscored the injustice of a justice process that excludes victims from meaningful participation (Strang, 2002).[75]

Social justice critiques have also pointed to inadequacies in the conceptual foundations or practices of criminal justice. These include the prison abolition movement, whose recognition of the suffering and debilitation caused by imprisonment has motivated its drive to replace it with other sanctions. Religious critiques of criminal justice practice have focused on the inadequacies of retribution alone as a governing theory and on the appropriateness of offender accountability to their victims. Some feminist scholars have argued that societal responses to crime should reflect values such as harmony and felicity rather than those of control and punishment. (Van Ness and Strong, 2002)

Defining restorative justice

There is no single accepted definition of restorative justice. Typically, however, definitions fall into one of two categories (Johnstone and Van Ness, 2005). The most restrictive category consists of process-based definitions emphasizing the importance of encounters between the stakeholders in the crime and its aftermath.[76] The most expansive category consists of justice-based definitions emphasizing the outcomes[77] and/or values[78] of restorative justice. A definition that combines the two (and that in terms of expansiveness lies somewhere between the two categories) is the following: *Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative processes* (Van Ness, 2004).

A definition that includes attention to outcomes will allow for, and even require, not only restorative processes but also interventions such as victim support, offender reintegration services, victim participation in criminal court proceedings, and court-imposed restitution and community service orders, provided that those interventions incorporate restorative values to the extent possible.

75 This is not to suggest that restorative justice programmes are inherently better at including victims. Considerable work needs to be done, particularly when particular programmes operate within the criminal justice system, to resist the strong offender-oriented current. For a thorough review of the issues, see Chapters 5-8 of Zehr, Howard And Toews, Barb. (2004). Critical Issues in Restorative Justice. Monsey, New York and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing.

76 For example: "Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future." Marshall, Tony F. (1996). The evolution of restorative justice in Britain. European Journal on Criminal Policy and Research 4 (4): 21-43.

77 For example, "Restorative justice is every action that is primarily oriented to doing justice by repairing the harm that is caused by a crime." Bazemore, Gordon And Walgrave, Lode. (1999). "Restorative juvenile justice: In search of fundamentals and an outline for systemic reform.". In Restorative juvenile justice: Repairing the harm of youth crime, ed. Gordon Bazemore and Lode Walgrave, 45-74. With an introduction by Gordon Bazemore and Lode Walgrave. Monsey, NY: Criminal Justice Press.

78 For example, "Repairing harm or healing is the main value of restorative justice but not the only one. Restorative justice programs also aim to promote democratic values, in particular the values of participation and deliberation….Other values prized by restorative justice include reintegration, mercy, and forgiveness. Roche, Declan. (2001). The Evolving Definition of Restorative Justice. Contemporary Justice Review 4(3, 4): 341-353 at 347-48.

Such a definition, therefore, can offer a philosophical and jurisprudential framework for those and other interventions to repair the harm caused or revealed by crime. Further, it offers a robust critique of contemporary criminal justice, with its narrow conceptual focus on lawbreaking behaviour (Walgrave and Bazemore, 1999).

The process definition is less ambitious and therefore much more precise. It offers a clearer standard against which to determine whether a particular intervention is restorative. It has been used to criticize interventions that proponents of the broader definition accept as restorative, on the grounds that they offer limited opportunities (or no opportunities at all) for encounters among the parties (McCold, 2000).

A further distinction within the process definition concerns which "stakeholders" should be allowed to participate in the process. Some have argued for a narrow use of the term, one that is limited to the victim, the offender and their families and friends (McCold, 2000). Others argue for a more expansive definition that includes representatives from the broader community and from government as well (Marshall, 1999).

The Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters ("UN Basic Principles"), endorsed by ECOSOC in 2002, avoids taking sides in this debate. Instead of attempting to define "restorative *justice*," it assigns usages to the terms "restorative *process*" and "restorative *outcome*" and a fairly broad definition of "parties."
"'Restorative process' 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' means an agreement reached as a result of a restorative process."

"Parties" means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process."[79]

Restorative processes, outcomes and values
Each of the restorative processes described below can be used at any stage of the criminal justice process, or outside the system altogether. They take place after guilt is no longer an issue either because there has been a conviction or because the defendant admits responsibility. The results of the process may or may not have an effect on the sentence, depending on relevant laws or regulations.

The first contemporary restorative process was victim offender mediation. In its original form, a trained facilitator prepared and brought together a victim and offender to discuss the crime, the harm that resulted, and the steps needed to make things right (Umbreit, 2001). Conferencing, which was adapted from Maori traditional practices in New Zealand, involves more parties in the process than mediation. Not only are the primary victim and offender invited, so are family members or friends of the victim and the offender as well as representatives of the criminal justice system (McCold, 1999). Circles, which draw from First Nations' practices in Canada, are perhaps the most inclusive process of the three, inviting any interested member of the community to participate. The participants sit in a circle, with discussion moving clockwise from person to person until the participants have arrived at a resolution. (Pranis, et al, 2003).

There are several ways in which offenders often make amends. The first is by offering an apology, a sincere admission and expression of regret for their conduct. (Cavanagh, 1998). A second is restitution, wherein the offender pays back the victim through financial payments, return or replacement of property, performing direct services for the victim, or in any way that the parties agree (Harland, 1982). The third is through performing community service by providing free

79 Resolution 2002/12, E/2002/INF/2/Add.2, Section I, par.2, 3, & 4.

services to a charitable or governmental agency. These and other measures to repair harm (if an expansive definition of restorative justice is used) are considered restorative outcomes.

Restorative justice values may be grouped into two categories.[80] In the first are normative values (the way the world ought to be); in the second are operational values (the way restorative programmes should function). Normative values find expression through the operational values implemented in restorative programmes. Figure 1 shows what might be included in each category:

Figure 1

Normative Values of Restorative Justice	**Operational Values of Restorative Justice**
Active Responsibility -- taking the initiative to help preserve and promote restorative values and to make amends for behaviour that harms other people	**Amends**: those responsible for the harm resulting from the offence are also responsible for repairing it to the extent possible.
Peaceful Social Life -- responding to crime in ways that build harmony, contentment, security, and community well-being	**Assistance**: affected parties are helped as needed in becoming contributing members of their communities in the aftermath of the offence
Respect -- regarding and treating all parties to a crime as persons with dignity and worth	**Collaboration**: affected parties are invited to find solutions through mutual, consensual decision-making in the aftermath of the offence
Solidarity -- fostering agreement, support, and connectedness, even amid significant disagreement or dissimilarity	**Empowerment**: affected parties have a genuine opportunity to participate in and effectively influence the response to the offence **Encounter**: affected parties are given the opportunity to meet the other parties in a safe environment to discuss the offence, harms, and the appropriate responses **Inclusion**: affected parties are invited to directly shape and engage in restorative processes **Moral education**: community standards are reinforced as values and norms are considered in determining how to respond to particular offences **Protection**: the parties' physical and emotional safety is primary **Resolution**: the issues surrounding the offence and its aftermath are addressed, and the people affected are supported, as

80 The following material on values is drawn from Van Ness, Daniel W.. RJ City. Posted on Restorative Justice Online, http://www.pficjr.org/programs/rjcity/latest/RJ%20City%20Draft%20-%204-30-04.pdf, as of 10 March 2005.

	completely as possible

Evaluations of restorative justice processes
The growing literature on research concerning restorative justice processes is remarkably consistent in key findings. First, satisfaction with the processes is higher for both victims and offenders than with court processes (Vanfraechem and Walgrave, 2004). Second, restitution and other obligations by the offender are more likely to be completed following a restorative process than in response to a judicial order alone (Walgrave, 2004). Third, victims who participate in restorative processes report that they feel more secure (Strang and Sherman, 2003). Fourth, offenders who participate have a greater understanding of the harm they have caused, feel more empathy toward their victims, and are less likely to repeat their delinquent or criminal behaviour in the future (Rowe, 2002). Studies on recidivism consistently show that offenders who go through restorative processes are less likely to re-offend than those who proceed through criminal courts (Bonta, et al., 2002). The studies that have not found such a reduction have nonetheless concluded that offenders who participate in restorative processes are no more likely to re-offend than those who are dealt with by the courts (Wilcox, et al., 2004).

Uses of restorative justice processes in the criminal justice system
The remainder of this overview will focus on *restorative processes.* These are the most distinctive dimensions of restorative justice even for those who adopt an expansive definition. They are also the aspects of restorative justice about which some observers have raised due process questions and cautions.[81]

The first use of restorative justice processes was as part of pre-sentence preparation. After the determination of guilt, the judge or probation officer responsible for a pre-sentence investigation referred the matter to the restorative programme, and if the parties were willing, they would meet. Any agreement reached as a result of the restorative process would be presented to the judge as a recommended sentence.

This use of restorative processes continues, as noted below. However, they have also been used in virtually every part of the criminal justice system. Their effects on the sentence and/or on the criminal proceeding vary from programme to programme. In some instances the result helps guide decisions by decision-makers in the justice system. In others, the result is independent of the justice process and has little if any effect on the outcome of the criminal justice proceedings.

Use by police. In a number of countries, police have begun using restorative processes (and in some instances, outcomes) in deciding what to do with juveniles and adults who come to their attention. This is, of course, only possible where police are given discretion to decide how to proceed with a matter. In New Zealand, the Children, Young Persons and Their Families Act of 1989 created a restorative alternative for police called family group conferences. One of the purposes of the Act was to divert juveniles from Youth Court. Even when matters were referred to the Court, it offers victims, offenders and their families a voice in deciding what sentence the judge should impose. When police do not refer juveniles to conferences or courts (which is the case a majority of the time), the offenders are often required to make apologies, do community service or pay restitution (Morris, 2004).

In some jurisdictions, the police conduct conferences themselves rather than referring the young people elsewhere. Thames Valley Police in England train police officers to conduct conferences that may involve the victim and offender, their family and friends, and in some instances members of the community (Parker, 2001).

81 For a discussion of the restorative uses of other kinds of interventions, such as victim participation in court proceedings, court-imposed restitution and community service, see Van Ness, D And Heetderks Strong, Karen. (1997). Restoring Justice. Cincinnati, OH: Anderson Publishing Company, 228p. Second Edition 2002.

A number of other countries have adopted similar programmes.[82] Successful completion of a mediation agreement results in the dismissal of charges (or in the decision not to charge) and may, as in Norway, mean that the case is removed from the ordinary police certificate of good conduct (Paus, 2000).

In a growing number of countries, including New Zealand and England, these measures have been extended to adult offenders as well (Maxwell and Morris, 2001; Home Office, 2003). In South Africa, Community Peace Committees were formed to assume responsibility for crime prevention and resolution in localities where there was little confidence in the justice system. Recently, however, a pilot project was initiated to form a partnership with the police. While disputants may still go directly to the Community Peace Committee, they may also go to police who will refer appropriate cases to the Community Peace Committee (Sharma, n.d.)

Use by prosecutors. As a general rule, prosecutors are given more discretionary powers than police, and courts more than prosecutors.[83] In common law countries, prosecutors have the authority to divert cases. But even in civil law countries, recent legislation allows prosecutors to refer certain cases to restorative processes. In Austria, for example, prosecutors may send matters to mediation (referred to as "out of court offense compensation") after they have received positive recommendations from the social worker/mediator (Pelikan, 1997). The German Juvenile Justice Act of 1990 allows prosecutors to dismiss criminal cases on their own authority if the juvenile has either reached a settlement with the victim or made efforts to do so.[84]

Following a pattern that often occurs as jurisdictions adopt restorative justice processes, countries that began with prosecutor-referred restorative processes for juveniles have since extended it to adults as well. An example of this is Austria, which in 2000 authorized prosecutorial diversion (including to victim offender mediation) to adult defendants facing sentences of not more than five years' imprisonment (Löschnig-Gspandl, 2001).[85] In some other countries, such as Colombia, legislation authorizing the use of mediation has applied first to adult cases, when the prosecutor agrees.[86]

In general, the prosecutor's authority to divert a matter after charges have been filed appears to depend on the legal tradition of the country. In common law countries the prosecutor may continue to divert until the trial (and withdraw charges in the event of a successful resolution) without the court's permission. In civil law countries the power to divert is more likely to transfer to the judge once charges are laid (Van Ness and Nolan, 1998).

Use by courts. Judges use restorative processes both for pre-trial diversion and as part of sentencing preparation. In those jurisdictions where prosecutors have no authority to divert cases once charges are laid, judges may still have that authority. In Italy, for example, a judge may arrange for mediation between a juvenile offender and the victim, and following successful completion may enter an order suspending the trial and imposing probation (Paliero and Mannozzi. 1992). In the U.S. State of North Carolina, this approach has become so routine that at the beginning of court hearings the prosecutor will invite any parties interested in mediation to identify themselves, and the judge will explain the benefits of mediation. Trained, volunteer court mediators are present to immediately help willing parties find a mutually acceptable resolution (McGeorge, 2004). In some jurisdictions, a judge may offer court-based mediation even after the trial has begun if it appears that the parties might benefit from it. However, as with other diversion

82 Police are permitted to refer juveniles to restorative processes in Australia, the United States, the Netherlands, Russia and Canada, to name a few examples.

83 Laws that grant police discretion to divert cases typically give similar powers to prosecutors and courts. However, other legislation restricts the use of discretion to prosecutors and courts, and a final category of laws makes it available to judges alone.

84 Jugendgerichtsgesetz (JGG),§§ 47, 45(3)(10), no. 7 (1990).

85 Other conditions include that the offence not be a petty offence, that the crime not have resulted in a fatality, that the prosecutor or the court consider the facts of the case to be settled (often through a confession), and that the suspect voluntarily accepts the offer of diversion. Löschnig-Gspandl, Marianne. (2001). Diversion in Austria: Legal Aspects. European Journal of Crime, Criminal Law and Criminal Justice. 9(4): 281-290.

86 Criminal Process Code, Law 906 of 2004 (August 31).

programmes, the decision by the parties whether to participate will not influence the outcome of a trial.

In addition to pre-trial diversion of cases to restorative processes, judges may also use restorative processes after conviction or a guilty plea and before sentencing. For example, in Finland, the judge may suspend the matter until an agreement is made and then carried out, at which point the sentence may be waived (Iivari, 2000). Another example is the Restorative Resolutions Project in Canada, which focuses on adult offenders and their victims in cases of serious felonies. During its initial 18 months, the Project accepted 67 of the 115 cases referred. Of those 67, the Project developed plans for 56 offenders. These plans were submitted to judges at the time of sentences. The plans were accepted in the cases of 45 offenders (Richardson, et al., 1996).

Use by probation officers. Not all offenders and victims are willing or able to participate in a restorative process prior to disposition of the criminal case in court. In those instances, restorative processes may be used in the course of the offenders' sentences. In Japan, when the offender has been placed on probation, the probation officers may arrange meetings with the victim for the offender to apologize and make restitution (Norapoompipat, 2000). In fact, in 2001, a rehabilitation center was opened in order to arrange conferences between juvenile offenders and their victims. Participation is voluntary and may include family members and supporters of both parties. These conferences may be held prior to the court proceeding or while the juvenile is on probation. The agreement is then sent either to the judge or the probation officer for their use in working with the offender.

Use in prison. There are several reasons for providing restorative processes in prison. One is to help prisoners develop an awareness of and empathy for victims. This may be done by bringing surrogate victims (i.e., victims of crimes committed by other offenders) to meet with groups of prisoners. An example is the Sycamore Tree Project, a programme used by Prison Fellowship affiliates in a number of countries (Walker, 1999).

Other programmes provide an opportunity for prisoners to meet with their victims, their estranged families, or with hostile communities. The State of Texas developed a programme at the request of victims that facilitates meetings between crime victims or survivors with their offenders. Most of the offenders are serving very long sentences; some are on death row. The programme does not affect the prisoners' sentence length; however, the victims' opinions are very influential in parole hearings and some victims have decided not to contest parole after their meetings (Doerfler, 2001).

Many prisoners have alienated their families because of their involvement in crime, the embarrassment and harm they have caused their families, and in some cases because of crimes they have committed against family members. Furthermore, communities can be fearful and angry at the prospect of a prisoner returning. Consequently, it may be necessary for prisoners, family members, and community representatives to meet to discuss how to re-establish meaningful relationships together. Volunteers with the Prison Fellowship affiliate in Zimbabwe act as facilitators in conversations between prisoners' families, the head man of the prisoners' villages, and the prisoners about the conditions needed for a successful re-entry to the village (Van Ness, 2005b).

A final purpose for restorative justice processes in prison is to create a culture within prison in which conflict is resolved peacefully. This includes dispute resolution programmes for conflict between prisoners. Imprisoned gang leaders in Bellavista prison in Medellin, Colombia, have created a peace table, at which they meet to resolve disputes between gangs arising both inside and outside the prison.[87] Other prisons have programmes that address workplace conflict between correctional staff members, including senior management. Such programmes have been used with success in Philadelphia City Prisons and the state of Ohio. The programmes have not only helped

87 The author has visited this prison and met with participants at the peace table.

staff address their own conflicts, they have also improved prison staff members' ability to deal with conflicts they may have with prisoners (Roeger, 2003).

Use by parole officers. Restorative processes are used in parole in at least three ways. One is when, prior to the decision to parole an offender, the victim and offender have met in a restorative process and made agreements that could be considered in determining whether to parole the offender and what conditions to impose. These restorative processes might have taken place years before the parole hearing. The Parole Act 2002 in New Zealand provides that the dominant concern in deciding whether to release a prisoner on parole is the safety of the public. However, the board is also instructed to give "due weight" to restorative justice outcomes (Bowen and Boyack, 2003). On the other hand, there are those who oppose use of such agreements. The American Probation and Parole Association's manual on the victim's involvement in offender re-entry recommends that prisoners should not be offered, nor should they receive, any favourable treatment as the result of apologizing to the victim or attempting in some other way to make amends. The rationale is that victims will be able to trust the offenders' statements more if they know that the offenders have no ulterior motives (Seymour, 2001).

A third use of restorative processes is at the time a release decision is to be made. The National Parole Board in Canada has created specialized hearings when the prisoner is an Aboriginal offender. An "Elder-assisted hearing" is one in which an Aboriginal elder participates in the parole hearing in order to inform board members about Aboriginal culture, experiences and traditions, and their relevance to the decision facing the board members. The elder also participates in the deliberations. A "community-assisted hearing" takes place in an Aboriginal community, and all parties, including the victim and members of the community, are invited to participate in what is called a "releasing circle," which will consider the question of release.[88] (National Parole Board, 2002)

A second use for restorative processes is immediately before parole to discuss what conditions of parole will be imposed on the parolee after release from prison. The New South Wales Department of Corrective Services uses Protective Mediation in situations where it is likely that an offender will come into contact with the victim on release (e.g., they live in a small community, they are family members, etc.). The mediation is not "face to face," but is instead conducted by a trained staff person who acts as a "go-between" to clarify the needs and wishes of each party about contact with the other, and helps them arrive at a practical agreement, when possible. The agreement may or may not be made part of the conditions of parole (NSW Department of Corrective Services, 1998).

Other uses. This paper has addressed the use of restorative justice processes in the criminal justice system. However, it should be noted that this methodology is being applied in a number of other settings. Many jurisdictions are using restorative justice in schools; this may be a logical extension of its use in responding to juvenile offences. It is used to address disciplinary problems, conflict among students, bullying and juvenile offences committed at school (see, for example, Hopkins, 2002).

One of the early formulations of restorative justice theory was developed by John Braithwaite as a result of research into successful interventions for securing compliance with corporate regulatory schemes (Braithwaite, 1989). Restorative processes are now used in addressing workplace conflict as well (Costello and O'Connell, 2002).

Restorative interventions are used to address community disputes ranging from misdemeanour crimes to chronic community conflicts (Abramson and Moore, 2001). Further, restorative justice has been applied to societal disputes in post-conflict settings. Perhaps the best-known instance is the South African Truth and Reconciliation Commission, but other countries, such as Rwanda, are

88 While a number of jurisdictions allow victims to offer statements at parole hearings, these are restorative interventions only in the broadest sense of the term "restorative justice." They are not restorative processes, because the purpose of the hearing is to inform the decision-makers (the parole board) about factors it should consider in making the decision.

also using restorative processes in response to state-sponsored or mass violence (Tiemessen, 2004).

Issues concerning adoption of restorative justice processes

Issue 1: Due process and restorative justice. The informality of restorative processes has given rise to concerns that without the due process protections of formal justice systems, restorative processes will fail to protect the human rights of the participants. This is, in part, why the United Nations Economic and Social Council endorsed a Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters in 2002[89]. The principles offer guidance to governments intending to incorporate restorative processes so that both victims and offenders are treated with respect and their fundamental rights are protected.

Warnings about whether restorative processes can adequately protect the rights of accused persons have centred around five fundamental rights recognized in international law (Van Ness, 1999). Figure 2 reviews brief descriptions of how those rights might be violated in restorative processes and the approach taken in the Basic Principles to avoid such violations.

Figure 2

1. The right to recognition before the law and equal protection under the law.	
Concern: Discriminatory behaviour might be masked by the informality of restorative proceedings.	**Basic Principles response:** Paragraph 9 provides that "disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring any case to, and in conducting, a restorative process." Paragraph 18 provides that facilitators be impartial and that they should not only respect the dignity of the parties but ensure that the parties treat each other accordingly.
2. The right to freedom from torture and cruel, inhuman and degrading treatment or punishment.	
Concern: The parties may not appropriately limit the kinds of obligations that the offender assumes. One way is by requiring obligations that are disproportionate to those assumed by other offenders in other agreements. A second way is by including an obligation that the law would reject as degrading or cruel.	**Basic Principles response:** Paragraph 7 states that agreements must be reached voluntarily and "should contain only reasonable and proportionate obligations." Paragraph 15 calls for judicial supervision of agreements
3. The right to presumed innocent.	
Concern: Offenders are expected to assume	**Basic Principles response:** Paragraph 7 allows restorative processes

89 See note 6.

responsibility before using restorative processes. This confession could be used later as evidence of guilt in the event the restorative process fails to produce an agreement and the matter returns to court.	only when there is sufficient evidence to charge the offender. Paragraph 8 provides that "participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings." Paragraph 14 provides that when restorative processes are not held in public, the discussions should be confidential. Paragraphs 16 and 17 address situations when either there is no agreement or the agreement is not fully implemented and the matter is referred back to the criminal justice process. In those situations, the failure to agree or to complete an agreement may not be used in any criminal justice proceedings that may follow.
4. The right to a fair trial.	
Concern: Offenders give up the opportunity for a trial when they choose to participate in a restorative process.	**Basic Principles response:** Paragraph 7 limits the use of restorative processes to matters when the offender and victim freely and voluntarily consent to participate. Furthermore, they should be allowed to withdraw the consent at any time during the process. The agreements must also be reached voluntarily. Paragraph 13 requires procedural safeguards be in place when referring cases to restorative processes. Among those are provisions requiring that the parties be "fully informed of their rights, the nature of the process and the possible consequences of their decision." Another safeguard prohibits coercion or unfair inducement to participate in a restorative process or accept a restorative outcome.
5. The right to assistance of counsel.	
Concern: The parties may be unaware of safeguards contained in the Basic Principles and in national and domestic law. They need the assistance of legal counsel to make educated decisions about participation in restorative processes.	**Basic Principles response:** Paragraph 13 provides that "subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian."

Issue 2: Legal status of restorative justice processes. Some restorative justice processes are entirely independent of the criminal justice system and have no formal legal status except as their outcomes are accepted within the criminal justice system. This not only includes indigenous processes, such as the peace committees in Pakistan (Khan, 2004) and the sulha peacemaking process in the Middle East (Jabbour, 1996), but also contemporary community-based mediation programmes such as the mediation centres in Guatemala (Parker, 2004) and Argentina (Paz, 2000). Other restorative processes operate under explicit and limited legislative authorisation, such as that developed in Austria and other civil law countries to allow development of restorative justice programmes (Pelikan, 2000). A third category of legislation concerning restorative processes consists of restorative measures that are included as part of a larger justice reform act, as were the Youth Offending Teams in The Crime and Disorder Act 1998 (England & Wales). A fourth category of legislation concerns efforts to base entire juvenile or adult justice systems on restorative justice philosophy and practice (Van Ness, 2005a).

It has been suggested, based on a survey of restorative justice legislation conducted several years ago, that there are five questions for a country to address before enacting legislation concerning restorative justice: (1) Is legislation needed to eliminate or reduce legal or systemic barriers to use of restorative programs? (2) Is legislation needed to create a legal inducement for using restorative programs? (3) Is legislation needed to provide guidance and structure for restorative programs? (4) Is legislation needed to ensure protection of the rights of offenders and victims participating in restorative programs? and (5) Is legislation needed to set out guiding principles and mechanisms for monitoring adherence to those principles?

Absent these or other compelling reasons, there may be no need to pursue legislatively-mandated restorative justice implementation.

CONCLUSION

Restorative justice has become a global phenomenon in juvenile and criminal justice systems. Resonating with, and in some cases drawing from, indigenous conceptions of justice, it offers both an alternative understanding of crime and new ways of responding to it. Restorative processes include victim-offender mediation, conferencing and circles; restorative outcomes include apology, amends to the victim and amends to the community. Research shows that restorative programmes meet a number of important criteria, such as victim and offender satisfaction, fear reduction for victims, development of empathy in offenders, increased completion of agreements, and lowered recidivisim.

This paper has offered an overview of how restorative justice processes are being used by police, prosecutors, judges, prison officials and probation and parole authorities in different parts of the world. Although restorative interventions have developed somewhat differently from region to region, in many cases, countries have found it useful to adopt appropriate legislation. The United Nations has endorsed the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters to guide countries around potential human rights and due process roadblocks as they incorporate restorative process into their formal justice systems.

Restorative justice programmes are used far more now than they were at the time of the 10th UN Congress on Crime Prevention and Criminal Justice in 2000. This growth shows no sign of abating between now and the 12th Congress.

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Workshop 2

Establishing a Framework for the Use of Restorative Justice in Criminal Matters in Canada

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The Canadian Parliament takes note of grass roots restorative justice initiatives in Canada
The Canadian House of Commons Standing Committee on Justice and Solicitor General, which I had the honour of chairing, began its review of sentencing, conditional release and related aspects of the correctional system in the spring of 1987, about the time a protracted and difficult national debate on capital punishment was coming to an end. Many of the issues raised in the House of Commons and across the country during that debate went beyond the question of capital punishment. They demonstrated that public confidence in many aspects of our criminal justice system was low. Many Canadians felt that they were not being fully protected and that crime was out of control. The Committee believed that this public perception, whether well-founded or not, had to be addressed and the issues raised by it be faced. The Committee undertook this study partly as a result of this sense of public unease.

The Committee received hundreds of briefs and expressions of opinion from many members of the public and representatives of all participants in the criminal justice system. It heard from lawyers, inmates, victims, helping professionals, parole officers, unions, correctional staff, judges, academics and many other interested Canadians. It held public hearings and in camera meetings across the country as well as in Ottawa. It visited institutions and met with people working directly in the conditional release system. Many witnesses before the Committee not only addressed the issues raised in its Terms of Reference, but also ranged well beyond them at times with their insights and experiences.

In the course of our deliberations, we began to hear about what to all of us on the Justice Committee, was a new concept, Restorative Justice. We found that victim-offender reconciliation or mediation had been used effectively in many Canadian communities since the birth of the concept in Southern Ontario in 1974. The Committee heard from representatives of programs operating in Ontario, Manitoba, Saskatchewan and British Columbia. Generally, such programs dealt with minor offences (e.g., property offences, assault and causing a disturbance, etc.), but we learned that victim-offender reconciliation could be used in more serious cases after an offender had served much of his sentence in prison.

The Committee found the evidence it heard across the country about restorative justice compelling and was particularly attracted to the notion that offenders should be obligated to “do something” for their victims and for society. The Committee was also impressed by the evidence of a number of the victims who appeared before it of their capacity to come to terms with some of the most serious offences which could be perpetrated against them (even murder of a loved one) through reconciliative meetings with offenders or other avenues opened up through victim services which operate on the principles or restorative justice.

The Committee recommended that the federal government, preferably in conjunction with provincial/territorial governments, support the expansion and evaluation throughout Canada of victim-offender reconciliation programs at all stages of the criminal justice process which:

- provide substantial support to victims through effective victim services; and
- encourage a high degree of community participation.

So we saw the desirability 17 years ago of linking restorative justice with improved victim services and the need for good evaluation.

We recommended a statement of sentencing principles that would "hold offenders accountable for their criminal conduct through the imposition of just sanctions which:

- encourage offenders to acknowledge the harm they have done to victims and the community, and to take responsibility for the consequences of their behaviour;
- take account of the steps offenders have taken, or propose to take, to make reparations to the victim and/or the community for the harm done or to otherwise demonstrate acceptance of responsibility;
- facilitate victim-offender reconciliation where victims so request, or are willing to participate in such programs."

These were among the 97 recommendations my Committee made to the Government in our 1988 Report, *Taking Responsibility*. We based those recommendations on the following principles:

- There must be greater community involvement and understanding at the successive stages of sentencing, corrections and conditional release (parole).
- Sentencing, correctional and releasing authorities must be accountable to the community for addressing the relevant needs and interests of victims, offenders and the community.
- Sentencing, corrections and conditional release should have reparation and reconciliation built into them – a harm has been done and should be repaired (the victim's loss must be redressed), and most offenders will be (ultimately) reintegrated in to the community.
- Sentencing, correctional and releasing authorities must provide opportunities for offenders to accept and demonstrate responsibility for their criminal behaviour and its consequences.
- Opportunities must be provided for victims to participate more meaningfully in the criminal justice system though the provision of:
    - full access to information about all stages;
    - opportunities to participate at appropriate stages of decision-making in the criminal justice system;
    - and opportunities to participate in appropriate correctional processes.
- Carceral sentences should be used with restraint; there must be a greater use of community alternatives to incarceration where appropriate, particularly in cases not involving violence or recidivism.
- Parole in some form should be retained with adequate safeguards to ensure that those who benefit from it have earned that privilege and that they do not constitute and undue risk to the community.
- All participants in the criminal justice system must put greater emphasis on public education.

The Corrections Population Growth Exercise

The late 1980s and early 1990s had witnessed a sharp growth in the size of offender populations in Canada. Between 1989 and 1994, the federal inmate population (those serving sentences of two years or more) had increased 21.5% with an annual rate of growth of 8% in 1993-1994. Canada's long-term average growth rate had been 2.5% per year. At those rates, predictions called for an increase in the federal population of almost 50% by 2004. Provincial correctional institutions (housing offenders sentenced to up to two years less a day) experienced average caseload increases of over 10% from April 1990 to March 1995.

In Western Canada, an extremely high proportion of provincial inmates and youth in custody were Aboriginal Canadians (over 70% in Saskatchewan for example). While forming only 2.8% of the country's population, Aboriginal offenders made up almost 16% of federal penitentiary inmates. While the Canadian population as a whole was aging, Aboriginals were experiencing a high birth

rate and forecasts called for this "baby-boom" to cause the Aboriginal incarceration rate, already a shocking 785 per 100,000 Aboriginal Canadians, to increase still further.

In large part because of the disproportionate Aboriginal prison rates, Canada was imprisoning greater numbers of people per capita than most other developed countries. Comparative statistics placed Canada's number of inmates per 100,000 total population at 133, significantly above western democracies except the United States.

In 1995, Correctional Service of Canada was double-bunking 25% of its inmates. 4,200 offenders were doubled bunked that year compared to 1985 when no one was. Predictions called for a need for 5,000 additional beds by 2004, which would translate, even on a shared accommodation basis, to 5-10 new institutions.

Ministers responsible for justice faced a choice: shift towards a "crime control and punishment" policy, or clearly articulate a strategy combining crime prevention, tough treatment of serious crime, and greater use of community sanctions for low-risk offenders. They opted for the latter approach.

The 1995 Speech from the Throne opening the Second Session of the 35th Parliament of Canada, pledged that the government's criminal justice policy would deal sternly with high-risk, violent offenders while at the same time "develop alternatives to incarceration for low-risk offenders."

In Canada, responsibility for the administration of justice is divided between the federal and provincial/territorial levels of government. The general distinction is that the federal Parliament makes the criminal law and the provinces and territories administer it. The need to work co-operatively is obvious.

In May of 1996, Federal/Provincial/Territorial Ministers Responsible for Justice issued a report entitled "Corrections Population Growth". Among the recommendations in the Report, the following are worth noting:

- Greater use of diversion programs:
- Used for juvenile offenders since the mid-1980s, diversion of low risk adult offenders was permitted by changes to the *Criminal Code of Canada* effective September 1996. It is at this stage that much of restorative justice takes place in my country.
- Restorative justice, other community-based sanctions and sentence management alternatives should be pursued for those low-risk, non-violent offenders who can be effectively managed in the community under appropriate sanctions and controls.
- Jurisdictions were encouraged to explore restorative justice approaches that focus on harm to victims and the community and offender accountability, particularly for youthful and Aboriginal offenders.

Providing a Legislative Foundation for Restorative Justice

The legislative centerpiece of the response to concerns about the overuse of imprisonment was Bill C-41*, An Act to Amend the Criminal Code (Sentencing)* passed by Canada's Parliament in June 1995. The Supreme Court of Canada in *Regina v. Gladue* referred to this legislation as "a watershed, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law." It interpreted these reforms "as a reaction to the overuse of prison as a sanction [that] must accordingly be given appropriate force as remedial provisions." The Court strongly endorsed greater use of restorative justice.

The principles of sentencing, now codified in Sections 718 to 718.2 of our *Criminal Code* list, alongside objectives of denunciation, deterrence and incapacitation where necessary, sentencing goals that reflect restorative approaches of repairing the harm suffered by individual victims and by the community as a whole, and promoting a sense of responsibility and an acknowledgment of the harm caused on the part of the offender to victims and the community. Restraint in the use of imprisonment is emphasized and courts are asked to consider "all available sanctions other than

imprisonment that are reasonable in the circumstances" and not to deprive an offender of liberty "…if less restrictive sanctions may be appropriate in the circumstances".

One of the most novel aspects of Bill C-41 was the creation of a new sentencing option - the conditional sentence of imprisonment. The conditional sentence is a sentence of imprisonment (less than two years in length) that the offender is permitted to serve in the community under mandatory and optional conditions. It is designed to be a non-carceral alternative for otherwise prison-bound offenders.

On January 31 2000, the Supreme Court of Canada in *R. v. Proulx* rendered a landmark decision on the use of conditional sentences that stated that the purpose of conditional sentences is to reduce incarceration and increase the use of restorative justice principles in sentencing.

Canadian Centre for Justice Statistics (CCJS, June 2001) data from the Adult Correctional Services Survey indicates that conditional sentences have had a significant impact in terms of reducing the prison population (a 13% reduction in sentenced admissions by March 31, 2001, translating to 54,000 individuals).

The CCJS survey found that the use of conditional sentences form a sizable portion of the community correctional caseload. In 2002/03, there were approximately 19,200 admissions to programs of conditional sentence, an increase of 3% from 2001/02 and 33% from 1998/99.

Some of the core program models used in restorative justice programs in Canada include:

- **Victim-Offender Reconciliation/Mediation** which brings victims and accused persons together with a mediator to discuss the crime and to develop an agreement that resolves the incident. This process allows the victim to express his or her emotions to the accused and to have the accused explain his actions and express remorse. Hopefully the process helps the victim to feel closure and the offender to take responsibility for his or her actions. In many Canadian jurisdictions, this method is most commonly used at the diversion stage pursuant to the Alternative Measures protocols in s. 717 of the *Criminal Code of Canada*.
- **Family Group Conferencing** is based upon Aboriginal traditions of involving extended families and the wider community in resolving conflicts. In Canada, facilitators assist accused persons and their families to meet with victims, police, and others to discuss and resolve the incident. The Royal Canadian Mounted Police have been actively involved in training its officers and community members in using this method. Most initiatives have focused on young offenders, but some communities are using this model with adults in a process the RCMP call a "community justice forum". Again these usually occur at the Diversion or pre-sentencing stage.
- **Circles**: Sentencing and healing circles are based upon Canadian Aboriginal practices of having communities, families, Elders, and disputants meet to discuss and resolve an issue. The participants sit in a circle and pass a "talking stick" or "talking feather" to each speaker. In sentencing circles, the victim, offender, family, and community members meet with a judge, lawyers, police, and others to determine what type of sentence an offender should receive. The victim and the community have the opportunity to express their feelings to the offender, and may also take part in developing and implementing a plan relating to the offender's sentence.

A restitution or compensation order can be among the restorative justice outcomes of any of these models.

The Youth Criminal Justice Act (YCJA) which came into force in April 2003, contains many opportunities for the use of restorative approaches in dealing with juvenile offenders.

One of the key objectives of the *Youth Criminal Justice Act* is to increase the use of effective and timely non-court responses to less serious offences by youth. These extrajudicial measures

provide meaningful consequences, such as requiring the young person to repair the harm done to the victim. They also allow early intervention with young people and provide the opportunity for the broader community to play an important role in developing community-based responses to youth crime. Increasing the use of non-court responses not only improves the response to less serious youth crime, it also enables the courts to focus on more serious cases.

The *Youth Criminal Justice Act* contains many provisions to increase the appropriate use of extrajudicial measures for less serious offences, based on the following principles:

- Extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable.
- Extrajudicial measures are presumed to be adequate to hold first-time, non-violent offenders accountable.
- The *Youth Criminal Justice Act* requires police officers to consider the use of extrajudicial measures before deciding to charge a young person. Police and prosecutors are specifically authorized to use various types of extrajudicial measures including warnings, cautions, referrals to community programs or agencies and extrajudicial sanctions, the most formal type of extrajudicial measure which may be used only if the young person admits responsibility for the offence. If the young person fails to comply with the terms and conditions of the sanction, the case may proceed through the court process.

Conferences

In many parts of Canada, there is an increasing use of conferences to assist in the making of decisions regarding young persons who are involved in the youth justice system.

These can take the form of family group conferencing, youth justice committees, community accountability panels, sentencing circles, and inter-agency case conferences. Conferences provide an opportunity for a wider range of perspectives on a case, more creative solutions, better coordination of services, and increased involvement of the victim and other community members in the youth justice system.

The *Youth Criminal Justice Act* includes specific sentencing principles that emphasize that the sentence must:

- not be more severe than what an adult would receive for the same offence;
- be proportionate to the seriousness of the offence and the degree of responsibility of the young person;
- within the limits of proportionality,
    - be the least restrictive alternative;
    - be the sentencing option that is most likely to rehabilitate and reintegrate the young person; and
    - promote in the young person a sense of responsibility and an acknowledgement of the harm done by the offence.

Custody is to be reserved primarily for violent offenders and serious repeat offenders.

The *Youth Criminal Justice Act* has led to a dramatic reduction in the number of young persons imprisoned in Canada. Although official statistics are not yet available, youth custody admissions are down between 30 and 50% resulting in the closure of a number of juvenile correctional facilities across Canada.

United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

The emerging consensus in my country about the value of restorative justice has been tempered by prudent caution surrounding the need to safeguard the rights and interests of both victims and offenders in the implementation of restorative justice programmes.

We came to the view at Justice Canada that one way to support the orderly and principled development of restorative justice would be to develop both international and domestic statements of fundamental principles on the use of restorative justice.

So Canada was pleased to take the lead, with the ultimate support of 39 other Member States, in introducing at the 9th Session of the United Nations Commission on Crime Prevention and Criminal Justice in April 2000, a resolution entitled "*Basic principles on the use of restorative justice programmes in criminal matters*" (2000/14) which initiated a process aimed at developing UN basic principles in this field.

Canada hosted a UN Experts' Meeting in Ottawa in late October 2001 to develop agreement on a *Joint Declaration of Basic Principles*. Chaired by the writer, this meeting of criminal justice professionals and officials from 17 countries resulted in consensus on a draft declaration. The draft was then discussed at the 11th Session of the UN Commission on Crime Prevention and Criminal Justice in April 2002 and a Resolution introduced by Canada, annexing the Declaration, was approved. The Resolution E/CN. 15/2002/L.2/Rev. I, which is available on the UN Web site: www.UN.org, encourages Member States to draw on these principles in the development and operation of restorative justice programs.

"Canadianizing" Principles and Values of Restorative Justice

We at Justice Canada felt our country should be among the first Members of the United Nations family to build on the foundation provided by the Resolution. Working with other interested federal departments and agencies such as the Royal Canadian Mounted Police, Correctional Service of Canada and our provincial and territorial partners, our Department published draft principles and program guidelines in September 2002.

In early 2003, we submitted these drafts to a comprehensive and innovative on-line consultation conducted by Conflict Resolution Network Canada. This facilitated electronic dialogue involved over 250 interested Canadians in an intensive and rich three-week on-line discussion about the drafts. Fresh ideas and best practices were volunteered by participants and added to the documents.

In October 2003, the final versions of what had become two separate but related documents were issued: *Values and Principles of Restorative Justice in Criminal Matters* and *Restorative Justice Program Guidelines*.

The following is an abridged version of the **Canadian Statement of Values, Principles and Procedural Safeguards.**

Purpose of a Restorative Justice Process:

- To understand the underlying causes of the restorative justice process and its effects on those who have been harmed, and address the needs of the parties for healing and reparation.
- Basic Principles and Procedural Safeguards:
- Participation of victim and offender should be based on their free, voluntary and informed consent. Consent may be withdrawn at any stage;
- The essential facts of the offence must be accepted by victim and offender. Offenders should take responsibility for the offence;
- There must be sufficient evidence to proceed with a charge. The prosecution of the offence must not be barred at law;
- The right of each party to seek legal advice at all stages;
- Referrals to a restorative justice process can occur at all stages of the criminal justice system. Referrals should take into account pertinent prosecution policies;
- A restorative justice process must take account of the safety and security of parties and any power imbalances between victim and offender;

  - Particular attention should be given to **implied or explicit threats to the safety of either party**, and **any continuing relationship between the victim and the offender**.
- Agreements must be made voluntarily and contain only reasonable, proportionate and clear terms;
- The failure to reach or to complete a restorative justice agreement must not be used in any subsequent criminal proceedings to justify a more severe sentence than would otherwise have been imposed on the offender;
- Restorative justice programs should be evaluated regularly in order to ensure that they continue to operate on sound principles and meet stated goals.

Restorative Justice Program Guidelines highlights:

- These Guidelines are intended to be aspirational and not prescriptive in nature;
- They are intended to reflect Best Practices in Restorative Justice;
- They are intended to be applied in a way appropriate to the context of each community;
- A program will be considered to be engaged on restorative justice if it has the intention to fully involve the victim, the offender and the community in the process, and can demonstrate the capacity in the program or the community to support the victim and the offender before, during and after the conference;
- Guidelines encourage the safe and effective use of restorative justice processes;
- The referral must be consistent with the provisions of the criminal law:
  - Right to counsel, authority to make referrals, privacy protections, proportionate accountability, withdrawal of consent and Alternative Measures.

Program Development:

- Each program should develop and articulate its own vision, goals and objectives;
- At the initial planning stage, a program would benefit from the input of a diverse cross-section of the community and justice stakeholders. Of particular importance is the need to encourage balance among victim, community and offender perspectives in the development and operation of the program. The access of any party to the program should not be limited in a discriminatory fashion;
- Each program should be developed and maintained through close working relationships and consultation with provincial and territorial officials responsible for restorative justice and local criminal justice officials and social service agencies. Collaborative relationships should be maintained with community and justice stakeholders.

Program Facilitation:

- Restorative justice processes must be facilitated by fair and respected third parties known as “facilitators”;
- Facilitators may be recruited from all sectors of society and should possess an understanding of the local cultures and communities in which they are working;
- The training of facilitators should provide the following skills and knowledge:
  - Values and principles of restorative justice, restorative justice processes, skill set of conflict resolution, how to effectively work with victims and with offenders, how to recognize and deal with issues of power imbalance.

Program Operation:

- Programs should develop ethical standards and protocols to guide their operation;
- All cases should include careful preparation and follow-up with both victims and offenders. Efforts should be made to identify and attend to the needs of victims and offenders, and where necessary, to connect individuals to support services which can meet their needs;
- Efficient data collection practices should be developed at the outset.
- It is suggested that each program consider implementing an outreach and public education strategy;

- Ongoing professional and volunteer recruitment, training, support and development will be a priority of a successful program.

CONCLUSION

Responding to Challenges

As jurisdictions develop programs based upon restorative processes, several issues and challenges emerge. Even the words that are used can raise questions, such as what exactly is meant by “restorative” or “community”. For restorative justice programs to be effective, all of the parties involved must have a clear understanding about goals, definitions, and principles.

1. The roles of government and community in restorative justice

Both government and community have roles to play in restorative justice, but achieving a balance between the two may be one of the most challenging tasks in developing restorative justice programs. Restorative justice requires community members to be involved as active participants, as early as possible in the resolution of the conflict. Victims are involved so that their needs for answers, healing, acknowledgement, safety, and emotional reparation are met. Offenders are involved in accepting responsibility for the harms they have caused, making compensation to their victims and communities, and making positive changes in their own lives. The community is involved in providing programs for these processes to occur, opportunities for offenders to make restitution, and safe environments where rights are respected.

For all this activity to occur, criminal justice officials must be willing to accept communities as partners in making decisions. Governments can play an important role in developing legislation, policies, and guidelines; forming partnerships between groups; and providing information, research, and technical support to communities. Governments will also have to consider the amount of funding that is necessary to develop and sustain these programs.

Community involvement depends on having individual members who are willing and able to volunteer in restorative justice programs. Communities also differ in their willingness to accept restorative processes and in their ability to administer programs. Therefore, communities may need time and assistance to develop restorative processes.

2. Effects on victims

Involvement in restorative justice processes can give victims the opportunity to express their feelings about the offence and the harm done to them, and to contribute their views about what is required to put things right. Studies have indicated that victims who take part in these processes are often more satisfied with the justice system and more likely to receive restitution. Involvement can also help victims with emotional healing and lessen their fears about being re-victimized. Nonetheless, some victims remain concerned about restorative processes. In Canada some victims groups have expressed concern that programs tend to focus on the offender and do not recognize the needs of victims. there is a danger that victims may feel pressured into taking part, even if they feel threatened by the thought of meeting the offender.

As our Program Guidelines indicate, it is important to involve victims’ right from the beginning in developing restorative policies or programs. Governments should have developed victims’ services programs that provide victims involved in restorative justice processes with support, referrals to other social agencies, information about the criminal justice process, and other services.

3. Appropriate offences for restorative processes

Can restorative processes be applied to any type of criminal offence? Not surprisingly, the public tends to be more receptive when the situation involves non-violent, non-repeat offenders and less-serious crime. However, programs such as Community Justice Initiatives in Langley, British Columbia, have had considerable success in working with sentenced offenders in cases of serious personal and sexual violence. In a study of this program, victims said they felt they had finally been heard, that they were less fearful and that they weren’t preoccupied with the offender any

more, and that they felt at peace. This is not to suggest that restorative justice is a cure-all for violent crimes, or that it can be applied to all types of offences or to all offenders; but the emphasis on healing could make an important contribution in dealing with the harm and damage that has been done.

Educating the Public and Criminal Justice System players

One of the major challenges facing governments or non-governmental organizations establishing restorative justice options and programmes, is responding to the prevailing public view that restorative justice is a soft option that "lets offenders off too easily". Our experience has been that this initial view is actually fairly easily rebutted by consideration of how difficult it can be for an offender to face his victim and:

- Explain why the incident happened;
- Express his feelings and emotions;
- Express remorse to his victim and tell the victim that he is sorry for his behaviour;
- Demonstrate to the victim that he has taken the steps to address his offending behaviour and that there is minimal risk for re-offending;
- Answer questions that the victim may have for him/her;
- Repair the damages that resulted out of his actions;
- Desire to be accountable to the victim, taking responsibility for the harm that the victim has suffered as a result of his/her actions/behaviours;
- Desire to make amends to the victim's and their community; and
- Reassure the victim that he/she can feel safe.

It is possible to convey to a skeptical public the power of genuine remorse and accountability on the part of an offender, particularly with the testimony of a victim that this has allowed them to find closure and bring normalcy and a sense of control back into their life.
That is essentially what restorative justice is about - having many more stories to tell of victim satisfaction and success in finding a sense of justice.

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Workshop 2

Restorative Justice in Thailand

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I. INTRODUCTION

"Restorative justice" is the name given to a wide range of emerging justice approaches that aim for more healing and satisfying response to crime. While each approach may be different, the basic philosophy and principles of restorative justice are common: restorative justice views crime as harm to people and justice as restoring social harmony by helping victims, offenders and community to heal. In fact, restorative justice is not a wholly new concept, elements of restorative justice have been presented in major criminal justice systems for many decades, in some cases, centuries. With the obvious shortcomings of conventional criminal justice and recent interest in reassessment of the relationships between offenders, victims, communities and the State in criminal cases, there are growing interests in restorative justice in many jurisdictions around the world, including in Thailand.

In Thailand, like in many other Asian countries, restorative justice is not a new approach but a familiar concept well entrenched in the Thai traditions and culture. Many elements of restorative justice still remain in the traditional way of communal justice in some rural areas. With such solid background in the Thai culture and increasing problems resulted from the shortcomings of conventional criminal justice, it is not surprising to see a growing interest of restorative justice in Thailand. In my presentation, I will examine the experience of Thailand in implementing restorative justice to the Thai criminal justice process. Although restorative justice has been *reintroduced* in Thailand only recently, and an attempt for its implementation is only in the beginning stage, restorative justice has been very well received by the criminal justice communities and the public. There are also many indications that it is likely to be adopted as a viable alternative to the formal criminal justice process in various types of offenses.

II. WHY RESTORATIVE JUSTICE? : THE CASE OF THAILAND

There are many reasons why Restorative Justice has received much interest in Thailand.

1. The shortcomings of conventional criminal justice

During the past decade in Thailand has witnessed a growing awareness and concern about the ever-increasing size of prison populations and the continued and increasing reliance on the use of imprisonment at sentencing. The problems have been exacerbated by the widespread of methamphetamine, which has doubled the numbers of prison populations during the past five years. Before 1996, the prison population in Thailand had remained approximately 120,000 but with the "get tough" policy on drug, which did not provide adequate attention to the demand side, has resulted in the rapid increase of inmates more than half of whom were drug users or addicts. According to the statistics revealed in September 2002, there are approximately 250,000 inmates in prisons while the available space could handle only 100,000 persons.

The overcrowding problems have caused many problems within the criminal justice ranging from the high costs of criminal justice administration, riots and human rights problems in prisons, the failure of rehabilitation during confinement, etc. With the severity of the problems at hand, the

policy on incarceration will gradually change and, in my opinion, prisons will soon be preserved only for dangerous criminals who should be kept in confinement. The future direction on the treatment of offenders in Thailand, in my opinion, will be toward community corrections, the trend, which coincides with principles of restorative justice.

There are similar problems with regard to juvenile justice system. Juvenile offenders were drawn into the formal process and too many of them were detained in the Juvenile Observation and Detention Center. The statistics for juvenile delinquents have remained fairly steady during the past five years from 29,284 cases in 1998 to 29,622 in 2002. Most of these were narcotic offenses. In 2002, 21.5 percent of the cases were sent to the Department for Juvenile Observation and Protection for a period between 6 months to 3 years detention without any process of restoration.

Apart from problem of overcrowding and juvenile justice, the Thai criminal justice also faces problems of case backlogs. The lack of screening processes, such as diversion programs and other alternative measures, during the police and prosecution levels have resulted in the influx of criminal cases to the formal justice processes, which now inundate the works of the police, the prosecution and the court. It is not surprising to see a criminal case taking more than a year to finish the criminal courts of first instance and several more years before the final decision of the Supreme Court arises. Realizing the problem of delay in the criminal process the Constitution of 1997 has stipulated that a suspect shall rightfully receive an “expeditious, continual, and fair” investigation or trial. In implementing the constitutional provision, it was found that a criminal case pending the consideration of the court has to wait for more than a year before the case will be adjudicated. As a result, it is obvious that more alternative measures and diversion programs have to be urgently introduced at the pretrial stage so as to be able to achieve speedy trial in Thailand.

With such shortcomings, the Thai justice system is now in search of new justice initiatives as a means to solve the problems. As a result, when the concept of restorative justice has been presented to the public, it has received considerable interest among practitioners and academics. This is partly due to the fact that restorative justice not only presents new way of looking at crime and punishment, but it also introduces alternative and diversionary measures which also help reducing caseloads and prison populations. In addition, restorative justice also brings new dimensions to the solution of the high financial and human costs of justice and to the expanded role of for victims, offenders and communities in criminal justice.

2. The need for more community involvement in criminal justice

During the past 2 decades Thailand has witnessed an increasing interest in community participation in the administration of the country. This phenomenon was the result of the long campaign for democracy, which has culminated into the Constitution of 1997, widely called the People’s Charter. During the drafting of the Constitution, there were strong interests on the part of the people at the grassroots to have more roles in administering the country. As a result, the Constitution contains many provisions aiming at transforming the country’s philosophy of government from “representative democracy” to “participatory democracy.” The Constitution has created the ground rules for transforming Thailand from a bureaucratic polity prone to abuse of political rights and corruption into more participatory in which citizens will have greater opportunity to charge their own destiny. It has set the frameworks of laws and administrative procedures, which promote citizen participation, protect individual liberties, restricted state’s power to infringe upon individual rights, advocate independent judiciary, and create mechanisms for greater transparent and accountable government. It encourages decentralization by delegating more powers to local administrations and communities.

In the area of criminal justice, community participation in justice administration used to be the hallmark of traditional Thai culture and traditions. Many conflicts were resolved, with mutual consent and satisfaction of the adversaries, within the communities by respectable persons in the communities, mostly the elders, village-leaders, etc. Through the community bonding and networks, the duties of crime prevention, treatment and support of offenders had largely remained

within the community. However, because of the country's too much reliance on highly centralized control of government for many decades have resulted in the decline and weakness of the roles of the community particularly on these very important functions. With the establishment of police stations in all districts all over Thailand with highly centralized commands from the police headquarter in Bangkok, the rural community, which used to play a key role in crime prevention and, sometimes, mediation of minor infractions, have almost completely abandoned their roles.

With this new movement toward the revival of the community spirits and decentralization of power of the central government to local administration, the prospect of involving the community to have more meaningful roles in the administration of justice is better than ever. The obvious shortcomings of the Thai criminal justice mentioned earlier have made people think back to the good old days of strong community participation and networking which have made great contribution to the success of crime prevention and treatment of offenders in the community.

The widespread of drug have also highlighted the need or more community involvement in crime prevention and control. With such immense workloads of trivial drug cases in the criminal process and increasing numbers of drug addicts/users, the policy makers have come to realize that there is no way to fight the problem without full participation of the communities and all sectors within the society.There has been increasing awareness that crimes cannot and should not be the sole responsibility of the State to tackle alone. The community and other private parties should join in and share such responsibilities with the State in the form of partnership.

With such background, it is not surprising to see that the government has put the policy of public participation and involvement in criminal justice administration among its high priorities. The Department of Probation, together with other relevant governmental and non-governmental agencies, are working on several pilot projects all over Thailand in creating or bringing back "community justice networks" in the community to assist in crime prevention and treatment of offenders in that community. These new networks will also attempt to find linkages with local administrations, which are now enjoying more autonomy in accordance with the new Constitution. The results of these pilot projects will help our future planning on the attempt to involve local communities to enter into "partnerships" with the State in areas of crime prevention and control.

The above-mentioned phenomenon has, I believe, contributed greatly to the implementation of restorative justice principles, as communities will play an important role in the process to achieving restorative outcomes.

3. Wider interest in the protection of the right of victims

As in many countries, the rights of crime victims have received due attention in Thailand only recently. With the advent of the new Constitution of 1997, widely called the People's Charter, there are two provisions that directly addressed the right of crime victims. Section 53 provided that:

> *"Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment.*
>
> *Children and youth with no guardian shall have the right to receive care and education from the State as provided by law."*

Although the protection rendered by this Section does not address crime victims in general, it however deals with such issues as domestic violence which is one of the major areas where victims need special protection and treatment. In addition, Section 245 of the Constitution stipulates that:

> *"In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law.*
>
> *In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or*

her heir has the right to receive an aid from the State, upon the conditions and in the manner provided by law."

The increasing awareness of the right of victims in the Thai criminal justice was a result of a long campaign for criminal justice reform in the country. With the mandate by the Constitutions, the past five years saw a dramatic increase on the protection of crime victims in both laws and practices. The Criminal Procedure Code was amended to adopt a new procedure for interrogation of children who were victims of violence particularly on domestic violence. They were allowed to have a prosecutor, psychologist and social worker presented during the interrogation. Teleconference was also provided during court hearings so as to reduce the pressure of confrontation with the defendants. Moreover, recently the Parliament has passed the law on compensation for crime victims and the wrongfully accused. Currently, the Ministry of Justice is in the process of preparing ministerial regulation setting up the scheme for compensation.

As restorative justice places great emphasis on restoring the plight of crime victims, such heightened awareness of the rights of victims of crimes has directly helped generate interest in restorative justice.

4. Recent criminal justice reform in Thailand

Another major problem on the administration of criminal justice in Thailand is the "non-system" of the criminal justice agencies. Unlike in most countries where major organs in the criminal justice system, such as the police, the prosecutors, the probation and correction officers, are under the purview of the Ministry of Justice, in Thailand, criminal justice agencies are scattered in different places. Such an unorganized structure of the criminal justice system is one of the major causes for the lack of cooperation and coordination among organs within the system. Each agency in the criminal justice system often focuses its resources in solving problems or creating works and projects within its own organization without adequate consideration on the impact of such efforts on the criminal justice process as a whole. These have resulted in repetition of works, the building of empires among criminal justice agencies, the lack of national criminal justice policy, the end results of which is inefficiency in the administration of justice. This has made it very difficult to initiate or implement any new criminal justice policy.

The recent overhaul of the criminal justice system was aimed at solving this structural problem within in Thai criminal justice. According to the new structure, the judiciary, which has long been under the Ministry of Justice, became an independent entity. At the same time, the Ministry of Justice, which used to be a small ministry overseeing only the administrative works of the judiciary, has become the focal point for justice administration, quite similar to the Ministry of Justice of Japan.[90] In this new structure, all agencies concerning justice administration, including those dealing with the treatment of offenders, were brought together under the same organization. Most importantly, a new agency called the Office of Justice Affairs was established with the aim to be a platform for policy planning and budget allocation within the justice system. To help the effective functioning of this new office, the National Committee on Justice Administration, chaired by the Prime Minister, will be created. Apart from the heads of criminal justice agencies within the Ministry of Justice, the Committee, according to the draft law proposed to the cabinet for approval, shall also, *inter alia*, consist of the Prosecutor General, Police Commissioner General, Secretary General of the Court of Justice, representatives of the Bar, the Law Society, academics, and related NGOs.

With this new structure, it is a lot easier to design and implement new criminal justice policies and initiatives, including restorative justice, as a means to solving inherent problems with the administration of justice. The Ministry of Justice has drafted the 1st National Master Plan on Criminal Justice of 2004-2007, which was approved by the cabinet on February 10, 2004. The

90 The new Ministry of Justice consists of the following agencies: (1) The Office of the Permanent Secretary, (2) the Office of the Minister of Justice, (3) Office of Justice Affairs, (4) The Special Bureau of Investigation, (5) the Institute of Forensic Science, (6) the Rights and Liberties Protection Department, (7) the Department of Correction, (8) the Department of Probation, (9) the Department of Child Observation and Protection, (10) the Department of Legal Execution. In addition, there are 3 other agencies which are not within the Ministry of Justice but under the direct supervision of the Minister of Justice; they are the Office of the Attorney General, the Office of the Narcotics Control Board and the Office of the Anti-Money Laundering Board.

Master Plan contains the Restorative Justice Programs Plan in its Sixth Strategy- Strategy to Promote Conciliation and Diversion from Criminal Justice System. This is the first time that a National Master Plan on Criminal Justice has been adopted and is also the first time that restorative justice has been incorporated into the mainstream justice system.

III. HOW RESTORATIVE JUSTICE WAS INTRODUCED IN THAILAND?

Against this background, I would like to turn attention to how the concept of restorative justice was introduced in Thailand. As mentioned earlier, even though during the past decade the concept of restorative justice has been known and discussed among a few criminologists in the academic world, but it was formally introduced to Thailand only recently. The principles of restorative justice were mentioned for the first time on October 6, 2000 at the National Seminar on Strategies for Criminal Justice Reform in Thailand organized by the Thailand Criminal Law Institute at the Government House. In the Seminar, a numbers of strategic plans and proposals aiming at the overhaul of the criminal justice system were introduced. Among the many plans and proposals made, it was also suggested that "there must be a paradigm change from retributive to restorative justice." However, as there are many issues presented at the Seminar, restorative justice was mentioned only briefly.

However, the first national seminar on restorative justice, which has formally introduced restorative justice to the Thai criminal justice communities, was organized subsequently on January 16, 2002. Prior to that there were several seminars and workshops on the New Zealand's "family conferencing model" which was introduced not as a restorative justice program but as a means to deal more effectively with juvenile cases. The restorative justice concept, which is the framework of the family conferencing model, has not been mentioned distinctively in those seminars and workshops.

In fact, the idea of organizing a national seminar to officially launch restorative justice concept in Thailand was carefully plan so as to be able to achieve optimal result. The venue was chosen at the Government House and the audiences were top criminal justice officials, leading academics and elite within the Thai society. The Seminar was presided over by Dr. Thaksin Shinawatra, the Prime Minister of Thailand, who is also a criminologist. The Seminar was also attended by HRH Princess Bajrakitiyabha, the grand daughter of the Crown Prince of Thailand, who is currently doing her doctoral degree in law at Cornell Law School. The Seminar was broadcast live all over Thailand by a public television channel.

The Seminar has achieved quite a successful result. There was good feedback as the media has paid great interest to this new justice initiative. Several articles were published in major newspapers both English and Thai regarding restorative justice. The Prime Minister himself gave several interviews afterward in support of this new concept, particularly in the area of juvenile justice. The organizers also published several books on restorative justice. Moreover, restorative justice concept has now been taught in advanced criminal law courses in the major law schools as well as in other criminal justice institutions, while researches on the subjects in various aspects have been conducted and received financial support from research funding agencies.

Despite the fact that there are many reasons for applying restorative justice programs in Thailand and a strong support for implementation as mentioned above, real implementation is not at all easy. First of all, the drastic changes of restorative justice concept from the mainstream criminal law ideology make it quite difficult to convince a number of conservative criminal justice officials to understand and accept the idea. Moreover, as restorative justice is an evolving concept with no exact definition or formula, it is somehow difficult for criminal justice officials to understand, let alone to support the idea. Moreover, the Thai criminal justice system is not familiar with any diversion programs, either at the police or prosecution level. Normally, criminal cases process mostly through official procedure from the police to the prosecutors who rarely use discretion in dismissing the case. Almost all criminal cases with sufficient evidence, except minor offenses with fine as maximum penalty, shall be prosecuted to the court. Such unfamiliarity with informal procedure make it more difficult to initiate and successfully implement restorative justice programs,

which in itself are more advanced forms of diversions where restorative processes and outcomes are key elements to the success of the programs.

One aspect, in my opinion, which partly contributes to the successful introduction of the idea of restorative justice to the Thai justice circles and the general public, is the name in Thai of restorative justice. Instead of translating it literally which would make it sound much more difficult and less comprehensible in Thai, I have deliberately chosen the Thai word *Samarn-Chan,* which means "social harmony." As a result, the Thai terminology for restorative justice for the Seminar is *Yutithum Samarn Chan*-- justice for social harmony-- in the term in Thai which, in my opinion, may capture the true essence of restorative justice far better than literal translation. This has proven to be an appropriate and strategically correct choice, since the word is well received by the media and the public as well as people in academic circles.

IV. DRUG REHABILITATION ACT OF 2002: AN IMPORTANT GROUND WORK FOR RESTORATIVE JUSTICE PROGRAMS

Another important development, which may provide good ground works for the implementation of restorative justice programs in Thailand, is the recent passage of the new Drug Rehabilitation Act of 2002 with an aim to implement demand reduction programs to counter the widespread of methamphetamine in the country. Although Thailand has been quite successful in cutting down heroin production and consumption, we are still facing the problem regarding the widespread of methamphetamine. Methamphetamine is much easier to produce than heroin and is as much lucrative. Although the volumes of the drug seized have been increasing notably, there is still widespread drug abuse to a large number of people including among the young. The Thai government has placed the drug problem issue high on its agenda. It has introduced the holistic approach to drug prevention and suppression. While the government will continue with its efforts in supply-side reduction by stepping up its strong law enforcement on drug producers and traffickers and cutting down the entry of production from abroad, at the same time, it will also put great emphasis on the reduction of the demand for drug by concentrating more on prevention strategies as well as on rehabilitation of drug addicts.

As mentioned earlier, the Parliament has recently passed the Drug Rehabilitation Act of 2002. This law has for the first time introduced drug compulsory treatment programs to the country. According to the implementation plan, the programs will start operation, during the first phase, within 36 selected provinces in early March 2003, and for the rest of the country in July this year. The compulsory treatment program will for the first time introduce "drug diversion programs" to the Thai criminal justice. It will allow drug addicts to undergo treatment instead of prosecuting them. If they are willing to receive treatment and relinquish their drug habits, the prosecutors will drop the charge and they will be assisted to continue their daily lives in the community as ordinary people. To ensure that this new initiative will be successful, the Department of Probation, in the capacity as the coordinator of the programs, has work closely with many government and non-government agencies as well as the communities all over the country. It is believed that by concentrating seriously on rehabilitation and prevention, Thailand will be able make progress on the fight against drug. By such policy, the government will be able to step up the suppression as well as to make the precise target of suppression so that those punished will be the ones who deserve punishment, not the addicts who themselves are the victims of the drug problem.

The introducing of the compulsory treatment policy is a new concept in drug rehabilitation in Thailand. It will complement the voluntary treatment programs, which we now have. As a matter of fact, the compulsory treatment program will strengthen the voluntary programs, as it will increase their clients immensely. With this new and clear policy from the government, Thailand is on the right track on demand reduction policy. It is necessary that drug rehabilitation capacity be increased to meet the rising demand. However, to be successful in these undertakings it is important to involve the communities more into the process of rehabilitation. In addition, we need to think about the issue of reintegration into the society of these addicts. The communities must support and encourage them to start new lives.

According to the new procedure specified by the law, those arrested under drug consumption charge will be sent to the Department of Probation for assessment and review of the level of addiction. The Probation Department has set up the so-called "drug rehabilitation committees" in every province all over the country to do the job. The Committee consists of a prosecutor as chair and a doctor, a psychologist, a social worker and two representatives of the communities. The Committee will design drug treatment programs for each individual drug users/addicts. If they are able to meet with the rehabilitation programs prescribed by the drug Committee, their charges will be dropped. As currently, more than half of the police, prosecutors and judges caseloads are drug cases, the programs will not only introduce an appropriate solution to drug problem, but they will also help reducing the pressure of the heavy drug caseloads from the Thai criminal justice.

Moreover, the Drug Rehabilitation Act and the national policy on drug will rely heavily on reviving the community spirits and involving them into the drug rehabilitation programs. Through the new policy, the Probation Department will try to establish "community justice networks" within certain community around the countries. These networks will, among other things, assist in the persuasion of drug users/addicts to receive treatment in voluntary treatment programs (without having to arrest them). Family and community support and encouragement are also necessary during and after the treatment. These networks will collaborate closely with the volunteer probation officers in the aftercare and the follow up of the drug users and addicts within the community after the treatment. If successful, the responsibilities of the networks will hopefully be extended to other functions such as the prevention of crime, community mediation, etc.

In my opinion, this new law will directly contribute to the application of restorative justice in Thailand in many aspects. Firstly, the new drug diversion programs will make the Thai criminal justice officials familiar with the concept of suspension of prosecution and diversion programs. This is a major breakthrough since Thailand, unlike in some countries, have never before adopted any kind of diversion programs as a normal practice. Given the large amount of cases going through this channel, it will make these diversion programs at the prosecution level a common practice in all jurisdictions. This will directly support the draft legislation for diversion at the prosecution level where restorative practices will be used, which is now awaiting consideration of the parliament.

V. RESTORATIVE JUSTICE IMPLEMENTATION IN SELECTED AREAS

(1) Juvenile Justice

Adapted from the New Zealand's "Family Group Conferences," Thailand, through the Department of Juvenile Observation and Protection (DJOP) of the Ministry of Justice, has initiated its "Family and Community Group Conferences" (FCGC) since June 2003. From then up to the end of January 2005, there were 4,653 cases referred to FCGC, of which the prosecutors agreed to drop the charges for 3,366 juvenile offenders. The use of restorative justice in juvenile justice has received a great deal of support from all concerned including the Prime Minister, who in many occasions, has shown his preference for this new approach to the old, flawed juvenile justice system.

The introduction of restorative justice into the Thai juvenile justice has been made possible by a provision in the Juvenile Procedure Act which allows the prosecutors to drop the charge if the director of the juvenile training center recommend for such measure. According to the law, he has to convince the prosecutors that the young offender can change their behaviors and become a good person without being prosecuted in court. This provision has however not been used as Thailand never has a tradition for any diversion programs before. With the increasing concerns of the public towards the quality of juvenile justice in protecting and rehabilitating juvenile delinquents and the popularity of restorative justice concept in Thailand, the DJOP has reintroduced this provision and added FCGC as a restorative process for the parties to solve their conflict.

The FCGC is the process of multidisciplinary brainstorming, particularly of all stakeholders who have been affected by the incident including the child offender and the victim. The criteria for cases to go through FCGC are as follows:

1. The offence must be under 5 year imprisonment;
2. The young offender has to admit and show his intention to repair the harm;
3. The victim has to agree with this arrangement;
4. The young offender must be a first-time offender exception the prior offence is a petty one;

To systematically and quickly introduce FCGC to all jurisdictions in Thailand, the DJOP has worked closely with Mr.Ted Wachtel and the International Institute for Restorative Practices (IIRP) for the designing of the restorative process and training of facilitators.

(2) Domestic Violence
Domestic violence particularly when female spouses were assaulted by their love ones has recently received a great deal of attention in the Thai society. Through long, continued and efficient campaigns by women rights advocates, the public has started to realize the inadequacies of the conventional criminal law and criminal justice process in protecting the right of the aggrieved wife. In such case it is obvious that in most cases the victims do not want their husbands to be put into prisons; they just want them to change behaviors and stop hurting them. The criminal justice system in Thailand do not leave many choices for the aggrieved wives, since the police, for obvious reasons, do not want to receive complaints as the incidents were viewed as family matters. The beaten wives will mostly be forced to reconcile with the aggressors, a venue which does not adequately protect them or guarantee that future similar incidents will not occur. On the other hand, if the police decide to proceed with the complaints, it is more likely than not that the wives will later request the police or prosecutors to withdraw the cases for fearing that the husbands will have to be imprisoned, a result which will directly affect the women and their children economically and socially. Such dilemma represents the weakness of the existing conventional criminal justice process to which restorative justice can appropriately fill the gap.

To solve this problem, on January 3, 2005, the Department of Probation, together with the Bangkok Metropolitan Police Bureau and the City of Bangkok, has introduced the use of restorative justice in a pilot project, which was named by the media as “husband rehabilitation clinic.” The project aims at setting up a diversion program at the police level for treatment of abusive husbands. It is proposed that the police, after receiving complaints from the victims of aggression, refer the case to probation officer instead of proceed with the formal investigation process. The probation officer, after considering the facts and circumstances of the case, may organize a conference among the victim, the aggressor, their relatives (if necessary), respected members of the community (if appropriate) to find appropriate measures for the treatment of the aggressor and the solution to the personal conflict and/or other problems. In this process, the probation officer will act as a facilitator trying to seek reconciliatory measures for the belligerent couple. The aggressor may be subject to some or all of the following conditions: attending appropriate treatment programs, regular report to probation officer within a specified period of time, providing restitution or rendering community services as deemed necessary. If the aggressor was able to meet with the conditions set for him, the probation officer will report the positive result to the police. On the contrary, if the agreed conditions were broken the police may proceed with the criminal process.

By having this alternative program, it is hope that not only both the victims and aggressors in domestic violence will be appropriately taken care of, but such measures will also allow the police to be more efficient in the preventive campaign against domestic violence. Currently, the project was initiated only in about 30 police stations in Bangkok metropolitan areas. If the project proves to be successful, it will hopefully be extended to cover all jurisdictions.

(3) Draft Legislation for Diversion at Prosecution Level for Adult Offenders in Offense with less than 5 years imprisonment
With the success of the drug addicts diversion programs as mentioned earlier and the widening support of restorative justice in Thailand, the draft legislation on diversion programs with restorative approaches at the prosecution level has been approved by the cabinet since October 2004 and now awaiting consideration of the parliament. Hopefully, it will soon become law. According to the draft legislation, for the offence with 5 year imprisonment or less, the prosecutors may use his

discretion to suspend the decision to prosecute and refer the case for a restorative process. To be eligible for this diversion program, the offender must admit his crime and be willing to make amends. The victim must also agree to this process. The prosecutor may refer the case for the probation officer who will act as facilitator.

(4) At Probation Works
At the moment, the Department of Probation has, since June 2004, initiated a pilot project in selected 11 offices for the use of restorative justice in probation works. This include the use of restorative process between offenders and victims during the preparation of pre-sentencing reports, the organization of healing and supporting circles at parole where parolees, victims and their relatives, and representatives of the community meet. Probation officers have been trained to act as facilitators and to organize various types of restorative process for reconciliation of victims and offenders.

The implementation of restorative justice in probation works including the role of probation officers in acting as facilitators will be evaluated by a research project for future improvement. As probation officers will be the key player according to the draft legislation on restorative practices at prosecution level, this project will make them ready for their future responsibilities.

VI. FUTURE TRENDS OF RESTORATIVE JUSTICE IN THAILAND

Restorative justice policies are, in my opinion, a benevolent means of addressing crime problem and, in the case of Thailand, are appropriately capable of addressing many concerns on the administration of justice. Underlying the crime prevention goals of restorative justice is the reduction of prison populations and formal criminal justice processing through the rehabilitation of offenders by committing them to assuming greater accountability and sensitivity to victims. The procedure through which prison reductions are to occur involve the use of various forms of diversions from courts as well alternatives to incarceration which also coincides with the current policy of reducing cases coming into the formal justice processes. In addition, the restorative process by which restorative outcomes are achieved is the process that involves and empowers individuals and communities to deal with many of the crime and disorder problems normally dealt with by the state criminal justice system. In line with the policy of more community participation and involvement, restorative justice emphasizes the solving of crime and justice problems through the delegation of many aspects of criminal justice decision making to the local level. It is also supports the use of partnerships, where desirable, between the private parties, that is, individuals and communities on the one side, and the public spheres, that is, state agencies, such as police, prosecutors, probation, on the other side.

Although it will not be easy to bring restorative justice policies into practices within a short period of time, the prospect of its being accepted to the mainstream criminal justice are very bright. In the case of Thailand, I believe that it is necessary that we must make sure that restorative justice is a complement to and not a replacement of conventional criminal justice. Moreover, it is important to, at least at the outset, carefully select areas of trial application that can guarantee success with fewer objections. For example, restorative justice policies may be initiated in juvenile justice and other areas where the plights of crime victims are obvious, such as in domestic violence, car accidents, etc. In addition, it is also important to distinguish restorative justice from other diversion programs by placing the utmost importance to restorative processes where victims should be placed at the center of the attention with appropriate participation from the offenders and the communities. Finally, we have to be mindful that restorative justice is an evolving concept and there is no definite formula of success. What works in one society may not flare as well in others. Each country has to find its own recipe which properly balances the conventional role of criminal justice with this new concept so as to be able to come up with a better way to ensure justice to all.

Workshop 2

The UNICEF Juvenile Justice Indicator Project And The Field-Test In The Philippines

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SUMMARY
UNICEF's work on the issue of juvenile justice focuses on reducing recourse to deprivation of liberty, through the promotion of diversionary systems, restorative justice, and other alternatives. UNICEF assists countries to incorporate international standards into national legislation, and to monitor outcomes for children.

To improve the availability of data on children's rights within juvenile justice systems, UNICEF convened in 2003 a group of experts to identify a set of global indicators for juvenile justice. The list of global indicators will assist the U.N. Committee on the Rights of the Child, governments and non-governmental agencies to monitor progress in protecting children's rights within justice systems and aid efforts to improve the application of juvenile justice principles.

The indicators are:

1. The proportion of children in conflict with the law held in detention, the proportion held pre-sentence.
2. Existence of specialized juvenile justice system.
3. Outcomes of contact with the Juvenile Justice System.
4. Number of child deaths in custody, the cause of death.
5. Existence of a system guaranteeing regular visits by independent bodies
6. Duration of Detention/Average length of pre-sentence detention
7. Existence of complaint mechanisms for children deprived of their liberty
8. Proportion of children in detention who are not separated from adults
9. Existence of a national programme for the prevention of juvenile delinquency
10. Proportion of children released from detention benefiting from an aftercare program
11. Proportion of children in detention who have been visited by parents or family members in the last 3 months.
12. Distribution of juvenile justice budget on custody vs. community disposals.

The indicators were field-tested in three countries, one of which was the Philippines. Conducting the field-test in the Philippines was significant because there was no government agency principally concerned with juvenile justice issues and there were no consolidated data on children in detention. The field-test was launched through a workshop conducted in October 2004, the main purpose of which was to introduce the indicators to the government agencies and non-governmental organizations working on juvenile justice issues in the country. The process for the

field-test and the survey instrument were also discussed. The detention and rehabilitation centers where the field-test was to be conducted were also identified.

There were seven questionnaires prepared for the Philippine field-test. These were:

1. Census of Children in Detention
2. Survey of Children Leaving Detention
3. Survey on Institutional Policies and Practices
4. Survey on Pre-court Diversion and Court Outcome
5. Census of Children in Rehabilitation
6. Survey of Children Leaving Rehabilitation Center
7. Survey on Institutional Policies and Practices

Another questionnaire was also developed for the interview with the children, the purpose of which was to get their own views, experiences and direct information from them. It was anticipated that the children's response may differ from those provided by the staff of the institution.

Among the data generated by the field-test were:

1. The duration of pre-sentence detention was excessively long: while 34.3% were under 1 month, 17.6% were detained for 1 month to less than 3 months, 14.8 % were detained for 3 months to less than 6 months, and 27.8% were detained for 6 months to less than 12 months. More than 4% were detained for 12 months or longer.
2. 79.3 % of children in detention were not separated from adults.
3. The most common offences committed by children in detention are offences against property, both violent (21.5 %) and non-violent (23.8 %), and drug offences (21.6 %).
4. 12.8% of children in detention were less than 15 years old, 64.1 % were 15 to 17 years old, and 9.1 % were 18 years old and older. 94.5 percent were boys.
5. Among children under rehabilitation, 35 % had no fixed term, 17 % had a term of 24 to less than 60 months, and 22 % had a term of less than one year. About 11 % under rehabilitation had been in the centers beyond the term prescribed by the court.

Process-wise, the field-test provided a venue for the improvement of data collection as well as the instruments to generate the indicators on juvenile justice. It identified difficulties in data collection in the country and the mechanisms to respond to them. It likewise showed the strong points in the system and how it can be further improved.

There were also several lessons learned. The field-test proved the value of validating the information provided by the service providers with that provided by the detained children in order to extract accurate information on actual practice.

The terms used in the global indicators would have to be adapted to the terminology formally and informally used in the particular country. Some terms may have different meanings in different countries. The general categories, such as those used in the classification of offences, also need to be adapted to the classifications used in the particular country if they are to be correctly understood.

It was also found during the field-test that a lengthy questionnaire often results in the reporting of low quality data. This can be due to fatigue of both the respondent and interviewer. The quality of the responses to the questions suffers when the respondent loses interest. This is especially true in the interview of children.

Also, self-administered questionnaires do not produce good quality answers. There are items left blank and there are inconsistent responses in the same questionnaire. There is also a tendency for the respondent to give answers which will allow him/her to skip several questions, in order to quickly finish the questionnaire. The answers to open-ended questions are also often incomplete or vague. There is also the low rate of return of the questionnaires.

During the field-test, the self-administered questionnaires were sent out and collected through the government agencies that supervise the detention or rehabilitation centers. This should have been done through, an independent institution which not in any way connected to the respondent. The respondent may deliberately conceal some information knowing that it is the supervising office which will collect the questionnaires.

But the field-test had an unintended positive effect: most of the respondents were very appreciative of the field-test as it gave them guidance on how to improve the conditions of their institutions and those of the children under their custody.

INTRODUCTION

The rights of children in conflict with the law are among those specifically outlined in the Convention on the Rights of the Child (CRC). The protection of children in conflict with the law is therefore one of the components of the child protection programme of the United Nations Children's Fund (UNICEF). Our work on juvenile justice focuses on reducing recourse to deprivation of liberty, through the promotion of diversionary systems, restorative justice, and other alternatives. UNICEF assists countries to incorporate international standards into national legislation, and to monitor outcomes for children.

The need to develop uniform, global indicators on children in conflict with the law and juvenile justice has been often expressed. Such indicators would allow countries to compare progress towards better protection of children in conflict with the law and the administration of juvenile justice. The resulting data would also creates a basis for dialogue at local, national and international levels. Measurement will help make the concerns around children in conflict with the law more visible, and progress towards their improved protection in line with international standards more likely.

The indicators are also likely to be used by the Committee on the Rights of the Child for their reporting guidelines to countries submitting CRC implementation reports. They are meant to support monitoring of State Parties adherence to the relevant provisions of the CRC, and other international juvenile justice standards, namely the United Nations Guidelines for the prevention of Juvenile Delinquency [Riyadh Guidelines], United Nations Standard Minimum Rules for the Administration of Juvenile Justice [Beijing Rules], and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The indicators are also expected to be useful for monitoring and systems improvements at country level. This helps ascertain accountability in case of violation of the rights of children in conflict with the law. The indicators are also very useful for advocacy and awareness-raising at country, regional and global levels. And, of course, the indicators play an important role in research and publications on child rights, juvenile justice and related concerns.

THE JUVENILE JUSTICE INDICATOR FRAMEWORK

Background and Process

To improve the availability of data on children's rights within juvenile justice systems, UNICEF convened experts to identify a set of global indicators for juvenile justice. An initial list of sixty indicators was drawn up. Where possible, the indicators in this framework were drawn from indicators developed and field-tested by juvenile justice personnel already engaged in data collection and analysis. Further suggestions were refined by a Juvenile Justice Reference Group with representation from the U.N. Office of the High Commissioner on Human Rights, the World Organization Against Torture, the University of Munich, The International Association of Family and Youth Judges and Magistrates, the U.N. Committee on the Rights of the Child, Penal Reform International, the Child Justice Project of South Africa and UNICEF. The list of global indicators will assist partner organizations in both monitoring child rights abuses within justice systems, and evaluating progress of collaborative efforts with local organizations and government counterparts.

The indicators
The juvenile justice indicators in this list encompass the following:

- *Family, school and societal factors which can contribute to or inhibit children's conflict with the law.* This includes indicators on children's right to a family environment, the availability of education, life skills programmes, and public attitudes towards youth, crime and juvenile justice which can influence the State's treatment of children in conflict with the law.
- *The extent to which States rely on detention as a solution to children's conflict with the law.* This includes indicators on arrest, investigation, arraignment, pre-trial detention and custodial sentence, judicial proceedings, and sentencing. Non-custodial measures and diversion at all stages of conflict with the law are included.
- *Treatment in detention*. This includes separation from adults, access to education, health care, and family contact. Reports of abuse, outside inspection and complaints mechanisms are included here.
- *A child's reintegration after detention* which includes recidivism rates and support from families and social welfare personnel.

The indicators take into account all potential offenses allegedly committed by children, including status offenses, criminal acts, and immigration violations. Protective custody is also included.

"Detention" includes any form of residential placement which the child cannot leave at will. In this way, there are clear links to the indicators developed for children in formal care, in particular institutional settings such as reform schools, education and re-education centers, and remand homes. At the global consultation, efforts were made to ensure useful overlap between the indicators for both children in formal care and juvenile justice.

The list applies a ***protective environment framework*** to the issue of children in conflict with the law. In addition to trying to determine the situation and well being of children in conflict with the law, the list includes indicators to help assess and monitor the attitudes, legislation, policy, and capacity issues which affect children in conflict with the law.

The indicators presented for consideration measure both the extent to which child rights violations occur in the justice system, and the extent to which legal, policy and social structures are in place to protect children in conflict with the law. The indicators can be categorized into children's status indicators, i.e., those that quantify the levels of child rights violations or violations of international standards for juvenile justice, and protective environment indicators, i.e., those that reveal the structures in place, and gaps in the protection environment for children.

The indicators were also divided into priority indicators and additional indicators. More specifically, the indicators that were proposed were:

Global Indicators on Children in Conflict with the Law [Juvenile Justice]
Priority Indicators

	1	The proportion of children in conflict with the law held in detention, the proportion held pre-sentence.
	2	Existence of specialized juvenile justice system.
	3	Outcomes of contact with the Juvenile Justice System.
	4	Number of child deaths in custody, the cause of death.
	5	Existence of a system guaranteeing regular visits by independent bodies
	6	Duration of Detention/Average length of pre-sentence detention
Additional Indicators		
	7	Existence of complaint mechanisms for children deprived of their liberty
	8	Proportion of children in detention who are not separated from adults
	9	Existence of a national programme for the prevention of juvenile delinquency
	10	Proportion of children released from detention benefiting from an aftercare program
	11	Proportion of children in detention who have been visited by parents or family members in the last 3 months.
	12	Distribution of juvenile justice budget on custody vs. community disposals.

Definitions
A set of definitions was also proposed and these were refined with input from participants during the global consultation. They are meant to clarify key terms to translate across several different legal, social and political systems. This common terminology will support the collection of comparable global data.

JUVENILE JUSTICE INDICATOR CONSULTATION
The global consultation on child protection indicators was held at the UNICEF headquarters in New York on 11-13 November 2003. There were four sets of child protection indicators discussed, including the indicators on juvenile justice. Refinement of the indicators was assigned to a group of experts of which the Chairperson of the Committee on the Rights of the Child was a member.

Process
The task of the participants in the juvenile justice group began with a review of the list of sixty indicators. The objective of the exercise was to streamline the list to a manageable set of global priority indicators. As the review progressed, it became evident that the indicators needed revisions in order to capture multiple concerns in a single indicator. Small groups were devoted to these revisions throughout the course of day two. The products of these revisions provide a rough basis of an in-depth analytical tool for children in conflict with the law. These revisions were taken into consideration and prioritized based on the guiding principles for the whole of the indicator consultation. These were usefulness, advocacy, measurability, input to international processes, flexibility, comparability, and sustainability The participants finalized a list of nine priority indicators, giving the first five indicators their endorsement as global indicators for juvenile justice.

Discussion Points on Juvenile Justice Indicators
Below are some of the key points raised during the discussions of the juvenile justice indicators.

Prevention indicators - Much discussion was devoted to the potential benefits and risks of indicators related to the prevention of juvenile delinquency, including the protective structures in place to reach out to groups of children at high risk of coming into conflict with the law.

Targeted services for delinquency prevention - Participants explored the extent to which it is a positive attribute to target delinquency prevention services at high risk groups. Certain risk factors, such as failure to attend school, substance abuse or the lack of a positive family environment, may point to a higher tendency for children to come into conflict with the law. However, participants were concerned that targeted services can sometimes be a mechanism for states to put 'high risk' groups under surveillance, which is subject to political manipulation and has the potential to enable discrimination. Agreement was reached on a broad-based prevention indicator to be encouraged but not prioritized.

Need for integration with other sectors - It was noted that broad-scale provision of social welfare services can have a preventative effect to reduce the probability of children coming into conflict with the law. In this regard, integrating juvenile justice aspects into education, drug prevention, adolescent development and participation, child-centered budgetary analysis would yield data that could be analyzed to inform juvenile justice advocacy and programming. Specific outreach should be given to these sectors, so that data is useful from a juvenile justice standpoint.

Specialized systems - Participants discussed the necessity of measuring global progress on the development of specialized legislation or procedures for children in conflict with the law. Participants prepared a detailed list of attributes for specialized legislation for children in conflict with the law. Some discussion centered on whether and how to measure the extent to which professionals are specialized through training in children's rights and psychological development. In the end, participants agreed that measurement of the legal provisions and procedures for children would be easier to obtain at the global level.

Conditions in detention - Despite great concern regarding the physical and psychological treatment of children deprived of their liberty, participants found it challenging to find a global indicator which would serve as a proxy for children's treatment within detention centers. In the absence of feasible indicators that would measure the actual abuse or neglect of detained or incarcerated children, a protective environment indicator was chosen instead to measure the mechanisms in place to ensure a minimum standard of living conditions for children in detention.

Rehabilitation and after-care - The great importance of aftercare for children in conflict with the law was noted. However, the main issue is a low number of after-care programmes, their quality, and ability to provide reintegration services to children once released from detention. These qualitative issues are difficult to measure on a global scale.

Key points on methodology
In the course of the discussions, some concerns on methodology were also raised:

Basic record-keeping - Participants noted that basic record keeping for juvenile justice systems will be a pre-requisite to the collection of standardized data. It was mentioned that this will require individual case files for children in conflict with the law, which may or may not be linked to their criminal records, depending on the national system in place. Individual case files should 'follow' a child throughout the system and should ideally include a social inquiry report that details a rehabilitation plan for each child. While evidence of basic record keeping was not chosen as a priority indicator, individualized children's files will facilitate the collection of data at the country level, and should be encouraged.

Data collection - For the indicators which require quantitative data, it was agreed that ideally information would be collected on a monthly basis, and then presented at the global level as an

annual average. However, since many countries have not yet integrated regularized data gathering processes into their justice systems, initial figures may be taken “at a given time”.

Disaggregation - Participants discussed in detail at how to disaggregate data collected on children in conflict with the law. This is most relevant for the indicator on outcomes of contact with the juvenile justice system. It was decided that, subject to availability, data should be disaggregated by the following: age, gender, ethnicity, offence, and those detained for reasons other than penal offences such as status offences, administrative offences and immigration violations. Further suggestions included disaggregating children who have been in formal care, so as to understand further the potential connection between placement in formal care and being in conflict with the law.

Outputs
The following is the list of indicators as prioritized by the participants during the consultation. There are nine priority indicators in this list, though the first five are those that the participants expect to be collected globally, while the last four are also to be encouraged.

Child Protection Indicator Framework		
Children in Conflict with the Law [Juvenile Justice]		
	#	**Global Indicators**
Priority Indicators		
	1	Number of children in Detention/Proportion held pre-sentence
	2	Existence of a specialized juvenile justice system
	3	Outcomes of contact with the Juvenile Justice System
	4	Existence of a system guaranteeing regular visits by independent bodies
	5	Duration of Detention/Average length of pre-sentence detention
Additional Indicators		
	6	Existence of complaint mechanisms for children deprived of their liberty
	7	Proportion of children in detention who are not separated from adults
	8	Existence of a national programme for the prevention of juvenile delinquency
	9	Proportion of children released from detention benefiting from an aftercare program

Next Steps
Among the subsequent actions suggested by the participants in the consultation were:

Field-testing of indicators - To ensure the feasibility of these indicators, members of the reference group are encouraged to develop a plan of action to field test them in selected countries, and feed this experience into revisions of the indicators if needed.

Committee on the Rights of the Child - Pending further discussion with the Committee on the Rights of the Child, the final documents of the consultation may be adapted to suit the needs of the Committee, which may take the form of a checklist or monitoring tool for juvenile justice. UNICEF is considering the feasibility of including components of the indicator list in situation analysis tools for juvenile justice.

Juvenile justice in armed conflict - Due to time constraints, participants did not have the opportunity to review the parallel list of juvenile justice indicators adapted to situations during and post-conflict. Discussions are pending regarding how to finalize specific adaptations of the juvenile justice indicators during situations of armed conflict.

FIELD TEST OF THE INDICATORS IN THE PHILIPPINES

The Philippines presents an interesting case. While there is information on children in conflict with the law from particular institutions, these are not properly compiled. There are separate data systems at detention centers managed by local and national government and rehabilitation centers for children in conflict with the law managed also by the national government, local government units and non-government organizations. Raw data is available but it is not consolidated and analyzed and its utilization is not maximized. Thus, comprehensive policies and programs protecting children in detention are lacking due to the absence of consolidated information that accurately show the real situation of these children.

The absence of common indicators among used in these institutions which could be aggregated at a wider level of geographical unit also contributes to this dilemma.

First workshop

The Philippines was one of the three countries selected to pilot test the indicators, along with Romania and Kazakhstan. A team of international consultants from England was hired by UNICEF for the field-test. A services of a local consultant was also contracted for the field-test in the Philippines.

As part of the preliminary activities, a workshop was conducted on 27-28 October 2004 in Manila, the main purpose of which was to elicit comments from the participants from the government and non-government agencies on the set of indicators for the children in conflict with the law and juvenile justice. The participants discussed the importance of the field-test, the process involved in gathering data on the indicators, the relevance of the indicators to the Philippines, and the questions to be used in the survey.

There were initially five questionnaires prepared by the local consultant for the field-test: the Census of Children in Detention; the Survey of Children Leaving Detention; the Survey of Deaths in Detention; the Survey of Pre-court Diversion and Court Outcomes; and the Survey of Institutional Policies and Practices.

The terms used and the questions propounded in the questionnaires were reviewed by the workshop participants for appropriateness and clarity. Field-test sites were also identified by the participants in the workshop with the view of testing the instruments in different management set-ups and institutions so as to check the questionnaires' general applicability in the Philippines.

Field-test

The field-testing of the juvenile justice indicators was done in selected institutions from November 2004 to January 2005. The indicators listed in the international consultants' list of twelve indicators were field-tested except Indicator Nos. 2, 9 and 12.

At the same time that the juvenile justice indicators were being field-tested, another set of indicators was also being field-tested in the Philippines. This was the indicators on children in formal care. The same local consultant who did the field-test of the juvenile justice indicators also did the field-test of the indicators on children in formal care.

Preparation of the Questionnaires
Based on the comments gathered during the workshop, the questions were revised and the questionnaires re-formatted to make them respondents- and interviewers-friendly. Grouping of related questions, addition of instructions on skipping of certain questions, and assigning of codes were also done.

The questionnaire for the Survey of Death in Detention was combined with that for the Survey of Leaving Detention since they have the same set of questions with the addition of some questions related to death in the first questionnaire. Thus, there were seven questionnaires prepared for the field-test. These were:

1. Census of Children in Detention
2. Survey of Children Leaving Detention
3. Survey on Institutional Policies and Practices
4. Survey on Pre-court Diversion and Court Outcome
5. Census of Children in Rehabilitation
6. Survey of Children Leaving Rehabilitation Center
7. Survey on Institutional Policies and Practices

The questionnaires for rehabilitation (Forms 5, 6, and 7), contain the same questions as that in the detention questionnaires (Forms 1, 2, and 3), except that the terms “detention,” “convicted,” and “sentence” were replaced with “rehabilitation,” “under suspended sentence” and “commitment to center.”

Pre-testing of the Questionnaires
The pre-test conducted for the questionnaires for the indicators on children in formal care provided some bases for the revision of some questions and terms and the inclusion of additional questions. The questionnaires on children in formal care served as a model since there are similar questions in the questionnaires on children in conflict with the law.

No actual pre-test was done for the questionnaires on children in conflict with the law due to time constraints. However, revisions were done on the questionnaires on children in conflict with the law after the interview was conducted in the first institution visited.

Finalization of the Questionnaires
Based on the pre-test on the questionnaires on children in formal care and the first interview in the institution for children in conflict with the law, the questionnaires were finalized. Another questionnaire was also developed for the interview with the children in the institutions, the purpose of which was to elicit their views, experiences and other relevant information. It was expected that the children’s responses shall differ from those provided by the staff of the institution especially on questions related to the condition and treatment of the children in the institution.

Interviews Conducted
A letter was sent to all the identified institutions informing them of the field- test, the purpose of the field-test, and the schedule of the visit of the local consultant to the institution. Confirmation on the availability of the respondents was also done prior to the visit to the institutions. In most cases, the visit had to be re-scheduled.

A team of three interviewers was fielded by the local consultant to facilitate the accomplishment of the questionnaires. Interviews were conducted simultaneously, where one interviewer handled the institutional questionnaire, the other the census of children in the institution, and the last one the interview with the children. The respondent for the institutional questionnaire was the manager of the institution or the warden of the detention center, while for the census of children it was the records officer. The census was tedious as it required the checking of information from the children’s records.

The average interview time per questionnaire was as follows:

Questionnaire	Number of Pages	Average Interview Time
Form 1 – Census of Children in Detention	3	45 min
Form 2 – Survey of Children Leaving Detention	4	1 hour
Form 3 – Survey on Institutional Policies and Practices	9	At least 2 hours

Two to three groups of children per institution were interviewed, with a sample size of 7 to 8 children per group. The children in the groups were chosen based on sex and age. The youngest child interviewed was11 years old and the oldest was18 years old. At the start of the interview, the children were informed of the confidentiality of their responses and that the staff of the institution would not know the responses they would provide to the interviewers. At first, the children were hesitant to answer, but as the interview went on the children became comfortable and began to narrate their experiences and the conditions in the institutions.

Follow-ups and Verifications Made
Since the interviews took some time to accomplish, the staff of some institutions opted to answer the questionnaires by themselves and at a time more convenient to them. The interviewers then just scheduled another visit for the retrieval of the questionnaires and the verification of the responses. In some instances, the number of visits by the local consultant's researchers reached four times because of the unavailability of the respondents. This happened in December when some of the visits coincided with the Christmas parties for the children and staff of the institutions.

Follow-ups and scheduling of interviews were made through phone calls while another visit was scheduled for those verifications that involved several questions.

Self – Administered Questionnaires
Questionnaires were also sent to different regions in the country to test which method, apart from interview, is more appropriate when it comes to data collection. The test is necessary to determine which system could be adopted on a national scale. Moreover, this was done to test if the questionnaire was self-explanatory and could be readily accomplished with minimal instructions.

There was another form developed for the staff who will accomplish the questionnaires. The form contains questions about their difficulties in accomplishing the questionnaires, which terms are not clear for them, which questions are not applicable in the Philippines, whether the sequence of the questions are appropriate, whether the length of the questionnaire is manageable, and the method they recommended gathering the required information.

These self-administered questionnaires for detention and rehabilitation centers were sent to each region of the country. As of the end of January 2005, accomplished questionnaires from 7 detentions and rehabilitation centers were received. More are expected to be submitted in the subsequent weeks.

The second workshop
A second workshop was conducted on 2-3 February 2005 in Manila where the results of the field test were presented by the local consultant. It was attended by representatives from the same government and non-government institutions who participated in the first workshop. Among the major findings of the field-test were:

The questionnaires were too lengthy and consumed a lot of time to accomplish
Some terms needed to be clarified and defined further

Some "global" terms were not applicable to the situation in Philippines
The timing or schedule of data collection should be considered in the actual gathering of data

Highlights of the Results of the Field Test
The field-test also generated data that gave a picture of the condition of children in detention.

Derived Indicators

Indicators	Value	Source
1. Proportion of children in conflict with the law held in detention and the proportion held pre-sentence	Number of children in detention in the identified institutions: 919 children Proportion held pre-sentence: 72.9 %	Form 3
2. Existence of specialized juvenile justice system	None	
3. Outcomes of contact with the juvenile justice system	None	
4. Number of child deaths in custody and cause of death	2 children, illness	Form 3
5. Existence of a system guaranteeing regular visits by independent bodies	4, out of 12 institutions	Form 3
6. Duration of detention and average length of pre-sentence detention	Duration of detention of children who left (total for sentenced and pre-sentence) Under 1 month: 44.8 % 1 month to less than 3 months: 14.2 % 3 months to less than 6 months: 8.0 % 6 months to less than 12 months: 22.8% 12 months to less than 24 months: 6.5% 24 months to less than 60 months: 0.3% Pre-sentence, duration of detention Under 1 month: 34.3 % 1 month to less than 3 months: 17.6 % 3 months to less than 6 months: 14.8 % 6 months to less than 12 months: 27.8% 12 months to less than 24 months: 3.7% 24 months to less than 60 months: 0.9%	Form 2
7. Existence of complaint mechanisms for children deprived of liberty	9, out of 12 institutions	Form 3
8. Proportion of children in detention who are not separated from adults	79.3 % of children	Form 3
9. Proportion of children released from detention benefiting from an aftercare program	60.8 % of children who were released	Form 2
10. Proportion of children in detention who have been visited by parents or family members in the last	52.7 % of children in detention	Form 1

3 months		

Institutional Policies and Practices

- The total population in 8 detentions and 4 rehabilitation centers was 5,526 (both adults and children), of which 93 percent were in detention and 7 percent in rehabilitation centers.
- here were 919 children aged 11 to 17 years (17 % of the population of the institutions), and 68 % were in detention.

- Of the total number of children in detention centers, 595 children (95 %) were detained pending trial and 32 children were suspended sentence. On the other hand, of the total number of children in rehabilitation centers, 75 were in custody pending trial (26 %) and the rest were under suspended sentence.
- The most common offences committed by children are offences against property, both violent (21.5 %) and non-violent (23.8 %), and drug offences (21.6 %).
- Of the children under suspended sentence, 21.7 % received a sentence of one year to two years and about 18 % were with no fixed term indicated in their sentence.
- Of the 12 institutions, 4 reported that they have an inspection system, with all in detention centers and none in rehabilitation centers. (Inspection system refers to the inspection done by an external independent person or body and covers the inspection on children's condition in the institutions).
- Most of these institutions were inspected just very recently (in the last 6 months), with varying frequency of visit, and the visits were sometimes announced. In terms of the inspectors' activities in the institutions, one of the inspectors' normal routine is to talk with the children and submit reports but these are not publicly available. The institutions' action on the inspectors' findings is considered an internal matter.
- Three in four institutions followed a complaint-handling system. These were on complaints against the management, the staff, or the policies and rules of the institutions. There was no mechanism on complaints against the children. The common process to be followed in cases of torture, violence and abuse is the investigation of the case. So far, however, no institution had reported an incidence of torture, abuse or exploitation of children.
- Although three-fourths of the institutions had a complaint system, one-half of the institutions has no written procedures, but the practice is that once a complaint is made an investigation immediately follows.

In detention centers, children are exposed to the adults' influence because even if the children have separate cells they are allowed to mingle with adult detainees as they share the same facilities such as infirmary, recreational facilities and others.

The 12 institutions recognized the right of the child to maintain contact with his or her family through letters, visits and telephone calls. All the institutions allow visits, with half of them allowing a weekly visit to children and some even allowing a daily visit. Moreover, 75% of the institutions allow phone calls and 92% allow written communication.

Census of Children

- 94.5 % of the children in the institutions were boys.
- % of the children were less than 15 years old, 64.1 % were 15 to 17 years old, and 9.1% were 18 years old and over. Those in the last group entered the institution when they were less than 18 years. Thus, they were included in the count.
- 71% of the children had both of their parents still living, while 17 % had only one parent living.
- 70% percent of the children had been staying in the institution for less than a year, while about 3 % had been there for more than two years.
- Among children under suspended sentence, 35 % had no fixed term, 17 % had 24 to less than 60 months, and 22 % with less than one year. About 11 percent of those with

suspended sentence (10 in 91 children) had gone beyond the duration of the sentence given by the court.
- 53 % of the children were visited in the last 3 months, while 24 % were not visited at all

Children Leaving Detention
337 children left detention or rehabilitation during the past 12 months. Among them, 61 % received an aftercare programme. About 76 % of those who received aftercare services were supported for a duration of 6 months. Provision of accommodation (90.2 %), help in employment (77.6 %) and counseling (98.5 %) are the common aftercare services received.

Close to 60 % of the children released in the past 12 months stayed in detention or rehabilitation for less than 3 months, while close to 30 % from 6 months to 2 years.

Most of the children (82 %) went back to their families.

Children's Interview
- A total of 79 children were interviewed in detention (46 children) and rehabilitation centers (33 children).
- The youngest child interviewed was 11 years old and the oldest, 18 years old.
- When they were asked on what are the things considered good in detention/rehabilitation centers, 27.8% said that they were happy with their stay, 25.4% said they like attending school, mass and bible study. But 12.7% said nothing is good in detention/rehabilitation centers.
- Between detention and rehabilitation centers, a higher proportion of children in rehabilitation centers signified appreciation on the food offered and the rehabilitative component of the programme for they were able to change their attitudes.
- On the things they considered not good in detention/rehabilitation, 32% said that it separated them from their parents, 17.7% said that there is no freedom or they are not allowed to do everything they wanted, and 13.9% mentioned some problems on facilities. On the other hand, 19 % of the children said that everything was alright.
- Children in detention said lack of freedom was the major restriction (30.4 percent), while children in rehabilitation centers said it was being separated from parents (57.6 percent).
- 60% of the children said they can watch television programs anytime they want, 24% said they can watch for more than 12 hours, and 8.9 percent for 9 to 12 hours.
- The children aired theirs complaints through the house parent (26.6%), through their parents (16.5%), or through other personnel of the institution (16.5%).
- 57% of the children interviewed do not have their own bed, and they either share with other children or sleep on the floor.
- 77% of the children have the chance to exercise, with 88.5%of them exercising every day, and 72.1% of them exercising outside of their cell.
- All of them have a bathroom inside their cell, although 55.7% said that the bathroom have no doors.

Pre-court Diversion and Court Outcome
Due to the unavailability of data on the total number of arrests made, the proportion of children availing of pre-court diversion and the proportion as to type of sentence adjudged by the courts cannot be computed.

Issues, Comments and Observations, and Recommendations
The field-test provided a venue for the improvement of data collection as well as the instruments to generate the indicators. It identified difficulties in data collection and the processes that would overcome those difficulties. It likewise showed the strong points in the process and how it can be further enhanced to provide an overall improvement to the system.

Below are the major observations/comments and recommendations gathered from the field-test:

On the Questionnaires

Torture, violence, abuse and exploitation

The words "torture, violence, abuse and exploitation" present a sensitive issue for the staff of the institution. Most hold back when asked about this issue and some even denied that such existed in the institution, which was contradicted by the children who were interviewed.

It was anticipated that questions which reflect the performance of the institution may not to be answered truthfully by the staff. Hence, interviews with the children were conducted so that the actual practices and policies can be extracted fully.

Definition of certain terms

There is a need to define some terms in the questionnaires, such as "complaint," "accidents" and "inspection" as the staff of the institutions have different interpretations of the meaning and parameters of such terms.

Qualifications of the staff

The qualifications of the staff asked in the questionnaires should be defined as to whether such refer to the education, training or number of years of experience of the staff. These are too difficult to gather especially if there are a number of staff members in the institution. Most of the institutions do not maintain a separate record of the education, training and experience of the staff. Information may be derived from the individual staff member's records but such will take time. Most of the respondents do not have the patience to answer the questions nor accomplish the said portion in the questionnaire. This was left blank in many institutions.

There is a need to delete or revise this indicator. The question on criteria followed in recruitment may suffice to determine the qualification of the staff. This is because staff members cannot be appointed if they lack the appropriate qualifications.

Legal terminology and offences categories

Under Philippine law, there are legal terms like "suspended sentence" which describe a common disposition of cases of children in conflict with the law but which are not used in the indicators. There are also legal terms which are not used, like "pre-sentence," but have a local equivalent, like "pending trial". Thus, some "global" terms used in the questionnaires should be revised to adapt to the local legal procedures.

The same may be said about offence categories. Some offences under Philippine law cannot be easily categorized within the categories in the questionnaires. Those who self-administer the questionnaires find it particularly difficult to categorize the offences since the categories do not often correspond to the offences under the local law. To remedy this, specific offences could be enumerated under each of the categories.

Same questions in different questionnaires

There were questions which elicited the same data which were found in two different questionnaires. It will shorten the questionnaires if there was no repetition of questions.

Length of the questionnaire

A lengthy questionnaire normally results to low quality data. This is due to fatigue of both the respondent and interviewer. Questions asked after more than an hour and a half of interview tend to answered poorly because the respondent has lost interest. Thus, the questionnaires should be shortened.

Questionnaire on Survey of Pre-court Diversion and Court Outcome

The questionnaire on Survey of Pre-court Diversion and Court Outcome requires two different respondents to answer it. The respondent for Pre-court Diversion is the social worker assigned to the police station while the clerk of court will be the one to answer the part on Court

Outcome. Thus, a questionnaire for Pre-court Diversion should be developed separately from the Court Outcome questionnaire.

On the Interview with the Children

The interview with the children was a very good way to assess the real condition of the children in detention or under rehabilitation. While the interview with the staff of the institution can provide general data, often the children's condition is not reflected in the answers of the staff especially on indicators that relate to the institution's performance.

Also, there is a need to reduce the number of questions in the questionnaire as the interview with the children normally takes at least one hour. The interest of the children decreases as the interview drags on.

On the Self-administered Questionnaires

Of the seven institutions that gave comments on the self-administered questionnaires, five answered that they preferred to be interviewed. Some of the reasons cited were the need to clarify matters or to interpret question.

Problems encountered included several blank answers and inconsistent entries in the questionnaire. Moreover, there is a tendency for the person accomplishing it to give answer which will allow him or her to skip several questions in order to shorten the filling up of the questionnaire. Another problem is the incomplete and vague answers for open-ended questions that require explanation or details. The low rate of return of questionnaires also posed a problem.

The two processes of accomplishing the forms, either by interview or through self-administer have their own advantages and disadvantages. While an interview will ensure complete and consistent answers and shorter period of data collection, it entails costs.

On the other hand, problems inherent in a self-administered process can be addressed by reducing the number of questions and changing the type of questions to a structured format (answerable by Yes or No, or with specified choices of answers), provision of a manual on how to accomplish the questionnaires and allotment of resources to do follow-ups and verification of entries.

Ideally, an independent institution, not in any way connected to the source of information should be tasked to collect and compile the data to avoid bias in the answers, especially in questions related to the performance of the institutions. The source of information may deliberately conceal some information knowing that it is the head or central office which will consolidate or compile the information submitted.

On the Timing of the Interview

The field test was conducted in November and December when the institutions were busy with Christmas parties and similar activities. Hence, re-visits and several follow-ups were done for the completion of the questionnaires.

The appropriate timing of the interview should be either the latter part of the first quarter, the second or third quarter of the year to avoid major holidays in the country. Also, this is the best time for accomplishing the self-administered questionnaire as the institution will not be busy doing the year-end closing of books and records.

Other Comments

On the whole, the respondents were cooperative. They allotted time for the interview, prepare the necessary records and made the children available for the interview. If there was some unwillingness, it was because of the length of the interview, the timing of the interview, and the search for records that needed to be done by the staff, which for them was time consuming.

It must be emphasized that the respondents appreciated the field-test as it served as their checklist on what had to be done to improve the condition of children in their institutions. They also looked forward to the implementation of the system as they recognized that there are no uniform indicators on children in conflict with the law. They were also grateful that they were selected as field-test sites as they were excited to take part in the improvement of the process.

WORKSHOP COMMENTS

During the second workshop, the participants recognized the usefulness of the indicators for policy advocacy, research, evaluation of programs and services and the effectiveness of the justice system. They were asked to provide comments on the list of indicators and the process of data collection. Some of the comments made by the participants were:

1. The core indicators are not yet currently available at the national level
2. There is no system in place to collect the indicators. There is also a need to identify the agency which will be responsible for the collection and compilation of indicators
3. While the core indicators may be applied to the Philippines, there is a need for additional data that will provide better insights on the condition of children in conflict with the law and the juvenile justice system.

The additional information that can be integrated into the local indicators, which were suggested by the participants during the workshop, included:

1. Educational attainment of the child
2. Educational level of the child upon entry into the system
3. Information on whether the family of the child is functional or dysfunctional
4. Place where offence was committed by the child
5. Socio-economic condition of the family of the child
6. Proportion of children who returned to detention within 6 months after release
7. Previous offence committed by the child, if any
8. To whom the child was discharged upon released
9. The impact of the offence on the victim
10. The impact of diversion on the victim

Final List of Data Items for the Philippines

Based on these comments and the observations from the field-test, the complete list of data items needed to derive the indicators (only those which were field-tested) for children in conflict with the law was prepared by the local consultant.

Some of the data items suggested during the workshop (socio-economic condition and impact on the victim) were not included in the final list of data items because of the difficulty in gathering such information and also because the questions to be used to gather those items are yet to be developed. In the future, these items may be included, but at the moment only the priority information needed for the indicators are considered.

Final List of Core Data for Indicators on Children in Detention or Rehabilitation

No.	Data Items
1	Type of Institution
2	Region of Detention/Rehabilitation
3	Age/Date the child entered detention/rehabilitation/Duration of stay
4	Age at Present/Date of Birth
5	Sex

6	Ethno-Linguistic Group
7	Educational Attainment
8	Principal Offence
9	Place where offence was committed
10	Legal basis for detention/rehabilitation (Pending/On-going Trial or Suspended Sentence)
11	Length of sentence (if sentenced)
12	Parental Status
13	Contact with parents/family
14	Children who returned to detention within 6 months
15	Previous Offence
16	Date of Discharge
17	Reason for Discharge
18	To whom discharged

Final List of Core Data for Court and Diversion Indicators

No.	**Data Items**
Information on Each Child	
1	Region of Detention/Rehabilitation
2	Date of Birth/Age
3	Sex
4	Ethno-Linguistic Group
Information on Diversion	
5	Principal Offence
6	Date Cautioned/Diverted
7	Length of stay in detention
8	Diversion type (caution, apology, reparation, etc.)
Information on Court Sentencing	
9	Principal Offence

10	Date Sentenced
11	Length of stay in detention
12	Finding (not guilty, guilty, etc.)
13	Sentence category
14	Length of Sentence

Final List of Core Data for Institutional Policies and Practices

No.	Data Items
1	Complaints (presence of complaints system, presence of formal written scheme, process followed to inform children of this system, measure to protect children during the investigation process, whether all complaints are recorded, number of complaints received in the last 12 months, actions taken)
2	Separation from Adults (how children are separated from adults)
3	Inspection System (presence of inspection system, agency conducting the inspection, frequency of inspection, how concerns raised were addressed)
4	Discipline given to Children (system to discipline the children)
5	Suitability of premises (number of children in cells per capacity of cells, number of hours spend in cell, number of hours spend to socialize, facilities to exercise/socialize)
6	Food (presence of menu, whether children have a choice of main course, how special dietary requirements are met)
7	Health and Safety (presence of health and safety hazards to children, procedure for fire drills/emergencies, presence of accidents)
8	Bathroom and Washing Facilities (presence and description of bathroom/washing facilities)
9	Qualification of Staff Directly Working With Children (Educational qualification of house parents/social workers, guards and warden)
10	Number of deaths and causes of death
11	Through care – the rehabilitative component of detention (number of children by type of through care given, agencies/institutions providing the through care)
12	Aftercare Program (number of children by type of aftercare program provided, involvement of parents and children in aftercare planning, agencies/institutions providing aftercare, duration of aftercare program)

POSTSCRIPT

There is a plan to have the indicators adopted by two government agencies in the Philippines within 2005 as part of their regular monitoring and data systems. These are the Department of Social Welfare and Development, which operates the rehabilitation centers for children in conflict with the law, and the Bureau of Jail Management and Penology, which has jurisdiction over the more than a thousand city and municipal jails all over the country. The Council for the Welfare, the national coordinating body on children's concerns and which also prepares the periodic State Party report submitted to the Committee on the Rights of the Child, is another agency which can immediately use the indicators. There is also a plan to integrate the indicators into the DevInfo data system of UNICEF.

Workshop 2

CRITICAL REFLECTION ON THE DEVELOPMENT OF RESTORATIVE JUSTICE AND VICTIM POLICY IN BELGIUM

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INTRODUCTION
The challenges of the criminal justice system, including the needs of crime victims and the growing attention for restorative justice as an alternative to retributive criminal procedures, have attracted the attention of the United Nations Congress in Bangkok (April 2005). This paper unites both interests in analysing the evolution and implementation of restorative justice practices in Belgium in light of the developments concerning the policy in favour of victims in the same country. In this paper, we will essentially analyze the evolution of the position of victims of crime committed by adult offenders. Therefore, the first part of our contribution discusses the victim policy developments in Belgium. The second part deals with the description of restorative justice developments for adult offenders at the level of policy and practices in the same country. Finally, the last part of this contribution focuses on the parallels between policies and practices in both fields and in particular aims to argue how restorative practices for adult offenders and victim policy currently implemented in Belgium answer to the victim's needs and rights, as they have been formulated by the Belgian National Forum for Victim Policy.[91] In addition, we will explore the complementarity between restorative justice developments and the policy in favour of victims, which transcend the Belgian boundaries. Our discussion is mainly based on analyses of national legislation, on results of evaluative research having already been conducted in the field of restorative justice and on ongoing research regarding the consideration of victims in the criminal justice system in Belgium, and on the study of the scientific literature on victim policy and restorative justice. It is therefore to be considered as an inductive process of reflection, which can produce new research questions and more profound empirical analyses.

Overview of the Belgian victim policy
1.1. Victim policy: state of affairs
In Belgium, the position of the victim in the penal justice system has been debated upon since the mid 80's. However, it was not until the 90's that a large movement of reform aiming at the recognition and amelioration of the position of the victim in the penal procedure truly emerged. This trend can be related to structural changes identified in most of the western countries (for example, the Recommendations and Declarations enacted at an international level), to conjectural events in Belgium (*Hannut* affair, *Dutroux* affair), which contributed to the increase of political interest, and to the pressure of citizens groups with respect to this issue in this country.[92] In the last decennium, many regulations emerged to support the implementation of initiatives towards victims[93] and

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91 NATIONAAL FORUM VOOR SLACHTOFFERBELEID, Handvest voor het slachtoffer van een misdrijf, Federale Overheidsdienst Justitie, Brussel, 1998, 20 p.

92 Such as the association of parents of murdered children or of children who died in traffic.

93 **E.g. the law of august 1st 1985 establishing financial aid by the State to victims of intentional acts of violence and to occasional rescuers; the decree of 1990 of the French Community regarding the social support to clients of the justice system; a circular letter of 1991 of the Federal Minister of Internal Affairs (OOP15) which defines the kind of help to be provided to the victims by the police and which has been revised three times yet; the law of 1992 on the function of police which defines the notion of assistance to victims in article 46 ('Les services de police mettent les personnes qui demandent du secours ou de l'assistance en contact avec des services spécialisés. Ils portent assistance aux victimes d'infractions, notamment en leur procurant l'information nécessaire'). Also various laws were voted in 1995 concerning the repression of sexual child abuse, human trafficking and child pornography. Furthermore there is the directive of July 22nd 1997 concerning the research regarding disappearances replaced by the directive of February 20th 2002; the directive from the Minister of Justice of September 15th 1997 stating the implementation of a service for reception of victims at the level of the public prosecutors services; the law of March 8th 1998 which aims to ameliorate**

various authorities of the Belgian Federal State became competent with respect to victim policy.[94] In Belgium, since the 80's several victim services have been created in order to provide general help and support to victims, and to prevent secondary victimization. These services are namely 'assistance to victims' (*bureaux d'assistance aux victimes*) at the level of the police, under the authority of the Federal Minister of Internal Affairs, 'reception of victims' (*services d'accueil aux victimes)* at the level of the public prosecutors services, under the authority of the federal Minister of Justice and 'support to victims' (*services d'aide aux victimes)* at the community level, under the authority of the Flemish and French Community. Moreover, specialized or therapeutic aid is offered by different services, such as 'Centers for General Welfare Work' and 'Centers for Mental Health Care'. Finally, specific services are offered to particular groups of victims, as for instance 'Centers for Victims of Human Trafficking', 'Women and Child Abuse Centers', 'the Centre for Equal Opportunities and Opposition to Racism' and 'the Compensation Fund for victims of intentional acts of violence and for occasional rescuers' (Xavier *et all*, 2003; Nationaal Forum voor Slachtofferbeleid, 2004; Lemonne and Van Camp, 2004). Taking into account that several authorities are competent in victim matters, various cooperation instruments have been implemented in order to insure an optimal cooperation between these authorities.

1.2. Increasing help and support for victims

1.2.1. Implementation of general victim support services

In the 80's psychosocial support for victims was initiated through the creation of centers for victim support (*centres d' aide aux victimes* and *diensten voor slachtofferhulp*), financed by the French and Flemish Community.[95] Even though the philosophy of work in both parts of the country can be variable, services aim to provide psychosocial help to victims of crime.[96] These centers were initially part of the 'Services of Forensic Welfare' in Flanders and of the 'Services for Judicial Welfare' in the French speaking part of Belgium. In Flanders, however, they were reallocated to the 'Autonomous Centers for General Welfare Work' in the 90's, and care for victims was thus separated from the work dealing with perpetrators of crime. Moreover, these Centres work predominately with volunteers. The voluntary engagement of fellow citizens is regarded as contributing to restoring the victims' trust in society, damaged by the offence. In the French speaking part of Belgium, the work with counterpart associations working with perpetrators of crime is less separated and the work philosophy favours professionalism (Van Camp, forthcoming; Devroey, 2003).

1.2.2. Implementation of victim support services at the level of the police and the public prosecutors services

In a 1991 circular letter by the Minister of Internal Affairs and in a 1992 Law on the function of the police, the police are explicitly given the task to deliver first assistance to victims of crime.[97] Primary assistance merely concerns short term support to victims immediately after a crime occurred or a complaint was posed, the offer of practical information and the referral to other specialized services if necessary and agreed upon by the victim. Every police district should also appoint an officer for victim assistance, responsible for individually assisting victims in a non-psychosocial manner and for structural work, such as the sensitization of and provision of information to the police officers in their district and for the construction and maintenance of contacts and communication with other victim (oriented) services. Nevertheless, victim assistance

the penal procedure at the level of the information and instruction and gives a certain number of rights to victims; the law of Reform of the law of March 5th 1998 concerning the process of conditional release which defines the position of the victim in this process; the directive of September 15th 1998 concerning the last greetings to persons passed away in case of judicial research; the directive of February 1999 concerning the sexual aggression set; the ministerial directive of July 15th 2001 regarding audiovisual recording of the audition of minor victims or witnesses of crime; the circular of the Minister of Justice and the College of general prosecutors of May 3rd 1999 concerning information transmitted to the press by the judicial authorities and police services in the stage of preparatory research.

94 Under the Belgian Constitution there are, besides the Federal State, three cultural 'Communities' (the Flemish Community, the French Community and the German Community) and three economic 'Regions' (the Flanders Region, the Walloon Region and the Brussels-Capital Region). The Regions and Communities do not coincide, neither in terms of competencies nor in terms of people falling under their rules. Rules enacted by the Federal State (in matters such as Justice, Social security, Defense, Interior, Finances, …) apply to the whole territory and to all people living in Belgium, whereas rules enacted by the Communities (in matters such as Education, Youth help and protection, Welfare, Culture, …) apply to Belgians according to their language criteria and rules enacted by the Regions (in matters such as Economy, Tourism, Environment, …) apply to all Belgians according to territorial criteria.

95 Since care for individuals is a competence of the 'Communities' instead of a responsibility of the Federal State, psychosocial victim support is not a national issue.

96 The target group however transcends victims of crime. It also concerns relatives of a person who committed suicide and victims of traffic accidents.

97 With the creation by the Law of December 7th 1998 of an integrated police force at two levels, a local and a federal police, victim assistance is exclusively assigned to the local police. One of the directorates of the federal police does nonetheless have a supporting and structural function towards the victim assistants at the local police.

is, in the frame of these regulations, not regarded as the unique task of specialized services or officers, but rather as a responsibility for every single policeman (Van Camp, forthcoming).

Since 1997 justice assistants and a liaison magistrate are appointed in each court of first instance, as well as an advisor designated in each appeals court to accomplish the implementation of measures with respect to the reception of victims at the level of the public prosecution services (*accueil aux victimes dans les parquets*)[98] in collaboration with the judicial officers and authorities. This service is based on the need to prevent secondary victimization, which can result due to involvement in judicial proceedings (Rans, 2004; Le Roy, 2004). The justice assistants offer support to individual victims during the entire judicial procedure, from the complaint at the police to the (conditional) release of the offender. Their actual assignments include for instance: providing practical information to the victim in the course of the procedure; guiding a victim when given insight in the criminal file; supporting the victim or their relatives when personal items which have been subject to investigation are handed back; supporting the victim during the proceeding before the court; and assisting victims when greeting the body of the deceased after a forensic autopsy. Moreover, when an offender of a serious and violent crime, such as murder, rape, torture and kidnapping, applies for conditional release, a justice assistant is appointed to complete a victim form, in which conditions for release can be proposed by the victim to the commission on conditional release (Law on conditional release of March 5th 1998). The justice assistants are likewise assigned an important structural task, namely the sensitization and training of the magistrates and the indication of obstacles in developing the victim policy at the level of the public prosecutorial services and the courts. At the outset of creating these services, it was emphasized matter of factly that the final objective of the justice assistants was to ensure that they become ‘superfluous’.

1.3. Reinforcement of the victim position in the course of the criminal procedure

In Belgium, a continental criminal law system gives victims the right to constitute themselves as a civil party (*constitution de partie civile*, article 63, 65, 67 of the criminal procedure code) or to directly summon the court (*citation directe*). Since 1998, the rights of the victims to intervene in the criminal procedure have been increasingly developed. Indeed, according to a reform of the procedural code (by the Law of March 12th 1998 *relative à l’amélioration de la procedure pénale au stade de l’information et de l’instruction*) the victim can introduce a ‘declaration as aggrieved party’ (*personne lésée*) in order to receive information on the proceedings of his file; can ask for complementary acts from the public prosecutor or the examining judge (*juge d’instruction*); can receive a copy from the criminal file; etc. Since the introduction of the Law of March 5th, 1998 concerning the conditional release, the victim is also offered the possibility to give his or her opinion before the decision of conditional release in certain cases. Victims do hence receive more rights in the criminal procedure. However, since these rights are not automatically provided, they have to be claimed by the victim. The public prosecutor can even consider denouncing these rights to victims in certain cases according to the opportunity principle.

1.4. The coordination of initiatives

The cooperation between the victim services at the level of the police, at the level of the prosecutorial services and at the level of general welfare work should officially be framed in an agreement ratified by the Federal State and the ‘Communities’ and ‘Regions’ regarding the care for victims. In 1998, the Federal State and the Flemish Community validated such an agreement[99], but until now, the French Community and Region have not done so, despite the recognition of the need for such a protocol (Van Camp, forthcoming). In addition, the Minister of Justice implemented the National Forum for Victim Policy in 1994. This Forum aims to ameliorate the cooperation

98 The implementation of victim support at the level of the public prosecutor’s office is recognized through the adoption of a Directive from the Minister of Justice of September 15th 1997, and by various further legislation and regulation, such as Article 3bis of the Belgian procedural code concerning the conscientious and correct care for victims in giving them correct information and referring them to the justice assistants for victim support; the Law on Conditional Release of March 5th 1998; the Law on the preventive placement of juveniles who committed an act described as an offence of March 1st 2001; and several guidelines, such as on greeting the body of a deceased after the autopsy, on the proceeding before the court d’assisen, on missing persons, etc.

99 In Flanders, the agreement concerns first of all the organization of communication platforms at the level of the judicial districts, in order to shape the implementation of victim policy according to local possibilities and obstacles. Secondly, it prescribes procedures for referral of victims (divided in obliged and facultative categories according to type of offence) to the relevant services.

between the various authorities competent to deal with victims.[100] It is an important tool as it enhances the cooperation in the field, it is the ultimate provider of information and expertise, and is a place were actors from several services and competent authorities can strive for uniformity. However, it has not yet received a formal status and hence lacks the power to optimally influence the field and policy makers (Van Camp, forthcoming). It is worth mentioning that the Belgian National Forum for Victim Policy essentially views the rights of victims as an issue separated from that of offenders. In this respect, restorative justice programs are not at the forefront of the preoccupations of this forum even though, as we will see in the next section, a restorative justice policy has been developing in Belgium since the end of the 80's.

2.1 Overview of the Belgian restorative justice developments
2.2 Restorative justice: state of affairs

The implementation of restorative justice practices in Belgium started with the implementation of mediation practices in the field of justice for juveniles and adults. However, at the beginning, the orientation of this policy was implemented in the framework of a rehabilitative and/or punitive ideal and thus quite disconnected from the real interest towards the victims of crime.

Indeed, the first programs were primarily initiated in the youth protection justice field, in the framework of a pedagogical ideal.[101] In the 90's, a 'penal mediation' program (mediation at the level of the public prosecutor, before prosecution) was introduced in the field of adult justice. Penal mediation is still nowadays the only mediation program benefiting from a legal basis.[102] Other restorative justice initiatives are however implemented as pilot-projects. Today, mediation practices for adults are also implemented at the police stage (local mediation), at the level of the public prosecutor after prosecution (mediation for redress), and even mediation during the execution of a penal sentence, usually in prison settings (mediation at the stage of execution of punishment) (Aertsen, 2000). In addition, another restorative justice application in the field of criminal justice for adults is the structural implementation of restorative justice principles in prison since 2001.[103] Moreover, several legislative changes are now in the pipeline. In 2004 a proposition was made regarding the construction of a legal basis for mediation for adults, which should allow for mediation at every stage of the criminal justice process, including the execution of punishment.[104] Moreover, a current judicial effort in promoting restorative justice in Belgium is the development of restorative principles in the frame of the decisions made by the expert Commission on the legal position of inmates *intra muros* (Aertsen and Beyens, 2005; Commission Holsters, 2003).[105] In this sense, the Belgian State progressively complies with the standards regarding the implementation of restorative justice set out by the Council of Europe (namely Recommendation N°R(99)19 of the Committee of Ministers to Member States concerning Mediation in Penal Matters) and with article 10 of the framework decision of the 15th of March 2001 on the standing of victims in criminal proceedings.

Two applications of restorative justice in the adult field and their evaluation

2.2.1. The introduction of mediation as a means of reaction against petty delinquency

100 The Forum is bound to formulate advice regarding to propositions of law or decree, to develop new strategies to improve the position of the victim in criminal justice procedures, to evaluate initiatives, to encourage cooperation in the field, to ensure the compliance between national and supranational regulations and to sensitize the public. The Forum produced various reports on the state of affairs as well as recommendations for amelioration (Nationaal Forum voor Slachtofferbeleid, 1996; 1998; 2004).

101 **These experiments were initiated by several non-profit organizations (Oikoten in Leuven, Arpège in Liège, G.A.C.E.P. in Charleroi and Radian in Brussels), and were inspired by the experiences of these organizations with community service. For juveniles, mediation is applied before prosecution according to a decision taken by the public prosecutor and before and after judgment in the framework of a provisionary and definite decision taken by the juvenile judge. Besides mediation, other restorative justice initiatives have been implemented in the framework of the Belgian youth protection law. For instance, one can mention the existence of a provincial restoration fund for juveniles since 1991 and the introduction of a pilot-experiment of family group conferencing for juveniles since 2002.**

102 Article 216ter, introduced in the Belgian Code of Criminal Procedure by the Law of February 10th, 1994.

103 **Initiated in 1998 by the Catholic University of Leuven and the University of Liège as a pilotproject and later in 2000 generalised by the Minister of Justice to all Belgian prisons (Christiaensen, et all, 2000 ; Aertsen, et all, 2003). This project materialized in the implementation of restorative justice consultants appointed to work in prison settings. One of the missions of these restorative justice consultants is to develop collaborations with services working outside the prisons and focusing their efforts on the relationship between victims and detainees.**

104 Projet de loi introduisant des dispositions relatives à la médiation dans le Titre préliminaire du Code de Procédure pénale et dans le Code d'Instruction criminelle of January 19th 2005. This proposition of Law is now being debated upon in the Parliament.

105 The youth protection law is now also the purpose of reform, initiated by the Minister of Justice (Projet de loi modifiant la legislation relative à la protection de la jeunesse et à la prise en charge de mineurs ayant commis un fait qualifié infraction of November 29th 2004), in which both mediation and family group conferencing should be prominent.

In 1994 article 216ter on penal mediation was introduced in the Belgian code of criminal procedure by the Law of February 10th 1994. This law emerged from the recommendations of a parliamentary commission inquiring into several high profile criminal affairs[106], which focused on reviving the trust of the public in the official institutions. The reform of both police and justice services was insisted upon in order to create a strong policy in security matters. Moreover, arguments were developed in the federal parliament claiming that it was necessary to accelerate the judgement of petty and repetitive delinquency. The inadequacy of the traditional system to react to this kind of crime was highlighted and considered as problematic, because it fuelled a general feeling of impunity within the public opinion. Penal mediation was considered as an intermediary measure.

According to article 216ter the public prosecutor can formally dismiss a case under certain conditions, namely when the offender fulfils a condition to participate in mediation with the victim on compensation or reimbursement, to enter medical treatment or therapy, to accomplish a community service and/or participate in training.[107] In the framework of this implementation, three new structural functions have been created: (1) the justice assistants who handle the individual files for penal mediation; (2) a liaison magistrate in each judicial district responsible for the selection of cases and the supervision of the justice assistants; and (3) an assistant advisor in each of the appeals courts appointed to evaluate, coordinate and supervise the implementation of penal mediation (Peters, 2001).

In a collective report, the assistant advisors expressed several significant considerations on the implementation of penal mediation for the period 1994-1995 (Hanozin *et al.*, 1997; Houchon, 1997). The advisors claimed that penal mediation is a promising measure.[108] They also stressed that although various conditions are offered to the public prosecutor for the formal dismissal of cases in the framework of this law (mediation between the parties, community service, training and therapy), mediation between parties was applied in more than 50 percent of the cases. The advisors however regretted the strong variations among the different districts, not only in the criteria applied to case selection but also in the philosophy driving the implementation of the penal mediation. Where the condition of mediation between the parties occupied a central place in the policy in some districts, in others the public prosecutor did not call the victim to the penal mediation procedure, or he selected essentially cases without (identifiable) victims. Also in most prosecution services the meeting between the offender and the victim seemed to be a purely formal matter and could be seen as a mini-trial. The advisors concluded that the rationale of restorative justice was not sufficiently recognized and applied. Magistrates mostly envision penal mediation as a way to primarily punish petty crime offenders (Adam and Toro, 1999). Other evaluations have confirmed that the general focus of the procedure is not on communication (Beyens, 2000). The practice reflects a philosophy of administrative settlement rather than promoting a communication process between the conflicting parties. Reparation also usually only concerns the financial aspects of the offence (Aertsen, 1999). Furthermore, findings show that the condition of mediation and reparation to the victim is frequently combined with other measures. This indicates that mediation is considered as a weak measure by the magistrates (Adam and Toro, 1999). The procedure of penal mediation, institutionally linked to the criminal justice system and made up of a potpourri of different measures, can be considered as a mixed model with punitive, rehabilitative and restorative components (Aertsen, 1999).

Despite a circular letter of April 30, 1999, issued by the College of general prosecutors and the Minister of Justice, which aimed at bringing more uniformity in the application of penal mediation, at improving the understanding of this concept, and at promoting the selection of cases with identifiable victims, the application of penal mediation is still heterogeneous and not true to the restorative principles (Goosen, 2001). It is more oriented towards the outcome of the negotiation

106 For instance the massacres in the province of Brabant wallon (organized crime) and terrorist attacks by the 'Cellules Communistes Combattantes' in the 80's.

107 This legal provision applies to all types of criminal offences committed by adults, if the offence is not punishable by a penalty greater than two years of imprisonment. Penal mediation is not legally possible when a court judges the case, when an investigating judge initiates an inquiry into the case or when a victim has already adopted the status of civil party in the process. Participation to penal mediation is voluntary on the part of the victim and the offender. The offender however must at least acknowledge the offence and recognize his responsibility. If the offender disagrees with the proposed conditions or he does not live up to them, the prosecutor is free to dismiss the case or prosecute the offender (Vanneste, 1997; Lemonne, 1999; Goosen, 2001).

108 In a period of 13 months since its implementation, 5393 cases have been referred to penal mediation. This shows the fast development of the measure and the increasing interest given to its implementation.

rather than towards a real process of mediation, in which the issues to be dealt with are determined by the conflicting parties themselves. Furthermore, its use remains peripheral. The Belgian penal justice system is still based on a retributive approach, the traditional trial as well as the use of imprisonment and fines constituting by far the favorite solution to the criminal problem.

2.2.2. Mediation for redress: an increasing attention for victims

In 1993 the Catholic University of Leuven started an action research on mediation in serious crime cases.[109] Inspiration was derived from victimological research revealing the weak position of the victim in the criminal procedures, the obstacles they encounter in getting compensation and the deficiency in attention to their immaterial needs. In contrast to penal mediation program, mediation for redress was not meant as a diversion type of approach. As a matter of fact the project was determined to only address serious crime cases, for which the public prosecutor had already decided to prosecute. Also in contrast to penal mediation, the mediation process is conducted by mediation organizations, operating from outside the criminal justice system, while the selection of cases is performed by the prosecutorial services (Aertsen and Peters, 1998: Devriendt, 2001).[110] In the frame of a national project initiated by the Department of Justice in 1997, mediation for redress was introduced in other judicial districts. The basic idea was to provide a possibility to the parties to handle their conflict, independently of an offer of diversion made to the perpetrator. In 1997 a non-profit organization, named *Médiante*, *Forum pour une Justice Restauratrice et la Médiation* decided to introduce mediation for redress in the French Community in 1997. In 1998 its counterpart in Flanders, *Suggnomé, forum for restorative justice and mediation*, was created. Today, mediation for redress for adult offenders is operational in 10 of the Flemish and 5 of the French speaking judicial districts. For programs both in Flanders and in the French speaking part of the country, case referral is initiated by the public prosecutor or by the investigating judge. The victim and offender receive a letter from the referring body in which mediation is offered. Later, the mediator will contact the victim and the offender to check whether mediation is appropriate. Only in a minority of cases a face-to-face encounter is reached. Mostly the process of communication is limited to indirect conversation in which the mediator acts as a go-between. Around 800 mediation cases have been dealt with in 4 French judicial districts between 1998 and 2002 (Buonatesta, 2004a: 244). Suggnomé reports that there was a decline in the number of referrals to the Flemish mediation for redress services in 2003[111] compared to 2002, probably due to the reduction in mediators[112] and the drop in the amount of referrals from the public prosecutors office.[113] Only in a couple of cases the victim himself approached the mediation service. In the new and ongoing files in Flanders, crime against property constitute the biggest number of cases in which mediation for redress is conducted, although 1 in 5 cases concerns intentional physical violence. In the French speaking part of Belgium, it is the opposite, where violent crime against people constitute the biggest number of cases, around 70% of the referrals. If an agreement is reached (in 64% of the mediation processes in Flanders and around 66% of mediation processes in the French Community), it is send to the prosecutor and the mediator performs follow-up. If no agreement is available, the prosecutor receives only general information on the mediation process. The prosecutor is then free to use the outcome of the mediation process in his further decisions concerning the crime case. Unfortunately, the figures do not offer a clear view on the way the judge bares these agreements in mind (Médiante, 2002; Médiante, 2003; Suggnomé, 2003; Paquet, 2004).[114] In Belgium no evaluation has been conducted concerning the influence of mediation on re-offending or on cost-effectiveness (Willemsens, 2004).

Since 2000, mediation for redress is also provided for by Médiante and Suggnomé in the context of the execution of punishment. This initiative emerged from the implementation of restorative justice principles in prisons (see above). In Flanders, mediation for redress at the stage of the execution of

109 The pilot project was evaluated through reconstruction of case studies on the internal reporting by the mediator and through independent interviews with victims and offenders involved in the project (Aertsen, Van Garsse and Peters, 1994; Aertsen, Van Garsse and Peters, 1996).

110 The researchers realised that the dominant orientation on the offender in the criminal justice services could obstruct the referral procedures and hence cause a lack of files regarded as fitting for mediation. In anticipating on this risk, the Chief Prosecutor enlisted specific instructions to be followed by the prosecutors. He also emphasised a proactive way of selecting cases. Finally, a liaison magistrate was installed (Aertsen and Peters, 1998).

111 They counted 337 new files in 2003 in Flanders.

112 Compared to the year 2001 there is an increase in the number referrals. In 2001 the mediation services worked with the same number of full-time equivalents as in 2003.

113 Both in Flemish and French judicial district the need for sensitization action towards magistrates is emphasized.

114 However, from the outset of the project the prosecutors conformed to the idea that not reaching an agreement does not automatically motivate further penalty (Aertsen and Van Garsse, 1994).

punishment is available in two judicial districts. In the French speaking part of the country, the programme is available in all prison settings. Recent evaluation (Buonatesta, 2004:a) indicates that since the beginning of the project in the French speaking part of the country 138 victims and 101 inmates took part in mediation. About 60% of the mediation processes are opening to an informal or formal agreement concerning material or relational damages. Data mentions however that 72% of mediations are indirect. Only in a minority of the files, direct communication between victim and offender was possible (28%). A written or oral agreement is seldom reached. In Flanders, 95 new referrals were counted in 2003 and in 61 of these referrals (64 %), an actual mediation process was conducted. In both parts of the country, the majority of requests (77% in Flanders in 2003 and 82 % in the French speaking part of the country from October 2002 to September 2003) came from the offender. In only a small minority of cases it was the victim or a victim service that addressed the mediator (14% in Flanders and 18 % in the French Community). From the total amount of cases in Flanders 40% concern property crime, 35% violent crimes (of which 32% are murders and 52% are assaults) and 25% sex offences. Also in the French speaking prisons mediation deals with serious offences. A majority of cases concern thefts with violence and murders but there is an increasing attention devoted to sex offences. (Suggnomé, 2003; Buonatesta, 2004a).

The relation between restorative justice and victim policy developments: complementarity or conflict ?

The analysis of empirical data related to the Belgian situation allows us to explore an issue that transcends the Belgian boundaries, *i.e.* the complementarity between restorative justice developments and victim policy and the ability of restorative justice to address victims' needs. Literature often identifies several needs which victims from either petty crime or serious offences experience. First of all, victims generally seek some kind of restitution since they endure financial, material and emotional damage. Their sense of safety, trust in society and self-esteem can also be negatively affected by the offence (Peters and Goethals, 1993). Hence they need protection and psychosocial support. In the course of the criminal justice proceedings, they want information on the proceedings in their case, practical information on the judicial procedures and respectful treatment by the judicial actors (Yantzi and Brown, 1980). Finally, every victim desires to be recognized.[115] BRIENEN and HOEGEN[116] stated that in Belgium the attempts of the federal and communitarian government to meet victims' needs and to give the victim a certain status in the criminal justice have been enormous as well as exemplary (Brienen en Hoegen, 2000). There is indeed sufficient reason to be satisfied and positive about the efforts delivered to adapt regulations to the needs of victims and to create victim services. The policy developed since the mid-eighties tries to improve the response to the right to respectful treatment, to receiving and providing information, to judicial support, to financial restoration, to psychosocial support and to protection of and respect for privacy.[117] In the criminal justice system these victims' rights are outlined in the 'Charter for Victim Rights' published by the National Forum for Victim Policy[118] (Nationaal Forum voor Slachtofferbeleid, 2004). However, an analysis of the impact of the victim-oriented legislation at the practical level prompts us to temper this enthusiasm. Firstly, routine or real policy in this matter has not yet permeated to the level of practitioners, taking into account the resistance or caution of some actors (judicial and police officers, authorities) to the implementation of a victim policy in the penal justice system. Magistrates and police officers often fail in taking up responsibility in providing primary support to victims. Currently, care for the victim is still mainly considered as a speciality of victim services working within the police or prosecutorial departments. These services are flooded with individual files and are not able to accomplish the structural task of sensitization and training of police and judicial officers as stated in the founding documents of

115 A Flemish association of parents of murdered children summarizes quite well the basic needs of victims when confronted with the criminal justice system: the need for a respectful attitude of police officers and magistrates, the reduction of the time required for criminal justice proceedings, support by the environment, respect for privacy by journalists, support and guidance during the criminal justice proceedings, recognition in the frame of several modalities of execution of penalties, judicial information and advice, out reaching by the psychosocial services and compensation (Aertsen, 1992).

116 Brienen and Hoegen conducted a research concerning the implementation of recommendation (85)11 of the Council of Europe on the position of the victim in the framework of criminal law and procedures, covering the policy evolutions in European countries from 1985 to 1999 (Brienen en Hoegen, 2000)

117 These rights do not necessarily reflect all the needs victims sense nor do all victims wish each and every one of these rights to be fulfilled.

118 These rights are based on the Statement of Victims' Rights emanating from the European Forum for Victim Services (European Forum for Victim Services, 1996). They are also partly recognized by the recommendation No.R(99)19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters and by the framework decision of the 15th of march 2001 on the standing of victims in criminal proceedings, which promotes the use of mediation at every stage of criminal justice as well as the right of victims to financial compensation (including the possibility for the victim to communicate with the offender about compensation and the need for communication and accessibility to information).

these services. Secondly, the improvement of the position of the victims in the penal procedure is still conditional, meaning victims have to claim their rights to be respected and police or judicial authorities can on certain grounds deny their rights to them. Thirdly, instances of cooperation in the field of victim policy are missing authority and legitimacy. Despite the supposed existence of cooperation protocols between competent authorities, the strategic and global approach still does not exist (Lemonne and Van Camp, 2004; Van Camp, forthcoming).

As for the ability of restorative justice to answer victim needs, theoretical arguments are encouraging. In opposition to the retributive and rehabilitative criminal justice models, restorative justice aspires a balanced approach to meet the needs of victims, offenders and community by actively involving these parties (Aertsen and Peters, 1998). According to FATTAH only a paradigm shift from retributive to restorative justice can satisfy victims' needs because it '*recognizes their plight and affirms their rights*' (Fattah, 2004 : 17). Restorative justice offers the victim the guarantee of receiving proper information on the proceedings in the case and the opportunity of submitting objective and subjective information on the offence to his file. Moreover, a victim is more likely to receive financial or material compensation during this process as opposed to the traditional justice system, in which the payment of judicial costs and fines are still prior to a compensation to the victim. Finally, restorative justice provides opportunities to participate in a direct or indirect manner in the justice process. The victim is in other words recognized and involved in the search for a solution to the offence (Wemmers, 2002).

In practice, it seems however that not all restorative applications lead to victim satisfaction. Penal mediation, as described above, does not seem able to respond to victims' rights. First of all, victims are seldom actively involved in the process. Secondly, penal mediation is meant to be a diversionary program in which mediation between victim and offender is only one of the possible conditions for the formal dismissal of a case by the public prosecutor. Research results show that the condition of mediation with the victim is underused. This confirms that the name given to the whole procedure is a 'misuse of language' (Hanozin *et all*, 1997). The procedure of penal mediation has been proposed in urgent response to the big crisis encountered by the government and demonstrates its eagerness to provide some appropriate answers to it. Under these conditions, the implementation of penal mediation has largely been determined by a willingness of the criminal justice system to react quickly to the petty offences in general (seen as the main source of insecurity), and by the need to decrease the caseload of the court through diversion of some infractions from the traditional criminal justice system. Responding to the needs and rights of victims is thus secondary. This provides us with a warning regarding the improper use and absorption of restorative justice applications by the traditional criminal justice system, resulting in instrumentalization of the paradigm. A mediation program is here serving other aims than those defined by their initiators. The pre-eminence of other logics in the justice system (such as punitive or pedagogical logics) circumvent the objectives of the mediation work, including the benefits for the victims. The development and protection of a restorative framework is therefore important if one wants to secure its potentialities (Fattah, 1998). Likewise, we point out the danger of misusing victims in determining the severity of punishment to the offender or of using the victim in the service of the offender (Ashworth, 2000) and the danger of the political manipulation of the victim (Crawford, 2000).

In contrast, according to the evaluative research from the Belgian experiment on mediation for redress, there is a high level of victim satisfaction. Victims are given the opportunity to be actively involved, to receive information about the circumstances of the crime, to express their emotions in the aftermath of the crime and to get restoration for the material and immaterial damage they suffer. More interestingly, victims indicated that they were pleased with the mediation process even though no agreement was established with the offender (Aertsen and Peters, 1998). This seems to indicate that the communication process and the opportunity to express their concerns are more important than the actual outcome of the process. It confirms WEMMERS' statement that the victim's need for recognition does not equal a demand for decision-making power: '(...) *they want a voice to be heard but they don't want to bear the burden of decision-making power*' (Wemmers and Cyr, 2004 : 270). Restorative justice does hence not pose a threat to the rights of the offender. In

such a way, it counters the fear of opponents to restorative justice concerning the arbitrariness of the sentencing when giving the victim a voice in dealing with a crime. Mediation for redress seems thus to succeed in combining the perspective and interests of the offender, the community and the victim and to meet victims' rights such as recognition, receiving and providing information on the offence and (financial) restoration.

Finally, despite similarities in the objectives of restorative and victim policy developments, current Belgian policy in favour of victims and certain applications of restorative justice are mainly envisioned 'univocally'. Neither the National Forum for Victim Policy nor the government seem to fully apprehend the potential of restorative justice for the victims of crime. This sometimes leads to paradoxes in which mediation services and victim services are in conflict instead of in collaboration to the benefit of the victims. One example is the unsatisfying recognition of the role of the victim in the course of penal mediation, as discussed above. Another illustration is the coexistence of mediation services working at the stage of the execution of punishment and victim services within the frame of the Law on conditional release of March 5th 1998 (see above). According to this law, victims of certain delicate crimes as murder, rape, kidnapping, etc. are invited to express their expectations concerning the conditions of release of the offender when he is admissible to conditional release. The victim can only mention conditions preserving his own legitimate interest. This context is quite painful for the victims because they live in a situation of anxiety with respect to the future release. Moreover, the conditional release commission will often not be able to respond to these expectations, resulting in secondary victimization. On the other hand, mediation at the conditional release level could allow the victim to evolve towards more realistic and better-handled expectations because these would be derived form a communication process with the offender (Buonatesta, 2004b). The complementarity of both applications is nonetheless not recognised in practice.

CONCLUSION

In theory, restorative justice and victim policy are complementary in their aim to recognise and involve the victim in the criminal justice system. In Belgium, though they were developed simultaneously, restorative justice and victim policy in practice remained parallel. They affect each other in rare applications, such as in the frame of mediation for redress. Moreover, sometimes they have been combined only for the mediation or the victim to be instrumentalized in serving another purpose, such as diversion and net-widening instead of the need to recognize the victim or to promote communication (*e.g.* in penal mediation in which neither victims' rights nor the purpose of communication between the parties involved are fully considered in practice). In other occasions, restorative justice applications and victim-oriented initiatives remained in concurrence, although the combination of both policies would benefit some victims, such as in the context of the conditional release.

Hence, in Belgium, the use of mediation is still peripheral. In practice only some victims of crime benefit from this approach, depending either on the availability of the program, or on the willingness of the magistrate. This is probably why it is agreed upon that a general restorative vision on crime and criminal justice should be developed and key actors sensitized and involved in order to optimally develop restorative justice applications. However, WEMMERS considers it '*unacceptable that in practice, the only option for victims to participate in the criminal justice system is through restorative justice programs*' (Wemmers and Cyr, 2004 : 271). Comparable reflections and concerns were expressed by actors of the victim support services on article 10 in the framework decision of March 15th 2001 concerning the standing of victims in criminal procedures. Mediation should not be 'promoted', as stated in article 10, but rather be made available for the victim to make use of as considered suitable by the victim (Suggnomé, 2004). Ideally, victims of any kind of offence should be offered the opportunity to be involved in a restorative way of dealing with the aftermath of the crime, but victims should always be free to choose to either walk the restorative or the traditional path. A victim knows best what he benefits from.

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Workshop 2

Penal Reform

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We in the developing world, particularly in Africa should recognize that we are experiencing very important changes resulting in a political climate conducive to democracy, to international co-operation, to more widespread enjoyment of basic human rights and fundamental freedoms, and to the realization of the aspirations of all nations to economic development and social welfare. Notwithstanding these developments, the world today is full of violence and other forms of serious crime. Wherever these occur, they constitute a threat to the maintenance of the rule of law, and law and order. It is therefore necessary for us to base our justice on the rule of law as a pillar on which civilized society will survive. A humane and efficient criminal justice system can be an instrument of constructive social change and social justice, protecting basic values and people's rights. Every right of the individual should enjoy the protection of the law against violations, a process in which the criminal justice system plays an essential role.

A just, fair and humane criminal justice system is a necessary condition for the enjoyment by the citizens of all countries. It contributes to an equal opportunity for economic, social and cultural life. Human development objectives including the prevention of crime, should be one of the main aims of the establishment of a new international economic order. In this context, policies for crime prevention and criminal justice should take into account the structural causes, including socio-economic causes, of injustice, of which criminality is often but a symptom.

Integrated or co-ordinated criminal justice policies should not only reduce the human and social costs of traditional and new forms of criminality, but should also, where appropriate, help provide safeguard to ensure equitable and full public participation in the development process, thereby enhancing the viability of national development plans, programmes and actions.

Criminal justice should not be treated as an isolated problem to be tackled by simplistic, fragmentary methods, but rather as a complex and wide-ranging activities requiring systematic strategies and differentiated approaches in relation to:

a) The socio-economic, political and cultural context and circumstances of the society in which they are applied;
b) The developmental stage, with special emphasis on the changes taking place and likely to occur and the related requirements;
c) The respective traditions and customs, making maximum and effective use of human indigenous options.

When making national plans, we should base those plans on a global, intersectoral and integrated or co-ordinated approach with short-term, medium-term and long-term objectives. This would permit the evaluation of the effects of the decisions taken, mitigate their possible negative economic and social consequences and decrease the opportunities for committing crimes, while increasing legitimate avenues for the fulfilment of needs.

Penal Reform planning needs to be carried out from a dynamic and systematic perspective, taking into account the interrelationships of activities and functions in the areas of legislation, law enforcement, the judicial process, the treatment of offenders and juvenile justice, with a view of ensuring greater coherence, consistency, accountability, equity and fairness within the broad

framework of national development objectives. A systematic weighting of social costs and benefits would permit, in the case of alternatives to imprisonment the selection of that option which exacts the least human and material effects, which give costs yielding the maximum benefits. It is for this reason that the Government of the Republic of Uganda decided to form, Law and Order Sector, The Chain Linked, Backlog, resulting in Community Service and the revision of the Law.

The establishment of one or several planning and co-coordinating bodies or mechanisms, at both the national and the local levels, with the participation of representatives of the different criminal justice subsystems and other experts and with the involvement of members of the community, should be promoted because of its special values in assessing needs and priorities, improving resource allocation, and monitoring and evaluating policies and programmes. The following should also be included in the objectives of such planning and co-coordinating bodies or mechanisms:

a) Encouraging local research potential and developing indigenous capabilities in respect of planning for law reform;
b) Assessing the social costs of crime and the efforts to control it and generating awareness of the significance of its economic and social impact;
c) Developing means for more accurately collecting and analysing data concerning crime trends and criminal justice, as well as studying the various socio-economic factors bearing on them;
d) Keeping under review crime prevention and criminal justice measures and programmes in order to evaluate their effectiveness and to determine whether they require improvement;
e) Maintaining working relations with other agencies dealing with national development planning in order to secure the necessary co-ordination and mutual feedback.

The criminal justice system, besides being an instrument to effect control and deterrence, should also contribute to the objective of maintaining peace and order for equitable social and economic development.

The conflicts existing in many countries between indigenous institutions and traditions for the solution of socio-legal problems and the frequently imported or superimposed foreign legislation and codes should be reviewed with a view to assuring that official norms appropriately reflect current societal values and structures.

Various forms of community participation should be explored and encouraged in order to create suitable alternatives to purely judicial interventions, which would provide more readily accessible methods of administering justice, such as mediation, arbitration and reconciliation courts. Community participation in all phases of criminal justice processes should, therefore, be further promoted and strengthened, paying full attention to the protection of human rights.
The Local Council Courts in Uganda, could be a case for study.

When new criminal laws are introduced, necessary precautions should be taken not to disrupt the smooth and effective functioning of traditional systems, full attention being paid to the preservation of cultural identities and the protection of human rights.

I would like to turn to alternatives to imprisonment specifically. First of all, I regret the political realities of criminal justice operations in Africa. For many of us who are administrators of Penal Institutions, it is our experience that the African public and politicians is bent on punitive altitudes. This requires special educational schemes to the public and political leaders. It is therefore my opinion that whatever efforts criminal justice administrators may exert to implement the improvements in the law, much will depend on the resources made available, the domestic and international political "will" provided to ensure their vigorous applications.

Traditional ways of thinking will have to be altered if we have to take full advantage of these new plans. Resources allocators may have to think seriously and know that crime affects development and that the problem of crime does not have to be solved by only improving one or two segments of the criminal justice system.

In discussing this matter, the resource problems of the Criminal Justice System need to be addressed. The many specific needs of the criminal justice system – for manpower, for equipment, for facilities, for programmes, for research, for money – are interlocking. Each one must be filled with the others in mind.

Too much of Africa's Prisons is physically inadequate, old and dilapidated, overcrowding of prisons prevalent, which make it difficult to treat convicts humanely. The system's personnel often must work with poor facilities: record keeping systems that are inefficient, communications equipment that makes speedy action difficult, an absence of all kinds of scientific and technological aids. Furthermore, in few countries is there the variety of correctional facilities that could make a variety of correctional programmes possible. Most institutions are almost entirely custodial in a physical sense – with high walls, locked gates, and barred windows. New kinds of institutions less forbidding in character and situated within reach of the community, are an immediate and pressing need.

It is therefore needless for me to propose that Africa should endeavour to adopt non-custodial alternatives to imprisonment.

There are many different ways of assessing the effectiveness of non-custodial alternatives. This is because the notion of "effectiveness" is always related to the achievement of some particular goal or goals and there are differing views and differing emphasis about the nature of the goals of non-custodial sanctions.

It is with this in mind that the Uganda Government decided to promote human rights and effective administration of justice through the introduction of Community Service, the Chain Linked Programme and the Sector Wide approach.

This goal was developed on consideration of the overall benefit of community service to the whole society and not just the rights of offenders, the development concerns of the various stakeholders and it is also linked to the Justice, Law and Order Sector goal.

The Program has developed two purpose statements:

1. The humane treatment and rehabilitation of offenders.
2. Use of non-custodial sentences and involvement of the public in the administration of justice to improve and increase.

Objectives of the pilot phase (short term)

1. To test the concept of community service in Uganda and refine the laws and regulations to suit local circumstances before nationwide application of the concept.
2. Establish and test community service management and administrative structure.
3. Ensure stakeholders' understanding and acceptance of community service and its benefits before application of the program nationwide.

Objectives of community service (long term)

1. Contribute towards decongestion of prisons.
2. Effective rehabilitation of offenders.
3. Promotion of reconciliation of offender with both the victim and the community.
4. Contribute to the reduction of recidivism.
5. Contribute to reduce government expenditure on prisons.

Administration of Justice

Community Service has been adopted to improve the following:

- Contribute to the cost-effective ways of administering justice in Uganda. It is a cheap and cost-effective way of punishing offenders. Offenders do not become the responsibility of government while serving their punishment.

- Contribute to effective rehabilitation of offenders – it is clear that the Prisons worldwide have failed to rehabilitate offenders and it is argued that some offenders can be effectively rehabilitated in their communities.
- Promote the participation of ordinary people in the crime management and prevention. In reaching a community service sentence, court is also informed by the community; in addition, the community undertakes the supervision of the offender.
- Contributes to law and order through reduction in the rate of re-offending. This is facilitated by the lack of contact between first offenders in minor offences with hard-core criminals, which takes place in prisons.

The Strengthening of the Judiciary
Background
During 1993-95 the Government of Denmark through the Danish International Development Agency (Danida) fielded a number of project identification missions to formulate a project document for support to the Judiciary in Uganda. As a consequence of these missions Danida funded the Commission of Inquiry (Judicial Reform). The Commission submitted its final report in August 1995. The report formed the basis for the first Phase of the Judiciary Project planned to last three years that was to be jointly implemented and financed by the Governments of Uganda and Denmark. A Country-to-Country agreement was signed in September 1995 and activities started in full scale in January 1996. A Mid Term Review in September 1997 recommended that the first phase should be extended by eight months within the same overall budget. A Final Review in December 1998 recommended that the Project should continue with a second phase. Following an Identification Mission in January – February 1999 and an Appraisal Mission in March 1999, the Board of Danida approved a Project Document for the second phase planned to last four years in June 1999. The Country-to-Country agreement for the second phase was signed in August 1999 and activities under the second phase started in September 1999.

Purpose
The project was aimed at improving the effectiveness and efficiency of the Judiciary and thereby contributing to the improvement of the Administration of Justice process in the Ugandan Justice system.

Components
The main components of the Project during the first phase have been:
Component 1:
- Rehabilitation of Court buildings.
- The corresponding output being: Function of Judiciary adequately accommodated on a sustainable manner.

Component 2:
- Rationalization of work routines and procedures.
- The corresponding output being: Effective and transparent case administration ensured on a sustainable basis.

Component 3:
- Training of Court staff.
- The corresponding output being: Skills of Judiciary staff at all levels upgraded.

In the second phase a new fourth component has been added.
Component 4:
- Administration of Justice support activities.
- The corresponding output being: New models and approaches for improved administration of justice developed and implemented, especially those aimed at:
  - Enhancing interaction and collaboration between Judiciary and other institutions in the legal sector,
  - Identifying and addressing bottlenecks in the criminal and civil justice system,
  - Elaborating and interpreting the role of the Judiciary in the administration of justice process.

The Second Phase of the Project – which runs until September 2003, was in its third year of operation.

The Justice Law and Order Sector – Potentials and Problems
In the recent past, the Government of Uganda supported by development partners brought together key players in the Justice, Law and Order sector. The Judiciary through the project took the initiative when in November 1999 a planning workshop was held [in Mamba restaurant in Kampala] to get the minimum acceptance for the programme. The project paid for the cost of this gathering and subsequent meetings and researches.

The result has been that the world's first sector-wide approach (SWAP) to reform and budgeting within the Justice Law and Order Sector (JLOS). The initiative has been under development since November 1999 and is the result of extensive consultation between the sector agencies and budgeting and planning activities, which are cross cutting and beneficiary to them.

Two initiatives, namely The Chain Linked and the Case Backlog project, preceded and helped pave the way for the development of a sector approach to justice delivery to the people of Uganda.

The Chain Linked initiative
The Chain Linked was conceived in 1998 as a pilot project to focus on communication, co-ordination and co-operation between the criminal justice agencies in one Magisterial Area with the aim to increase the effectiveness and efficiency of the criminal justice agencies in that area. It established two bodies: the Case Managements Committee (CMC) at local level responsible for implementation and the Advisory Board at national level responsible for policy. The CMC has met on a monthly basis since January 1999 whereas the Chain Linked Initiative itself with some external funding has been operational since September 1999. The Initiative was established for two years from 1 September 1999 to 31 August 2001. It was later extended until 31 December 2001, and now it is a programme.

A characteristic of the initiative has been to develop and test new approaches in one district in such a way that the initiative could be used as a model for other areas. This has meant that special focus has been given to such principles as sustainability, exportability and modest financial input, counterpart funding, coordination at both ends (sector agency as well as development partner) all in the hope that the initiative will become an agent of change. An indication of success in this regard will be a change of focus away from simply asking the question "Are we doing the things right" towards asking the more critical question "Are we doing the right things".

The initiative has been well received by the involved agencies and is being implemented with a lot of enthusiasm. It has further received considerable attention internationally and is being referred to by some donor agencies as a new model for safety, security and accessible justice.

The idea of the Chain Linked has been extended by transfer workshops to High Court centres all over the country. All these areas have now got Case Management Committees, which are very active. The magisterial areas within these High Court centres are expected to form their own case management committees to better manage their own initiatives.

The Case Backlog Project
Following this new focus on increased communication, cooperation, and coordination the Government of Uganda introduced the Case Backlog Project starting with the Financial Year 2000/01. Hereby the Government, budgeted a substantial amount of money in each of the three Financial Years (2000-03) to the four main Criminal Justice Agencies (Police, Prosecution, Court and Prison Service) and the Ministry of Justice and Constitutional Affairs with the aim to tackle the Backlog of Criminal cases.

The Case backlog Project has now – so far as the only Justice Law and Order Sector (JLOS) activity – been assigned to the Poverty Action Fund, which are funds received under the HIPC

debt relief initiative. This means that releases from this development budget should be assured and thus not affected by any revenue shortfalls, as has been the experience in the past.

The planning within the JLOS is under the ultimate control of the Hon. The Chief Justice, the Minister of Justice and Constitutional Affairs and the Minister for Internal Affairs. The development of a Strategic Plan for the sector has been carried out under guidance of a Steering Committee comprising officials at the highest levels of the institutions in the Sector and the Ministry of Finance, Planning and Economic Development. The second joint Government of Uganda – Development Partner bi-annual review of the JLOS was held from 26 – 28 November 2001. During this review a Strategic Investment Plan (SIP) for the JLOS was launched and issues related to the financing and management of the plan with the development partners was discussed. Apart from the sector agencies and the development partners the review was attended by the Ministry of Finance, Planning and Economic Development (MoFPED). The presence and involvement of the MoFPED was to allow for the re-examination of the resources allocated to the sector as part of the Medium Term Expenditure Framework (MTEF).

Component 4: Administration of Justice support activities
Background and justification
Component 4 was introduced to the Project as part of Phase II. It is different from the three core components in some fundamental ways:

- It is broader than the core components in that its mandate goes beyond supporting Judiciary specific issues and allows the Project to address bottlenecks identified within the administration of justice process.
- It is narrower than the core components in that it can only support processes and not address logistical needs.
- The component was deliberately designed in a flexible manner and funds were not earmarked to specific activities.

Guidelines for the interpretation of the 4th Component specific objectives, especially in the context of other initiatives in the legal sector as well as project selection criteria have since been developed.

In line with these criteria a number of activities are being supported under the 4th Component. The list below illustrates the kind of projects being supported and the justification for support under Component 4.

PROJECTS	JUSTIFICATION FOR COMPONENT 4 SUPPORT
Support to Public Defender Scheme	*Accused persons lacking defence lawyers is a bottleneck adversely affecting court throughout and the quality of judgements. The Public Defender Association of Uganda is being supported through Component 4 to develop a Public Defender Scheme.*
Reform and strengthening of LC Courts	*A survey of LC Courts has already been carried out under SJP Phase I. Measures to reform and strengthen LC Courts could improve coordination and collaboration with the Judiciary, and possibly reduce the Judiciary's case-load.*
Professionalisation of the Bench	*Recruitment and training of legally qualified magistrates to replace present lay magistrates is linked to reform and strengthening of LC Courts. Although within the Judiciary, it is not included in Components 1-3. It would address bottlenecks adversely affecting court throughout and quality of judgements.*
Chain Linked Initiative	*The Chain Linked Initiative is explicitly targeted on*

	improving interaction and collaboration between the agencies of the criminal justice system (CJS), initially in the Masaka Magisterial Area. It is part-funded through Component 4. It is implemented by the CJS agencies in Masaka themselves.
Court Recording	*Introducing effective systems for recording court proceedings will relieve the work-load on judges and magistrates, improve the speed and accuracy of recording, and provide records that are easier to handle and assimilate. Its impact therefore is upon bottlenecks.*
Support to Community Service	*SJP has been assisting the Interim National Committee on Community Service to prepare for the introduction of community service. Justification for this assistance depends upon the argument that community service will increase the number pleas of guilty by petty offenders and reduce recidivism, thereby reducing the Judiciary's case-load.*
Reform of penal and legal systems and procedures	*Aspects of the penal and legal systems and procedures currently in force are held responsible for inefficiencies in the judicial process and for deficiencies in coordination and collaboration between agencies of the criminal and civil justice systems.*
Central data-base and information system for the criminal justice system	*Data collection, recording, storage, analysis, and targeted dissemination of information will facilitate coordination and collaboration between agencies of the criminal justice system. The nature of support provided through Component 4 would probably be limited to system development and piloting, rather than provision of infrastructure and equipment .* *N..B. Please note that a similar system for Commercial Justice is being handled by the Commercial Justice Reform Project under SWAP for the Justice/Law and Order Sector.*
Development of a sector-wide strategic framework for the Justice/Law and Order Sector	*Assistance is being provided through Component 4 to the Justice/Law and Order Sector Budget Working Group in developing a sector-wide strategic framework – justified by the presumed contribution of such a strategy to improved coordination and collaboration between institutions, organisations, and agencies within the sector.*
Development of a strategic plan for the Judiciary	*Developing it will involve addressing result 3: elaboration and interpretation of the role of the Judiciary.*

Closer links are being established within the JLOS in that the Technical Committee of the Chain Linked is being merged to form a committee to deal with both issues as the players and stakeholders are the same. The members of this Committee are the same as the Committee responsible for managing the Case Backlog Project. A merger of these two committees will achieve the following:

- Reconciliation of planning between the Chain Linked and the Case Backlog Project both serving the same overall objective: to improve effectiveness and efficiency within the administration of criminal justice.

- Simplified reporting mechanisms to JLOS and therefore greater transparency in terms of budgeting and planning.

The Chain Linked Advisory Board has instituted the following actions to be undertaken.

1. Guidelines and a checklist for visitation committees visiting prisons was developed and distributed to all Chief Magistrates and State Attorneys.
2. The introduction of a system for "speed tracking" of petty offence cases in a pilot court to be identified will be considered and guidelines developed.
3. The establishment of a unit of "relief judges" to cover areas with a great backlog of cases is being considered and guidelines will be developed.

HEALTH IN PRISONS

Another issue which is of concern is that Prisons are among the most unhealthy places in our societies. In them, people are not only deprived of their freedom but they are also exposed to threats such as violence, addiction and infectious diseases, while at the same time their own capacity to manage these risks is severely constrained.

Prisoners are often exposed to hygienic conditions of the most basic kind and suffer from inadequate fresh air, space and opportunities for exercise. Many of the people who are incarcerated in prisons are already in poor health, and most will come into contact with other unhealthy prisoners in overcrowded conditions. As a result, prisoners are constantly at risk of stress to their mental health and to their physical well-being.

Incarcerating people in prisons and denying them their freedom is supposed to be their punishment: exposing them to diseases which are often fatal is not part of their sentence and is unacceptable. In addition, often large numbers of people circulate through holding cells and prisons and back into society. Prisons are serving as foci for the development of high levels drug-resistant communicable diseases. The rapid development of a serious tuberculosis epidemic and the HIV epidemics in prisons […] represents a major threat to prison populations and to society in general. It is imperative that these new threats be managed effectively.

Prisons do not have to be unhealthy *per se*, and some are not. Many heads of prison systems realize that there has to be good access to health care and health promotion and links between their institutions and the community. Prison doctors and other health and welfare personnel are frequently very dedicated to their patients, and the wider public health community is beginning to understand the relevance of prison health. There is a growing awareness that prisons, because of their very nature, require extra efforts in the areas of health protection and health promotion.

The HIV epidemic is new and complex to address, involving technical challenges and substantial barriers of ignorance and stigmatization. As with many other health problems in society generally, HIV/AIDS is present in prisons in a more concentrated and aggressive way and requires intensive response. If we act today, many people working or incarcerated in prisons, their families and social contacts can be spared much suffering and humiliation […]"

As stated earlier, the Uganda Prisons Service is part of an integrated Justice/Law and Order Sector with objectives of contributing to the protection of society by providing reasonable, safe, secure and humane custody of offenders and assisting them in their rehabilitation, reformation and social integration as law abiding citizens.

The Uganda Prisons Service recognized HIV/AIDS as a developmental socio-economic problem and as such set up the Prisons AIDS Control Programme (PACP) in 1993. With support from UNDP, DFID, (1993-1998) and support from the STI project, Ministry of Health (1996-2000), the World Bank (1996-1998), attempts have been made to address the Control of HIV spread and to provide care to people living with HIV/AIDS in the prison community. In addition, attempts have been made to mitigate the medical, social and economic effects of the disease and also to create capacity to manage the epidemic and carry out research.

There is wealth of experience drawn from this long period of involvement in HIV/AIDS related activities and this has provided basis for formulation of strategies for the period (2001-2006) aimed at consolidating the gains as well as addressing areas that are deficient.

Situation Analysis
In order to provide a holistic approach to the problems of HIV/AIDS, the Uganda Prisons Service adopted the National HIV/AIDS Policy guidelines under the following objectives:

- To prevent the spread of HIV infection.
- To mitigate the adverse health and social economic impact of HIV/AIDS epidemic.
- To strengthen the capacity to respond to the HIV/AIDS epidemic.
- To establish the departmental information base.
- To strengthen the capacity of the Uganda Prisons Service to undertake research relevant to HIV/AIDS.
- To reduce the vulnerability of individuals and communities to HIV/AIDS with focus to prisoners.

According to the concluded research on incidence of HIV transmission in health units in Uganda, the incidence and prevalence of HIV infection is currently at 7%.

While the National indicators show that HIV infection rates are declining, this cannot be easily verified in prisons because prisoners population is very dynamic. Despite the latter however, there are observable indicators suggesting tremendous improvement in the HIV incidences and prevalences in the prison community.

Prevention of HIV infection

- Creation of awareness on the modes of transmission through development of IEC materials (Information, education and communication) in form of posters, pamphlets and calendars in different languages, organizing sensitization meetings and formation of drama groups and staging drama shows, film shows on STDs/HIV/AIDS. Special highlights on sharing of razor blades and circumstantial homosexuality among inmates.
- Orientation of health workers and provision of gloves to reduce transmission in health care giving settings.
- Management of STDs has been improved through training of health workers, provision of standard guidelines on syndromic management of STDs and provision of drugs.
- Promotion of proper condom use through training of condom distributors, establishment of condom distribution points, procurement and supply of condoms to prison units for staff and prisoners on release.
- Provision of HIV testing and counselling services.

Challenges for prevention of HIV spread

- The high illiteracy rates and mixture of diverse tribes in one place has made the development of IEC materials a challenging problem.
- Overcrowding for both staff and in their barracks, and prisoners in their dormitories expose them to risky sexual behaviours leading to acquiring HIV.

Building capacity to respond to the epidemic
The Uganda Prisons Service has established structures responsible for planning, implementation and evaluation of HIV/AIDS activities at various levels:

a) Steering Committee at policy making level
b) Core team at the central level
c) AIDS coordination Committees at the Regional level
d) AIDS control committees at the Prison units.
   - Over 100 staff and 20 inmates have been certified as Counsellors.

- Over 2000 inmates have been trained as assistant counsellors focusing on health education, skills of care and management of fellow inmates and the community after release.
- Two prison officials have undergone a Diploma in HIV/AIDS Training of Trainers course, validated by Manchester University in Counselling, care and management of people living with HIV/AIDS.
- Ongoing training of multi-sectoral professionals of prison officers and inmates in counselling, TB/Leprosy supervision, etc.
- 30% of the health workers have so far been trained in data management.
- Uganda Prisons Service has incorporated the Ministry of Health standard form on diagnosis of HIV/AIDS for information management system.

There is however, a need to establish a Prisons Data Base.

Workshop 2

The Need for Evidence Bases Approaches and Systematic Evaluation

Toni Makkai

Presented at 11th UN Congress on Crime Prevention and Criminal Justice, 18-25th April Bangkok, Workshop 2: Enhancing Criminal Justice Reform, Including Restorative Justice, Friday April 22nd 2005.

I would like to thank the Chair and distinguished delegates particularly the International Centre for Criminal Law and Criminal Justice Policy for providing me with the opportunity to listen and learn from a range of interesting papers and discussions on restorative justice. In recognition of the short time available I don't want to cover old ground as many papers have highlighted the strengths and weaknesses of the evidence base. So I will confine myself to a few very brief comments on the need for evidence based approaches and systematic evaluation.

Many of the papers today have reported some positive and promising findings. These are especially significant in the criminal justice system which is a difficult environment in which to achieve effective and long term change. However they have also highlighted conflicting findings. What do we take away from this then? What this suggests to me is that restorative justice can make a difference, under certain circumstances for particular offenders and particular groups of victims.

The challenge is to move beyond this and to build an evidence base that will enable criminal justice practitioners to implement restorative justice programs that are cost effective.

How might we achieve this task? There are 2 areas that I would like to highlight:

1. this is the need to invest in basic data collection and evaluation that is long term –I see this investment as an investment in basic infrastructure just like we invest in roads and buildings; it is essential if we are to be effective in intervening in the criminal justice environment.
2. the second area that I would like to highlight is that we need to apply best practice in our research and our evaluations so that our findings are not undermined by contradictory findings. This includes the need to assess issues such as potential selection bias, comparison groups, how we measure recidivism, and other various aspects such as victim satisfaction.

If we do this we will be better informed, and will be able to ensure that our interventions are cost effective and at the end of the day the most important thing is that we will be able to make a real difference to the lives of ordinary citizens.

Thank-you Chair.

Workshop 2

Juvenile Justice and the Link Between Criminal Justice Reform and Economic Development
Conclusion and recommendation

Elías Carranza
ILANUD

Claramente, varios participantes en el taller de trabajo expresaron el estrecho vínculo existente entre la Justicia y los Proyectos de mejoramiento de la Justicia, y el desarrollo social y económico. Ambas variables se retroalimentan entre sí.

La justicia legítima, rápida, transparente y verdaderamente justa brinda seguridad a la sociedad civil, y brinda también seguridad a las inversiones. Por su parte, el crecimiento económico con equidad evita la exclusión social y promueve la integración.

En el caso de los países de medianos y bajos ingresos o en vía de desarrollo, el establecimiento de buenos sistemas de justicia juvenil tiene primordial importancia por cuanto el porcentaje de menores de edad y de jóvenes es en estos países por lo general muy alto.

Como lo establece la Convención de Naciones Unidas sobre los Derechos del Niño, la justicia penal juvenil debe contar por lo menos con las mismas garantías penales, procesales y de ejecución de las sanciones que los sistemas de justicia penal de adultos. A estas garantías deben agregarse las que les corresponden a las personas menores de edad por su condición de tales. Asimismo, como también lo establece la Convención, hay que procurar evitar la solución penal. Y en esto las formas de justicia restaurativa cumplen una función importante.

Es necesario utilizar formas de Justicia Restaurativa con los menores de edad por cuanto éstos se encuentran en edad escolar, y los mecanismos de justicia restaurativa tienen un importante ingrediente pedagógico.

Workshop 3
Strategies and Best Practices for Crime Prevention, in particular in relation to Urban Crime and Youth at Risk

Organised by
International Centre for the Prevention of Crime
ICPC

Workshop 3

Strategies and Best Practices for Crime Prevention, in particular in relation to Urban Crime and Youth at Risk

AGENDA

Saturday April 23, 2005

Morning Session Theme: Urban Crime
10:00 – 10:30 am

Opening of Workshop
Chair of Workshop

Presentation of Workshop Issues
Margaret Shaw, International Centre for the Prevention of Crime (ICPC)

Urban crime prevention and youth at risk – challenges to development and governance
Paul Taylor, UN-HABITAT
Minister Christopher Martin Ellison, Minister for Justice and Customs, Australia

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10:30 - 11:00 am
Block I - National strategies to promote and support crime prevention in urban areas

Urban Safety Policy in Chile: The *Comuna Segura* Program
Alejandra Lunecke, University of Hurtado, Santiago, Chile

Local Crime Prevention in Peru
Rachel Neild, Open Society Justice Initiative, Peru, and
Mayor Hugo Salómon Aedo, San Juan Bautista, Ayacucho, Peru

The Prevention of Crime in Belgium: Security and Prevention Contracts
Luc Devroe, Ministry of the Interior, Belgium
Philip Willekens, Ministry of the Interior, Belgium

11:00 - 11:30 am
Block II - Urban partnerships for crime prevention - challenges and successes

Local Innovations for Crime Prevention: The Case of Safer Cities Dar es Salaam
Anna Mtani, Coordinator Safer Cities Programme, Dar es Salaam, Tanzania

The Community Oriented Policing System
Miguel Coronel, Commissioner of Police, Metropolitan Manila, Philippines.

Public Policies on Safety & the Prevention of Crime: The Experience of the City of Diadema
Mayor José de Filippi Junior, Diadema, Sao Paulo, Brazil

11:30 – 12:00 am
Block III - Crime Prevention and Social Inclusion – responding to the urban challenges

Urban Regeneration as a Crime Prevention Strategy
Richard Dobson iTrump Joint Programme Leader, eThekwini Municipality (Durban), South Africa

Volunteers Against Violence Antananarivo, Madagascar
Deputy Mayor Eduardo Razafimanantena, Municipality of Antananarivo, Madagascar
Marie-Pierre Delcleve, UN Volunteer Program, Madagascar

12:00 am – 1:00 pm Discussion

Afternnon session Theme: Youth at Risk
3:00-6:00 pm

Block IV – Integrated and effective strategies for youth at risk

Integrated Responses to Youth at Risk: Effective Prevention Programmes in England and Wales
Brendan Finegan, Youth Justice Board, England and Wales, and
Sohail Husain, Crime Concern, England and Wales

Effective Early Intervention: The Pathways to Prevention Project in Brisbane, Australia
Marie Leech, Mission Australia, Australia

The Draft National Policy on Child Justice Administration in Nigeria
Adedokun Adeyemi, University of Lagos, Nigeria

3:30 – 4:00 pm
Block V – Inclusive approaches for vulnerable groups of youth at risk

Youth Sexual Exploitation: A Strategic Approach to Trafficking of Youth in the Czech Republic
Radim Bures, Ministry of the Interior, Czech Republic

The Growing Involvement of Children and Youth in Organized Armed Violence
Marianna Olinger, COAV, Viva Rio, Rio de Janeiro, Brazil

Support for Urban Youth at Risk: “House for Youth” in Cambodia & Vietnam
Ayako Otake, *Kokkyo naki Kodomotachi* (Children without boarders, KnK), Japan

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4:00 – 4:30 pm
Block VI - Better exchange of knowledge and technical assistance

The Local Crime Prevention Toolkit
Themba Shabangu, CSIR, South Africa, and
Laura Petrella, UN-HABITAT, Nairobi, Kenya

Urban Crime Prevention and Effective Measures for Training Needs and Technical Assistance
Kei Someda, Ministry of Justice, Japan

The Shape of Future Technical Assistance
Slawomir Redo, UNODC, Austria

16:30 - 17:30 Discussion

17:30 - 18:00 Workshop Recommendations and Closure of Workshop

Workshop 3

Presentation of Workshop Issues

Margaret Shaw
ICPC

Purpose of the Workshop

•Show how guidelines are being applied by national, sub-regional, and local governments
•Demonstrate with practical examples of good strategies, practices, and tools from a range of countries in the North and South
•Assess factors which contribute to success or failure
•Identify the priorities for action for urban crime prevention and youth at risk

Themes

•Urban Crime – crime, violence, and insecurity in North and South
•Youth at Risk - includes those living in the poorest and most marginal circumstances, those in conflict with the law, street children, those exploited by the drug trade, sexually exploited or affected by HIV/AIDS, war, and natural disasters

Key Trends in the Development of Crime Prevention

•Increasing range of countries now implementing integrated strategies and practice
•Increasing depth of knowledge and experience about effective practice (what) and implementation (how)
•Increasing range of data, tools, and exchange of experience, eg. Safer Cities Program, UN HABITAT; South-South Project, UNODC, ICPC City Exchange
•Recognition of importance of context and adaptation to local circumstances
•Links between local crime and transnational organized crime

Challenges of Urbanization

•Rapidly increasing urbanization, growth of informal settlements
•Migration and immigration, leading to increasing cultural and ethnic minorities in cities
•Increasing disparities of income and access to services health and security; long-term poverty and unemployment
•High proportions of children and young people in urban areas - almost half the urban poor
•Children and youth especially vulnerable to victimization, exploitation, and offending

Challenges for Urban Areas

•Growing crime in urban areas, especially violent and organized crime
•Drug trade and traffic in small arms
•Trafficking in human persons, sexual exploitation
•Violence against women and girls

Pressures on Urban Governments

•Fear and insecurity and public pressures to respond to crime with repressive measures
•Privatization of policing and public space; vigilante and mob justice
•Breakdown of traditional cultural values and social networks, and traditional family structures
•Impact of HIV/AIDS
•Increasing social exclusion of youth at risk and minority populations, and use of arbitrary justice
•Corruption and lack of public trust in government, culture of lawlessness

2002 Guidelines for Crime Prevention - Basic Principles

•Government leadership
•Socio-economic development & inclusion, cooperation/partnerships
•Sustainability/accountability
•Knowledge base
•Human rights/rule of law/culture of lawfulness
•Interdependency
•Differentiation

Effective Urban Crime Prevention

•National support to facilitate strategy at the local level

•Local authorities key to development of comprehensive strategies
•Strengthen community policing and community partnerships with civil society
•Integrate safety of women and girls, minorities, and other vulnerable groups

Effective Strategies and Practice, Youth at Risk

•Inclusive approaches
•Participatory approaches
•Integrated strategies – multi-sectoral
•Balanced strategies – early intervention, social/education, restorative, crime control
•Targeting/tailoring strategies and programs to needs of specific at-risk groups
•Respecting the rights of children and youth

Challenges for the Future

•Capacity-building – training and technical assistance
•Importance of “accompanying” strategy design and implementation
•Empowering communities and civil society
•Balancing short and long-term objectives
•Sensitivity to context
•Developing and sharing knowledge – routine evaluation, exchange of experience
•Sustaining and embedding strategies
•Funding and resources

Workshop 3

Urban Crime Prevention and Youth at Risk – Challenges to Development and Governance
Opening Remarks

Paul Taylor
Chief, Urban Development Branch
UN-HABITAT

Ladies and Gentlemen.
UN-HABITAT is pleased to support this Congress, with the participation of a wide range of actors, some of whom are long-term partners and are involved in UN-HABITAT projects on crime prevention in their respective cities. This workshop focusing on “Urban crime prevention and youth at risk – an urban development challenge” will go a long way in providing insight, good experiences and lessons learnt that can be referenced for future action by cities and governments in both the developed and developing world.

As you know, UN-HABITAT is the lead agency within the UN system for co-ordinating activities in the field of human settlements. UN-HABITAT’s operational activities focus on promoting housing for all, improving urban governance, reducing urban poverty, improving the living environment, crime prevention, disaster mitigation and post-conflict rehabilitation.

Ladies and Gentlemen, according to a recently launched UN-HABITAT report on the *State of the World Cities 2004/2005*, the **world’s urban population** will grow from 2.86 billion in 2000 to 4.98 billion by 2030, of which high-income countries will account for only 28 million out of the expected increase of 2.12 billion. This means that low-income countries will experience very high levels of urbanisation. Furthermore, the world’s annual urban growth rate is projected at 1.8%, in contrast to the rural growth rate of 0.1% and by 2030 60% of the world’s population will live in cities.

One of the characteristics of this urban phenomenon in developing countries has been the emergence of **marginalised and stigmatised neighbourhoods** associated with the rise of crime and insecurity. These neighbourhoods are frequently referred to as ghettos, slums, favellas, or squatter settlements. At present 930 million people live in slums worldwide. If the trends continue, 1.5 billion people will live in slums by the year 2020, the year when the Millennium Goal of improving the lives of at least 100 million slum dwellers is supposed to be met. Most slum dwellers are excluded from the basic elements of urban life that allow residents to live with dignity. They lack political voice, decent housing, the rule of law, education and health. These urbanisation characteristics are generally accompanied by an increase of crime and violence in cities as a whole and in slums in particular. These increases are sometimes accompanied by predatory and punitive government action against the poor, political fanaticism and civil disturbance. Such cities and neighbourhoods are unsustainable.

Contrary to common perception, it is not the better-off groups but the urban poor themselves and vulnerable groups such as women and youth in particular that suffer most from crime and insecurity. Many argue that, due to this association, crime is simply a product of poverty. Things are not as simple as that. It is UN-HABITAT's view that much of urban **crime and violence are products of social exclusion,** a condition that reinforces simple income poverty. Social exclusion has eroded civic values and broken down social support structures, such as the family and the community, generating groups at risk of falling into crime and violence. Urban crime generates a feeling of insecurity that spirals into distrust, intolerance and in certain cases violent reactions such

as mob justice. It erodes social capital and creates a culture of suspicion that divides cities. Thus, where there is no culture of solidarity amongst the poor, which is a defining characteristic of exclusion, crime and violence is most frequently poor on poor. This analysis is valid for both North and South.

The **corruption and institutional decay** witnessed in many urban areas in a number of countries, which involves social groups other then the marginalised and excluded, in the police force, the justice system, and national and local government, helps catalyse a culture of criminality and frustrates possibilities of an effective response to crime and violence. Transnational crime and the globalisation of organised crime that is manifested in the trafficking of human beings, arms or drugs add specific features to the local scenario. These are seldom fully comprehended and rarely referred to in the international debate but can flourish in the local environment of institutional decay and social exclusion. The local level is therefore and integral part of any strategy to combat transnational crime. It is UN-HABITAT's intention to explore further with UNODC our preliminary discussions about how to collaborate on a programmatic basis on addressing this linkage.

This potent cocktail of exclusion, crime, suspicion and corruption makes cities inefficient and unproductive as well as more unequal and intolerant. It reinforces the segregation within cities. What should be hubs of development and exchange become fortresses of fear.

Many cities in our rapidly urbanising world exhibit an **intensification of social exclusion as far as youth is concerned**. There is growing youth unemployment, increased chance of family breakup, the recruitment of child soldiers, trafficking in young persons and the impact of HIV/AIDS. Young people are especially vulnerable to such problems because they often don't have access to forums that can address their concerns from their perspective. Ingrained attitudes amongst adults and in decision-making bodies that see youth solely as a liability and a source of problems, contribute to exclusion. This is despite a global consensus that children and youth have rights, as reflected in the 1989 Convention on the Rights of the Child, which underscores the right to be heard and represented.

Addressing **'youth at risk'** in our cities and towns in a practical way that allows the rights of youth to be respected, while taking cognisance that these rights are also accompanied by responsibilities, is a characteristic of good urban governance. We need to strive for **inclusive cities**, which allow for the participation of all stakeholders, including youth, in matters that affect their present and future well being. Youth's creativity, energy and capacity for idealistic commitment have to be mobilised to the maximum extent. The capacity of young women and men to do this is best maximised through the **capacity development of organisations representing youth**. These organisations can provide the institutional framework of positive civic values that are the necessary underpinning for development of opportunities for young people to engage with local authorities representing the larger community. Where such youth organisations exist, their capacity needs to be built. Where they do not, they need to be created. Local government has a key role in facilitating this stakeholder driven approach. This is a key message that the UN-HABITAT is sending to all its partners.

Let me unpack some of the notions referred to above a little more. UN-HABITAT has launched **two global campaigns**, one for secure tenure and the other on urban governance. The aim of these two campaigns is to reduce urban poverty through policies which emphasise inclusion, equity, sustainability and social justice. Strategic and operational partnerships with governments, local authorities, non-governmental and community based organisations, the private sector and UN agencies are crucial to the success of these campaigns.

The **Campaign on Urban Governance** aims to increase the capacity of local governments and other stakeholders to practice good urban governance. The campaign visualises "Inclusive Cities", places where everyone, regardless of wealth, gender, age, race or religion, are enabled to participate productively and positively in the opportunities cities have to offer. Based on its own

experience working with cities, UN-HABITAT has initiated a global debate by arguing that good urban governance is characterised by sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship, and, not least security, and that these norms are interdependent and mutually reinforcing.

The **Safer Cities Programme** of UN-HABITAT has over the past 9 years developed and implemented citywide crime prevention strategies in several pilot cities around the world that particularly address the two governance values of security and citizenship. **Citizenship** is particularly important in rebuilding social solidarity and social capital. This was recognised at UN-HABITAT's Governing Council held earlier this month, which enjoined the Programme to delve further into these concepts to understand better their contribution to good urban governance. Experience gained so far suggests that the stakeholder-driven model for youth inclusion, stressing the development of youth organisations, is one means by which civic values can be enhanced.

The lessons of experience gathered by Safer Cities thus far are captured in programme products such as a **global toolkit on local crime prevention** which will be presented to you later today. The toolkit also makes the Safer Cities approach more accessible and its relationship to national policies and urban development strategies more explicit. It also examines the role of various actors, local authorities, the criminal justice system as well as civil society. It proposes approaches for the development of cities' capacities and expertise in the areas of community safety and crime prevention.

To reiterate, **the leading role of the local authority** in undertaking participatory approaches to crime prevention cannot be overlooked. The local authority can neither be substituted nor have its responsibility delegated to any other local stakeholder. Since 1987, various International Conferences of Mayors held in Montreal (1989), Paris (1991), Johannesburg (1998) and more recently in Durban (2003) have affirmed the role of local authorities as the leaders of local partnerships or coalitions against crime. Local authorities occupy a strategic position to undertake the co-ordination of all local actors.

Nevertheless, we cannot ignore certain realities of local governance in our midst. As has been inferred above, many local authorities behave in a manner that worsens exclusion rather than increases inclusion. The Urban Governance Campaign seeks to persuade local authorities that the **key to inclusion is to engage with civil society organisations**, and especially community based organisations in the development of city priorities, strategies and in implementation. In the field of security, residents' commitment to protect themselves and their property from crime and insecurity can be tapped into. Traders, business and neighbourhood groups are potential partners for local authorities for crime prevention in the context of a good urban governance approach.

Furthermore, other **UN-HABITAT tools** and documented experiences exist, in addition to the crime prevention toolkit mentioned above, for example on participatory budgeting, or Youth Councils that promote inclusion in the context of local policies on crime prevention and youth.. In addressing issues of overall governance by local authorities that affect the crime prevention environmnet a *Tool to Support Transparency in Local Government* is available.

Crime prevention issues need to be a priority in municipalities' agendas and urban crime should receive a special focus in national government agendas. Capacity building and exchange of experience has to continue, through city to city collaboration and targeted technical cooperation.
In this respect, UN-HABITAT will be hosting the **3rd World Urban Forum** in Vancouver, Canada in June next year. This Forum, which will coincide with UN HABITAT's 30th anniversary celebrations, will bring together one of the largest gatherings of cities and other partners – we anticipate some 6,000 attendees - to discuss urban issues, including crime prevention and youth at risk. It is our intention that together with partner networks, UN- HABITAT Safer Cities Programme will convene a Partners Coordinating Committee to advance global programming on urban safety issues. It is also our intention that in Vancouver, one of the outputs will be the upscaling of our UN-HABITAT Best Practices category on crime prevention and youth at risk to be owned and run by Safer Cities

partner networks using agreed criteria. UN-HABITAT's intention is extend a special invitation to UNODC, to be formally confirmed in due course, to co-organise these special events on crime prevention as reciprocation of our involvement at this event in Bangkok and as recognition of the close relationship between the two organisations.

As a separate initiative global indicators on urban crime prevention and the establishment of a ranking of cities worldwide based on quality of life and feelings of insecurity will be developed and input into the UN-HABITAT *Global Report on Human Settlements 2007* whose theme will be "Urban Safety".

UN-HABITAT hopes that the deliberations of this Congress can become part of the **road map** to Vancouver and beyond. Let the discussions consider the different contexts and approaches to crime in the North and in the South, and provide a basis for technical co-operation where best practices on crime prevention can be replicated and presented to mayors and other city stakeholders participating at the 3rd World Urban Forum.

Ladies and Gentlemen, let me conclude by reiterating that it is important to recognise that the governance of security is a critical issue for our cities and for urban youth. It is our challenge, the challenge of national and local governments and that of other stakeholders to develop appropriate governance of security in our urbanising world.

On this point, Ladies and Gentlemen, I wish you a fruitful exchange of experiences. I thank you.

Workshop 3

Urban crime prevention and youth at risk – challenges to development and governance

Hon Senator Chris Ellison
Minister for Justice and Customs of Australia

Mr Chairman, distinguished delegates.I am delighted to have the have the opportunity today to speak on the important topic of crime prevention – as Minister responsible for crime prevention in the Australian Government, it is a subject close to my heart.

This Congress offers us a rare opportunity to exchange views and to share experiences and expertise about what works in preventing crime and victimisation. It brings together governments, practitioners, researchers, academics and policy makers from the many and diverse fields that are involved in preventing crime in all its manifestations. It provides an opportunity to discuss the types of policies and programs which have been implemented on a national, regional or local level. But before I go any further, I would like to join others in thanking the Government of Thailand for its gracious hospitality in hosting this Congress. I would like to thank the United Nations, particularly the Office of Drugs and Crime, and also the International Centre for Crime Prevention as the organiser of this workshop.

Mr Chairman, as we all know, serious crime is not local or even national any more. Crime has gone global in response to the globalisation of the economy, the development of the electronic village and the advent of terrorism without geographical borders or localised grievances. Transnational crime in one country is local crime in another; and it is a threat to all of us for a number of reasons.
- It exploits the weakest and the poorest in our societies.
- It directly contributes to crime in local communities.
- It undermines democratic institutions and the rule of law.
- It impedes economic growth.
- It supports terrorism.
- And it puts greed and avarice before humanity and compassion.

Australia is absolutely committed to cooperating with the international community and has been active in working through the United Nations (UN) to combat crime. To do this we are pursing a range of initiatives both domestically and internationally.

The relationship between transnational crime and local crime is clearly demonstrated by organised drug trafficking. The transnational supply and trafficking of illegal drugs ultimately ends up in local communities. This then leads to increases in related criminal activities, such as property crime.

The results from the Australian Government's most recent survey of police detainees (the Drug Use Monitoring Program - DUMA) in 2004 showed that just under half of all police detainees interviewed reported using drugs just prior to their arrest. And 61 percent of those charged with a property offence tested positive to an illicit drug – (excluding cannabis and alcohol). These findings reinforce the point that the drug trade is related to local crime. The DUMA report also shows that drug use is concentrated in young people. For example, over 60 per cent of those who tested positive to methamphetamine were under the age of 30.

Another finding of the DUMA report is that there are very high rates of cannabis use amongst young offenders (69 per cent of males aged 18 to 20 and 71 per cent of males aged 21 to 25). And 70 per cent of offenders who are dependent on illegal drugs have high to very high levels of psychological distress. And this is why the trafficking and use of illicit drugs remains a matter of immense concern to the Australian Government. Australia continues to have a very strong anti-drug stance. And reducing the supply of drugs and bringing to justice those criminals and organised crime groups who manufacture, import and distribute illicit drugs is a matter of the highest priority.

I released yesterday at the Congress the Australian Crime Commission's Illicit Drug Data Report on drug trends and seizures. And I am pleased to say that the report shows that the Australian Government's 'Tough on Drugs' strategy is working. We are intercepting drugs at our borders, and we are catching the drug traffickers and we are stopping the drugs from coming in. Our law enforcement agencies arrested over 79,000 people for drug-related offences in the last financial year. They made over 52,000 drug seizures and prevented the importation of more than 11 tonnes of illicit substances with a value of billions of dollars.

And just over a week ago, more than one tonne of ecstasy tablets was intercepted at one of our ports. This is the largest seizure ever in Australia, and one of the largest in the world. And it demonstrates that we are succeeding in disrupting the international illicit drug trade. We are also undertaking a range of measures aimed at stopping the diversion of legally traded precursor chemicals into the manufacture of amphetamine type stimulants. These successes are reducing the amount of illicit drugs that are available. Australia's law enforcement and health authorities have reported that heroin supply and use have dropped. And in human terms this has meant a significant drop in the number of deaths through opioid overdoses.

Tough on drugs is an excellent example of integrated program design addressing both demand and supply. Since its launch, the Australian Government has committed more than $1 billion to the Strategy. It includes funding to assist communities to establish support and advice and mechanisms for families and provide outreach services to link and coordinate pathways to health related counselling services. A new set of national drug education resources for schools has also recently been developed by the Australian Government. The Resilience Education and Drug Information program represents a significant investment in the future health and wellbeing of young people in Australia and the resources focus on resilience building.

We have also provided over $400 million to an Illicit Drug Diversion Initiative which supports the diversion of illicit drug users from the criminal justice system into education and treatment. Evaluation findings received to date from the drug courts are positive, indicating reduced levels of recidivism amongst those who successfully complete the program.

I also want to re-iterate the Australian Government's support for the United Nations Office of Drugs and Crime (UNODC). Australia has consistently taken a strong stand against the abuse of illegal narcotics. And we fully recognise the importance of effective international cooperation to combat this global challenge.

Australia continues to attach high importance to addressing the problems of international illicit drug control and we see the UNODC as an important contributor to managing this issue. he importance of UNODC's regional operations in the Asia Pacific region are particularly to Australia's international crime prevention strategies. Australia's total core contribution to UNODC since 1991 is over A$9 million. This establishes Australia as one of 20 major donors.

Mr Chairman, the UN Millennium Declaration emphasised the importance of men and women being able to live their lives and raise their children free from the fear of violence, oppression and injustice. Australians enjoy the luxury of living in a relatively safe and peaceful society.However, crime continues to be one of the most important issues of concern for the Australian community.

And in 2003 the Australian Institute of Criminology estimated that crime cost the Australian community $32 billion per year.

Mr Chairman, over the past ten or so years a strong evidence base for crime prevention has been developed.Today the causes of crime are better understood than ever before. These can range from aspects of a person's individual characteristics and their relationship to their family and community, to social and structural factors such as education, employment and housing. We know too that these factors can be deeply embedded, stretching back over generations in patterns that are repeated in apparently unbreakable cycles.

We have also improved our understanding of what can be done to bring about sustained eductions and the long-term prevention of crime – whether through primary prevention, interventions with at risk populations or individuals, or programs to reduce recidivism. While we still need further research to build the evidence base, there is no doubt that we now know more about what works in both situational and developmental crime prevention. And so, we have broadened our traditional responses beyond the criminal justice system to include measures aimed at tackling the social and economic causes of crime – attempting to improve opportunities for individual and community success along the pathways that can lead a person into crime or keep them positively engaged in society. Today's panellists will be discussing many such successful projects.

More recently, we have come to recognise that the interventions that make up these new programs are likely to have a greater chance of success if they are designed and undertaken as a package of closely linked and coordinated measures. Collaborative policy development and program planning and delivery have become features of the crime prevention scene in Australia, though we are certainly not unique in that. Crime prevention has become a coordinated effort involving government and community.

The United Nations' standards and norms provide useful guidance in that regard, particularly the Guidelines for the Prevention of Crime, adopted in 2002. I am pleased to note that Australia participated actively in the development of the guidelines, and they have contributed to the development of our national crime prevention policies. The Australian Government remains committed to addressing crime and its causes at the community level.

Youth crime and crime prevention through social development have been key areas of work over several years. We commissioned the influential report *Pathways to Prevention* which highlighted the importance of targeting multiple risk and protective factors at critical transition points in a young person's developmental life cycle. This report has been much cited both domestically and internationally. Later today you will be hearing a presentation on the successful early intervention project which grew from that research.

The *National Safe Schools Framework* (NSSF) provides a consistent, national approach to countering bullying and violence in Australian schools, and supports schools to provide safe and happy learning environments. *MindMatters* focuses on how a school can enhance protective factors for good mental health within in its students, and build this into their curriculum, policies and procedures and partnerships with the local school community.

The Stronger Families and Communities Strategy is an Australian Government initiative giving families, their children and communities the opportunity to build a better future. Helping children in their very earliest stages sets the scene for the rest of their lives. With this in mind, the Australian Government has made early childhood a priority and has undertaken an extensive consultation process to develop a National Agenda for Early Childhood. The Strategy also continues to support communities to develop local solutions to local problems, and for initiatives building capacity, leadership and mentoring.

Since the Strategy was first announced by the Prime Minister, the Hon John Howard MP, on 16 April 2000, funding of more than $226 million has been allocated. More than 660 local projects

have been funded.And we recently announced a $58 million National Community Crime Prevention Program. Under the Program, grants will be provided to grass roots projects designed to reduce crime and anti-social behaviour, improving community safety and security, and reducing the fear of crime.

Australia also attaches a high priority to combating domestic violence and sexual assault. To combat violence against women we are increasing community education and awareness programs, providing better training for community support organisations and improving the criminal justice system. Targeting family violence and child protection in indigenous communities is also a key priority.

The Australian Government has also identified the development of safer communities as a priority for its work in Indigenous affairs. Focus areas within the safer communities priority include family and domestic violence, child abuse and neglect, law and order, substance misuse and community governance and leadership. We have a number of programs in place that work to reduce crime and violence in Indigenous communities. These include the Council of Australian Government (COAG) trial sites, leadership development programs and community-specific responses. As part of this work we are identifying gaps in the services that work to create safer communities and promoting coordination across levels of government and flexibility in the delivery of services that exist.

A Ministerial Taskforce on Indigenous Affairs is providing leadership and strategic direction at the national level, advised by a Secretaries Group and a National Indigenous Council. In the States, Territories and regions, multi-agency Indigenous Coordination Centres have been established, managed by an Office of Indigenous Policy Coordination. Governments work in partnership with Indigenous communities which set their priorities and share responsibility for outcomes. The Office of Indigenous Policy Coordination has responsibility for overseeing collaborative policy development and implementation of some programs that support reductions in crime and violence in communities.

Mr Chairman, policing, law enforcement and prevention are important parts of the fight against crime, but must be backed up by strong democratic processes, accountable governance and the transparent rule of law.

In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, member states called for greater regional and international cooperation to create fair, responsible, ethical and efficient criminal justice systems where they are lacking.
The Vienna Declaration was of great importance to Australia and we have seized the further opportunity it presented to work in cooperation with other member states, particularly with countries in our region, with international and regional organisations and with UN agencies.

I am confident that the declaration arising from the Bangkok Congress will provide such a catalyst in international cooperation in crime prevention and criminal justice over the next five years. We cannot allow crime to dominate our world. By working together we can enforce justice and we can ensure peace.

Worshop 3

Política urbana de seguridad en Chile: programa comuna segura

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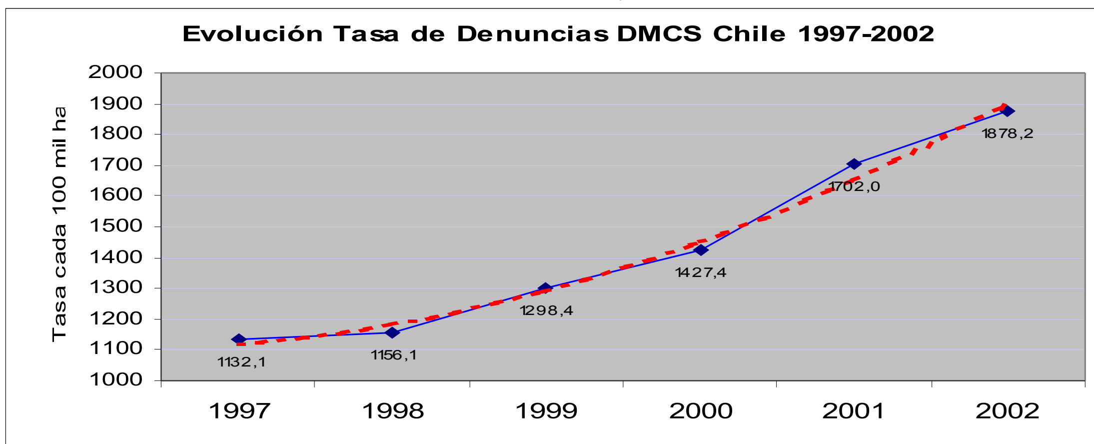
I. EL CONTEXTO

Magnitud y evolución de la delincuencia en Chile[119]

La criminalidad es hoy en día un tema de preocupación central en el país. Las denuncias de Delitos de Mayor Connotación Social[120] crecieron entre 1982 y 1986, para luego mostrar una tendencia decreciente hasta 1995. A partir de 1998 se registra un nuevo aumento, manteniéndose dicha tendencia hasta la actualidad. Los delitos de mayor incremento corresponden a aquellos de motivación económica —hurto, robo con fuerza y robo con violencia[121]—.



Adicionalmente, preocupa el crecimiento del tráfico de drogas. Información del Ministerio de Interior da cuenta de un aumento del circuito de las drogas en el gran Santiago entre el año 2002 y el 2004, el cual se habría extendido significativamente en los sectores más deprimidos social y económicamente en las principales ciudades del país, y especialmente en el Gran Santiago.

Por otra parte a pesar de la falta de información sistemática, es importante destacar la necesidad de enfrentar la violencia al interior de las familias y en contra de la mujer como un problema de país[122]. El hogar es el espacio de mayor riesgo para niños, niñas y mujeres[123]. Los datos indican que las violaciones y el abuso sexual son cometidos mayoritariamente por hombres[124] en contra de mujeres, en sus propias casas y por familiares u otras personas conocidas[125].

119 Información recogida del Documento Diagnóstico de la Seguridad Ciudadana en Chile. Foro de Expertos. Ministerio de Interior, 2004.

120 Según la clasificación del Ministerio del Interior, los DMCS incluyen hurto, robo con fuerza, robo con violencia, homicidio, violación y lesiones. A su vez, los dos primeros son clasificados como delitos contra la propiedad, mientras que los cuatro siguientes son clasificados como delitos contra las personas

121 El término robo con violencia hace referencia a la suma de los delitos de robo con violencia, robo por sorpresa y robo con intimidación, de acuerdo a la desagregación estadística realizada por el Ministerio del Interior el año 2001.

122 Al interior de la familia, nos referimos a la violencias entre las parejas y hacia los niños. Las mujeres además de la violencia física , psicológica , sexual y económica que viven en las relaciones de pareja, experimentan otras formas de violencia producto del abuso masculino, como el hostigamiento o acoso sexual, la prostitución forzada, abuso sexual, violaciones, entre otros.

123 El 50% de las mujeres actual o anteriormente casadas, residentes en la Región Metropolitana declaran haber vivido una situación de violencia de parte de su pareja, alguna vez en su vida. La violencia contra la mujer está presente en todos los estratos socioeconómicos (Estudio de Prevalencia de la Violencia Intrafamiliar. SERNAM 2001).

124 Según la Defensoría Penal Pública el 98% de los delitos sexuales se cometen por hombres.

125 Según el Servicio Médico Legal el 81% y 77% respectivamente de las víctimas de violaciones y abuso sexual son mujeres y éstos son cometidos en un 86% por conocidos (Pericias Médico Legales en Delitos Sexuales, Servicio Médico Legal, Mayo 2002). Respecto a los menores, las niñas son más frecuentemente abusadas que los niños. En el 92% de los casos, el abusador es un familiar o conocido

Sensación de Inseguridad

La sensación de inseguridad se ha convertido también en uno de los problemas de política pública más trascendentes en la última década en Chile. Sus causas y características están aún en discusión, pero es indudable que un porcentaje importante de la población presenta altos niveles de ansiedad y temor hacia la delincuencia. La Primera Encuesta Nacional de Victimización (M. Interior – INE, 2003) indicó que 48% de los encuestados cree que será víctima de un delito en los próximos 12 meses. Los lugares más inseguros para la gente son las calles y los medios de transportes, especialmente los buses. El 25% de los encuestados dice que es muy probable que sea víctima de un delito en los próximos 12 meses; mientras que el 61% piensa que esa situación es sólo probable.

La respuesta pública

En Chile, la preocupación ciudadana y política instaló el tema de la seguridad ciudadana en la agenda pública a principios de los 90. Las primeras respuestas a esta problemática se centraron en las tareas de control y represión de la delincuencia. Esto se constata a través de las cifras que muestran el aumento explosivo de la población penal durante la ultima década. La población penal creció de 22.000 reclusos en 1990 a 38.000 a fines del 2003 para una población de 15 millones de habitantes. De igual forma, el hacinamiento carcelario llega a un 40% y la tasa de detenidos es de 2,5% por cada mil habitantes. Frente al fracaso del sistema de control para frenar el aumento de la delincuencia (como se muestra antes), comienzan ya a fines de la década, a integrarse en el discurso y quehacer político y público, enfoques y estrategias (muchas inspiradas en la experiencia internacional) de prevención que entregan a su vez un rol importante a la participación ciudadana en la materia.

Esta ha sido una etapa dinámica que ha significado – a su vez- un proceso de aprendizaje para los diferentes agentes publicos, el cual se ha desarrollado por medio de las distintas iniciativas que han sido puestas en práctica. A partir de este proceso ha sido posible constatar una serie de errores, tanto de enfoques como de diseños, que han posibilitado reorientar la labor preventiva que se desarrolla a través de las distintas instancias.

Un importante avance en el país, lo constituye el esfuerzo realizado en la elaboración de la Política Nacional de Seguridad Ciudadana. Esta da cuenta de una mirada sistémica en el análisis de la problemática, considerando los diversos actores institucionales involucrados en el abordaje de ella como así también el rol que estos juegan en el desarrollo de las respuestas al fenómeno. Esta se ha planteado como principales desafíos programáticos el desarrollar intervenciones y estrategias de Prevención y Control del delito; el desarrollo institucional y de información y tecnologías adecuados. Para ello contempla como principales instrumentos de acción:

- La Reforma Procesal Penal en el sistema de justicia
- El Plan Cuadrante de la Policía de Carabineros de Chile
- Las Medidas Legislativas
- Programa Comuna Segura
- Programa Barrio Seguro

II- DESCRIPCIÓN PROGRAMA COMUNA SEGURA

El Programa Comuna Segura, es una iniciativa gubernamental que nació el año 2000 y constituye una de las principales estrategias del Gobierno de Chile para fortalecer la seguridad ciudadana en el ámbito local. Surge de manera paralela con la División de seguridad Ciudadana, institucionalidad que con el tiempo se ha ido consolidando como la instancia gubernamental encargada la coordinación intersectorial en materia de política pública. A partir del año 2001 el Programa se ha desarrollado en un total de 56 comunas y prevé implementarse en 15 más a partir de marzo de 2005 (sumando un total de 71 comunas).

(Instituto Médico Legal, 1995)

Este programa ha sido definido como como una estrategia de prevención comunitaria del delito, la violencia y el temor y se inscribe en la perspectiva de descentralización de las políticas de seguridad ciudadana, relevando el rol de las comunidades locales.

2.1. OBJETIVOS Y ESTRATEGIAS

Propósito Del Programa

- Promover el desarrollo de estrategias integrales y efectivas de prevención en el ámbito comunal, mediante la participación de los actores públicos y privados
- Objetivos
- Fortalecer las capacidades institucionales existentes en el ámbito local para intervenir en seguridad ciudadana.
- Promover la generación y ejecución de Planes integrales de Seguridad Ciudadana.

Cambio Esperado

Se espera que con la ejecución del programa los municipios y el resto de los actores locales incorporen metodologías de trabajo en la perspectiva de desarrollar planes preventivos de alto impacto y focalización; en definitiva se espera que el programa contribuya a superar la situación original de los municipios, donde no se ha instalado el tema de prevención del delito y la delincuencia como tema transversal que guíe la inversión y planificación municipal; así mismo, se espera que los municipios incorporen una visión más integradora del tema, entendiendo que la labor preventiva posible de desarrollar va más allá de la existencia de sistemas de vigilancia municipal.

Ejes Del Programa

- **Interviene desde el ámbito de la Prevención**; se entiende que una política moderna e seguridad complementa las labores de control con estrategias que intervienen sobre los factores de riesgo social.
- **Interviene desde el Territorio Local**; comprende que el fenómeno de la delincuencia, la violencia y el temor adquiere características particulares en los territorios locales.
- **Se basa en la Participación Social**; se entiende que por la multicausalidad del fenómeno las intervenciones deben considerar al conjunto de actores que interactúan en el territorio local, especialmente la comunidad.
- **Promueve la focalización territorial y social de los recursos;** intenciona la intervención hacia aquellos territorios y grupos sociales más vulnerables; y en los temas que efectivamente son prioritarios para las comunas.

2.2. ESTRUCTURA DEL PROGRAMA

El funcionamiento del Programa a nivel local se basa en el funcionamiento de 3 componentes:

- **CONSEJO COMUNAL DE SEGURIDAD CIUDADANA:** Espacio de representación social en que participan las autoridades del Estado a nivel local y representantes de la Sociedad Civil . Esta definido como un espacio de diálogo social en el tema de seguridad; asumiendo como responsabilidad la orientación de la estrategia local, aprobando las inversiones que se hacen con recursos del Programa y haciendo el seguimiento de las mismas.
- **SECRETARÍA COMUNAL**: Esta constituida por un profesional encargado de generar y mantener el diagnóstico de la situación de seguridad de la comuna, y coordinar el diseño, implementación y seguimiento del Plan Comunal de Seguridad, con base en la articulación de los actores locales.
- **MESA TÉCNICA COMUNAL:** Instancia Técnica formada por las Direcciones Municipales relacionadas directa o indirectamente con acciones de prevención y otros programas de ejecución municipal, , proponiendo la inversión o su focalización social y territorial, y aportando en su seguimiento.

2.3. ETAPAS DEL PROCESO DE IMPLEMENTACIÓN

1. Selección de las Comunas

La selección de comunas la hace la División de Seguridad Ciudadana en consideración de variables sociales – agrupadas en un Indice de Vulnerabilidad Social Delictual (como nivel de escolaridad, pobreza, indigencia, desempleo, consumo de drogas, etc.) – y delictuales (Tasas de Denuncias).Cada año se actualiza la información sobre cada uno de los indicadores y se confecciona el ranking de comunas, ingresando al programa aquellas que muestran un mayor puntaje.

2. Instalación del programa
La instalación comienza con el anuncio de comunas seleccionadas, prosiguiendo con la suscripción de los respectivos Convenios de Colaboración con cada uno de los Municipios; luego se procede a la selección de Secretarios Comunales de acuerdo a un perfil que prioriza las habilidades técnicas y personales para desempeñar el cargo. Los Convenios de Colaboración entre el Ministerio del Interior y los Municipios determina las obligaciones de cada parte.

Diagnóstico Local de Seguridad Ciudadana
El Diagnóstico Comunal de Seguridad es el proceso a través del cual se caracteriza la situación de seguridad de la comuna, tanto en lo que respecta a la dinámica delictual como de los factores de riesgo social y situacional interactuantes en el territorio y se definen los problemas prioritarios sobre los cuales se intervendrá. El Diagnóstico en seguridad supone una perspectiva operativa, es decir, se centra en los elementos fundamentales que permitan focalizar los puntos geográficos, temas y grupos sociales sobre los que se organizará la acción. Implica la integración de fuentes cuantitativas (Estadísticas de Denuncias, Encuesta de Victimización, etc.) y cualitativas; dentro de estas últimas cobra relevancia la realización de Diálogos Ciudadanos, instancias de autodiagnóstico y análisis participativo de la comunidad.

Plan Comunal de Seguridad Ciudadana
El Plan Comunal de Seguridad Ciudadana es el instrumento central para la gestión en materia de seguridad ciudadana a escala comunal. Plasma la estrategia local de seguridad involucrando una mirada integral de la temática. Es considerado el eje sobre el que se organiza el trabajo del Programa y requisito ineludible y obligatorio para el traspaso de recursos a las comunas.

Evaluación y selección de los planes comunales
La selección de los Planes Comunales, y de cada uno de los proyectos que se postulen a las tres líneas de financiamientos serán objeto de una evaluación externa en diferentes momentos del ciclo del Programa.

2.4. ESTRATEGIA DE FINANCIAMIENTO
El financiamiento general del Programa está a cargo del Ministerio del Interior. Tiene tres modalidades de inversión.

INVERSION FOCALIZADA: Representa el 30% de los recursos transferidos a cada municipio y tiene como propósito la ejecución de iniciativas que por su diseño, temática y respaldo técnico - profesional aseguran mayor impacto en los territorios focalizados por el Plan Comunal de Seguridad. Su ejecución se realiza vía licitación a entidades especializadas o a directamente por el municipio. Esta reservada para proyectos psico sociales en áreas temáticas estratégicas como: Violencia contra la mujer y Maltrato Infantil; Violencia Escolar: Violencia barrial; Niños y adolescentes en riesgo de ingreso a la carrera delictual.

FONDO CONCURSABLE PARA INICIATIVAS COMUNITARIAS: Tiene como propósito promover la participación de la comunidad en el mejoramiento de la seguridad de su territorio, a través del financiamiento de proyectos comunitarios de seguridad ciudadana. Las organizaciones sociales podrán postular proyectos únicamente en los siguientes ámbitos: Prevención Situacional; Intervención psicosocial y Promoción de Seguridad.

FONDO DE INCENTIVO PARA LA GESTION LOCAL: Se destinará un monto equivalente al 10% de los recursos destinados a las comunas para financiar proyectos de alto impacto presentados

por municipios, individualmente o asociados, que demuestren una buena gestión en seguridad (un Plan consistente, cumplimiento de focalización en el Fondo, calidad de proyecto presentado, aporte municipal).

2.5. ESTRUCTURA ADMINISTRATIVA

El PCS tiene una estructura administrativa instalada en el nivel central y en el nivel local. Esta estructura también ha variado en el tiempo y a partir del año 2005 se ha incorporado una nueva modalidad de gestión. Hasta el año 2004, en el nivel central, se ubican las unidad de gestión, planificación, asesoría, y coordinación. En el ámbito local, el programa estaba administrado por la secretaría comunal. A partir del año 2005, se ha generado una instancia intermedia de gestión a cargo de la supervisión de zonas regionales que incorporan a diversas comunas. Actualmente, se han instalado 5 grandes zonas en el país y la labor de los encargados de estas zonas, es procurar el adecuado funcionamiento del programa en las comunas y establecer la vinculación entre el nivel central y los actores locales.

2.6. PRINCIPALES RESULTADOS

Cobertura y focalización

En cuatro años de ejecución se calcula en 3.891.036.000 los beneficiarios directos de los 2.737 proyectos financiados en igual período. Se estima que los beneficiarios de los proyectos han coincidido mayoritariamente con población vulnerable socio delictualmente. Las orientaciones 2005 apuntan a conseguir mayor focalización.

En total se han financiado 2.737 proyectos de seguridad:

- Se han financiado 1401 proyectos de infraestructura participativa.
- Se han financiado 1100 proyectos de Fortalecimiento de redes comunitarias.
- Se han financiado 236 proyectos de atención psicosocial.

Inversión realizada

En cuatro años se han invertido US 23.325.594,4. (Americanos) concentrados fundamentalmente en el Fondo Concursable.

III.- ANÁLISIS EVALUATIVO

El Programa Comuna Segura ha sido evaluado por cinco instituciones externas al Ministerio del Interior (dos empresas consultoras, dos universidades y por el Ministerio de Hacienda) y estas evaluaciones han estado enfocadas a analizar diferentes aspectos del programa y por consiguiente, han arrojado diversos resultados, lecciones y desafíos. Ello ha permitido, que el PCS durante el período que lleva de implementación haya ido redefiniendo algunas de sus estrategias y líneas de acción. Las lecciones aprendidas a partir de estos insumos, son la base de la redefinición que el PCS ha realizado para la gestión 2005, la que contempla el número de cambios más significativos del Programa durante su desarrollo.

Lecciones aprendidas: evaluación a partir del análisis de los gestores del programa

En términos generales y según lo manifiestan sus gestores, se puede señalar que la principal debilidad que ha presentado el Programa es la insuficiente focalización de las iniciativas financiadas. Esta situación se ha dado principalmente por lo que se ha definido como la **"fondización" del Programa**, es decir, centrar toda la acción comunal en materia de seguridad en el Fondo Concursable de Proyectos Comunitarios. Del mismo modo, este ha quedado sujeto a tendencias habituales en todo fondo concursable, como **la concentración de los recursos en algunas organizaciones sociales, impidiendo el desarrollo de una mayor experticia en la temática de Seguridad Ciudadana**. De esta forma, el proceso de "fondización" del programa ha impedido la construcción de uno o varios modelos de intervención a escala local y adecuados a la realidad de las diversas comunas.

Además este enfoque ha impedido **dejar los tiempos necesarios a la realización de diagnósticos consensuales** indispensables a cualquier Plan de Acción. Por otra parte al hacer depender el Programa del Fondo Concursable se ha evitado la obligación de **sustentabilidad** que pasa por el involucramiento de las alcaldías en el financiamiento de los recursos humanos y de los

proyectos que deberían provenir de la propias autoridades locales. En sentido falta **identificar una forma de involucramiento de los municipios** que asegure una capacitación del personal municipal y una real apropiación por parte de las autoridades locales del programa Comuna Segura.

No obstante estas limitaciones, el programa ha permitido avances que se manifiestan en la **experiencia adquirida** de los Secretarios Comunales y del personal de Comuna segura y el desarrollo de algunas **buenas prácticas** de prevención en algunas comunas del país.
Asimismo, otro de los principales logros identificados es que el PCS ayudó a instalar una **mirada más integral al tema de la seguridad** ciudadana incorporando el tema de la prevención social.
En virtud de los antecedentes antes señalados, se ha propuesto introducir cambios en el Programa Comuna Segura, que permitan superar los problemas identificados, alinear el Programa con la Política Nacional de Seguridad Ciudadana e involucrar en forma sustentable a los municipios del país. En función de ello han operado cambios programáticos que se expresan en las nuevas modalidad de inversión del programa desde el 2005 y los cambios de la estructura de funcionamiento del mismo, en que se deslindan los campos de responsabilidad de las instancias tanto locales como del nivel central, y dentro de estas últimas se establece una nueva instancia operatoria, basada en la distribución territorial de las funciones de supervisión y de orientación estratégica.

Desafíos pendientes
A partir de una mirada externa, es posible establecer que el PCS ha avanzado significativamente en cuanto a su modelo, metodología de implementación y a su gestión. En este sentido, el avance pragmático que ha sido evaluado, ha permitido que los mismos gestores hayan ido produciendo cambios en el modelo de la intervención. Las lecciones aprendidas en este avance, son las que hoy (más que en etapas anteriores) dan lugar a mejores condiciones de éxito de esta iniciativa en el largo plazo. Sin embargo, aún el PCS enfrenta desafíos importantes en miras de lograr sus objetivos y de consolidarse como una estrategia exitosa en materia de prevención de la delincuencia. Estos desafíos se basan, en las aún debilidades que este programa presenta respecto a algunos aspectos de su gestión y a la implementación en el territorio.
Al respecto, los desafíos principales son:

Aumentar la eficacia y eficiencia del programa en materia de resultados e impacto a través de la eliminación del fondo concursable de la inversión
Frente a los escasos logros obtenidos por el programa respecto a sus resultados en materia de transferencia de capacidades; apropiación de la metodología y de la estructura por parte de los municipios y por parte de la misma comunidad involucrada, es necesario que el Programa finalice la modalidad concursable de la inversión y con ello pueda, generar estrategias de prevención de mediano y largo plazo, que trasciendan al año de implementación.

Coproducción efectiva
Un primer desafío lo constituye el avanzar hacia mayores niveles de colaboración y coordinación en el ámbito central (del PCS con otros Programas Sectoriales) y en el ámbito municipal para lograr una coproducción efectiva en materia de prevención. Aún cuando se han dado pasos importantes al respecto, es necesario tener presente que la sola participación de la comunidad no basta para obtener buenos resultados en esta materia (enfoque sostenido por el programa hasta 2004). En este sentido, la colaboración, la coordinación y el quehacer conjunto del gobierno central, gobierno local junto a la comunidad, son requisitos indispensables. Para ello, el PCS debe avanzar significativamente en la transferencia de conocimientos y capacidades en materia de gestión local intersectorial y en conocimientos técnicos y de conocimientos específicos en materia de prevención del delito a las instancias locales y comunales. Así también debe coordinarse efectivamente con el quehacer de otras reparticiones públicas presentes en el territorio.

Incorporar una mirada y estrategia de implementación de mediano y largo plazo.

Los resultados e impactos obtenidos (bajos en materia de los objetivos del programa) dan cuenta de la necesidad de reevaluar los tiempos que considerados en la etapa de implementación en el territorio comunal. En este sentido, toda estrategia de prevención estará destinada a lograr bajo impacto, sino contempla un diagnostico profundo y participativo de los principales actores involucrados (actualmente el diagnostico se realiza en uno o dos meses ye s realizado por el secretario comunal). La actual forma de realizar los diagnósticos ha significado que estos constituyan radiografías de la realidad y no procesos de identificación y apropiación de las problemáticas. Sin duda esto incide negativamente sobre el diseño e implementación del Plan de Acción, el cual no contempla estrategias de mediano y largo plazo y no focaliza adecuadamente los recursos y las iniciativas.

Descentralización de la Prevención

Avanzar hacia niveles de mayor descentralización, significa mayor flexibilidad administrativa por parte del mismo programa. Como se ha señalado, el PCS han sido débil en la instalación de las capacidades necesarias que dan sustentabilidad en el largo plazo a las iniciativas de prevención. En este sentido, el proceso de implementación del programa ha evidenciado las tensiones y obstáculos que se generan cuando una política central interviene en el ámbito local por cuanto son pocos logros que se obtienen si el municipio no coincide con los ejes de trabajo del gobierno. El análisis de las opiniones dadas tanto por el equipo técnico del gobierno (División de Seguridad Ciudadana) como por algunos alcaldes y Secretarios técnicos confirman estos riesgos que pueden ser superados sólo si los alcaldes asumen en forma coherente con su propia política los objetivos del Programa y si el Programa es flexible administrativa y técnicamente.

Redefinición de la Participación Comunitaria

La Redefinición del tipo de participación comunitaria que se busca promover, aparece como otro desafío. El PCS debe abordar en el corto plazo, cual es el significado y alcance de la participación de la comunidad en materia de prevención. En Chile, la noción de “participación” comunitaria que sustenta a muchos programas sociales involucra un riesgo en materia de logros y resultados en cuanto las modalidades de participación en curso, no necesariamente están enfocadas a lograr mayores niveles de apropiación de la problemática, la responsabilización y empoderamiento de la comunidad en esta materia.

Consolidar el Enfoque y Trabajo Supra Comunal

La delincuencia y la violencia tienen carácter multidimensional, respondiendo a múltiples causas. Por ello, el abordaje multi agencial es requisito para obtener cualquier resultado positivo. Ello implica reconocer, que en un determinado espacio urbano, los actores, los hechos y los escenarios de la delincuencia y de la violencia se relacionan, interactúan y se desplazan sin distinciones territoriales. Si bien, para dar cuenta de este fenómeno el PCS ha avanzado en la definición de territorios supracomunales (zonas) para su administración, se debiese comenzar gradualmente a incorporar un enfoque de trabajo aun más integral y coordinado supra comunalmente. Sin ello, se corre el riesgo de limitar la acción de conjunto e integrada y se arriesga de dejar de lado muchas actividades esenciales de los grupos objetivos que están fuera de una comuna.

Workshop 3

LOCAL CRIME PREVENTION IN PERU

Hugo Aedo Salomon
Mayor of San Juan Bautista, Ayacucho
and
Rachel Neild
Open Society Justice Initiative

Peru is a country of 27 million in Latin America's Andean region. It covers arid coastal, jungle, and extensive mountain areas with a majority indigenous populations living in extreme poverty. After 20 years characterized by a brutal insurgency and an equally brutal anti-terrorism campaign and then by deeply authoritarian and corrupt government, the government of President Alejandro Toledo came into office July 2001 with a democratic reform agenda.

In comparative terms for Latin America, Peruvian crime rates are relatively low, but recent years have witnessed rising concern with public security issues. Public perceptions of insecurity are exacerbated by the weakness of the police and judicial system, and consequent low indicators of public confidence in the police.

In February 2003 – in the context of an institutional reform of the Peruvian National Police – Congress passed Law No. 27933 creating a National Citizen Security System (Sistema Nacional de Seguridad Ciudadana or SINASEC). Although other Latin American countries have greater experience of crime prevention than Peru, this is the only national, legislatively mandated crime prevention system in the region.

The system is mandated to formulate, promote and coordinate national crime prevention policy. It is multi-sectoral, led by the Minister of the Interior, and includes representation of the primary social agencies in the country. The core of the system lies in the Local or District Citizen Security Committees (CODISECs) which are in the process of being created at the municipal level throughout Peru. Reflecting the multi-sectoral structure at the national level, the district committees are presided by the mayor of the locality, and include the police, judicial. health, education sectors and organized civil society. The CODISECs are mandated to develop a local security diagnostic, develop and implement a local crime prevention plan, and to evaluate the process, including evaluating official and police performance.

The Justice Initiative / ICL projct works in six pilot sites (shown on the map eaelier), all of which are in low income areas. In every community, the initial surveys found that crime was identified as the primary problem in the neighborhood. One issue you will note here is the extremely low ratio of police to population. I will briefly describe the main project activities.

Extensive training and capacity building has been a major focus of the project. Training has focused on building awareness of human rights, law and criminal procedure, and of the new system and basic aspects of crime prevention approaches. Training has targeted all of the members of the CODISECs, with a strong emphasis on the community. Basic manuals, radio and TV spots have supported these activities. Ongoing activities focus on incorporating crime prevention plans into local integrated development plans and the participative budgeting process that is nationally mandated in Peru's decentralization law.

Additional aspects include:

- Coordination with police, including initiatives to improve communications and police response.
- Community organization in *Juntas de Vecinos* – neighbourhood watch structures undertake joint patrols with police in several sites, including successful targeting drug houses.
- Youth crime prevention with school patrols, education and recreational initiatives – including building sports fields, alcohol-free rock concerts and public festivals, kids bicycle parades and poster competitions.
- Recuperation of public space, some street lighting
- Public health campaigns, focuses include alcohol consumption, domestic violence, and gangs
- Risk factor focus closing unlicensed bars.

As a pilot initiative, it is key to develop strong data on impacts in order to provide a persuasive demonstration effect. The project has conducted two sets of local surveys, at the start to develop base-line data, repeated in March of this year to evaluate impacts. The slide shows the factors examined in the district of Chilca. (I have brought separately results from two additional pilot districts.)

The surveys find that crime is still viewed as the primary problem in Chilca – with a slight increase in concern from 73.3% to 79.1% , however gangs are viewed as less of a problem – from 56.6% to 42.7%.

There is an improvement in sense of safety in the area, with those feeling more or less safe increasing from 35.5% to 49.2% , although those feeling somewhat insecure also increases from 31.1% to 35.7% the percentage of those feeling very insecure goes down significantly from 27.1% to 8.1%.

This finding is reflected even more strongly in the perception of crime rates, with those saying that crime has increased locally going down from 63.6% to 30.2 percent, and 33.4% saying that crime has gone down to only 13.5% saying that it has increased.

What is most striking in the survey findings is a concrete impact on victimization: incidents of street robbery have gone down from a victimization rate of 37.6% to 25.3% while house burglaries have reduced but not to statistical significance: from 21.3% to 19.5%. (The margin of error on the survey is 4.8% on a sample size of 431 interviews.)

It is worth noting that crime reporting rates have also increased, from 4.7% to 14.8% for street robberies, and from 13.5% to 19.5% for house burglaries.

We see less change in confidence in public authorities, with some increase in confidence in the police, but very little change for the Mayor. I have no slide here, but in terms of the specific prevention activities that the community is aware of, the neighbourhood watches stand out by far. These findings will all be presented in greater detail and for all of the pilot sites in a project report to be published in September of this year.

The successes that I would note are:

A high degree of community mobilization and capacity building – with large numbers of neighbourhood watch groups created in each area

Some improvements in inter-agency coordination and action

An emerging new discourse about crime and preventive versus repressive policies

Strong interest in the project from mayors across Peru

Reductions in victimization

Improved perceptions of safety

Slight improvements in confidence in institutions

Some challenges:

<u>Identifying causality</u>: It is difficult to ascertain direct causality between project activities or different elements of project activities and the results obtained. In the final report of the project we plan to

cross-reference the result of the local self-evaluation processes with the survey results to see what causal links may be revealed.
Weak national political support: Six Ministers of the Interior in five years has resulted in a lack of political backing and resources for the system.
Weak police support: Police engagement depends on the individual commander locally rather than a national.
Lack of resources: the system creates an unfunded mandate, and Mayors have difficulty finding even modest resources for local projects. The work of the local coordinators paid for by our project funds must be taken up by municipality personnel if progress is to be sustained.
Institutional discontinuities: particularly in the police, personnel turnover means reinitiating contacts and training with each change.
Political turn-over: National elections in April 2006 and local elections later the same year will change the political terrain for crime prevention. We hope that the incoming government will see the importance of this agenda and that we will be able to bring the experience of this project to new Ministry of the Interior authorities and see a new and dynamic leadership at CONASEC take the system forward.
I will now pass the floor to my colleague from Peru, Hugo Aedo, Mayor of San Juan Bautista, Ayacucho, who will describe his experience of leading a CODISEC. I am delighted that he could be here with me and wish to thank the United Nations and the organizers for providing the opportunity for us both to present this work.

Workshop 3

La prévention de la criminalité en Belgique : les contrats de sécurité et de prevention

Philip Willekens
And
Luc Devroe
Ministère de l'Intérieur, Belgium

INTRODUCTION
Puisque l'objectif de cet atelier est d'avant tout d'encourager l'échange d'informations sur les meilleures pratiques en matière de programmes de prévention du crime, il ne nous paraît pas primordial de retracer de façon exhaustive l'historique de la politique contractuelle en Belgique dans ce cadre ni de s'étendre plus avant sur les différents mécanismes budgétaires et administratifs liés aux contrats de sécurité et de prévention.

Nous nous limiterons donc volontairement à dresser de façon schématique le cadre général dans lequel s'inscrivent ces contrats et de tracer de façon succincte leurs lignes directrices.

Il nous apparaît en effet plus enrichissant et plus vivant de parler de nos pratiques respectives et de susciter la réflexion à partir des éléments déterminants de la mise en place de projets, des obstacles rencontrés et de la façon dont ceux-ci peuvent être contournés ou surmontés.

Notre exposé se découpera de la façon suivante :
- Cadre général des contrats de sécurité et de prévention
- Exemples de pratiques
- Conditions optimales à la mise en place de projets

I) LES CONTRATS DE SÉCURITÉ ET DE PRÉVENTION

Comment sont nés les premiers contrats ?
Le domaine de la prévention est en mouvement depuis près d'un quart de siècle où les instances internationales (Nations Unies, Conseil de l'Europe …) ont porté un intérêt particulier aux causes de la criminalité et à la nécessité de développer des stratégies en vue de combattre les facteurs économiques et sociaux influençant le comportement criminel.

Beaucoup de Conférences et Congrès internationaux se sont ainsi succédés et se sont positionnés en faveur d'une politique de prévention du crime dont les priorités ont été orientées vers la coopération internationale, l'approche communautaire, et le développement d'une approche intégrée et décentralisée des problèmes liés à l'insécurité.

L'année 1991 et les évènements qui lui sont liés vont encore marquer un réel tournant. Ainsi, l'impact des incidents entre jeunes d'origine étrangère et forces de l'ordre dans une agglomération bruxelloise et les élections du 24 novembre 1991, marquées par le recul des partis traditionnels et la montée des partis d'extrême droite, ont réellement accéléré la réflexion sur les questions de sécurité et accentué la politique de prévention en Belgique.
C'est en effet à la suite de ces événements que le Gouvernement s'est engagé le 9 mars 1992 à développer une politique contractuelle associant l'État et les Communes, soit à développer les

premiers contrats de sécurité. Cet accord gouvernemental a prévu, en outre, la constitution d'une structure permanente détenant des compétences en matière de prévention.

Le Secrétariat Permanent à la Politique de Prévention (SPP), département auprès du Ministère de l'Intérieur en Belgique, a ainsi été créé.
Les missions de ce service sont les suivantes:

1) assurer le secrétariat du Conseil supérieur de Prévention de la Criminalité;
2) faire une analyse scientifique de la criminalité;
3) installer et exploiter la documentation en la matière;
4) organiser la formation en matière de prévention;
5) coordonner le soutien au niveau local.

La politique que le Service public fédéral Intérieur entend mener depuis 1992 se caractérise donc par une élaboration au niveau local d'une approche intégrée, notamment en associant les autres acteurs participant à la prévention, c'est-à-dire les Autorités locales, les acteurs du monde associatif, les citoyens et les différents partenaires régionaux et communautaires.

Quels sont les objectifs d'un contrat de sécurité et de prévention?
Les contrats conclus entre l'Etat représenté par le Ministre de l'Intérieur et la ville/commune se doivent de contribuer à la réalisation des priorités du Gouvernement fédéral en matière de politique de sécurité et de prévention.

Les mesures préventives prises dans le cadre du Contrat de sécurité et de prévention visent à renforcer une impulsion à la politique locale de sécurité.

Elles sont inspirées des principes suivants:

1. rencontrer des besoins sur le terrain et apporter une réponse spécifique à des problèmes rencontrés dans la commune ;
2. tenir compte de la préoccupation du citoyen par rapport à la criminalité ;
3. lutter contre le sentiment d'insécurité ;
4. participer à la lutte contre les phénomènes dont la maîtrise constitue un objectif prioritaire inscrit dans **la Déclaration gouvernementale**, à savoir :
    - les délits contre les biens
    - les nuisances sociales
    - la lutte contre la toxicomanie
    - la sécurité routière
5. s'inscrire dans une politique de <u>sécurité intégrée et intégrale</u> ;
   Le développement d'une telle politique au niveau local est primordial car elle constitue la base de la politique de tous les autres partenaires de la chaîne tant pénale que administrative.
6. renforcer le tissu social dans les communes ;

Les mesures prises dans le cadre du Contrat de sécurité et de prévention et leur exécution doivent être intégrées dans la politique globale de la commune en matière de sécurité.

La commune veillera à assurer la cohérence entre la politique locale de sécurité et de prévention et les initiatives prises au niveau de la police.

Les contrats en chiffres ?
La Belgique compte sur son territoire 589 communes parmi lesquelles 102 bénéficient d'un contrat de sécurité et de prévention.

Sur ces 102 communes, 29 d'entre elles s'attèlent exclusivement à développer des projets afin de lutter contre les nuisances sociales liées au phénomène de la toxixomanie.
Le budget global alloué dans le cadre des contrats de sécurité et de prévention s'élève à plus ou 33 millions d'euros. Ce budget est donc alloué au développement d'initiatives ayant pour objectifs

généraux de répondre aux besoins locaux en matière de sécurité, et de lutter contre le sentiment d'insécurité.

Il est à noter que d'autres partenaires participent eux aussi à la subsidiation de projets liés à la prévention de la criminalité.

Quelles sont les conditions d'octroi ?
Les communes bénéficiaires ont été sélectionnée sur base des critères (non cumulatifs) suivants:
1° avoir une population qui excède 60 000 habitants ;
2° appartenir aux communes qui ont le taux de criminalité par habitant le plus élevé[126]
3° appartenir aux communes qui ont le revenu moyen par habitant le plus faible et qui en outre ont une population qui excède 10 000 habitants et un taux de criminalité qui figure dans le premier quartile national.

Quel contenu ?
Bien qu'il existe une structure plus précise au sein des contrats, on peut dire pour plus de clarté que les différents projets développés s'inscrivent au sein de trois grandes catégories.

Renforcement de la politique communale de prévention
Les objectifs généraux de ce types d'initiatives est d'asseoir un dispositif chargé de coordonner, soutenir et accompagner les différentes mesures prises dans la commune en matière de prévention de la criminalité et d'informer la population des initiatives développées dans ce cadre.

Prévention sociale
L'objectif général est ici l'insertion sociale d'un public fragilisé, marginalisé ou en voie de l'être, et ce en vue d'éviter la spirale de la délinquance par une approche intégrée du phénomène.
On y retrouve par exemple le travail éducatif réalisé au sein de quartiers problématiques de certaines communes ou encore l'accueil d'urgence des toxicomanes.

Prévention situationnelle
La finalité des projets développés dans ce cadre est la prévention des incivilités et des délits contre les biens par une approche de type fonctionnelle.
Sont ici concernés tous les dispositifs techno-préventifs comme la sécurisation de certaines professions à risques ou l'approche de phénomènes de criminalité spécifique la lutte contre les différents phénomènes de vols.

II) EXEMPLES DE PRATIQUE

Il nous semblait important de mettre en exergue deux types de projets assez différents dans leur approche d'une situation problématique puisque le premier se revendiquera plutôt d'un courant situationnel alors que le suivant s'inscrira dans une philosophie plus sociale.

La Technoprévention

Le cambriolage est, depuis plusieurs années déjà, une des formes de criminalité les plus importantes en Belgique. La lutte contre ce phénomène est dès lors une priorité majeure du Gouvernement et du Ministre de l'Intérieur.
Pour faire face à ce phénomène, le Ministre de l'Intérieur a lancé un plan d'action fédéral de technoprévention prévoyant notamment l'embauche de conseillers en technoprévention (CTP).

BUTS

126 Taux de criminalité : uniquement chiffres relatifs aux vols de voitures, aux autres vols (à l'exception des vols de vélos), au vandalisme, aux coups et blessures extrafamiliaux, issus des statistiques criminelles policières pour la période allant de la quatrième année à l'avant-dernière année qui précède celle de l'octroi de la subvention).

- Prévention du cambriolage par une augmentation du niveau de sécurisation des immeubles
- Diminuer le sentiment d'insécurité et d'impuissance du citoyen
- Responsabiliser le citoyen qui a aussi un rôle à jouer vis-à-vis de sa propre sécurité

DESCRIPTION

Le cambriolage est un délit partiellement généré par l'occasion. Il est possible de faire face à cet aspect du phénomène en encourageant les victimes potentielles de cambriolages à prendre des mesures préventives. Dans de nombreux cas, les cambriolages peuvent être évités. De nombreuses habitations sont en effet peu ou pas suffisamment sécurisées contre le cambriolage.
Le CTP prodigue sur le terrain des conseils adaptés aux spécificités des immeubles qu'il s'agisse des d'habitations, de locaux professionnels, ou de bâtiments publics et semi-publics.
Il se rend gratuitement sur place et étudie l'immeuble, y analyse les faiblesses spécifiques et propose des solutions. Il donne avant tout des conseils organisationnels, techniques ou architecturaux qui sont à la portée de tout un chacun.

Ces Conseillers reçoivent une formation spécifique. Ils font partie soit du personnel du corps de la police soit du personnel de la ville ou de la commune.

RÉSULTATS

Actuellement, près de 900 Conseillers en technoprévention sont reconnus par le Ministre de l'Intérieur dans l'exercice de leur fonction. Ils offrent un service visible, positif et populaire. De plus, les statistiques montrent un net recul dans le phénomène du cambriolage. Par ailleurs, les conseils en technoprévention ont également un impact sur le sentiment subjectif et objectif d'insécurité.

La prévention des incivilités

Nous parlerons ici d'une forme particulière d'incivilité à savoir la dégradation volontaire d'un environnement : actes de vandalisme, tags,…
Un quartier particulier de la Ville de Bruxelles porte les stigmates des quartiers défavorisés, de l'exclusion sociale ce qui engendre vandalisme et délinquance .

BUTS

- Améliorer l'image du quartier, le cadre de vie et la qualité de vie
- Améliorer la citoyenneté
- Diminuer le sentiment d'insécurité objectif et subjectif
- Augmenter la participation des habitants dans la réhabilitation de leur quartier

DESCRIPTION

Le centre de Bruxelles et les quartiers périphériques sont caractérisés par des problèmes urbanistiques certains (Habitat ancien délabré, terrains vagues, implantation massive de bureaux, envahissement par les voitures, espace piétons résiduel…).

Ainsi, l'urbanisation à outrance dont sont victimes bien de grandes villes européennes entraîne bien souvent un délabrement et la ghettoïsation des quartiers plus anciens. Cette situation entraîne une fracture au sein de la Ville et est génératrice de tensions et de phénomènes d'insécurité. L'idée est simple: soigner l'espace public en lançant un processus de participation et d'implication des habitants afin d'engendrer un respect de la part de la population locale, une augmentation de leur civisme et de diminuer le vandalisme. Le but est donc d'une part de réunir des artistes et des jeunes en difficulté autour d'un lieu, en leur faisant concevoir et réaliser ensemble un projet créatif.Le cadre de vie étant amélioré, les lieux redeviennent accessibles pour tous et ont dès lors plus de chances d'êtres respectés.

Parallèlement à cela, un volet pédagogique et de sensibilisation à la ville est mené avec les écoles, les associations de quartier mais aussi avec les habitants (enfants et adultes) du quartier.

RÉSULTATS
Le projet apporte sans conteste une amélioration de la convivialité dans le quartier, le projet est en effet devenu porteur d'image et d'animation.
Les activités proposées rassemblent des personnes d'origines, de milieux et de générations très différents, et renforce les liens de cohésion des habitants.

III) CONDITIONS OPTIMALES À LA MISE EN PLACE DE PROJETS

Une analyse préalable
On constate que de nombreux projets sont mis en place sans réelle analyse du phénomène qu'ils tendent à enrayer. Bien souvent un projet est lancé dans l'urgence afin de répondre au plus vite à une situation de crise.

Le contexte particulier dans lequel ont été lancés les premiers contrats en est une illustration. C'est pour ces raisons particulières que le Ministère de l'Intérieur accorde une attention particulière sur la nécessité des communes de développer un **Diagnostic Local de Sécurité.**

L'idée qu'une commune doive réaliser un DLS n'est pas récente et se trouve rappelée dans plusieurs documents issus d'organismes internationaux comme la Charte Urbaine Européenne du Conseil de l'Europe. Elle repose sur le principe selon lequel une politique locale de sécurité et de prévention doit s'appuyer sur un constat partagé préalablement entre les acteurs locaux.

L'enjeu principal assigné par les acteurs locaux au DLS est d'améliorer la compréhension des phénomènes d'insécurité et de préciser les perceptions et besoins des citoyens afin d'utiliser ces informations pour améliorer les réponses à y apporter. Il s'agit donc d'une étude globale des phénomènes, des ressources de la ville ou de la commune mais également de la population. Un guide en phase de finalisation afin que les communes disposent d'un outil adéquat. Il proposera aux acteurs impliqués dans la politique locale de sécurité et de prévention une méthode de base pour dresser un portrait de l'insécurité, mieux définir les attentes des habitants sur leur territoire et ainsi de faciliter une mise en œuvre des actions de sécurité,leur réorientation ainsi que leur évaluation future.

Une recherche de partenaires
Une politique locale de sécurité et de prévention doit s'appuyer sur un constat partagé préalablement entre les acteurs locaux. Il est en effet important de rassembler les données issues d'une majorité des acteurs impliqués à des degrés divers dans la lutte contre l'insécurité.

Il s'agit donc bien de rassembler les multiples constats locaux et de définir une vision commune des problématiques et d'y associer tous les partenaires impliqués dans ce cadre.

Un projet mesurable
En corollaire à l'analyse préalable du phénomène ciblé, le projet se doit d'être construit de façon rigoureuse en établissant très clairement les objectifs poursuivis, les moyens mis en œuvre pour y parvenir et les résultats à atteindre.
C'est pourquoi l'établissement d'indicateurs préalablement au lancement du projet est indispensable. Sans indicateurs le projet n'est tout simplement pas évaluable et ne permet donc pas ce mesurer dans quelle mesure il rencontre les objectifs poursuivis et si celui-ci doit être réorienté.

Une participation active

Les projets les plus efficaces sont ceux qui permettent aux citoyens de devenir « co-producteurs » de leur propre sécurité. Les projets construits avec l'aide active de la population sont en effet bien plus « solides ».

En corollaire de cette participation active du citoyen, et cela nous amène à notre conclusion, il est important de garder à l'esprit certains principes directeurs:

- Nous nous devons d'aborder tout phénomène criminel dans le contexte le plus large possible, sous tous leurs aspects.

  L'idée fondamentale étant de garder une attention permanente tant pour la prévention et la répression que pour le suivi des auteurs et des victimes.

- La collaboration de tous les acteurs concernés est indispensable pour parvenir à une solution commune de la problématique.

  Toutes les initiatives, projets et instruments doivent être les plus harmonisés possible et être coordonnés, comme faisant partie d'un grand projet.

  Ainsi, une coordination qualitative et quantitative des efforts de tous les acteurs dans chaque maillon de la chaîne pénale et de la chaîne administrative.

- La réponse à un comportement criminel doit être rapide et efficace au risque de conforter chez certain délinquant un profond sentiment d'impunité

Ce n'est qu'à ce prix que les actions mises en place face aux différents phénomènes criminels auront du sens pour les différents individus concernés et que l'image d'une société responsable prendra forme.

Worshop 3

Local Innovations for Crime Prevention: "The case of Safer Cities: Dar es Salaam"

Anna W. Mtani

1. BACKGROUND/INTRODUCTION

Tanzania is located in East Africa along the shores of the Indian Ocean. It covers approximately 1million squire kilometres with a population of 34,569,232 (National Census 2002) of which at least 10 million people are urban inhabitants. The current urban growth rate is 7.0% per annum and a gross domestic product of US $230 per capital.

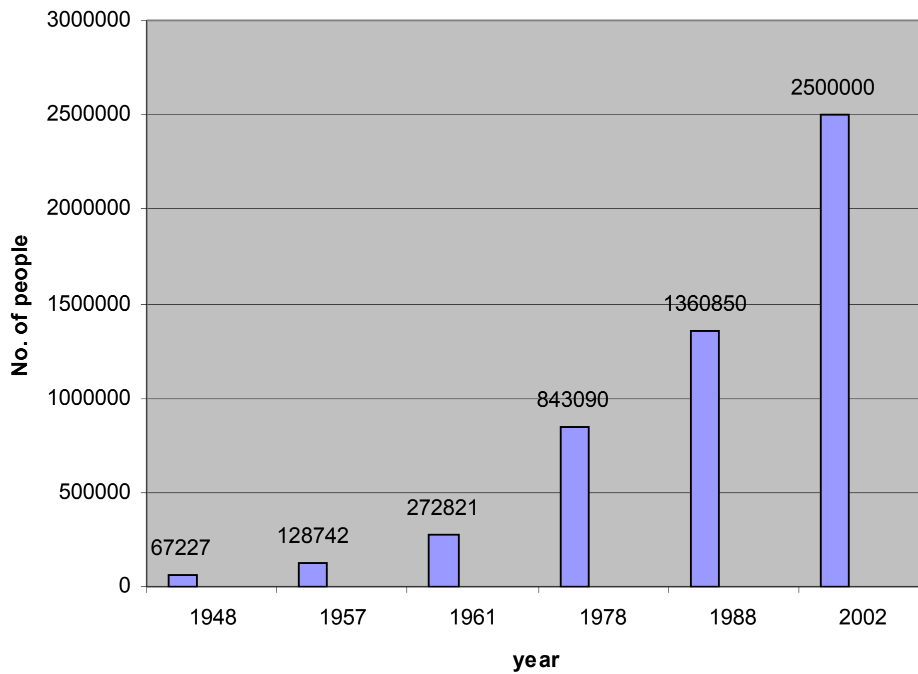
Tanzania like many other African countries has experienced in the last two decades more than half of her urban population settling in slums and in spontaneous (informal) settlements characterised by little or non-accessibility to clean water, lack sanitation and accessibility (roads), lack drainage systems and social services (schools, health, etc), faced with uncollected solid waste and sewerage, inadequate housing and poor environmental health. It is estimated that about 40 -70 per cent of urban dwellers live in the informal or spontaneous settlements.

2. THE IMPACT OF URBANISATION

Dar es Salaam is the major commercial centre of Tanzania and one of fast growing cities in Sub-Sahara Africa covering an area of 1800 squire kilometres and a population of 2.5 million and a growth rate of 4.3 % (2002 National Census). Apart from the population growth, the city is also expanding laterally at a rate of about 7% per annum, which does not commensurate with expansion of basic service provision. Another emerging challenge as a result of rapid urbanisation is the increase of urban poverty, social exclusion and rise of crime among others. The inability of urban centres to provide ready-made employment opportunities in the public or private sector has not changed the view that urban centres are still engines of development.

Figure 1: Map of Tanzania

National setting: Map of Tanzania



Dar es Salaam (city expansion 1947 – 2001)

3 ISSUES OF URBAN SAFETY AND INSECURITY

Insecurity is a serious threat to sustainable human development both in urban and rural settlements. It affects environmental, economical, social and cultural development. Insecurity tears

the social fabric of any society, it threatens the foundation of democracy and erodes the ability of the poor to live and engage in productive activities. In 1992 the city of Dar es salaam held its first city consultation to review problems of poor service delivery and revenue collection which had caused a total collapse of the city management systems. Participants of the 5 days consultation workshop prioritised nine issues which needed immediate attention through a partnership approach supported by the Sustainable Cities Programme of UN-Habitat. Crime and insecurity was not identified as one of the nine priority issues to be addressed immediately due to the existing efforts by the government that time to strengthen community initiatives in crime prevention thus keeping crimes incidents low. However due to ongoing socio-economic, cultural and political dynamics around the world and Tanzania in particular steered with decrease of job opportunities, globalisation, urbanisation of poverty, modernisation of criminal technology, Dar es Salaam started to observe a changing scenario in crime incidents such as organised crimes, age of offenders getting younger and rise of white colour crimes. The most heartening crimes include Burglary, theft, armed robbery, illegal drugs, etc

4. THE ROLE OF LOCAL AUTHORITIES

Security is one of the key obligations and therefore functions of Local Authorities in Tanzania in accordance to the United Republic of Tanzania Constitution (1977)[127] and the Local Government Act (1982)[128]. While at national level the government complements community initiatives with Police and establishment of Militia Act[129], communities were able to enhance safety and improve security through local crime prevention innovations such as *Sungusungu*[130] groups (night watch groups).

Like other urban centres, Safety and security at city level prior to 1998 was mainly seen under the Regional and District Defence and Security Committee where the City Director is only invited to represents the Dar es Salaam City Council. This arrangement did not provide a direct link between the communities and the city management in terms of insecurity feedback, community needs such as capacity building and resource allocation to strengthen community strategies on crime prevention. On the other side the legal section at city level was mainly and still is engaged in repressive measures, preventive approach were seldom developed and practiced.

5. ESTABLISHMENT OF SAFER CITIES:DAR ES SALAAM

Following the launching of Safer Cities Approach by UN-Habitat immediately after UN-Habitat II which was held in Istanbul (1996), The Dar es Salaam City Commission[131] (DCC) requested technical assistance from UN-Habitat and the International Centre for the Prevention Crime (ICPC) to establish Safer Cities approach in 1997 and officially launching Safer Cities: Dar es Salaam in 1998.

The main goal of establishing the approach was to build the capacity of DCC and the local authorities to involve other stakeholders and community members to implement crime prevention strategies in a partnership manner thus bridging the gap between the city residents and the city management through decentralisation. A rigorous study carried out during this time (1997) indicated that more than 25% of all reported crimes in urban centres in the country were reported in Dar es Salaam. This level called for concerted efforts between different parties to initiate alternative approach to address the increasing tends.

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127 URT 1977 article 146 (1) the purpose of having local government authorities is to transfer authority to the people. Article 146(2) (b) Functions of Local Government Authority shall have the following functions: to ensure the enforcement of law and public safety of the people…

128 Local Government act (1982) Sect. 54(1) (a)"It shall be the responsibility of each urban authority as a local government…. maintain and facilitate the maintenance of peace, order and good governance within its area of jurisdiction". Section 54 (2) (a) " For the purpose of better execution of its functions… local government authority shall take such measures as in its opinion are necessary desirable, conducive or expedite (a) for suppression of crime, maintenance of peace and good order and the protection of public and private property lawfully acquired…"

129 Militia laws (miscellaneous Amendments) act 1989 (ActNo.9/1989) section 2... organized groups of the people of URT operating with authority of and the aegis of the government e.g. Sungusungu, Wasalama

130 Laterally Sungusungu are black ants which bite fiercely when attacked by their enemies. Otherwise these are community security groups which were established to fight crime especially cattle rustlers in central Tanzania but due to the success gained by these groups they gained popularity and spread to urban centers, gained political support and protection by law (under the militia act)

131 The Dar es Salaam City Commission was established in 1996 after the Government disbanded the Dar es Salaam City Council following a series of mis-management of city activities thus replacing it with a team of professional commissioners lead by a Chairman. The commission had very specific terms of reference to keep the house in order among others to prepare the city decentralization by restructuring it into four authorities (3 municipalities and the city council)

Launching of Safer Cities 1998

The launching workshop organized by the Dar es Salaam City Commission involved key role players and stakeholders including Government Ministries, Training Institutions, and Civil Society, Community members, the Private Sector, UN and International organizations. The participants discussed the issues of insecurity and agreed on the main strategies to be adopted to address the issues of insecurity and delinquency especially among the vulnerable groups such as women and youth. Each stakeholder's roles and commitments was determined while the DCC was obliged to take the leading role.

5.1 The Approach

Safer cities adopted a bottom up approach already established in the city through the Sustainable Cities Programme (EPM) to bring all stakeholders together to participate in the development of crime prevention strategies. An inventory of all stakeholders was prepared and was used to bring them together through briefing sessions, sensitisation workshops and seminars, the media and documentation.

The linkage between the primary stakeholders (community leaders and popular sector) and secondary stakeholders (Government Ministries and Institutions, Higher Learning Institutions) was important to facilitate knowledge sharing, resources mobilisation and agree on roles and commitments by each part to implement adopted strategies to address the problem of increasing crime rates in the city. In this way a partnership evolved between the stakeholders and the city management coordinated by Safer Cities towards crime prevention initiatives.

5.2 The Objectives of Safer Cities: Dar es Salaam

The main objectives of establishing the approach at city level were:

- To reduce the number of victims of crime, assisting the victimised and prevent repeat victimisation in partnership with other stakeholders and communities
- To support and upgrade prevention policing in a way of community policing.
- To develop a culture of respect and adherence to the law, while addressing the causes of crime, violence, delinquencies and insecurity in improving and/or changing socio-economic, cultural and physical environments conducive for them

5.3 Strategies Adopted

5.3.1 Sensitisation seminars and workshops:

This strategy enabled participating stakeholders to come up with concrete recommendations on how crime prevention should be implemented and identified roles and responsibilities of each party including possible commitments. Some of the recommendations made by the stakeholders included the need for intensive and continuous awareness creation among the community

members and city residents to play their part and work with the government and other stakeholders to effectively develop and implement crime prevention initiatives.

Box 1: Sensitisation process to create network and establish stakeholder inventory:

(i) Sensitisation workshops at Municipality level

Phase one of the sensitization seminars and briefing sessions were held to all local leaders involving all sub-ward chairpersons of the then three zones of Dar es Salaam i.e. Temeke, Ilala and Kinondoni. The Ministry of Home Affairs (Crime Prevention department) and High Learning Institutions participated in this grass root level awareness creation and sensitization seminars for the first time in history of public awareness on crime prevention. Phase two of the process focused the secondary stakeholders through separate briefing sessions and in-depth discussions. The participants were also able to provide rigorous information and rate the most heartening crimes in their localities in terms of robbery, drug abuse, theft, armed robbery, delinquency, etc which were then mapped to provide a scenario of crime levels in the city for reference. The Dar es Salaam City Council was re-instated in the year 2000 after the restructuring of the city into four autonomous authorities with decentralized city functions into 3 municipalities of Temeke, Ilala and Kinondoni and the Dar es Salaam City Council. This time a repeated sensitization and awareness creation

(ii) Community briefing meetings

For the first time Local Authorities at Municipal level provided forums for local communities to discuss and deliberate on how to address insecurity problems/issues in their local authorities. The workshops brought together the heads of departments, sub-ward leaders and community members (grass root) and other partners.

The police also found a forum to sit with grass root communities to know people's perception on police activities in crime prevention and exchanged discussion on roles and responsibilities of Police, Communities and Municipalities.

Community members had the opportunity to seek clarification on police procedures thus strengthening the working relationship between the police and local communities a situation envisaged for community policing.

Brief meetings at community levels to develop local initiatives are held with technical support from municipal coordinators. At the level of sub-ward (Mtaa), community members are the masters of their environment and know better solutions to address their problems. Such visits build good relationship between municipality and communities.

Enforcement of Laws and By-Laws: City Auxiliary Police and Ward Tribunals

(i) The Auxiliary Police

In order to build a culture of adherence to laws and by-laws among city residents there was need to complement government efforts by establishing a City Auxiliary Police to link with communities through the *Sungusungu* groups to implement local initiatives in crime prevention. As a pilot project about 100 officers were recruited, trained at the Moshi Police Training College and deployed in the four authorities in 2001 with the main objective to:

- To enhance public safety and security through visible policing and patrolling.
- Enforce adherence to laws and by-laws including public education on city and municipal by-laws.
- Complement community efforts at local level by providing guidance and support to *Sungusungu* through community policing.

Box 2: The Dar es Salaam Auxiliary Police

After receiving the formal training at the Moshi Police College, the Auxiliary Police (AP) went through in-house induction training before they were deployed to their working positions in the municipalities and city council. The induction training involved the understanding of the structure and functions of local authorities (especially Dar es Salaam), Local government code of conduct, Community Policing, Human Rights and Good governance. The AP were then deployed to their respective working positions in the four authorities where they are currently engaged in community policing at ward level and enforcing laws and by-laws including public education on municipal by-laws. The APs are also supporting the community security groups *"Sungusungu*" and provide support during ward tribunal sessions. However the due to their limited number (100) for a city of about 2.5 million people, they are almost negligible and overwhelmed by responsibilities. The need to increase the number is therefore inevitable. (Evaluation Report 2003).

On the launching day of City Auxiliary Police, all stakeholders were invited to witness this big event, the first among all urban authorities in Tanzania. The demand for a larger unit to meet community needs in terms of backstopping has been identified by both the municipalities and communities. While efforts to train more officers by all the four authorities in Dar es Salaam are underway, the Ministry responsible for Regional

(ii) Justice Delivery at grass root level; the ward Tribunals:

The government circular to all local authorities to re-establish ward tribunals where they had cessed to operate due to a number of reasons (including lack of capacity, resources and follow up) was an important challenge to the whole approach of crime prevention which required coalition building and partnerships with communities in crime prevention. Where justice is denied or delayed, peace cannot prevail and insecurity may rule. Working with the municipal legal departments, Safer Cities facilitated the capacity building by training the elected members of the ward tribunals on their roles and responsibilities to enable them perform their duties smoothly in accordance to the laws. Although the exercise was being done in phases, to-date all 73 wards of the city have established Ward tribunals.

Box 3 Ward tribunals:

Ward tribunal are community based judicial bodies which are established and functions under the Ward Tribunal act 1985 (No. 7/1985) and amended act 12/1990 to complement the formal justice system by settling minor offences and disputes. Members of the ward tribunal are elected from the community by trust among community members. The numbers varies between 5-8 members with a quorum of one half and also elect the chairperson of the tribunal. A tribunal secretary is appointed by the municipality to take notes and keep records of tribunal proceedings. Ward tribunals enjoy the advantages of (i) to secure peace and harmony by mediating and endeavoring to obtain amicable settlements of disputes before exercising compulsive jurisdiction provided by the act thus reducing number of inmates; (ii) Ward tribunals contribute to bring justice/legal system of adjudicating justice closer to the people, through officials of their choice in ward committees with endorsement of the full councils; (iii) Ward tribunals are more efficient and less costly in terms of time and resources serving the communities from the delayed bureaucratic, expensive legal procedures and technicalities through lawyers and police investigations etc. ("justice delayed justice denied"); (iv) Ward tribunals contribute into enhancement of security and build community belonging and good governance.

5.3.3 Safety Audits for women:

Women are masters of their living environment. When they are involved they are capable of bringing about change that may foster their development and the community at large. In safety, it is always said, "*A safer place for women is safe for everybody"*. Safer Cities works to include the vulnerable groups, such as women and youths in the society to enhance safety as a governance issue. As far as women are concerned, Safer Cities works to bring women groups together to walk in their communities, identify issues that cause insecurity to their daily life, discuss and agree on how best to address the problems through safety audits for women. Women involve other partners including men, local leadership and municipal management during the audits. In a way, safety audits may be entry point for environmental enhancement through improved urban designs and upgrading strategies to improve urban safety.

Box 4: Involving women in crime prevention strategies through "Safety audit for women"

Safety Audit for Women in Kurasini (Temeke)

Implementing Safety Audit for Women Results: Environment protection in Kurasini (Temeke)

An example of safety audits carried out in Dar es Salaam may be very different from those conducted and implemented in Montreal Canada due to socio-economic and geographical differences between the two cities. However, one thing in common is **the fear of victimization amongst women** and the need to address that fact. Problems may differ in nature and magnitude. Also solutions and level of implementation may differ but the good news is that a common enemy **fear of crime** has brought the women together. In Dar es Salaam, three audits have been conducted in Manzese, Kurasini and Mchikichini. In Manzese, a group of women in Mnazi Mmoja identified many aspects ranging from environmental design, socio-economical and cultural that creates state/feelings of fear in the women's daily life. Fear of crime is as bad as crime itself since its impact is the same. On the environmental design they observed the unplanned nature of their settlement coupled with narrow and un-lightened narrow streets, lack of drainage channel and lack of street

Other issues were housing congestion with no space for air circulation, some of them blocking the few footpaths and streets blocking emergency service by police, fire and ambulance. On Socio-economic aspects, they sighted the haphazard merchandise and mixed business enterprises going on in the area including numerous local brew and illicit beer pubs which employs most women and young girls, 24 hrs video show kiosks, guest houses, open food markets etc. All these features provide fertile grounds for crimes to thrive. On cultural aspects they see a lot of unauthorized video show kiosks in the areas which attract school going children making them deviate from school. After discussions, the women made the following recommendations:
Environmental design: need for municipality to collaborate with the community to upgrade the settlement. They vowed to launch campaign on lighting the surroundings for safety through “a bulb each door”. They acted immediately.
Economical aspects (income generation and poverty reduction): They suggested for descent business activities for income generation among women instead of selling local brews which they have to sell at night and risk victimization.
On cultural aspects: They recommend for urgent ban of the video show kiosks and regulated business hours especially local brew bars and emphasis to improve *Sungusungu* groups in the area.
Implementation: The women most of them involved in local brew and illicit beer for a living decided to change and proposed a different income generation activity free from crime risk and more descent. They changed to selling of maize cereals and maize floor. With support from Safer Cities this project is scaling up now to food vending sold during lunchtime, which is much safer for the women. The group has drawn the interest of other women to withdraw from risks and illegal employment and three more groups have been established with support from Safer Cities.

5.3.4 Income generation projects:

Often time poverty has been linked with crime. Not because poor people are violent but because they have to survive by all means even if it is against the law. Situation of idleness drives young people to commit crimes unknowingly as they sit in jobless corners “*vijiweni*” (idle mind is devil’s workshop). On the other hand crime affects the poor most because they have no means to protect themselves against the perpetrators of criminal activities neither do they know how the judiciary systems works or meet the costs for employing security systems. In most cases they are least educated, live in poorest suburbs of the city and get the worst and least paid jobs. **They lead an angry life, yet they won’t sleep stomach empty.** Youth and women are the majority of this group and the most vulnerable to crimes. Safer Cities Project works with vulnerable groups to address the underlying causes of crime through sensitisation and awareness sessions.

Box 5: Income generation, Sungusungu and job creation for crime prevention.

A youth security group in Ilala "Yegeyege Sungusungu group" is engaged in crime prevention with support from the community members through house to house contribution of token fee of Ts.1,500 (US $1.50) per month. The amount collected is shared among the security group every month as a source of income. In order to sustain the group especially when community contribution is low due prevalence of security, the group decided to initiate an additional activity for income generation by collecting solid waste at house hold level for fee.

After discussions with the community through local leadership, the fees for security was increased from Ts.1,500 to Ts.2,000 (US $2.00) per month per house to cover security and solid waste collection. The group with 33 youths in a community of 1,300 houses entered into agreement with main contractor to get a share of Tsh. 500 (US $0.50) per house to remove the waste from the collection point to the dumpsite. The remaining Ts.1,500 is shared among the youths each getting about Ts.60,000 per month. This amount is over and above a government minimum salary which is about Ts.50,000.

The group has further agreed to deposit into their bank account Ts.10,000 from each member amounting to Ts.330,000 (US $330) each per month. This fund is the social security fund for the group.

The group needs the start-up capital to buy working equipment both for security and waste collection. With support from Safer Cities (capital and skills) the group is working in their own community (jobs created) to enhance safety, clean environment, and demonstrate good governance through partnerships.

6. REPLICATION OF SAFER CITIES TO OTHER MUNICIPALITIES IN TANZANIA

Following the success stories by Safer Cities Dar es Salaam seven municipalities in Tanzania wrote to the City Director requesting for support to establish the approach in their municipalities to address increasing rates of crime in their areas. A city consultation involving Mayors and Municipal directors of City of Mwanza, municipalities of Arusha, Moshi, Tanga, Dodoma, Mbeya the town council of Bagamoyo and other stakeholders was held in 2004 to chart out the way forward. All Mayors of the respective cities endorsed the plan early this year (Feb.2005) and effort to mobilise initial resources to support the cities are underway in collaboration with UN-Habitat, ICPC and SIDA.

7. SUMMARY OF SUCCESS, CHALLENGES AND CONCLUSION:

Tanzania has taken a number of measures to strengthen sustainable development and governance even before the 1992 Earth Summit. The participatory approach under EPM found a fertile ground to bring together all stakeholders to play their roles thus influencing changes in a number of policies both at national and local government to improve governance within the communities including enhancing urban safety and security and poverty reduction. A culture of collaboration and partnership in planning and management of local initiatives has been built and shared through replication

Through Safer Cities initiative, it has become clear that when communities are involved and society groups are given the opportunity e.g. women and youth, they can make a change. Partnership approach is crucial to enhance security at community level as crime affects the livelihood of all community members. During the implementation period, women have proved to be masters of their living environment and have affordable solutions. Affordable and sustainable crime prevention strategies at community level are by definition, people oriented based on participatory decision-making and implementation and therefore a governance issue pre-requisite for sustainable development. Knowledge and skills have been built to support local initiatives for service provision

Devolution of powers and decentralisation of functions and finances been implemented by the government through the Local Government Reform Programmes has complemented the work of safer cities by empowering communities and stakeholders to participate in service delivery including security.

Challenges facing the initiative in Dar es Salaam include among others limited resources to support community initiatives and the national replication to other cities countrywide. Dar es Salaam cannot sustain the attained safety if the security of surrounding cities (or the hinterland) is not strengthened. The process takes time and energy to engage stakeholders and develop into action. The dynamics of urbanisation coupled with globalisation surpasses the capacity of local authorities in terms of resources i.e. expertise, technology and financial. It needs legitimacy and institutional support for commitment of communities, stakeholders and development partners to work together.

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Workshop 3

The Philippine Strategy and Best Practice for Crime Prevention: Community-Oriented Policing System

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INTRODUCTION

Just like many other developing countries and cities throughout the world, the Philippines lacks the resources and capacity to readily put into effect the international guidelines and agreements on crime prevention. However, this constraint did not prevent us from finding ways and means to effectively implement them in our country. It is for this reason that we have resolutely crafted and evolved appropriate strategies and best practices for crime prevention which are assimilated to our situation and historical experiences.

Having overthrown a well-entrenched dictatorship and restored democracy in our country through a bloodless people power revolution in 1986, we are fully cognizant of the insuperable force of people power as well as fully appreciate its great benefits to our country. Capitalizing on this historical experience, what we lack in resources and capacity is being addressed and usually more than made up for, through people power. Hence, the Philippine strategy and best practice for crime prevention that I will be presenting this morning is not only community-based, but people powered also; known as Community-Oriented Policing System, or COPS for short.

The outline and sequence of my presentation is as follows: COPS: Strategy, COPS: Best Practice, and Concluding Perspective.

COPS: STRATEGY

a) Opening Perspective

COPS is primarily a national police strategy for crime prevention which is based on and an implementation of a proposed holistic National Anti-Crime Strategy (NACS); which came about as an offshoot of the Philippine participation in the 1991 UN Ministerial Conference on Crime Prevention. The proposed NACS was serialized in the PNP-Journal in its 1992-1993 issues. The Philippine National Police officially adopted and started implementing COPS as a flagship program on August 15, 1994. It is significant to note that the holistic NACS was finally adopted in the National Crime Prevention Program which was approved by President Gloria Macapagal-Arroyo on February 2, 2004.

b) Basic Principles/Foundations

Aside from the NACS, the basic principles that serve as COPS foundations are the following:

- Interdependence of Peace and Development
- As aptly stated in the UN Milan Plan of Action in 1985: “The problem of crime demands a concerted response … to reduce opportunities for the commission of crimes and to address relevant socio-economic factors, such as poverty, inequality and unemployment”.
- Shared Responsibility for Policing

- As prescribed by Robert Peel: "The Police are the public and the public are the police; police officers are only members of the public who are paid to give full time attention to the duties which are incumbent on every citizen in the interest of the community welfare".
- Indispensability of People Power in Crime Fighting - "The greatest source of power with which to wage war against criminality, insurgency, terrorism and other threats to peace and order lies among the people."

c) Three Core Components

In consonance with the NACS, COPS is wielding a three-pronged strategy against crime; namely: Full Service Policing, Problem Solving and Community Partnership. These prongs serve as the three (3) Core Components of COPS which are actually interrelated and mutually reinforce each other.

1. Full Service Policing (FSP)

Under FSP, the police shall directly prevent and control crime by simultaneously undertaking five (5) anti-crime drives to eliminate, or at least minimize, the Motives (or desires/intents), the Instrumentalities (or capacities/abilities) and the Opportunities (or accesses) for the commission of crimes. These drives are the following:

i) *Crime Prevention* – This includes all measures and efforts being undertaken by the police, with the participation and support of the community, to eliminate, or minimize, the magnitudes of motives, instrumentalities and opportunities for the commission of crimes in the society. The following are some of the illustrative examples: initiating the amicable settlement of disputes among neighbors, minimizing drug addiction and drunkenness and the like shall reduce the motives; campaign against unlicensed firearms, regulation and checking of the carrying of licensed firearms and other deadly weapons outside residence, etc shall reduce the instrumentalities; crime prevention consciousness drive, including the observance of National Crime Prevention Week, dissemination of the modus operandis of crime groups, installation of light at night and clearing of crime proned areas, and many others shall reduce the opportunities. All these measures and efforts shall result in the prevention of many crimes.

ii) *Crime Suppression* – It is based on the cardinal principle that a crime shall only happen, if all the three (3) correlated ingredients meet and combine together at the same time and place. Hence, this drive encompasses all the measures and efforts being undertaken by the police, with the participation and support of the community, to suppress the motives and/or instrumentalities of the would-be criminals, as well as deny their accesses or opportunities to commit the crimes on the intended victims. Illustrative examples on the part of the police, include the conduct of mobile or foot patrols, fielding of secret marshals in passenger buses and jeepneys along crime-proned thoroughfares, setting up of mobile check points in crime-proned areas, and many more. On the part of the community, especially the likely victims, they shall institute security measures ranging from passive to active measures, including resistance or self-defense. A good example is exemplified by Kevin in the popular movie entitled "Home Alone".

iii) *Crime Intervention* – This consists of the measures and efforts of the police, with the participation and support of the community, to immediately detect and respond to "live" or transpiring crimes at their earliest/lowest stage, so as to minimize damage to life, limb and/or property and arrest the perpetrator/s at the crime scene on a "flagrante delicto", or red-handed basis. The effectiveness and success of this drive shall depend on the capability of the police to be immediately contacted by the public and to immediately respond to such calls, as well as the sense of citizenship duty in the community. This is exemplified by 911 in the US, and many others in developed countries. In the Philippines, we have 117 which is a joint project of the government and an NGO. Admittedly, we have a lot more to do and spend , before we could catch up and be at par with those in the developed countries. On the part of the community, especially the would-be victims, this is the time for activating and putting into effective use the self-defense measures that have been prepared for this eventuality. They should also know and be able to perform the doctrines of citizen's arrest, self-defense and defense of a stranger.

iv) *Crime Attrition* – It includes all measures and efforts of the police, with the participation and support of the community, to identify, secure warrant of arrest, ferret out and isolate

criminal elements, including the fugitives, from the rest of the society; so as to prevent them from further committing crimes and/or becoming victims of reprisals by their victims and their loved ones. It is in this drive where the police and the community shall interact and collaborate with the other pillars of the Criminal Justice System for the prosecution, conviction and rehabilitation of the criminal elements; so that they shall become fit and law-abiding citizens, once they are released to rejoin the society. On the part of the community, they should learn observation and description for crime watching and reporting to the police; preservation of the crime scene and handling of evidence; serving as eyes and ears of the police; helping in the protection of and support for the victims and their witnesses; and the like.

v) *Crime Deterrence* – It consists of the all-out measures and extra efforts of the police, with the participation and support of the community as well as all the other pillars of the Criminal Justice System, to convincingly prove to one and all on a continuing basis that "crime does not pay"; so as to sow fear on and deter the criminals and potential offenders, thereby forcing them to cease and desist from committing crimes. The effectiveness o this drive shall depend on the capability and efficiency of the entire Criminal Justice System. On the part of the police, this drive shall be mainly the after-effects of their consistently effective and efficient performances in the Crime Intervention and Crime Attrition Drives that shall lead to the sure and expeditious conviction of almost, if not, all guilty offenders. On the part of the community, the success and effectiveness of this drive shall directly depend on the willingness and determination of almost, if not, all victims as complainants and their witnesses to file and pursue appropriate charges in court up to conviction of almost, if not, all guilty offenders.

2. Problem Solving (PS)

Under the PS Component, the police shall identify or anticipate, study and address those problems that serve as root-causes, or breeding grounds of crime in the environment, with the participation and support of the community, including the cognizant national government agencies (NGAs), local government units (LGUs) and non-government organizations (NGOs). It shall constitute the Crime Pre-emption Campaign of the police through the initiation of development-oriented projects and activities that are addressing crime-causing or breeding problems in the community.

COPS shall prioritize and concentrate on problems that impact the most on crimes in, and based on the concerns and preferences of the community being served. The common problems being encountered in most of the communities include poverty, abuses and injustices, ignorance, lost family values/broken families, soft state problems such as corruption and non-enforcement of laws, fear or insecurity, drug addiction and drunkenness, and others. Correspondingly, problem solving efforts under COPS shall consist also of appropriate development-oriented projects and activities under the Economic/Livelihood Development, Moral/Spiritual Renewal, Education and Public Information, Crime Prevention Through Social Development (CPTSD), Good Governance, Crime Prevention Through Environmental Design (CPTED), Anti-Drug/Substance Abuse and other Programs embodied in the NACS.

This core component is complementary and supportive to Full Service Policing. The more problems are addressed and solved, or at least mitigated under PS, the lesser crimes and volume of work there shall be for FSP; and vice versa.

3. Community Partnership (CP)

The effectiveness and success of the police in implementing Full Service Policing and Problem Solving shall depend mainly on this component. Beset by the perennial lack of resources and capacity, the police could hardly cope up with the traditional, or mainly reactive way of policing; how much more with the inclusion of FSP plus PS? CP is the solution to the lack of resources and capacity of the police. Under this component, the police shall undertake anti-crime People Empowerment Campaign in the community, so as to motivationally enlighten, organize and mobilize as many of the citizenry as possible. The mobilized citizenry shall be tapped by the police, as its Force Multipliers, to increase its capacity in terms of volunteers; and/or Resource Multipliers, to increase its material and financial resources. In fact, the youth could be tapped as Junior Police and Youth Barangay Tanods to help the police in FSP.

Community Partnership is the linchpin component that will determine the success or failure of COPS in any community. This is due to the fact that Anti-Crime People Empowerment is the key to the unleashing and harnessing of people power; which shall tremendously boost the capacity and resources of the police to effectively undertake both FSP and PS. These shall be made possible, even without any increase in the budget of the police for additional personnel and material resources.

d) COPSified Police Unit Structure

For purposes of operationalizing COPS, the most appropriate police unit is the City Police Office or Station, including Municipal Police Stations in Metro-Manila. However, most of the City Police Offices or Stations have to be re-structured (and retrained) into what maybe termed as "COPSified Police Unit Structure"; so as to make them suited and capable of properly implementing COPS in their respective areas of responsibility.

Shown on the chart is the organizational structure of a typical or average COPSified Police Station. Only those related to COPS are highlighted; as follows:

1. Chief of Police (COP) – commands/controls the police station
2. Operations/117 Center – station facility for exercising command and control over its subordinate units and operational support groups. It doubles as the call/dispatch center for receiving and acting on all calls for police action or assistance from the public.
3. Operational Support Groups (OSGs) – the station has four (4) OSGs; namely:
    I. Mobile Patrol/Quick Response Group (MP/QRG)- its strength is at least one team equipped with at least one mobile car or patrol jeep, with mobile radio linked to the Operations Center/117 Center, and appropriate weaponry. It is capable of conducting Intervention Operations, Bomb/Explosive Disposal, Hostage Rescue/Negotiation, Close Quarter Battle and Mobile Patrol/Pursuit Operations, among others.
    II. Intelligence and Investigation Group (IIG) – its strength is at least five (Group Chief, two investigators and two intelligence personnel). It is equipped with basic investigative and intelligence kits/equipment, with at least one motorcycle with a handheld radio.
    III. Anti-Organized Crime/Special Operations Group (AOC/SOG) – its strength shall depend on the nature and number of organized crimes and Special Operations to be performed on a continuing basis. The most common are drugs, kidnap for ransom, carnapping, gunrunning, smuggling, cattle rustling, illegal fishing, illegal logging, illegal gambling, illegal recruitment, hijacking/bus-jeepney hold ups and bank robbery/hold up. There should be specialists/secret marshals, at least on the most prevalent and pernicious organized crime in the AOR. It shall be equipped with at least one motorcycle with one portable radio.
    IV. Traffic/Public Safety Group (T/PSG) – its strength shall depend on the volume of traffic, accidents, hazards and disasters in the locality. It shall be equipped with at least one motorcycle; or preferably one mobile car and one wrecker/tow truck.
4. Community Policing Units (CPUs) – the station/precinct has a total of eight CPUs. They are categorized/broken down into the following:
    a. Urban CPUs – there are two (2) urban CPUs, all located within the city/town proper. Their mini-AORs are small in land area, but thickly populated. Each urban CPU is equipped with at least two bicycles, a telephone, two handheld radios and a base radio at the CPU Center/Post linked to the Operations Center/117 Center and the Mobile Patrol/Quick Response Group. They are augmented by barangay tanods in conducting beat patrols. They are supported also by the Barangay Intelligence Networks (BINs).
    b. Rural CPUs – there are also six (6) Rural CPUs, all located outside the city/town proper. Their mini-AORs are big in land area, usually consisting of clusters of barangays; but are sparsely populated. Each Rural CPU is equipped with a motorcycle or a horse, a telephone if available, a handheld radio and a base radio at the CPU Center/Post netted to the Operations/117 Center and the Quick Response Group. They are augmented by Civilian Volunteer

Organizations (CVOs) in conducting barangay rondas or patrols. They are also supported by the Barangay Intelligence Networks (BINs).

e) Concept of Operations (Figure #5)

The COPSified Police Station shall undertake Full Service Policing, Problem Solving and Community Partnership in its Area of Operational Responsibility (AOR) through its Operational Support Groups (OSGs) and CPUs. It shall be carried out as follows:

1. Responsibilities/Tasks of CPUS and OSGs

a. CPUs

1) Primarily responsible for undertaking Crime Prevention and Suppression (including beat patrols/rondas) Drives of Full Service Policing, Problem Solving and Community Partnership in their respective mini-AORs;

2) Support/assist the OSGs and adjacent CPUs within respective AORs; and

3) Respond to calls for assistance from the public and/or dispatches from the Operations Center/117 Center within respective mini-AORs.

b. Mobile Patrol/Quick Response Group (MP/QRG)

1) Primarily responsible for waging the Crime Intervention Drive of Full Service Policing in the entire AOR of the Station;

2) Co-Primarily responsible with CPUs for Crime Suppression Drive (mobile patrol) in the entire AOR; and

3) Serves as back up force to all CPUs and other OSGs.

c. Intelligence and Investigation Group (IIG)

1) Primarily responsible for waging the Crime Attrition Drive in the entire AOR of the Station and

2) Provides intelligence and investigative support/assistance to all other OSGs and all CPUS.

d. Anti-Organized Crime/Special Operations Group (AOC/SOG)

1) Primarily responsible for conducting the anti-organized crime drive and special operations (anti-drugs/carnapping/kidnap for ransom/etc) in the entire AOR of the station; and

2) Provides anti-organized crime and special operations support/assistance to other OSGs and all CPUs.

e. Traffic/Public Safety Group

1) Primarily responsible for traffic management, traffic accident investigation and public safety/emergency operations in the entire AOR of the Station; and

2) Provides traffic management/accident investigation and public safety/emergency assistance to other OSGs and all CPUs of the Station.

2. Operational Procedures

a) For Routine/Normal Situation

The CPUs shall be undertaking Crime Prevention and Crime Suppression (primarily through beat patrols/barangay rondas) Drives of Full Service Policing, Problem Solving and Community Partnership-building/expansion within their respective mini-AORs.The MP/QRG shall be conducting Crime Intervention and Suppression Drives of Full Service Policing in tandem with CPUs, primarily through mobile patrols in the entire AOR. The IIG shall be pursuing routine Crime Attrition Drive of Full Service Policing, like intelligence work and following up the solution of cases in the entire AOR. The AOC/SOG shall be building up cases and conduct awareness campaign against organized crimes throughout the AOR. The T/PSG shall be performing routine traffic management chores and public safety work in the entire AOR.

b) In Case of Crime Incident

If the report is received first by the nearest CPU, it shall immediately call up and inform the Operations/117 Center. Then, its COPS officer/s with some barangay tanods or CVOs shall proceed to the crime scene immediately. If the Operations/117 Center received the report first, it shall call up and dispatch the nearest CPU and appropriate OSG to the crime scene. If it is a live/on-going crime, the MP/QRG shall be immediately dispatched, followed by the IIG. If it is a done thing and the suspect/s managed to escape already, only the IIG shall be dispatched immediately.

At the crime scene, the Outfit Primarily Responsible (OPR) shall be the MP/QSG, if it is a live/on-going crime. If it is a done thing and the suspect/s managed to escape already, the OPR is the IIG. If it is still feasible, the IIG is the OPR at the crime scene, while the MP/QRG shall conduct hot pursuit of the suspect/s. The CPU shall be in support of and assist the MP/QRG and/or IIG, like cordoning off and securing the crime scene to preserve the evidence and prevent looting; regulating traffic flow to and from the crime scene; holding on to the witnesses and turn over same to IIG elements; and the like.

If the CPU elements are the first to arrive at the crime scene, they shall immediately and initially handle the situation. If it is a live crime, they shall conduct appropriate Crime Intervention Drive Operations, or at least apply delaying tactics until the MP/QRG arrives. If the crime has been done and the CPU elements managed to catch up with the suspect/s, arrest and/or hot pursuit shall be undertaken, as appropriate. The other CPU elements shall check the victim; if still alive then apply first aid and/or immediately evacuate/call an ambulance, as appropriate. Once the MP/QRG and/or IIG arrive/s, the appropriate OSG assumes the OPR role, while the CPU element shall turnover the suspect/s, witness/es, evidence, etc to the said IIG and assume the support role.

Once no longer needed, the CPU elements shall resume their normal/routine operations/activities. It should be noted that the CPU shall not hold on to the suspect/s, as the IIG shall handle the investigation.

c) In Case of Traffic Accident

If the report is received first by the CPU, it shall immediately inform the Operations/117 Center and dispatch some of its elements to the accident scene without delay. If the Operations/117 Center received it first, then it shall call up and dispatch immediately the nearest CPU and the T/PSG to the scene. It shall also call the nearest hospital to send its ambulance thereat.

At the accident scene, the OPR will be the T/PSG, with the CPU in support. If the CPU elements arrive first, then they should immediately handle the situation. The victim/s shall be immediately checked and cared for; and apply first aid, as appropriate. They shall manage/regulate traffic flow to and from the accident scene. Likewise, they shall secure the area to prevent looting and preserve the evidence. Once the T/PSG elements arrive, the CPU elements shall turn-over the OPR role to them and assume the support role.

Once no longer needed, the CPU elements shall immediately resume performing their normal/routine functions/activities. It must be noted that the CPU assumed the OPR role temporarily, only while the T/PSG is not yet around. Traffic accident investigation shall be done and completed by the T/PSG.

d) Other Cases

In case of a sudden/momentary traffic congestion, the nearest CPU shall immediately handle traffic direction and control to ease/normalize traffic flow; if there are no regular traffic personnel in the area. Once normalized, the CPU shall revert back to their normal functions/activities. If it is a continuing/recurring problem, it should be brought to the attention of the T/PSG to remedy and takeover the problem.

In case an arrest of the suspect/s is/are effected by the CPU, the same shall be turned over to the IIG for investigation and further dispositive action. If the suspects are involved in, or are members of organized crime groups, they will be turned over to the AOC/SOG for appropriate action.

e) Dragnet Operations

This type of operation shall be implemented by all concerned CPUs and OSGs when the suspects are escaping, or are highly mobile, including the interception of fugitives from a jailbreak. The MP/QRG shall conduct hot pursuit on the escaping suspects/fugitives, while the surrounding/adjacent CPUs shall establish Blocking/Choke Points across their possible routes of escape. The Operations/117 Center shall orchestrate and closely monitor the operations of OSGs and CPUs; and alert nearby Police Stations.

3. Operational Guidelines

As much as possible, the CPUs shall not be encumbered with and tied down by such tedious and time consuming chores of traffic direction and control, investigation/filing/prosecuting cases and the like. They should be able to concentrate their resources, efforts and time on Crime Prevention and Crime Suppression Drives of Full Service Policing, Problem Solving and Community Partnership-building.

The OSGs, more particularly the IIG, T/PSG and AOC/SOG, should absorb and perform these tedious and time-consuming chores. The MP/QRG should sustain its mobile patrols in tandem with the CPUs' beat patrols/barangay rondas; and be ready to back up the other OSGs and all CPUs all the time.

The Station Headquarters, especially the COP, should be fully supportive of the CPUs and OSGs. Responsibilities should be decentralized and authority be delegated to the CPUs and OSGs, as much as possible. The COP should not begrudge giving up some of his prerogatives and importance, and not to envy the subsequent endearment of his CPUs and OSGs to the community. The primordial consideration should be to get things done efficiently and effectively; and the welfare and satisfaction of the clientele-the Community.

COPS: BEST PRACTICE

a) Introduction

In 1993-1994, Sr. Inspector Francisco Baraquel worked on his thesis for his Master in Development Management at the prestigious Asian Institute of Management. It is entitled: "Toward the Development of a Community-Based Crime Prevention and Control Program: A "Koban" Model for the Philippine National Police." (Note: COPS was adopted on August 15, 1994. Hence, it could have been entitled as "A COPS Model for the Philippine National Police). In his search for a model "koban" or COPS for the PNP, he researched on and made a comparative study of "BAC UP" (started in June 1986) in the Visayas, "KAUBAN" in Mindanao (started in October 1991), "Pulis Patrol-Lingkod Bayan" in Metro-Manila (started in early 1992) and Sectoral Organizing in Luzon (started in 1991).

His 174-page thesis came to the conclusion that: "BAC-UP can be considered as the most successful implementation of a community- based crime prevention program; for the following reasons:

1. It was able to sustain its objective of minimizing the levels of crime incidence , notwithstanding the fact that the commander who initiated the project was already transferred.
2. It presented a concrete example of committed private sector involvement manifested in the joint undertakings of the Rotary Club of Bacolod City-East and Negros Occidental PC/INP Command. (Note: BAC UP should get the credit, where Rotary Club of Bacolod City East Rotarians are also members).
3. It was undertaken at no cost to the government while completely overhauling the deployment structure of the Bacolod City Police and providing it with the needed administrative, communications and mobility requirement.
4. It emphasized the need for building awareness and eliciting response through social marketing.
5. It provided for the recruitment, training and integration of the "barangay tanods" in the community police structure.
6. It also provided for livelihood projects and the provision of soft loans for the police officers.

"Evaluating the level of crime incidence in Bacolod City, the available statistics showed that the total crime volume in the city considerably went down from a high of 3,500 crime incidents in 1989 to a low of 607 crime incidents last year. This goes to show that BAC UP has been able to sustain the gains that it has achieved in 1986 up to today, as far as keeping the level of crime incidence at minimal levels. The dramatic decrease in crime incidence in the city is mainly attributed to the institutionalization of the "BAC UP" within the communities of Bacolod City".

"The access of the BAC UP to civic organizations showed its advantage in overcoming the operational handicap brought about by resource constraints with the material support given by the Communities".

Premised on the foregoing, the BAC UP is being presented in this workshop today, as the COPS Best Practice. Although COPS was experimented starting in 1991 and officially adopted by the PNP in 1994, the concept has been substantially applied and operationalized in Bacolod City since 1986 todate. For lack of a name, as the Japanese "Koban" was not well known yet then, it came to be called as the BAC UP, the acronym of the non-governmental organization that spearheaded the decentralization of Bacolod City Police Station and the building of Community Partnership against crime. It was made to sound "back up", as essentially BAC UP is backing up the Bacolod City Police Station in the fight against crime.

b) The BAC UP

In 1986, Bacolod City had a population of 320,000 in a land area of 15,611 hectares distributed among its twenty (20) barangays, including the city proper. It was being protected and served by about 400 policemen who were concentrated in only one small area; that is, the compound housing the Bacolod City Police Station. There were then several complaints against the station coming from various sectors of the Community, redounding to its gross ineffectiveness in protecting and serving the Community.

At that time, Bacolod City had the highest crime rate among the eight administrative subdivisions of Western Visayas Region. In fact, its crime volume was equivalent to the combined crime volumes of all the other cities and municipalities of Negros Occidental, whose combined population was about six times bigger than that of Bacolod City. There were then organized crimes, including kidnapping, being perpetrated by a number of syndicates; the most notorious of which was the so called "Magnificent 7".

The gravity of the peace and order situation then was exacerbated by the strong presence of the Communist insurgents throughout the province, including Bacolod City; coupled with the isolation of the police and military from the civilian populace, as an aftermath of the overthrow of the Marcos regime. What made it worse was the prevailing suspicion that the Negros Occidental PC/INP Command (NOPC/INPC) was responsible for the assassination of the Bacolod City Police Station Chief, the late P/Col Gilfredo Geolingo. Compounding the situation was the mistrust of the Community on the Provincial PC/INP Command, as they suspected it to be protecting the "Magnificent 7" syndicate. To top it all, the crime situation in Bacolod City then was really quite appalling; considering that its land area and population shares are only two and fourteen (14) percent of the province's respectively, and yet 50% of the crime volume was occurring in Bacolod City.

c) The Decentralization Plan (Figure # 6)

Undaunted by the then discouraging situation, the NOPC/INPC leadership undertook an in-depth estimate of the situation to come up with the best course of action in addressing the alarming crime situation in Bacolod City. The end-result of the process called for the decentralization of Bacolod City Police Station, among others.

The plan envisioned to divide the station's AOR into eight mini-AOR's; two of which are urban areas, with the remaining six being rural areas. Accordingly;, eight precincts under Bacolod City Police Station shall be activated to be manned by police personnel mostly coming from Bacolod City Police Station, plus some augmentation from the Provincial Command. Additional firepower was to be issued by the NOPC/INPC to Bacolod City Police Station.

To regain the trust and confidence of the Community, purging of misfits was conducted and sustained. It was part of the plan to activate Barangay Tanods to augment the policemen in the different precincts. Likewise, community support shall be tapped for the purpose. Additionally, a

massive crime prevention consciousness drive shall be waged, for which purpose, a primer on crime prevention was being prepared for publication at that time.

The Decentralization Plan was submitted through channel to the Chief PC/Director General, INP-then Major General Renato S. De Villa, who expeditiously approved it on May 4, 1986. However, it was subjected to a certain constraint that turned out later to be a blessing in disguise. It was subject to the condition that its implementation would not entail any additional budgetary outlay, personnel and equipment on the part of the government. It was really quite a tall order to hurdle, as it would entail millions of pesos to implement the proposed project.

d) Implementation

Luckily, the Provincial PC/INP Commander came to know Mr. Sonny Coscolluela and Mr. Leo Echauz, and subsequently Mrs. Nena de Leon; who were to play key roles in this project. With the help of the Rotary Club of Bacolod City-East and these three key persons, a symposium on the peace and order was organized; which "was the first of its kind in the entire history of the province and Bacolod City". The symposium was held on June 7, 1986 at the Provincial PC/INP Camp in Bacolod City. It drew participants from the different sectors of the Community, including heads of civic clubs, workers, business and homeowners associations, professionals and many individuals; representing a general cross-section of the citizenry. The Rotary Club of Bacolod City East acted as the facilitator during the affair.

During the symposium, the NOPC/INPC Commander briefed the body on the alarming crime, and peace and order situation in the city. He also pointed out that one of the major problems confronting the city as far as crime prevention and control was concerned, was the highly centralized structure of the Bacolod City Police Station. The entire force of about 400 policemen was concentrated in only one station. This gave criminal elements the advantages of knowing how long and/or where the police would be coming from. Responses to calls for assistance were very slow, because policemen would be coming from the very far station and the public had a hard time contacting the station due to so many calls to be entertained thereat. Likewise, the area sanitized and rendered safe by the presence of the police is only one; the vicinity around the police station.

Then, the approved restructuring/decentralization of Bacolod City Police Station was presented in turn. It was explained that the setting up of eight (8) precincts under the command umbrella of Bacolod City Police Station would yield plenty of advantages and benefits to the Community. Notably, it would bring the police force much nearer to the areas sanitized by the presence of the police. It would be more difficult for criminals to commit crime, and citizens have more units to call for assistance, in addition to the station. Finally, the problem of implementing the plan was brought up to the participants.

But as pointed by Ms Kanaan, "noble intentions would always have a way of knocking at people's heart. Having been told that "community involvement is one of the strong pillars of the Criminal Justice System"; right then and there, those attending the symposium came to a decision to organize themselves and form a non-profit, non-stock and non-political foundation, which would provide them the legal status in soliciting contributions. "Striking while the rod is hot" so to speak, Mr. Coscolluela and Mr. Echauz immediately presented a prepared plan and a program of action to the participants. Their efforts paid off, as the participants approved them and decided to get organized for the purpose. An ad hoc committee chaired by Coscolluela was formed for the purpose. Thus, marked the birth of the Bacolod Citizens for Unity and Peace (BAC UP) Foundation.

Based on its Constitution and By-Laws, BAC UP was formed to pursue the following goals:

1. Promote peace and order in Bacolod City;
2. Promote the welfare of peace officers;
3. Organize the citizens for community development;
4. Engage in fund generations; and
5. Assist the peace officers in the drive against criminality.

BAC UP adopted part of the NOPC/INPC plan and labeled same as "BAC UP Plan"; whose components included the following:

1. Put up more precincts all over the city;
2. Maintain massive and sustained public education on crime prevention; and
3. Tap community participation in police work.

From the first organizational meeting of the ad hoc committee, several working committees were formed to study, conceptualize and market the plan of dispersing police services; thus the need to support the foundation. The committee's initial action resulted into a campaign brochure or flier (conceptualized by Mike Asignacion) convincingly proclaiming the words, "BAC UP YOUR OWN NEIGHBORHOOD AND SAY NO MORE TO CRIME". The brochure made public the goals, plan and benefits that shall accrue to the Community. BAC UP, through the fliers, urged the public to "join the growing Bacolod Citizens for Unity and Peace and make BAC UP, Bacolod's own People Power against Crime".

The committees moved fast, as they were determined to push for the setting up of the eight precincts soonest possible. Meanwhile, NOPC/INPC led by its commander and BAC UP members launched a massive and sustained information and organizational drives. All kinds of sectors, neighborhoods and aggrupations were covered by their sorties. The proposed project was well-received, and BAC UP took advantage of it, while at the same time keeping the enthusiasm alive. The resource mobilization was so fast that barely a month after, a precinct was to be activated.

And so, on July 12, 1986, the first "son" – Precinct No IV, was inaugurated at Barangay Villamonte, Bacolod City. (It marked also the official founding of BAC UP). Not long after, it was followed by the second "son" – Precinct No II for the northwest half of the city proper. In October 1986, the third "son" was born; and it was no less than Pres. Cory C. Aquino who inaugurated Precinct No. III at Lopue's Shopping Mall in Mandalagan, Bacolod City. She was so impressed that she endorsed it as a model to be replicated in other cities. In a span of a little more than three months, BAC UP and NOPC/INPC were able to realize the activation and operationalization of three precincts, housed in buildings volunteered free of rent by the owners. Furthermore, BAC UP took care of the rest such as patrol vehicles, motorcycles, radios, telephones, water, gasoline, electric bills, office supplies and even rice and snacks for the policemen manning the precincts.

BAC UP was granted its incorporation papers by the Securities and Exchange Commission on October 3, 1986. With this newly attained status, the foundation proceeded to elect its Board of Trustees; placing Mr. Leo Echauz as its Chairman. The new board was tasked to follow up and expedite the realization of the five remaining precincts. To facilitate its work, the Foundation organized Precinct Chapters which were tasked to support and team up with their respective counterpart precincts. This measure further widened and deepened the mobilization of the Community. Involved in the Precinct Chapters were homeowners associations, business establishments and many concerned citizens who really got out and campaigned for more people participation. Bazars and other fund-raising projects were held by the different chapters to get the much-needed financial support. All these fund-raising projects were held by the different chapters to get the much-needed financial support. All these fund-raising activities became a show of people's power, which considered fighting crime not just a police problem, but very much also of the private citizens.

The initial three precincts were followed by more, one after another; such that in a year's time, all initially planned eight precincts were in place and fully operational. On the average, each precinct had two patrol vehicles, one motorcycle, three radio sets, rent-free renovated or new building as office, telephone, typewriters and the like. These were all provided by BAC UP on a usufruct-basis; meaning, owned and supervised by BAC UP, but used by the police rent-free. To ensure longevity and proper use/maintenance of same, BAC UP even hired drivers and radio operators to operate them at its expense. The Precinct Chapters functioned as administrators of BAC UP-owned

equipment, partner and adviser/consultant of the Police Precinct on community mobilization and participation in the anti-crime campaign, and supporter/provider of its requirements rolled into one.

Some Precinct Chapters even put up livelihood projects for the spouses of police personnel; just like the husband and wife team of Dr. and Mrs. Ricardo Jara, who treated Precinct No. II like an “adopted son”. (They are blessed with several daughters but no son). Hospitalization, educational and/or burial benefits were provided by BAC UP to police personnel, who got sick and wounded or killed while in the performance of duty. Mrs Nena de Leon put up the capital which was loaned almost interest-free to police personnel free from the pangs of loan “sharks”/usurers. She also served as the conduit for the funds from anonymous donors which were disbursed by NOPC/INPC Commander to bankroll “Operation: Private Eye” that offered and gave reward money to informers in the anti-crime campaign in Bacolod City.

In addition, BAC UP funded the printing and distribution for free of 5,000 copies of the 32-page “Primer on Crime Prevention” booklets. It also helped in the training and partially supporting of about 3,000 Barangay Tanods that were deployed in conjunction with the precincts. Most BAC UP chapters organized and mobilized their respective neighborhoods to help in policing the Community; like serving as part of the neighborhood crime watch and telephone brigade in support of their respective precincts. During Christmas, BAC UP hosted Christmas parties and gift-giving for police personnel and their dependents.

e) Results and Stature of BAC UP

In the first two years of its existence, BAC UP managed to raise and spend the amount of about P5 million. This was the amount that the collective efforts of the Community, spearheaded and catalyzed by BAC UP, raised to realize and support the eight police precincts for the first two years alone. Hence, through Community Partnership or People Power, the decentralization of Bacolod City Police Station into eight precincts was realized at no extra cost, equipment and personnel outlay to the government.

The above amount does not include yet the massive and sustained volunteer work being performed by 3,000 Barangay Tanods, the neighborhood crime watch, the telephone brigade, etc which are very difficult to quantify. Significant to mention also are the livelihood projects, educational/hospitalization/burial benefits, financial assistance, Christmas parties and gift-giving, and the like that were extended by BAC UP Foundation and its chapters. As aptly stated by then-Police Lt Fernando Villarete, Chief of BAC UP Precinct No. II, when interviewed by Mrs Kanaan, “policemen’s morale has gone way, way up”.

As a direct consequence of the decentralization of Bacolod City Police Station into eight precincts and its Community Partnership with the people led by BAC UP and its eight chapters, crime decreased by 30% within a year’s time, reckoned from the activation of the first precinct. The downward trend continued in the succeeding years in a declining/tapering percentage manner. The peace and order situation markedly improved such that Bacolod City went down from No. 1 to only No. 4 in the crime rate ranking in Western Visayas Region. Likewise, “Magnificent 7” and other syndicates were forced to relocate to other areas; due to the decentralization and police-community partnership.

On the part of the police, especially NOPC/INPC, the most important windfall they received from the BAC UP phenomenon, was the shattering of the wall that was isolating them from the Community. It enabled them to regain and enhance the trust and confidence of the Community. As days and months passed by, the partnership and teamwork between the police and the Community became closer and stronger. As observed by Ms Kanaan, “the BAC UP movement unfolds a beautiful love story of mutual trust and understanding between the civilians and the police/military-a feat that sounds difficult to achieve these days, especially because the former appear to be wary of the latter”.

For their pioneering work on what is now known as COPS, both BAC UP and NOPC/INPC became recipients of national recognition. The Public Relations Society of the Philippines gave the much-covered ANVIL AWARD to BAC UP on March 4, 1987 for having been adjudged as the Most Outstanding Public Affairs Program for Peace and Order. BAC UP and NOPC/INPC were given Plaques of Merit by President Cory Aquino last August 10, 1987 at Camp Crame, Quezon City for exemplary work in the peace and order campaign.

The stature of BAC UP in Bacolod City is best described by Ms Kanaan as follows: “Today, BAC UP is the pride of many Bacoleńos involved in the movement. Involvement comes in the form of cash or in kind, ranging from one peso to thousands of pesos, from coffee to cookies and sandwiches for the policemen manning the precincts. Contributors and supporters come from all walks of life-the fish and vegetable vendors, security guards, jeepney and taxi drivers, the plain housewives, the sidewalk vendors, the thriving and not thriving business and the affluent, the almost affluent and the seemingly affluent sugar planters turned prawn growers.”

As a movement, BAC UP is now part of almost all nooks and crannies of Bacolod City. It has become synonymous with Bacolod City Police, such that a lot of people would rather say:”Hey, BAC UP is here; instead of saying: “Hey the police are coming”. What is really most heartening about BAC UP is that it is already nineteen (19) years old now. It has managed to stay alive, notwithstanding the notoriety of Filipinos for “Ningas Cogon,” “Bahala na”, crab mentality and other disabling tendencies.

It is significant to note that BAC UP is still around and precincts have even increased from eight (8) to ten (10).

CONCLUDING PERSPECTIVE

The key factors for the successful operationalization of COPS, based on the BAC UP experience, are the following:

1. Credibility and image of the implementor and/or initiator are such that he/she should have the trust and confidence of the Community in the area.
2. Higher level/quality of participation (ideally, commitment) on the part of the implementor, such that he/she is willing to sacrifice in terms of exerting more efforts, devoting more time to work than leisure, working with different kinds of people from all walks of life, etc;
3. Proper behavior as public servant and protector that will make him/her well-liked, approachable and easy to get along/work with the people, such as being humble, tactful, patient, courteous and knows how to appreciate the help being extended by the people (never be arrogant, high-handed and boastful or humbug);
4. Being apolitical/non-partisan on the part of the implementor and the project to be undertaken, making him/her and the project acceptable to and supportable by various sectors of the society; and
5. Responsiveness and civic-mindedness of the people in the Community, as exemplified by the people of Bacolod City and Negros Occidental who participated in and/or supported BAC UP.

Workshop 3

The experience of Diadema São Paulo Brasil

José de Filippi Junior
Mayor
City of Diadema

1-INTRODUCTION AND GREETINGS

Thank you very much. Good morning ladies and gentlemen. It is a great pleasure and I am very honoured to be here.

First of all, I would like to express my gratitude to UNODC and the ICPC for inviting me to participate in this workshop on Strategies and Best Practice for Crime Prevention.

I am going to try to convey to you all, the work that has been implemented in the last 4 years in Diadema; regarding our Public Policies on Safety and the Prevention of Crime.
Now, we start with some background information to put you in the picture.

2-BACKGROUND INFORMATION

Diadema
Industrial town with 1500 factories
Part of the metropolitan area of the City of São Paulo
Population: 383.600
Total area: 30.7 Km^2
Numbers of people by km^2 : 12.496 (2nd largest of the country)
Unemployment rate: 2001 - 21.23%
2005 - 15.70 %

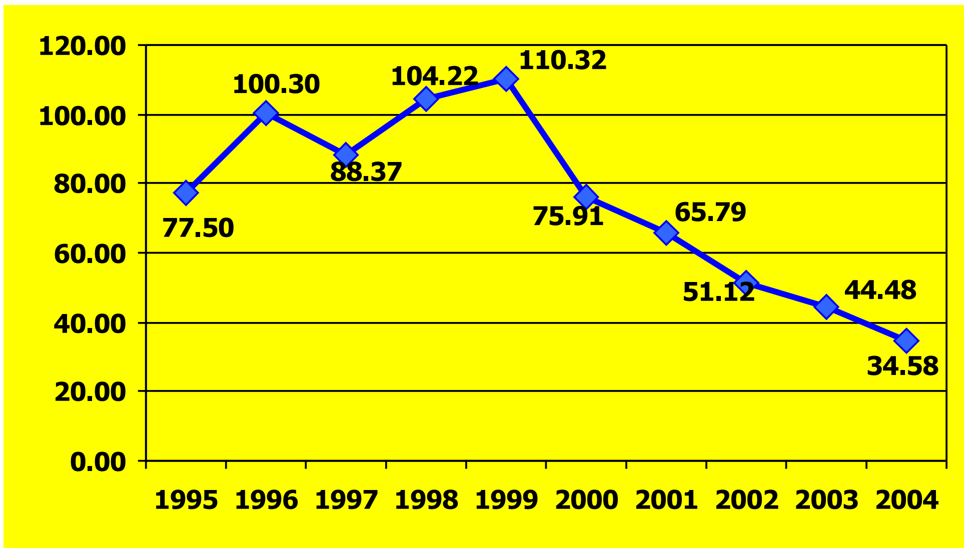
Some Background information

Between 1995 and 1998, the population of Diadema grew 3.4%. But during the same time the numbers of homicides had an increase of 49%.

In 1999 the numbers of reported homicides were 31.2 per month -(Average of one person murdered per day).

Subsequent studies showed that the majority of people involved were men, aged between 16 to 30 years old and 60% of these homicides occurred from11PM to 6AM in public areas, near bars and other similar establishments.

Cases of Homicides in Diadema from 1995 to 2004: Rate per 100.000 inhabitants



Strategies and Interventions on Community Crime Prevention

A Local Good Practice Model
Since 2001, The City Council has introduced 10 major new interventions on Safety and Prevention of Crime in Diadema.
Tackling the problem of urban violence
The overall objectives of the crime prevention and safety policies implemented were:

- To improve the effectiveness of policing to reduce crime and violence.
- To create more opportunities and attract investments for social and preventive actions.
- To facilitate a better community participation in the identification of local problems and their solutions.
- To improve the operational systems for inspection and law enforcement.
- To create a multi agency coordination, at both strategic and operational levels, in planning and delivery of services relevant to crime prevention and community safety.
- To focus also on social exclusion issues.

Public Policies on Safety and the Prevention of Crime

Strategies and Interventions

First Intervention:

- The creation of the Municipal Department of Social Policies and Public Security; and t
- The Mapping of all Criminal Activities in the Region.

The new Department of Social Policies and Public Security was created in January 2001, few weeks after the present administration came into power.

Objectives:

- To co-ordinate the actions among the different agencies involved in the prevention of crime, along side the Mayor's office.
- To improve the diagnosis, strategic planning, monitoring and evaluation of crime prevention measures.

Bridging the gap between the Mayor's office and the public security issues in the City!
Daily bulletins to the Mayor's Office with all the crime incidents reported!

Second Intervention:

- The Integration of all Police Forces in the City:
- Municipal, Regional and Federal Police Forces.

Objective
To improve the effectiveness of all activities concerning prevention and crime control in the City. Sharing information and working together for the first time!

Third Intervention:
The new law enforcing the closure of all establishments that sells alcoholic beverages from 11:00 pm to 06:00 am (introduced in July 2002). In 2001, crime, violence and lack of safety in general were the main problems in the City with several businesses and factories wanting to move away from Diadema. After 6 months of monitoring and mapping it became clear that 60% of homicides in the region happened in bars or in their vicinity, from 11pm to 6am.

Objective
To reduce the numbers of homicides and other criminal activities in the City.

Lives Saved

After 24 months, from July 2002 to July 2004, of this law coming into effect, 273 homicides and 216 assaults on women were prevented in comparison to figures from the same period before the law, from July 2001 to July 2002 (Research conducted by the Pacific Institute for Research and Evaluation and the Federal University of São Paulo).

Partners
- The Pacific Institute For Research and Evaluation, USA
- The Federal University of Sao Paulo, Sao Paulo Brazil

Fourth Intervention:
The launching of the Municipal Council for the Safety and the Prevention of Crime.

Objective:
To facilitate an active, diverse and comprehensive community participation on all issues concerning public security and prevention policies.

Partners:
- ILANUD – United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders
- The Institute “Sou da paz”, São Paulo Brazil

A Permanent Public Consultation and Advisory Committee on Crime Prevention

Fifth Intervention:
- Increasing the Municipal Police Force in 70%.
- Establishing the operation called “The Neighbourhood Angels”.

Objectives:
- To adopt a community policing model patrolling the streets by foot, bicycles and motorcycles
- To improve on all crime prevention actions
- To have more visibility on the streets
- To be more available and accessible for the community
- To provide a better assistance on the streets

The Neighbourhood Angels in Action

From January to December 2004, the presence of the Neighbourhood Angels on the streets of Diadema had a major impact, reducing to 50% the numbers of all incidents in the areas where the operation took place.

Sixth Intervention:

- The Young Apprentice Project

Disputing the Adolescent with the Drugs Trafficking!

Objectives:

- To target vulnerable young people from identified high risk and socially excluded areas where drug trafficking activity is present.
- To offer regular help to adolescents from 14 to 16 years old with a monthly income support of R$ 130,00 Reais
- (Around US$ 50 Dollars).
- To provide sports and cultural activities.
- To provide professional training and education.
- To enhance their self-esteem and to develop their advocacy skills.
- To offer work placements within several businesses and industries in partnership with the City Council.

In 3 years of running the project, almost 4000 adolescents received regular support. Some of them were school dropouts and they were encouraged to go back to school.

Seventh intervention:

Articulated Social and Environmental Policies

- Comprehensive lighting of streets and public places in socially deprived areas
- Urbanization of local shanty towns (favelas)
- Increasing the numbers of local day nurseries
- Educational projects for young people and adults
- Health programmes for women and children
- Specialized training for young professionals
- Community projects on sports, culture and leisure, such as:
- Theatre, hip-hop music, dance, football and capoeira.

Objectives:

- To articulate several social, environmental and cultural programmes alongside the prevention of crime and safety public policies.
- To integrate policies that goes beyond traditional crime control and situational crime prevention responses to include social development approaches and community renewal actions.

Eighth Intervention:

The Installation of Surveillance Cameras.

Objective:

To provide better assistance on the surveillance and monitoring of identified areas in the city. 26 cameras were installed until now, with the target of having 100 cameras in strategic places by the end of 2005.

Ninth Intervention:

The Inspections and Law Enforcement Operations

Objective:

To promote a better integration and improvement on all systems of inspections and law enforcement operations on crime control and prevention in the City

“Programa Diadema Legal”– The “Cool” Diadema Programme:

- Inspections of bars
- Inspections of irregular commercial establishments
- Inspections of noise and social disturbances
- The control of the informal market (street vendors)

<u>Tenth Intervention</u>
The launching of 3 major campaigns:

- The Disarmament of Fire Arms Campaign
- The Children’s Disarmament of Toy Guns Campaign
- The
- Drugs and Alcohol Awareness Campaign:

- (
- Training of a Drugs and Alcohol Prevention Team from the Municipal Police Force staff)

In 9 months of the Disarmament of Fire arms Campaign around 1400 guns were collected. Around 15000 toy guns were collected and exchanged for comics and children’s books.

The Municipal Police Force staff giving drugs awareness training for students at primary and secondary local schools

Diadema - A Better Place to Live!

Some of the results achieved with these interventions:

Homicides
Before and after the law enforcement of the closure of bars from 11:00 pm to 6:00 am:
2001/2002 reduction of 17.74%
2001/2003 reduction of 32.39%
2001/2004 reduction of 47.44%

2001	2002	2003	2004
65.79	54.12	44.48	34.58

Homicides *a*mong young people aged between 16 and 20 years old:

Diadema leaves the ranking of the 10 most violent places in the Estate of São Paulo:

Year	Position
2000	1º
2001	3º
2002	6º - 9º
2003	13º
2004	18º

Workshop 3

Urban Regeneration as a Crime Prevention Strategy. The Experience of Warwick Junction

Richard Dobson
iTRUMP Joint Programme Leader

Internationally, the nature of cities holds a fascination. The disparities between developed and developing; size; age; architecture and planning; urban design and history, are to name but a few. The amalgam of these determines the signature of a city. Urban migration is perhaps the common challenge of all cities, but as correctly cited in this workshop's background paper, the impact of urbanisation has unique consequences for a city. The growth of megacities and their global consequence is often presented as a statistical prospect which captures public attention. The quality of the lives to be lived in this megacity future is harder to register because often we are attempting to interpret from a position of privilege, devoid from a city context experiencing exponential growth..

In all rapidly urbanising cities, but to a lesser extent those with spontaneous growth, the contest is around public space and the opportunity that commanding this space affords. These conduits are the livelihood opportunities exploited for both good and bad. Survivalist pressures tend to push activity towards the latter and because of incomplete comprehension, we generally conclude with the perception that a future of mass urban migration is fatal. But there is evidence to the contrary. There are examples where citizens are particularly considerate in their creative sharing of public space. There is an appreciation that these public spaces are process places. Economist, Kenneth Paton, noted, “Cities are successful in their ability to take people from some point of entry and elevate them to some new level in the economic order of things.” Urban migration is a survivalist response. For many, despite indescribably hardship, cities have been able to elevate and provide. This is recognised by the migrant, but, is it appreciated by urban practitioners? Reconceived public spaces can be a powerful development tool available to local government to give effect to Kenneth Paton's statement. However, it implies that we embrace the potential for transformation and move toward proactive engagement with the forces of urbanisation. For example, what value should be placed on parking bays for private motor vehicles over vending stalls for survivalist women heading single parent households?

In Warwick Junction there are such women, admittedly with more determination than privilege, who through vending opportunities boast professionally qualified children. Cities have a built-in instinct to survive. Perhaps we lack a developmental courage to work with this robustness. Pre industrial London had a choice – sink in sewage or move to higher ground! Neither happened. The water closet was invented and London continues to embrace urban evolution.

The South African context is very specific in that its apartheid past entrenched social, political and economic exclusion. Overtly this was maintained by law and force but more insidious was the power of spatial planning. Cities were planned to offer the privileged property rights in racially exclusive neighbourhoods. With democratisation this has been abolished but cities still experience the aftershock. A meaningful market transaction transfer of land ownership will be slow which means that if inclusion is to be accelerated, the public spaces within cities must be used as a developmental tool. Equally, the use of apartheid public space was conceived around the cultural preferences of the minority that today is not necessarily appropriate – ripe for evolution.

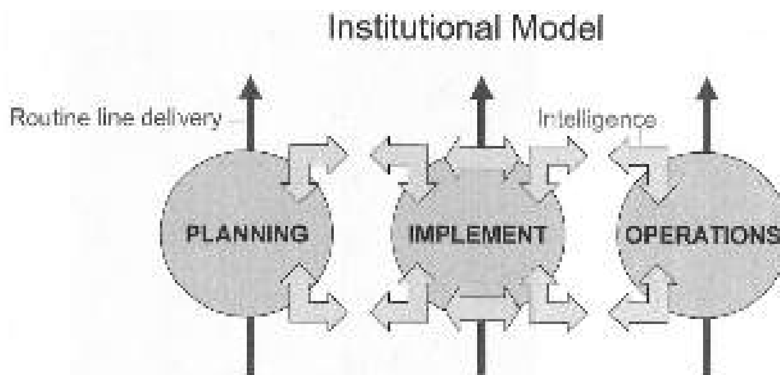
The Warwick Junction Project described in the accompanying fact sheet, released new energy into the transformation of post-apartheid eThekwini (Durban).

A further article and a critique can be found at www.interfund.org.za/pdffiles/vol5_one/Sanders.pdf and www.interfund.org.za/pdffiles/vol5_one/Horn.pdf.

The primary lesson emerging from the Project was the value of area based management – focused district level local government with its administration on the communities' doorstep. This close relation relationship enabled a more accurate reading of local needs and maximised the developmental opportunities latent in the public realm, e.g. relocation of the traditional healers' herb market.

The Inner Thekwini Regeneration and Urban Management Programme (iTRUMP) has absorbed the Warwick Junction project as one district within its Programme. This expanded Programme uses much of the prior learning, particularly that of area based management, which has been institutionalised as a local government function within the eThekwini Municipality. From this work, fiver urban regeneration strategies can be identified as having a positive contribution towards crime prevention.

STRATEGY ONE: Integration through Area Based Management (ABM)
The following diagram represents the line department activity within the iTRUMP programme.



Planning represents those departments responsible for strategy and forward preparation, e.g. Spatial Planning, Land Use Planning, Transport, etc.

Implementation: Broadly more technical in the sense of project packaging, tendering and implementation, e.g. Architectural Services, Urban Design, Infrastructure (Engineering and Project Management).

Operations: This clusters the maintenance/management line function departments. It is within this group that an enormous asset is to be found and its potential can only be realised with integrated management. This cluster includes City Health, Informal Trade, Solid Waste, Metro Police, South African Police Services, Waste Water Management, Drainage and Coastal Engineering, Roads, Traffic Authority, Urban Design, Architectural Services, Parks, Housing, Protection Services (including Fire and Safer Cities), Real Estate, Licensing, Electronic Services and Development and Planning. These have been listed at length to purposely emphasise the magnitude of the resource.

The iTRUMP programme is one of 5 Area Based Management programmes being piloted by the eThekwini Municipality for 5 years, with sector support funding from the European Union. Each programme has its own area responsive Business Plan and staffing organogram. iTRUMP has opted for a "joint leader" model where the programme responsibilities of REGENERATION and URBAN MANAGEMENT receive focused but integrated attention from the Programme Leaders. The regeneration function includes all the planning and economic matters whilst urban management includes the implementation of capital projects. The programme leaders report to the

office of the City Manager, i.e. not directly within a line function, whilst the remainder of the iTRUMP team is drawn from line departments, e.g. Environmental Health Officers lead the district level operations teams. These teams meet on a monthly basis with representatives from all the departments listed previously. This team makes two significant contributions: It provides an immediate response to public realm repairs and maintenance.

It is the major repository for invaluable 'kerb-side intelligence'. This information is used to identify recurring maintenance items that need external intervention either to minimise or eliminate. To achieve this Technical Task teams are formed from within the operations team membership to focus on the identified issue. (Currently, within Warwick Junction, 36 such teams have been formed.)

The benefit of Area Based Management is found in the institutional valuing of this 'kerb-side intelligence'. As the diagram indicates, this information is continuous in its feedback into planning and implementation. Equally, in their own right, these two disciplines generate intelligence that is critical to operational performance. The pulse of a developing city must be continually felt in order to achieve creative and responsive local government.

STRATEGY TWO: Value consultation
Meaningful, quality consultation is critical to:

- inform projects,
- implement projects, and
- sustain projects.

This underpins the ABM approach in that it gives relevance and authenticity to projects, but it is also important that in its interaction with the intelligence cycle it assist in providing a valuable 'reality check'.

The consultation process must be such that participation is seen to be valued and, where possible, stakeholder preferences should be acted upon. Further, individual and community reciprocity should be built up, i.e. conferred rights/opportunities should carry responsibilities.

STRATEGY THREE: A wide project spectrum
A wide project spectrum of hard and soft (capital and human/social); gender based; sector specific and type is essential as a 'hedge-strategy' to ensure Programme progress. A commitment to consultation/community participation can have unpredictable results or delays. The wide spectrum means that there are generally projects that can move to implementation to maximise spending within a financial year. A further outcome is that community participation is invigorated in that a wider cross-section of stakeholders experience Programme receptivity.

STRATEGY FOUR: Safety through environmental design.
The Warwick Junction Project has experienced the benefits of this discipline on many occasions. Significant expenditure in the upgrading of the lumination levels of street lighting had - almost to the switch on date - a statistical reduction in the theft of motor vehicles. An elevated pedestrian crossing was notorious for assault and robberies (Design manuals sometimes clarify this condition as a 'canyon'). Various design guidelines were implemented with respect to the critical heights of balustrades, visibility through the balustrades to ensure maximum surveillance from all surrounding elevations, material selection and lighting. The project also identified pedestrian congestion caused by opportunistic informal trading as an additional concern. In the consultations that ensured this reason was forwarded to the traders as the motivation for their removal. Clearly they were dissatisfied and offered to ensure public safety across the bridge in exchange for the opportunity to trade. An unofficial community compact developed where formal stalls were erected to manage the uncontrolled trading in order to reduce pedestrian congestion. Over the last 5 years this 'canyon' has been virtually incident free.

iTRUMP has an overarching project termed the corridors and precincts of excellence. This is a network of the priority pedestrian and vehicular routes within the inner city that are being progressively re-imaged in their urban design character. An important component of this project is public safety, both in real terms and by perception. Detail design is informed by current design standards but, more importantly, by the 'kerb-side intelligence previously described. The advantage of having the iTRUMP programme imbedded within local government is that the culture of awareness becomes the conscience of a broader group of implementers and operators. The Programme's Better Buildings Project has a specific building-by-building focus (472 in number) but a heightened awareness of those buildings along or within the corridors and precincts of excellence.

On a lighter note, the 'nose test' is often a foolproof indicator that a public space is potentially unsafe. If the configuration along the edge of a public space is such that it provides sufficient privacy to urinate in public then 'safety through environmental design' is urgently necessary!

STRATEGY FIVE: Distinctiveness.
The iTRUMP programme prescribes to 'district distinctiveness' meaning that each of the 9 inner city districts has a specific contribution to make the whole, by a community of local stakeholders who are or can contribute to that purpose. An overall inner city vision holds this intention at the centre. The outcome is a rich mix of activities, architecture, urban design detailing, stakeholders and culture. It enables celebrating the local dynamic and is reinforced by a number of the preceding strategies, e.g. Two and Three.

In conclusion, how do these strategy outcomes contribute towards urban crime prevention?

1. They establish an environment of positive influence. Every programme has the objective of achieving integration which in reality is often difficult to achieve and onerous to maintain but, in the moments when this is achieved, the multiplier benefits are extraordinary. Crime thrives in an anonymous and disordered environment.

They exert maximum influence on negative activities. During the 2004 December Festive Season, the iTRUMP Programme chaired a multi-agency committee representing all the seasonal operational service providers. This was an extension of the operations team approach previously described. This committee had approximately 700 staff under its control of which only some 350 (maximum) were from the policing agencies. The month-long season was characterised by very few serious criminal incidents considering the additional people enjoying the inner city beaches and facilities. On one key national holiday an estimated one-and-a-half million people gathered within 5 square kilometres. The aggregated benefits of a team larger than just police not only contained criminal activity in real terms, but enhanced the public perception of a safe and secure environment, e.g. large amounts of litter from a previous day might suggest uncontrolled activity. Public confidence is an important ingredient in the reclamation of the public realm from the control of criminals.

Multi-agency action enhances urban management and sustainability, e.g. the theft of cast-iron drain covers for illegal sale to scrap merchants, does not remain in the realm of continuous replacement but a project to apprehend the offenders in the short-term; the research of alternate product design to reduce the desirability of the material, and lastly, for the legitimate cases of need, perhaps a diversionary income support programme. Directed aright local government has the resources to initiate this type of integrated approach.

3. They establish an unmatched intelligence network. By establishing the dynamism implied in the ABM diagram (Strategy One above), the network starts to generate its own internal energy that becomes self-perpetuating and a reference source progressively relied upon by the team members. The wide range of information 'banked' within the Programme is enormous. The information is best managed with a measure of informality that raises the challenge of custodianship. Nevertheless, it is a huge asset.

4. They are a positive influence on the crime drivers. Developmental and responsive local government, with projects recognising local needs, reduces the inclination towards crime, e.g. poverty and social exclusion. The Warwick Junction Project has shown this to be a reality.

5. They are a positive influence on the upgrade of the physical environment. A degraded and under-managed public realm is an environment avoided by the public which creates the perfect and enabling 'hatchery' for crime. The strategies are beneficial on two levels. Firstly, the capital projects address the urban aesthetic and, secondly, the operating teams ensure public safety (in the broadest sense) and sustainable management.

In the early stages of the Warwick Junction Project, the complexity of the challenges were likened to the unravelling of a 'knotted ball of string'. One struggles to find an end with which to start; having done so, it might then flow freely until another bunch of knots appears; patient unravelling continues, and then you proceed further. At some stage you might even have to cut the string (radical strategy change) to remove impossible knots! Urban regeneration is a process that starts with the conviction that committed intervention can make a difference. Cities can elevate people and communities. Elevated people quest for urban stability and crime reduced environments.

Workshop 3

Volontariat Contre la Violence à Antananarivo

Eduardo Razafimanantena
Deputy Mayor
Munuicpality of Antanarivo, Madagascar
And
Marie-Pierre Delcleve
UN Volunteer Program
Madagascar

PRÉSENTATION DU CADRE DU PROJET

Généalogie du projet
Depuis 1997 le CNUEH (centre des nations unies pour les établissements humains) financé par le PNUD est intervenu à Madagascar pour l'identification des problèmes de prévention de la violence et de l'insécurité urbaine à Antananarivo. En 1998, le CNUEH et le Ministère de l'Aménagement du Territoire et de la Ville ont organisé un Atelier National sur la Lutte Contre la Pauvreté Urbaine et enfin le CNUEH a conduit un diagnostic sur l'insécurité à Antananarivo financé par le PNUD dont les résultats ont été validés dans le cadre d'ateliers de consultation qui se sont tenus en juin 2000. Ce diagnostic a servi de base pour l'élaboration du projet *Volontariat Contre la Violence* par le Programme des Volontaires des Nations Unies et la Commune urbaine d'Antananarivo sous la tutelle du Ministère de l'Aménagement du Territoire et de la Ville.
Méthodologie

Le projet Volontariat Contre la Violence (VCV) s'inscrit dans une optique de gouvernance urbaine à l'échelle locale de quartiers de la Commune Urbaine d'Antananarivo (CUA). Son originalité est de combiner une double approche. D'une part, l'approche « Volontariat » promue par le programme des Volontaires des Nations Unies qui repose sur la mobilisation communautaire, la démarche participative et partenariale ainsi que des campagnes de mobilisation contre la violence à travers des activités et des manifestations socio culturelles et sportives. D'autre part, l'approche « Villes Plus Sûres » développée par l'ONU-Habitat par laquelle tous les acteurs collaborent ensemble pour prévenir la sécurité et assurer le développement local et qui promeut le rôle de leadership de la municipalité.

La méthodologie employée est donc participative et préventive. Pour l'implication et la mobilisation communautaire, le projet VCV a commencé par réaliser un Diagnostic Participatif en développant des outils spécifiques au contexte tananarivien.
Stratégies et modalités d'exécution

Le projet qui a débuté en septembre 2002 est financé par le programme des Volontaires des Nations Unies qui a mis en place une équipe de 27 VNU (dont 20 animateurs de quartiers) pour une durée de deux ans. Il a été prolongé d'une année avec une équipe réduite de 20 VNU. Le PNUD Madagascar finance l'appui technique assuré par le programme Villes Plus Sûres d'ONU Habitat.

La CUA (Commune Urbaine d'Antananarivo) fournit les bureaux et des compétences humaines par la mise en place d'une équipe homologue.

Le projet intervient directement sur deux quartiers (environ 11 000 et 7 000 habitants) pour la mise en œuvre d'activités pilotes de prévention.
Objectifs du projet

De par sa finalité : la lutte contre la violence au sein des communautés de base, le but de ce projet est de mettre en place un système de coordination d'activités de prévention de la criminalité urbaine.

Pour cela les 4 objectifs spécifiques suivants ont été définis :

- Faciliter des mécanismes de coordination des actions de prévention à travers un processus participatif de renforcement de la cohésion sociale
- Etablir des centres de rencontres pilote dans les quartiers défavorisés sélectionnés
- Mobiliser les groupes de base et mettre en œuvre des activités pilote destinés aux groupes à risque
- Renforcer la capacité des autorités locales et des ONG dans la prévention de la criminalité et de la violence

PRINCIPAUX RESULTANTS AU NIVEAU DES ACTEURS CLÉS

La Commune Urbaine d'Antananarivo

La Commune Urbaine d'Antananarivo a toujours, dans la mesure du possible, mis à disposition du projet, des ressources humaines ou matérielles pour la réalisation des activités ou facilité les procédures administratives.

Durant la première année, elle s'est fortement impliquée dans la mise en place de la CLV (cellule de prévention et de lutte contre la violence) qui réunissait un large partenariat (ministères, représentants collectivités territoriales, ONG, associations locales..). Après les élections municipales de novembre 2003, la CUA a modifié son organigramme pour créer, la DCIS (la Direction de la Coordination des Initiatives Sociales) et une Direction Générale des Affaires Sociales et de la Sécurité qui agit en étroite collaboration avec le projet et devra assurer le suivi et la pérennité des activités. *La DG ASS* réunit les services clés pour la mise en œuvre d'une politique de prévention (la Direction des actions sanitaires et sociales, la Direction des activités socioculturelles et sportives, la Direction de la coordination des initiatives sociales, les pompiers et la police municipale)

La Communauté

La communauté de base est fortement mobilisée et plus de 160 Volontaires de Quartiers (VQ) sont impliqués dans le projet soit pour mener des actions de sensibilisation conte la violence, soit pour encadrer et former des plus jeunes soit pour contribuer à la réalisation des activités.

Certains de ces VQ se sont formalisés en associations tels que les cellules IEC (Information/ Education/ Communication) ou les COMSCS (comités d'organisation des manifestations socio culturelles et sportives). Ces Volontaires de Quartiers sont totalement bénévoles. La compensation qu'il trouve de leur engagement et certainement la reconnaissance sociale et/ou les formations que le projet organise dans différents domaines.

Les associations locales

Le projet appui la coordination des actions des associations locales par des renforcements de capacités techniques (formations thématiques) pour la participation à la mise en œuvre des activités identifiées de prévention de la violence. La construction d'un centre focal dans l'un des quartiers est imminente est permettra à ces associations de disposer d'un local pour leurs activités. L'implication de ces associations est primordiale pour la pérennisation des activités.

Les autres acteurs

D'autres acteurs jouent un rôle majeur dans ce projet, il s'agit principalement des Ministères et des ONG internationales avec qui le projet VCV a toujours eu un souci de coordination des interventions.Quelques exemples d'activités mises en œuvre:

Le Diagnostic Participatif réalisé auprès de la population des quartiers d'intervention et des partenaires institutionnels a permis d'élaborer une stratégie d'intervention basée sur 3 axes principaux. A titre d'illustration sont présentés certaines des actions mises en œuvre en fonction de ces axes.

Axe I : Développement d'approches pour la police et la justice de proximité

Rapprochement de la police et de la justice avec la communauté de base (portes ouvertes, formation des autorités locales et des responsables de la sécurité dans les quartiers), formation des agents de la Police Municipale, formation des cadres de la Municipalité d'Antananarivo

Axe II : amélioration de l'environnement urbain

Cartographie des lieux à éclairer dans les quartiers, appui des populations à la réalisation d'actions d'assainissement.

Axe III : développement des actions de préventions sociales visant les groupes à risques

Sensibilisation et éducation de la population à travers des manifestations socioculturelles et sportives, activités culturelles et éducatives avec les enfants et jeunes, activités d'insertion et de réinsertion professionnelles et de mobilisation de ressources

LA PRÉVENTION DE LA VIOLENCE À TRAVERS LA MOBILISATION COMMUNAUTAIRE

1. La valeur ajoutée du volontariat

La méthodologie adoptée par *le projet VCV* étant basée sur l'approche participative et préventive, le projet met particulièrement l'accent sur la participation de la population et sur la promotion du Volontariat bénévole pour réaliser les actions définies dans les axes stratégiques du projet.

Le volontariat, notamment au niveau local, favorise la réalisation des buts et objectifs fixés par toutes initiatives de développement économique et social durable et contribue efficacement à la lutte contre la pauvreté. Le volontariat profite à la fois à l'ensemble de la société et à la personne qui se porte volontaire. Il permet aux gens de faire la part des choses, d'agir, et contribue à développer la solidarité. Il encourage la participation et l'appropriation, crée des liens de réciprocité et renforce le sentiment de responsabilité envers la collectivité. Il est aussi une source d'épanouissement pour le volontaire lui-même.[132]

Le développement économique et social durable dépend non seulement des pouvoirs publics, mais aussi des synergies créées entre la société civile, le secteur privé et les nombreux particuliers engagés dans l'action volontaire. Le volontariat est constitutif de la culture et du patrimoine de toutes les nations.[133] Le développement des quartiers, spécifiquement pour la lutte contre la violence et pour la réduction de la délinquance et de la criminalité, dépend de la prise de responsabilité et de la participation active de la Communauté de Base, en l'occurrence les Volontaires des Quartier d'intervention. Depuis le début du projet, des Volontaires de Quartier se sont mobilisés dans les deux quartiers et ont participé activement à l'identification, la planification et la mise en oeuvre des activités priorisées.

2. La méthodologie d'organisation du volontariat de quartier

A Antananarivo, les Volontaires de Quartier sont des habitants des zones d'intervention qui ont été repérés par l'équipe VNU, à travers leur implication dans les activités du projet. Lors des actions de sensibilisation et d'information de la population sur le projet VCV, l'équipe de VNU en collaboration avec les autorités locales et les acteurs de développement du quartier, ont identifié les personnes les plus impliquées. Une fois que l'équipe VNU a repéré un nombre important de personnes intéressées, elle a tissé des liens de camaraderie avec elles, pour mieux les connaître et les sensibiliser sur l'importance du développement humain individuel et collectif.

Equipe de travail

132 Cf UN. Volunteers, rapport annuel, Tisser la toile , p5

133 idem, p14

Au départ, les équipes de travail étaient constituées uniquement de VNU (un spécialiste et quatre animateurs). Au fur et à mesures que les VQ se sont impliqués et engagés dans des différentes actions du projet VCV, ils se sont intégrés progressivement dans les équipes de travail selon leurs champs d'intérêts : un VNU Spécialiste avec quatre VNU Animateurs, et chaque VNU Animateur avec sept VQ. Chaque VQ est responsable de différents secteurs de la communauté. Le profil des Volontaires de Quartier du projet VCV

Afin de mieux connaître les Volontaires de Quartier ainsi que leur disponibilité pour cet engagement bénévole, une étude sur les caractéristiques qualitatives et quantitatives des Volontaires de quartier a été réalisée en décembre 2003. 163 VQ « Volontaires de Quartier » ont répondu à « l'enquête Profil VQ» soit un taux de couverture de 100 % des VQ actifs à cette période.

Cette enquête a permis d'élaborer le profil des VQ pour connaître leur motivation, leur disponibilité pour la communauté et leurs besoins en renforcement de compétences pour qu'ils puissent réaliser les activités identifiées avec les différents partenaires et assurer la pérennité des activités : « Que chaque VQ soit un point d'appui au développement de son quartier ». Il y a un peu plus de femmes que d'hommes engagées dans le volontariat et beaucoup exercent des métiers précaires. Les plus jeunes sont encore « scolarisés ». Les VQ ont généralement participé à plusieurs activités du projet. Le Diagnostic Participatif a été la première action d'envergure du projet qui a pu mobiliser la communauté. Les plus assidus sont devenus Volontaires de Quartiers. Les ateliers organisés par le projet pour renforcer les compétences des VQ dans le domaine de l'identification et de la planification d'activités de développement ont connu une forte mobilisation.

Les manifestions socioculturelles et sportives ont également eu un grand succès puisque c'est l'activité qui a fédéré le plus grand nombre de VQ à Anatihazo et 58% des VQ d'Andohatapenaka. D'ailleurs 26 VQ à Anatihazo et 27 à Andohatapenaka font parti des COMSCS, les comités d'organisation des manifestations socio culturelles et sportives, initiées par le projet VCV et 11 VQ avaient suivi à cette date, une formation en animation sportive organisée par le projet. Une des principales missions des Volontaires de Quartier est de sensibiliser leur entourage sur la prévention de la violence, aussi ils sont 70 et 77 % à avoir mener ce type d'actions. Les autres activités sont des activités de formation professionnelle (pour les jeunes déscolarisés et pour les femmes), d'accès au micro-crédit ou de développement d'activités génératrices de revenus.

Résultats

La démarche participative qui conduit au volontariat de quartier est basée sur « l'empowerment » par la population de son propre développement, le pari étant que la communauté soit suffisamment impliquée pour assurer la pérennité des actions mises en œuvre et continue à identifier d'autres interventions.

Cet engagement étant bénévole, il est limité dans le temps par la disponibilité que les VQ ont, en dehors de leur activité professionnelle formelle ou informelle. En effet, une grande part des VQ exerce des petits métiers, souvent dans le secteur informel. Par ailleurs, beaucoup sont des femmes et doivent s'occuper de leur foyer. Pour celles-ci, c'est souvent l'espoir d'améliorer les conditions de vie de leurs enfants, d'éviter qu'ils ne sombrent dans la délinquance qui les poussent à s'engager en tant que VQ. Les plus jeunes ont pu lier des liens de camaraderie avec les animateurs VNU du projet, ou ont été intéressés par les activités sportives et de loisirs, ou par une formation professionnelle organisées par le projet.

D'autres encore, sont intéressés par la reconnaissance sociale que leur apporte leur engagement. Certains étaient déjà des leaders, d'autres ont pu se faire connaître dans le quartier par le biais de leur engagement dans la sensibilisation contre la violence et dans l'organisation d'activités qui leur ont permis d'être élus « représentant de quartier ». Huit VQ ont été élus à la structure « Fokonolona » qui est une structure politico-administrative au niveau du Fokontany qui a pour mission le développement du quartier.

L'implication des VQ dans la vie publique se lit également à travers leur appartenance aux associations locales. Cela est doublement intéressant pour le projet VCV car d'une part les VQ engagent leurs associations dans les activités de prévention de la violence et d'autre part cela facilite le processus d'appui à une meilleure coordination des associations.

La motivation des VQ évolue dans le temps et nécessite un suivi attentif. Certaines actions concrètes fédèrent les VQ car ils sont en attente de résultats visibles cependant le volontariat peut aussi être l'apprentissage de la patience et des aléas liés à la réalisation de projet. Aussi, l'équipe VNU organise régulièrement des formations pour renforcer les compétences des VQ, car l'objectif ultime est de renforcer les capacités des populations à s'organiser pour mieux défendre leurs intérêts, à identifier leurs besoins à les prioriser et à prendre des décisions de façon concertée pour le développement plus sûr de leur quartier.

Perspectives

Fort de son expérience dans ses deux quartiers pilotes, le projet VCV souhaite étendre son intervention dans les quartiers limitrophes de sa zone d'intervention et, développer plus spécifiquement, un volet «d'appui à la promotion d'activités physiques, sportives et socio culturelles ». Ce programme d'actions est directement inspiré de l'expérience que le projet Volontariat Contre la Violence (VCV) a capitalisé de l'organisation des manifestations socioculturelles et sportives (MSCS) de 2003 et 2004. Ces manifestations, organisées durant les vacances scolaires, ont mobilisé un grand nombre de jeunes (1200 participants sur une population totale d'environ 18000 habitants) et ont permis de véhiculer des messages de sensibilisation pour un changement de comportement. Le programme d'activités portait sur des disciplines comme le rugby, le foot, le basket et l'athlétisme, ainsi que sur des compétitions et événements culturels comme la musique, la danse, le chant et la broderie. Le programme de sensibilisation portait sur différentes thématiques, telles que la protection et les droits de l'enfance, le droit des femmes, le respect des biens privés et publics, la santé (notamment la prévention de l'alcoolisme, de la toxicomanie, des MST et du sida), et la préservation de l'environnement. Ces programmes étaient élaborés conjointement avec les partenaires du projet.

Une étude sur l'impact de ces manifestations sur les participants a été lancée et les résultats montrent une forte sensibilisation des organisateurs et des joueurs sur le respect d'autrui, des règlements et un renforcement de la cohésion sociale en général. Aussi, les participants et les acteurs locaux souhaitent poursuivre l'organisation de ce type de manifestations tout en développant des activités connexes pour renforcer les capacités des organisateurs et les structures d'accueil.

Workshop 3

The Draft National Police on Child Justice Administration in Nigeria

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Urban crime has been the predominant form of crime over the years, hoisted, *inter alia*, on the phenomena of rapid urbanization and unplanned urban and housing expansion. The over-stretched facilities and infrastructures fail to cope with the heavy explosion; whilst unemployment rate increases, social exclusion, lack of educational opportunities, poverty, and heightened squalor become the order of the day.

(We) Call upon Member States to take preventive, protective and rehabilitative measures, through enforcement of compulsory education and provision of vocational training for the youth, monitor and bring abuses to light, carry out situation analysis at various levels, and raise awareness through public education actives and the mass media, including the incorporation of the appropriate educational modules into the school curricula at the primary, secondary and tertiary levels, and build coalitions with the civil society;[134]

Pursue policies of economic growth to create employment, alleviate poverty and ensure better and equitable income distribution, in order to ensure access by the most vulnerable groups, particularly women and children, to productive assets, including land, credit, technology and information. The resultant programme can be prosecuted in a partnership between government, the private sector, the citizens and the international community, particularly targeting accelerated growth of agriculture and food production, particularly targeting accelerated growth of agriculture and food production, and also complementing these with health services and transportation systems at affordable rates. Particular attention should be paid to strengthening family economic empowerment programmes and social safety nets for the most disadvantaged families and vulnerable groups, including women, children and youth, prone to crime commission and recruitment into criminal syndicates;[135]

Nigeria fully endorses these views. Accordingly, Nigeria is seeking to establish Non-judicial/Community Juvenile Crime and Delinquency Prevention Policies and Programmes.[136]

The principles of corrective and preventive measures that have been adopted in national approach to delinquency prevention in the country are meant to ensure that children would be useful citizens and active participants in the economic, social, political, and cultural development of the country through the National Children Exchange Programmes; Workshops for Prefects of Schools; School Social Works; Cultural Competitions; School Debates; Drug Free Clubs; Literary and Debating Societies; Workshops, Seminars, and Symposia; Children and Children Holiday Programmes; National Children Clubs; National Directorate of Employment; and Children on Employment (Waste to Wealth) Programmes.

134 The African Common Position on Crime Prevention and Criminal Justice (Africa's Contribution to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, adopted by the Heads of State and Government, at Abuja, in January 2005, operative paragraph 11, at page 4.

135 Ibid, paragraph 12, at page 5.

136 Draft National Policy on Child Justice Administration in Nigeria,

Officially, a lot is being done to encourage and develop Group Work Services, which are designed to influence, for good, the transformation of children from adolescence to maturity. These Services aim at the social progress of the society and of the individual by the encouragement of personal initiative and self-help, stimulated by loyalty to the community. Many training courses in, *inter alia,* citizenship and leadership, and national children training have been introduced with a view to developing an all-round personality of the individual. Also, sporting and other recreational activities and facilities are also provided and encouraged through the media of various Children Clubs and Councils. These Services and Programmes will be strengthened and enhanced.

Also, Family Welfare Services are available to help sustain the domestic health of the family, which Nigerians believe, have the primary responsibility for socialization of children and young persons. Also, school education complements these Services, and virtually all children and young persons are entitled to education, both in the academic and vocational training senses. However, government intrusion into primary and secondary education, in order to provide free education, has led to a sudden secularization of education – Nigeria being a multi-religious society. This has had the effect of pushing into relative unimportance of religion, which we all know contains those tenets characteristic of most widely accepted cultural norms. Concomitantly with this situation, the teaching of civics was also dropped for some time. However, attention had been seriously called to the implications of these lapses periodically; and all the authorities have made some efforts to take appropriate measures to remedy the situation. This development will be salutary in applying some brake to the effects of rapid industrialization, urbanization and technological, as well as other forms of development. It is, therefore, a welcome development that some States have now returned, or are in the process of returning private schools to their owners.

Despite the eroding and sometimes pervading impact of our experience of colonization, aided by the massive infusion of foreign cultural values into our cultural life through the importation of technology and technological know-how, and the aggressive drive of the international mass media, we, in Nigeria, are still trying to retain our cultural identity, with a view to avoiding the impact of culture conflict factor on a micro basis.

In addition, there has been a nationally co-ordinated planned programme, for over twenty-eight (28) years, to create facilities for the recreation, rehabilitation and training of juveniles, as measures against the rising trend in juvenile delinquency. And the old National Plan for a Youth Corps Programme had previously been under constant revision in the successive National Development Plans. But they seem no longer now to be in the Rolling Plans.

Efforts are constantly being made in the overall national planning to provide for Social Development. However, it is felt that a general Programme of Social Development, at both national and state levels, cannot be as beneficial as the specific incorporation of the Social Development components into specific development projects.

It is, therefore, appropriate now to lay down the following *Goal* and Objectives thereunder, as well as their implementation strategies, in relation crime and delinquency prevention for our children below the age of eighteen (18) years.[137]

GOAL

The essence of crime and delinquency prevention in children is to ensure the minimization of offending/delinquent behaviour in them, thereby – for the child, assuring his growth as a good and responsible adult citizen for the society, assuring order, peace and security economically, reducing the cost of minimizing offending/delinquent behaviour in the society.

1. Objective:

- Generating children/parents awareness about their rights and responsibilities

137 Draft National Policy ,ibid., Chapter 3, at pags 17-19.,

- Promotion of early childhood services which will promote the psychological development of children.

Implementation Strategies

- Communication through the media and other accepted modes, such as drama and sports competitions;
- Establishment of a good parenting assistance/counseling programme, thereby increasing parenting skills;
- Establishment of psychological, monitoring and counseling programmes which will assist in the positive development of the child as well as motivative and support the child in order to enable him/her identify and achieve educational, vocational and social goals. This will enable him/her address such internal factors that put him/her at risk of offending; and
- Establishment of Community Children for social and civil education.

2. Objective:

Provisions of access to quality and affordable education, as a tool for transforming the child into a responsible member of the community.

Implementation Strategies

- Full implementation of the Universal Basic Education (UBE) Programme to ensure education of the child;
- Vigorous re-introduction of civic and moral education in the school curriculum; and
- Establishment of mechanism for the placement of police and social welfare personnel in schools to-
- reduce victimization, criminality and anti-social behaviour within the school and the community.
- Working with school on Whole School approaches to behaviour and discipline;
- Identifying and working with children and young people ;at risk of becoming victims or offenders;
- Supporting vulnerable children and young people through periods of transition such as the move from primary to junior secondary school, junior secondary to senior secondary school; and
- Creating a safer environment for children to learn and live in.

3. Objective:

- Empowering and supporting families to enable parents build up their capacities for poverty alleviation.
- Implementation Strategies
- Promotion of income generating programmes and micro-credit schemes for both parents and children;
- Development of job creating schemes in the Community;
- Establishment of social upliftment programmes for children;
- Provision of government and donor funds to support such projects;
- Utilization of such orders by the court as will assist the parent to be in control of his/her family, including his/her child; and
- Enhancement of social services for children, e.g: free education and free primary health care services, etc.

4. Objective

Community participation and ownership of the Child Justice System must be entrenched in the system.

Implementation Strategies

- Awareness-creation and involvement of the entire community in crime and delinquency through visits to schools, churches, mosques and associations within the community;
- Establishment of Community Crime and Delinquency Committee which will facilitate community awareness, monitor the Court, the police, prisons, etc., personnel and facilities; and
- Introduction of Community Service Schemes for children and communities to participate fully in.

5. Objective

Encouragement of children participation in the planning and implementation of CJA and CJA-related programmes.

Implementation Strategies

- Establishment of peer education for children in and out of school;
- Establishment of peer juries in the context of the Family Court as well as that of Community Conflict Resolution; and
- Ensuring participation of the child offender in a life skill adolescent development programme, such as anger management, civil responsibilities, and skills acquisition.

6. Objective

Training of all officers working with children in order to enhance their mentoring and counseling skills and techniques.

Implementation Strategies

- Revision of the curricula of the various agencies training institutions to include counseling, community service, community development, and other developmental components, which will stimulate the requisite skills in the officers trained therein; and
- Ensuring the training of all such officers in those requisite skills, as well as in communication skills, which shall ensure their impartation to the children in their charge.

7. Objective

Establishment of child-friendly facilities in both rural and urban centers, in order to enable children access information, counseling and remedial services.

Implementation Strategies

(a) Establishing children desks at police stations, schools, clubs, local governments offices, and suitable rural facilities, which will enable children to be able to access – complaints mechanisms for abused children or children at risk of abuse or victimization;remedies (civil and criminal) where abused, or otherwise victimized, or at risk of such;information, or counseling; and

(b) Offering of information about actual or potential abuses or victimizations of themselves, or other children known to them, including physical, sexual and psychological abuses.

The additional Strategies and best practices being adopted by Nigeria can now be enumerated as follows:

1. Educating/enlightening youths about the victmological facts available, with specific reference to the conditions in the urban areas. Such knowledge will enable the youth to avoid being objects of victimization.
2. Even in poverty, making efforts to avoid social exclusion for the youths, and encouraging the community to partner with government, at all levels, to organise community projects, which will prevent the youth from offending. Such projects can be Micro–credit Projects, in which the community is involved in both their supervision and monitoring.

3. Establishing community policing, additionally with community oriented projects, such as the posting of a policeman within a particular community or school, working with families, communities or schools, in order to intervene at the earliest sign of difficult behaviour on the part of a child, and to correct and guide the child away from offending.
4. Establishing a group of community interventionists, including social workers, which can work closely with the policeman working in the community and/or the schools.
5. Planning or re-planning the urban centres with a view to containing the unsalutary effects of population explosion in the face of an unplanned and unsupported urban development.
6. Empowering/re-empowering families to become capable and to take or re-kindle interest in their children, and to form the necessary linkages with them to avoid their social exclusion.
7. Obtaining, wherever available, technical cooperation for capacity building, including training, which will empower pertinent officials and community members to learn the best practices for crime prevention for youths at risk.

In the area of crime prevention, Nigeria has developed a project, in collaboration with the DFID's Security, Justice and Growth Programme, which took a look at the Informal Police Structure (IPS). This IPS is on the ground throughout Nigeria. However, the project focused on Enugu and Jigawa States, where it dealt with two IPS entities per state. The project sought to provide training to the IPS operatives, with a view to sensitizing them, in relation to respect for human rights, improving their enforcement capabilities, improving record keeping ability, and their knowledge about arrest procedures, and improving their relationship with the police, for whom they now act as informants. The project has thus utilized this very useful machinery for crime prevention and control in Nigeria, thereby augmenting the efforts of the Formal Policing System, epitomized by the Nigeria Police Force. The project has been successful, and the IPS is now being organized under the umbrella of Neighbourhood Associations, and a bill is being drafted to formally recognize these Associations and formalize their objects and processes.

Workshop 3

The growing involvement of children and youth in organised armed violence: Rio de Janeiro and beyond

Marianna Olinger
COAV

INTRODUCTION

This paper briefly describes the rising involvement of children and youth in organised armed violence in Rio de Janeiro, Brazil, based on the results of Viva Rio and ISER's (*Instituto de Estudos da Religião*) research on the working functions of children and adolescents in *favela* based drug factions within the city[138] and the COAV Programme, that aims to promote the national and international recognition of the plight of children and youth in organised armed violence, further understanding the theme through research and information gathering, identifying areas where children and youth are at most risk, working to reduce the problem via coordinating pilot projects and formulating and promoting public policy.

Rio de Janeiro's case study

Between November 2001 and August 2002 Viva Rio and ISER carried out research on the working functions of children and adolescents in the *favela*-based drug factions of Rio de Janeiro. This research led to the publication of *Children of the Drug Trade: a case study of children in organised armed violence in Rio de Janeiro*.1 The case study of Rio de Janeiro has been important for a number of reasons: although not at war, there are currently more people (and specifically children) dying from small arms fire in Rio de Janeiro than in many low-level armed conflicts elsewhere2 ; although they are not politically oriented armed groups like those found in many civil wars, Rio's drug factions are a territorial and openly armed paramilitary presence in most of the city's *favelas* ; and the types of small arms and light weapons used by all sides in the daily conflicts between rival factions and the police, are those also encountered in any civil conflict.

Viva Rio's original research discusses the history, structure and organization of *favela* based drug factions in Rio de Janeiro. In doing this, the working functions of children and adolescents are presented and numerous similarities between 'child soldiers' and Rio's estimated 5,000 child and youth drug faction workers are made. These include: 'voluntary' recruitment dynamics; age (a focus on the 15-17 year old age group); working within a hierarchical structure enforced by orders and punishments; being paid for a service; being given a weapon; being on call twenty four hours per day; surviving in a kill-or-be-killed reality; younger and younger children being used in armed functions; and involvement in armed confrontations.5 Despite these similarities, however, the study concludes that categorising child faction workers as 'child soldiers' would be problematic as Rio de Janeiro is not in a state of war; although maintaining a degree of socio-political control within many *favelas*, drug factions have no defined political objectives and no stated interest in substituting the state. Furthermore, despite their own categorization as such, if we categorize these children as 'soldiers', we may legitimize the already high levels of lethal state force used against them. Describing minors that are given a war grade weapon and paid a salary to walk openly armed within a *favela* community on defensive patrol as 'juvenile delinquents' also seems inadequate.

In spite of similarities to both semantic categories, for all their worth definitions such as 'child soldier' or 'delinquent' have failed to correctly represent the growing number of children and youths in Rio de Janeiro and around the world that participate in organized armed groups functioning

138 Full results from this study were published in Children of the Drug Trade: A Case Study of Organised Armed Violence in Rio de Janeiro (Dowdney, 2003)

outside of traditionally defined war zones. Called to task on this problem, during the 'Seminar on Children affected by Organised Armed Violence' held by Viva Rio in September, 2002, international participants7 agreed on a *working definition* for child and youth armed drug faction workers in Rio, and those in similar armed groups elsewhere: *Children and Youth in Organised Armed Violence (COAV) – "Children and youth employed or otherwise participating in Organised Armed Violence where there are elements of a command structure and power over territory, local population or resources*

Although there are a number of similarities between children working for drug factions in Rio de Janeiro and gang youth in other urban cities, categorizing child drug faction workers in such a manner does not adequately represent the reality of their situation. Furthermore, if the plight of children and adolescents working in an armed capacity for drug factions in the city was to be recognised, understood and addressed within Brazil and by the international community, the specificity of the situation in Rio de Janeiro merited further investigation.

Fight for Peace: a best practice intervention for prevention and rehabilitation of children and youth in organised violence

Fight for Peace (*Luta Pela Paz)* is a Viva Rio project, part of the COAV Programme, established in 2000 in the *favela* of *Complexo da Mare,* Rio de Janeiro, a community dominated by rival drug factions in which faction gun violence has led to a firearm-related mortality rate of over 100 per 100,000 inhabitants for males in the 15-24 age group. The project is a local response to offer children and youths alternatives to crime and employment in the drug trade. The project uses boxing, *capoeira* and wrestling to attract children and youths to join, and offers an integrated and personalized six point plan for each participant in the project based in: 1) sports training, 2) education, 3) life-skills training, 4) promoting a culture of peace, 5) access to the formal labor market and 6) development of youth leaders. Members are also invited to take an active role in overall project co-ordination, through the Youth Council. Participation in the Youth Council is open to all project youth who show an interest and who have the support of the group. The members elect their representatives in a closed election, and those who receive the most votes are invited to join the Youth Council and to meet with the project team to discuss the project's overall performance. The council represents the project members in management meetings and joins the project team in developing planning and performance strategies and in evaluating project activities. The Youth Council members serve as an example to other Fight for Peace youth through their attitudes and personal experiences. In addition to preventative action the project has also rehabilitated adolescents and youths that have left drug faction employment back into the formal work market. The project emphasizes youth leadership and the coordination team now includes youth that were originally beneficiaries of the project and are now paid members of staff. There are currently 150 participants in the project and since its establishment over 400 young people have been directly involved. The project also houses a sports academy that has 100 paying adult members from the community thus ensuring partial financial self-sustainability and the integration of community residents into the project's ideals and objectives. The opening of a new building in may 2005 (under construction), will increase the project's capacity in number of beneficiaries and also in offering new services such as formal primary level education, information technology, job training, music and culture. During 2004 the project began to work with city government in Resende in the design, implementation and coordination of an alternative sentencing program for children in conflict with the law. To truly deal with the problem of children and youth in organised violence in Rio and elsewhere, structural problems must be eradicated, however, concurrently to such macro problems being treated, community based interventions like Fight for Peace can work to make children and young people more resilient to joining armed groups through offering the correct support, options and influences.

In the beginning of 2005 Viva Rio launched the "Sob Medida" Project, an alternative sentencing project for first time offenders in Resende, a city with 90 thousand inhabitants in Rio de Janeiro State. As part of a municipal public security programme being designed and implemented by Viva Rio in partnership with municipal government, this pilot project will work for the reintegration of children and youth that commit armed / drug related offences through alternative sentencing as

imposed to detainment. This project was designed by ex-offenders from *Luta Pela Paz* who are also involved in its implementation.

Research and Information

With development and implementation of field projects, the COAV programme realised more is needed to defeat the increasing involvement of children and youth in organized armed violence. The programme, that aims to take lessons learned in the field and from the people actually involved on-the-ground and transform these into effective policy, has been working in raising awareness and understanding the problem through information gathering and research.

The programme currently has daily updated news service in English, Spanish and Portuguese languages on children and gun violence at www.coav.org.br. The site sends a bi-weekly virtual information bulletin to over 7,000 subscribers. In 2005 the website aims to continue an updated news service on relevant issues, changing the focus to identifying and promoting solutions to the COAV problem. The website has recently entered into partnership with www.stopkillingchildren.com that was launched in England in November 2004. COAV's participation includes collecting data on summary executions of minors in Brazil by state and other forces.

During 2004 an international research was carried out, where there was an attempt of compare 10 countries on children's involvement in organised armed groups acting outside of traditional war situations. Data was collected by 10 partner organisations in Jamaica; USA; Northern Ireland; El Salvador; Colombia; Ecuador; Honduras; Nigeria; South Africa; Philippines; Brazil. The research is now complete and will be published in May 2005.

CONCLUSION

Although to truly deal with the problem of children and youth in organised violence in Rio and elsewhere, structural problems such as poverty, social marginalisation and state sponsored violence that stimulate the existence of drug factions and other armed groups must be eradicated. However, concurrently to such macro problems being treated, community based interventions like Fight for Peace can work to make children and young people more resilient to joining armed groups through offering the correct support, options and influences.

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Other resources
Children and Organized Armed Violence (COAV) website www.coav.org.br
Regularly updated site with news and information from around the world on children in organized armed violence. Content in Spanish, English and Portuguese.

Desarme.org website www.desarme.org
Regularly updated news and information site on human security and armed violence. Worldwide coverage with a focus on Latin America. Content in Spanish and Portuguese.

Viva Rio website www.vivario.org.br
Institutional site with information on events and campaigns by the Rio-based NGO Viva Rio.

Workshop 3

Support for Urban Youth at Risk: “House for Youth" Battambang, CAMBODIA & Ho-Chi-Minh City, VIETNAM

Ayakp Otake
Children Without Boarders - KnK

ORGANIZATIONAL PROFILE
Kokkyo naki Kodomotachi (KnK, Children without Borders), is a non-governmental organization based in Tokyo, that aims at supporting underprivileged children and youths in developing countries and promoting friendship and understanding between those and children in Japan. KnK was established in 1997 by Medecins Sans Frontieres (MSF, Doctors without Borders) Japon and since then KnK has been conducting programs in Southeast Asia to support street children, disadvantaged adolescents, young victims of trafficking, youths under forced labor, and children in conflict with the law. Today, approximately 600 children and youths from 8 to 22 years old are supported by KnK in Vietnam, Cambodia, and the Philippines. In addition, KnK currently initiated mid-term activities to support young victims affected by Tsunami in India, Indonesia, and Thailand.

I. PROJECT SUMMARY
Through the establishment and subsequent support to the “House for Youth” in Battambang, Cambodia and Ho-Chi-Minh-City, Vietnam, urban youths at risk (15-19 years old), are given assistance to help transform themselves into active members of society. The services to be provided at the House include vocational and skills development and basic education. The House also serves as a focal point for resources from local partners and local governments, which helps build capacities in addressing issues of youth at risk. The support contributes to better urban security and the reduction of urban poverty.

II. BACKGROUND
The globalisation and increase of organized crime and growing drug trafficking tends to draw on young people as a source of cheap labour, exacerbating the delinquency rate. While juvenile delinquents contribute to urban crime, they are also the victims of crime, violence, poverty, exploitation and HIV/AIDS. These self-defined, "without a roof and without roots – roofless and rootless” ‘street children’ are the victims of human insecurity and circumstances beyond their control. Many are orphans, children abandoned by their families or running away from violence, conflict or acute poverty at home or in institutions, or rural migrants earning money for themselves and their village-based families.

In the absence of crucial social, economic and emotional familial support, their protection is imperative. However, little support has been offered to adolescents regarded as adults post 16 years. Increasingly, these children have become the defenceless victims of social problems such as brutal violence, sexual exploitation, abject neglect, chemical addiction, trafficking and human rights violations. Ensuring their human security and restoring their human dignity as well as establishing a sense of belonging to society, all of which have been lost over the years, is the first step away from this victimisation.

«A Story of Youth»
After Lok's family repatriated to Cambodia from Thai refugee camp, their living changed. He and his 7 siblings could not eat enough and his mother had a debt. Lok never went to school, but very often he went to look for work in the Thai market at the border. Lok was 10 years old when trafficked to Thailand for the first time, and since then he crossed the border to Thailand for numerous times. One day, he met a foreigner who asked him to stay with in his nice condominium in Pattaya. The foreigner gave a mobile phone and enough pocket money to Lok. He had to have sex with the foreign man, but instead he enjoyed the beautiful beaches, hamburgers, drugs and prostitutes. Lok also sent some money to his mother in Cambodia. When he was inhaling drug in his room with friends, Thai police arrested him and sent him back to Cambodia. Lok stayed at "House for Youth" for 2.5 years, learned haircut skill and opened a barber.

Here is a summary of presentation that Lok made at the Provincial Child Protection Committee Workshop on Youth at Risk organized in Battambang in September 2003.

I first took drug (yama) when I was 16 years old and became addicted for more than a year. I did many things to earn money for drug such as thief, deception, and selling drug. However, I stopped taking drug when I saw lots of people having drug in my hometown and I realized that they would never have a good future if they keep living such a life. I don't want my brothers and sisters to repeat the same mistake to end up in such a desperate life and neither do I. So I made up my mind to continue studying literacy and skill training at "House for Youth" because I know that it will lead me to a positive future. I also would like to suggest to all of you to pay more attention to the youths who are exposed at trafficking and drug use, and to take actions to support those children's future.

A. Gap in Support for Youths at Risk

A number of national and international organisations initiated activities to support and protect street children/adolescents by providing shelter, schooling, counselling as well as vocational training, which would help them make a living. Most of these organisations, however, prioritise younger children and those who have reached the age of 16, are considered "adults" and are not eligible for the various support schemes targeting street children. The young people are forced to leave the institutions but are not well equipped to integrate into society as productive citizens to lead an independent life. Subsequently, they find themselves in very perilous situations, and their non-existent sense of citizenship and lack of essential life skills make them fail to be accepted by the community.

At the same time, authorities have tried to address the problem of the increasing number of street children and youths ostracized from society, however, this solution was based on the principle of "segregation", by preventing the youth at risk from entering into society, rather than help re-integrate with the society. It is also seen as helping to "clean" the street, as they are often seen as untouchables or troublemakers. This approach, however, does not help to restore the sense of human dignity of the target group and does not address the fundamental problems of juvenile urban crime in a sustainable manner. The "House for Youth" activities help reduce urban crime, urban violence and urban poverty in cities and at the same time restore the youths' lost childhood and human dignity. It also aims to raise awareness, so that communities and local institutions will provide supporting mechanisms for this target group.

B. Battambang, Cambodia

Battambang is located in the northwestern part of Cambodia on the border with Thailand. During the war and internal conflicts that lasted over 25 years, hundred of thousands of people crossed the border with Thailand, and 30 percent of the 350,000 refugees repatriated from Thailand from 1992 to 1993 currently live in Battambang Province. The majority of the displaced have little access to basic services and gainful employment, resulting in a state of acute deprivation marked

by malnutrition, ill health and early death. These factors forced repatriated refugees, in particular youths and children who do not have any relatives, to migrate into the center of the province, Battambang (Battambang District), in search of employment. Furthermore, the extreme poverty forces families to use their children as a source of income – i.e. selling them to traffickers. It is said that there are currently thousands of underprivileged children including street children and/or victims of trafficking in the district itself.

C. Ho-Chi-Minh City, Vietnam
Vietnam is one of the few countries in the world that was able to address poverty issues in a substantial form. However, it is true that proportionally it was the urban areas that benefited most, in terms of quantity, it was clearly the rural areas that felt the most impact. Liberalization of the economy and increased economic activity has encouraged migration to cities like Ho-Chi-Minh City and Hanoi. Although Ho-Chi-Minh City is not its capital, it is the most economically important city in Vietnam. Thousands of people migrate into Ho-Chin-Minh-City and in terms of age, between 7,700 and 11,000 people aged 15 to 19 are estimated to move into the city each year. With increasing urbanisation, rural to urban migration is on the rise, this will have a direct impact on the welfare of children and youths. It is likely that if the current policy of issuing residence permits is continued, this will have the impact of deepening urban poverty with an increased number of street children and youths as a result.

III. GOAL AND OBJECTIVES

A. Goal
The goal of "House for Youth" is to empower urban youths at risk, restore their human dignity and facilitate their reintegration into society.

B. Objectives
While issues of urban poverty and security require a more comprehensive and integrated approach for sustainable solutions, the project focuses on two components: 1) to directly secure the lives of the target groups by improving their living conditions; and 2) to promote re-integration into society by raising awareness and building the capacities of their supporting organizations and communities. These two components have to be addressed simultaneously.

Objective 1: To address the gap in support for street children, thereby helping youths at risk aged between 15 and 19 years old to make the transition to adulthood and to re-integrate into society as full citizens by providing education, vocational training and psychological support.

Objective 2: To promote the re-integration of youths at risk through raising awareness of the issues faced by disadvantaged youths and street children, in collaboration with the local governments, thus enhancing the capacity building of communities, local governments and supporting organizations.

Who join the "House for Youth"?
Previous street children;
Young victims of human trafficking;
Youths sexually abused or exploited;
Youths excluded from society, such as those who joined delinquent groups or gangs;

IV. MAIN ACTIVITIES

A. Rehabilitation and Empowerment of Youths at Risk
Basic Needs. Establish a secure living environment including essential health care for the target youths to be fully protected.

In-depth Consultations. Conduct consultations with the youths and identify the skills development and educational needs or other areas requiring special attention while accommodated at "House for Youth."

Basic Education. Provide the youths with in-House literacy class and/or formal schooling.

Vocational Training. Identify appropriate training centers or shopowners who provide apprenticeship programs and train the youths for vocational skills as well as business skills for income generation while providing job counseling.

Life Skills Training. Train the youths to be able to manage daily life affairs.

Psychological Care. Assess the psychosocial status of youths and provide counselling individually and/or in groups.

Self-empowerment Programs. Develop and conduct programs for leadership building, self-organizing, decision-making, goal-setting, etc.

Awareness Raising. Organize special workshops to raise awareness of the youths to cope with social problems concerning drugs, HIV/AIDS, crime, violence, trafficking, abuse, etc.

Recreation and Alternative Activities. Carry out activities such as sports, educational trips, cultural exchange with Japanese youths, interaction with local school students, etc.

Job-placement and Micro-enterprise Support. Review and assess markets for employment in order to do job placement or to assist youths to set up business by providing loans/grants or equipment/tools.

Reintegration. Carefully assess the capacity of youth for reintegration, focusing on literacy level, life skills, social knowledge, vocational skill, psychosocial status. Following assessments, reintegrate the youths into family or promote them to make an independent living.

Post-Reintegration Support. Continue monitoring youths after reintegrating them back into society in terms of economic conditions, family situation, psychosocial status, participation in the community, etc. Provide financial and emotional support according to the needs.

B. Preparation in Society to Promote Reintegration of Youths at Risk
Focal Point. "House for Youth" served as an interface between disadvantaged youths and communities, coordinates with local governments, line Ministries and local organizations, supporting street children or addressing youth issues.

Public Awareness and Capacity Building. Organize community-based workshops and training for local staff, partners NGOs, community leaders, district officials, and local authorities to raise awareness in how to address disadvantaged youths.

Sharing Knowledge and Policy Recommendations. Organize provincial/city level workshop to identify youth issues, share the experiences as well as practical methods among the concerned organizations and authorities to better address the youths at risk. Provide policy recommendations to governments and relevant stakeholders.

Family Reconciliation and Assessment. Conduct family tracing and provide consultations to the families for youths to be re-united with families. Prior to reintegration, Carry out assessment of family situation such as economic background, conflict within family, etc. so as to assess the readiness of family to receive the youths back.

Assessment and Collaboration with Communities. Assess the supporting system and resources in the community to accept and assist the youths back. Cooperate with community leaders to promote youths' reintegration and to monitor them afterwards.

Outreach and Education for Children in Conflict with the Law. Meeting and talking to street youths and children to refer them to social services or "House for Youth." Carry out non-formal education and skills workshop for minors detained in the prison.

V. IMPACTS

Improved Living Environment. Youths secured a stable living and good health to feel fully protected and focus on their studies. They also acquired daily affairs management skills.

Increased Capacity. Youths improved literacy rate and gained self-reliance by obtaining vocational training and necessary skills related to life in society.

Recovered Self-Confidence and Positive Change in Behavior. After progressing in school and training, youths rebuilt self-confidence and recovered self-esteem. Many positive attitudes were remarked in their daily life.

Achieved Mental Rehabilitation and Restored Human Dignity. Youths became emotionally stable by being educated, provided with essential care and support in a secure environment.

Reintegration of Youths into Society. Establishing effective operation of "House for Youth" assisted youths to be reintegrated into the community by obtaining stable jobs or being admitted for further study.

Facilitated Employment Opportunities. Establishing an apprenticeship support system in the community for the youths incorporating job placements with vocational training.

Reduction of Street Youths and Youth Crime. Outreach activity and receiving the elder children, who have to leave the local shelters, resulted in reduction of the number of street youths who contribute to and/or are affected from the urban violence and crime.

Reconciliation with Family. Conflicts between youths and families were solved and youths were reunited with families emotionally or practically.

Reducation in Human Trafficking. Awareness raised among youths' families as well as communities and the number of families who are forced to abandon their children to the trafficking business decreased.

Raised Awarenss and Built Capacity in Communities. The importance and various approaches of addressing the issues faced by youths at risk for urban security was recognized among local authorities and communities, and some preventative measures especially in trafficking and child abuse were taken.

Contributed to Policy Shift. In the workshops organized at provincial/city level, policy recommendations were adopted by participants and the governments took them into consideration to shift policy or reform laws related to problems of street children and youths.

Created Group Home. Elder and relatively mature youths started living in a community together with their peers and to receive minimum care such as mental support and scholarship until they become fully independent.

IV. LESSONS LEARNED

Essential Needs for Psychological Treatment

Due to the previous experiences at home or on the streets, many youths suffer from the trauma such as being depressed, having poor communication with the others, turning to violence in an attempt to resolve their problems, etc. Therefore, psycholocial support is needed for their mental rehabilitation. Professional counselors may provide counselling to the youths, however, it is not often effective since the project staff can not first properly assess the psychosocial status of youths to refer to those counselors and provide essential observations on the symptoms or problems. Thus, to train the project staffs who deal with the youths on daily basis is the fundamental step for psychological care.

From Troublemakers to Contributors

Youths can be trained to become role models back in the communities. They are the ones who effectively respond to the problems of children confronted in their hometowns as they have great potential to actively commit themselves to identifying the local circumstances and needs and to contribute to the community in building a supportive environment. Involving the youths in various activities also helps them develop their own capacities by making them feeling responsibile within their society, and so restoring self-value. The way forward is to recognize the youths at risk not as offenders or victims but as the potential peer supporters and young leaders in the society.

Change of the Norm of “Street Children”

To break the cycle of poverty, it is essential to cut a chain of the stereotype, specifically the stereotipical view of “street children.” A majority of youths are placed with apprenticeship programs in the classic fields such as motorbike repair, sewing, hairdressing; however, the number of youths who wish to continue studying at school of higher level is increasing. Subsequently to explore places not only in traditional vocations but also in other fields such as tourism, administration or information technology, etc. where the youths can utilize their capacities, is needed. The social integration process is achieved by not only improving an individual’s ability, but also by improving their social recognition, so enabling them to have more options for future life.

Community-based Approach

Society tends to have strong discrimination towards street children, who were once excluded from the society. It could be a barrier for children and youths, who are institutionalized for a certain period, when they reintegrate themselves into society. Community-based approach is recommended to be taken particularly for youths to enable them to have a close access to existing support systems within the community and keep their position as part of it while learning how to deal with various social challenges. Young people could live, based in the community, receiving a minimum care. It enhances self-support of the youths and avoids social exclusion and/or discrimination.

Comprehensive Approach to Mobilize Communities

The reintegration of youths at risk need to be assisted in cooperation with local authorities and communities. The youths are trained to reintegrate themselves into society, whilst the communities will have to prepare to accept them. Capacity building of communities, local governments and related organizations is crucial; sharing experiences and disseminating know-how among the supporting agencies is valuable. In addition, families and communities as well need attentions and back-ups to make them ready. This consequently creates an enabling environment for local government and communities to assist youths at risk for social reintegration.

Post-reintegration Monitoring by Communities
The youths, even after graduating the programs, still need appropriate and timely assistance until they fully settle down as productive adults in society. In addition, many risk factors exist, which make the youths vulnerable again, such as a family economic crisis, or the youths' post-traumatic problems, which cannot be foreseen at the beginning. Thus monitoring of youths should be continuously carried out after reintegration to see the situation by community leaders and local authorities, who could closely follow-up the integrated youths in cooperation with the project.

Annex: "House for Youth" Strategy

In-take of Youth

Rehabilitation and Empowerment		Preparation in Society
Basic Education Literacy class Formal schooling **Vocational Skills Development** Skills training or apprenticeship program Business management skills and job counseling **Capacity Building and Empowerment** Life skills Self-empowerment programs (leadership building, self-organizing, decision-making, goal-setting, etc.) Awareness raising (HIV/AIDS, STD, drug, crime, violence, trafficking, exploitation, abuse, human rights, etc.) Recreation and alternative activities (sports, computer, educational trip, cultural exchange, etc.) **Health Care** Physical health (medical treatment, vaccination, physical check-up) Mental health (psychological counseling)	**In-depth Consul-tations** **Progress Monito-ring**	**Public Awareness and Capacity Building** Organization of community-based workshops Raising awareness among communities and families **Sharing Knowledge and Policy Recommendations** Organization of city-provincial level workshops Sharing with NGOs, governments and communities **Community Mobilization** Liaison and coordination with local authorities and leaders Collaboration with communities in youth reintegration **Family Reconciliation** Family tracing and research Youths' home visit Counseling & referral services for family **Outreach and Education for CICL** Consultations with street youths Non-formal education for minor detainees in prison

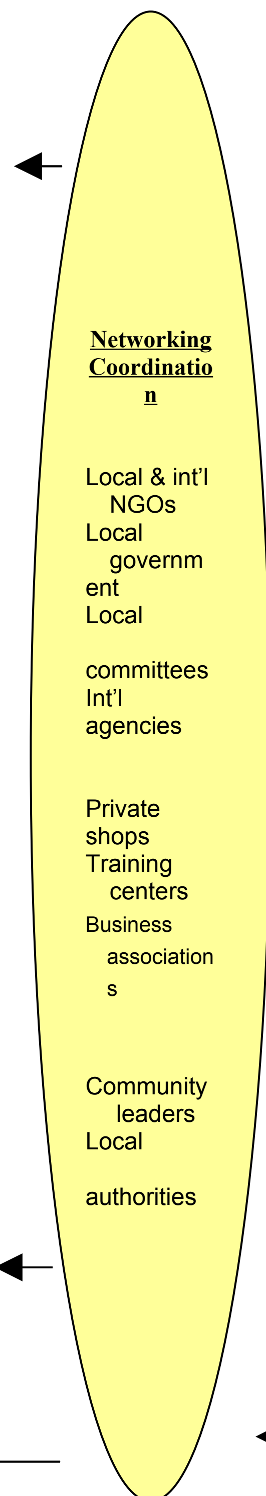
Assessment for Reintegration

Assessment of Youth' Capacity	Family Assessment	Community Assessment
Literacy, Social knowledge, Vocational skills Psychosocial status (mentality, attitude, life skills)	Financial situation Family problems Relationship with youth	Job opportunities and business market Supporting system and resources Understanding of youths' situation

Towards Income Generation
Job placement
Assistance for starting a business

Reintegration of Youth into Society

Follow-up & Monitoring



Workshop 3
Urban Crime Prevention & Effective Measures for Youth at Risk - Training Needs and Technical Assistance -

Kei Someda
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1. Introduction

Training needs for urban crime prevention and effective measures for youth at risk are, in general, based upon each county's situation. But in the light of my experience as a professor of UNAFEI (United Nations Asia and Far East Institute, Tokyo, Japan, established in 1961 as a UN regional training and research institute for prevention of crime and treatment of offenders.), I found some commonality among their needs. Types of technical assistance in these areas are also categorized into several basic elements correspondent to these common training needs.

2. Training needs

(1) Need for a System

We find that some countries do not have a basic or effective system to combat urban crime and to realize effective measures for youth at risk. In this regard, their needs are primarily how to establish this type of system in their respective countries. This requires the enactment or amendment of statutes, regulations and other types of legal documents which can be implemented nationwide under authorization of the government. The system requires the establishment of authorities or organizations that deal with personnel, an inter-agency cooperative framework, a basic structure of crime prevention and the treatment of offenders, etc.

(2) Need for Implementation

We also recognize that many countries lack effective ways of implementing the system. Even though some countries have a sophisticated urban crime prevention system or ways of dealing with youth at risk, it is commonly found that such systems are not effective. Reasons for this vary but common ones are as follows:

a. Lack of political will or strong leadership of the government and local authorities;
b. Lack of know-how concerning implementation of the system;
c. Insufficient inter-agency cooperation;
d. Inadequate funding;
e. Shortage of manpower and training for personnel;
f. Lack of technical knowledge to operate devices which employ advanced technology.

3. Types of Technical Assistance and Training

When we think about how we can meet these common needs, we may respond at the system level and implementation level. In many cases, these two levels of assistance have to be carried out simultaneously in reality.

I would like to introduce two examples from UNAFEI's support activities.

a. Providing technical assistance to the Juvenile Justice System of Kenya; and the
b. 129th UNAFEI International Senior Seminar

The former one is an example of continuous technical assistance to the specific country and the latter one is a typical example of a multiple-nation training seminar.

(1) Providing Technical Assistance to the Juvenile Justice System of Kenya

UNAFEI started this technical assistance project in 1997. It consists of three major pillars:

a. Dispatch of UNAFEI professors to Kenya with expertise on the Juvenile Justice System (Every year usually one to three professors are dispatched. UNAFEI will send four professors from July to August 2005. I visited Kenya from 2001 to 2003.);
b. Conduct country focused training course for Kenya at UNAFEI, Tokyo, Japan (We plan to hold the Sixth Training Course on the Juvenile Delinquent Treatment System for Kenya in October 2005.); and
c. Follow-up activities.

In practice, these pillars are a cycle of activities. Firstly, UNAFEI professors conduct research on the ground and identify the problems and needs. They then begin support activities for the establishment of the system and hold national and regional seminars to promote implementation of the system.

Secondly, we train Kenyan officials at UNAFEI in the effective implementation of the system. These training courses are designed for the training of trainers (TOT). Participants are also requested to formulate a concrete action plan for the effective implementation of the system for when they return back to Kenya. They are also expected to be lecturers on the training courses and seminars which will be held in Kenya.

Thirdly, based upon the problems identified by UNAFEI and the contents of the action plans of each year, we encourage and support UNAFEI alumni members to realize the action plans and implement the system by using an international teleconferencing system and keep in contact by e-mail, etc. JICA (Japan International Cooperation Agency) Kenya office also provides vital assistance under close collaboration with UNAFEI.

Based upon these follow-up activities, UNAFEI professors visit Kenya the following year to see if there have been improvements and accordingly make adjustments to the contents of their technical assistance.

As for the establishment of the system, I spent a total of about six months in Kenya between 2001 and 2003 as a JICA expert. I drafted the first nine systematic National Standards regarding community-based treatment for the Children's Department (the Office of the Vice-President, Ministry of Home Affairs, National Heritage, Children's Department). By 2003, another UNAFEI professor and I successfully established seventeen National Standards regarding community-based treatment and institutional treatment of children for the Children's Department with a manual (500 pages) for Children's Officers and Volunteer Children's Officers (VCOs). I also wrote the training handbook (100 pages) for the VCOs.

As for the training held at UNAFEI, in 2003 we started to invite agencies which are related to children's treatment and crime prevention of children and juveniles. Because many agencies and organizations are involved in children's issues, including street children, we ask officials not only from the Children's Department, which has overall responsibility for children's issues, but also from the police (police officers working for the Children's Desk), the judiciary (qualified Children's Magistrates), Probation and Aftercare Department (probation officers), Corrections Department (Directors of Juvenile Institutions) and Volunteer Children's Officers. While providing technical assistance for Kenya, we realized that the establishment of an integrated approach and close collaboration among the above-mentioned organizations is indispensable to realize a through care system for children. From the first to the third course, we only invited officials from the Children's Department, and then we widened the number and area of participants.

There are still many problems with the implementation of the National Standards; therefore, we will have to offer them our continuous support On the other hand, we are also encouraging them to increase their capacity to implement this system without our support.

(2) 129th UNAFEI International Senior Seminar

(a) Introduction

UNAFEI has held international training courses and seminars for criminal justice officials since 1962. The total number of overseas participants is more than 3,000 from 100 countries. We have multiple country courses/seminars together with country-focused courses for Kenya, Thailand, China, Philippines and Central Asia.

UNAFEI holds a five week International Senior Seminar once a year. It is seminar for high-ranking or senior public officials from central bureaus, departments or agencies in the field of criminal justice, such as police, prosecution, the judiciary, corrections and rehabilitation, etc. The 129th Seminar candidates were required to have experience in the field of crime prevention, youth crime, juvenile delinquency and rehabilitation of offenders. These requirements reflect the main theme of the course or seminar.

The main theme of the 129th Seminar was "Crime Prevention in the 21st Century - Effective Prevention of Crime associated with Urbanization based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency". It corresponded with the theme of this workshop.

I will now briefly introduce the basic principles and methodology of UNAFEI courses and seminars and then touch upon the special features of the 129th Seminar as the organizer and the programming officer.

(b) Methodology of the Training Courses and Seminars

(i) A practice oriented approach

UNAFEI is not a school or an academy, which specializes in pure theory. UNAFEI's first principle is that in dealing with any subject matter we follow "a practice oriented approach". Because the criminal justice system in any country is rooted in its own culture, tradition and social conditions the responsibility for reform in each country should ultimately rest in the hands of that country's people. Therefore, participants are expected to learn the ways most suitable for the betterment of the situation in their country, by sharing and exchanging views, experience and knowledge with fellow participants, visiting experts and the faculty of UNAFEI. UNAFEI may thus be classified as a multilateral learning community.

(ii) Integrated approach

The second principle involves an "integrated approach" to the study of criminal justice administration. To tackle any problem related to criminal justice administration, an understanding of the particular issue in relation to the criminal justice system as a whole is necessary. Therefore, the curriculum at UNAFEI is designed to promote understanding from a diversified perspective, thereby integrating each pillar of the criminal justice system. The views and experiences of participants from diverse fields undoubtedly contributes to more active discussions from a broader perspective.

(iii) Comparative study

Thirdly, "comparative study" is also stressed, so that the experiences of each country may be fully considered in examining appropriate measures for each nation. The unique composition of participating countries enables participants to approach discussion issues in a comprehensive manner.

(c) Contents of the 129th Seminar

(i) Objectives

We examined what kinds of measures can be taken by the criminal justice agencies of the respective countries to solve these problems. When we examined and discussed them, we concentrated on the current situation of crime associated with urbanization, countermeasures for them and related problems and future prospects from the viewpoint of preventive approaches (i.e., prevention of crime and reintegration of offenders into the community) along with the traditional

repressive approaches (i.e., strengthening of law-enforcement and just deserts to offenders). The major topics of this Seminar are as follows (summarized version).

(1) The Current Situation of Crime associated with Urbanization, Countermeasures and Problems experienced by Participating Countries

(a) Current situation.
(b) Measures which have been taken by the current criminal justice systems - by the police, prosecution, judiciary, corrections and rehabilitation services.
(c) Problems faced.

(2) Effective Measures for Prevention of Crime associated with Urbanization

(a) Measures that can be taken by the police and prosecution to prevent crime associated with urbanization- community policing and community prosecution.
(b) How to identify target areas – mapping analysis of reported crimes.
(c) Situational crime prevention – reduction of crime by the improvement of urban planning.
(d) Measures for preventing victimization – reduction of risk factors for victims, i.e., target hardening.
(e) Crime prevention measures in the community by the active participation of community residents, utilization of volunteers and so forth.

(3) Effective Measures for Youth at Risk

(a) Integrated approach (multidisciplinary approach) for youth at risk by the cooperation and collaboration of multiple agencies such as the criminal justice system, schools, welfare services, hospitals and others.
(b) Measures for enlightening youth.
(c) Early intervention for youth at risk – establishment of an appropriate risk and needs assessment scale and measures for early intervention based upon assessment.
(d) The establishment and management of a flexible disposition and treatment system/measures to tackle youth offending/juvenile delinquency – examination of various forms of disposition and treatment, establishment and management of diversion programmes (mainly community-based treatment) at the police, prosecution and courts level.
(e) Effective institutional treatment for youth/juveniles. Effective institutional treatment programmes for prevention of recidivism and enrichment of the through care system under cooperation and collaboration with the community-based treatment services (probation services).
(f) Effective community-based treatment for youth/juveniles.

Effective community-based treatment programmes for prevention of recidivism; measures that give an active role to the community for the effective rehabilitation and reintegration of offenders in the community; and promotion of the through care system under cooperation and collaboration with multiple agencies/organizations and the establishment of a smooth transition programme from the community-based treatment stage by criminal justice agencies to the aftercare stage.

(4) Role of the Community in the Integrated Approach (multidisciplinary approach) and Establishment of an Effective Multi-Agency Cooperation and Collaboration System

(a) Necessity of the integrated approach (multidisciplinary approach), methods of planning and implementation, and agencies which are in charge of this.
(b) Role of the community in the integrated approach (mainly focused upon prevention of crime and reintegration of offenders into the community) – revitalization of the local community, active participation of the community with the victim and the offender under restorative justice approaches and methods of recruitment and utilization of community resources and citizen volunteers, such as volunteer probation officers.
(c) Measures for the establishment of an effective integrated approach (multidisciplinary approach) – information sharing with agencies/organizations concerned and improvement of the aftercare system after sentencing/disposition.

(ii) Curriculum

The Seminar was mainly conducted in the form of general and group discussions based on the knowledge and experiences of the participants with the advice of the faculty members and the visiting experts. The Seminar programmes for this Seminar were as follows:

(1) Individual Presentations

This programme was intended to give the participants an opportunity to compare the systems and practices of their countries in regard to the main theme of the Seminar. Each participant was allocated forty minutes for his/her individual presentation and an additional twenty minutes for a question and answer session. PowerPoint, an overhead projector, and audio/video equipment were available for presentation.

(2) Group Workshops

Group Workshops further examined the subtopics under the main theme of the Seminar. The participants were divided into three groups. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures, and so forth. Each group was expected to compile the results into a report that will be published in the UNAFEI Resource Material Series.

(3) Lectures, Visits and others

Lectures by overseas visiting experts, ad hoc lectures from Japan and UNAFEI professors on subjects relating to the main theme and other subjects of general interest;
Panel discussion session by five overseas visiting experts.

(c) Visits to agencies relating to the main theme of the Seminar; and

(d) Cultural and other programmes of interest.

Outline of the Curriculum

Total Hours	110
I. Introduction	38
Self-introduction and Seminar Orientation Individual presentation on the Theme of the Seminar	2 36
II. Subjects	72
Faculty Lectures: “Criminal Justice System in Japan” Series, etc. Visiting Experts’ Lectures concerning the Main Theme of the Seminar Ad hoc Lectures concerning the Main Theme of the Seminar Group Workshops, Plenary Meetings and Report-back Sessions Observation Visits Study Tour to Criminal Justice-related Agencies Evaluation and Individual Interviews Closing Ceremony Miscellaneous	2 20 4 20 8 12 2 2 2

(iii) Contents of the Group Workshops

Group 1

(a) Main Theme

Effective Measures for Prevention of Crime associated with Urbanization

(b) Topic for Discussion

Measures that can be taken by the police and prosecution to prevent crime associated with urbanization - community policing and community prosecution.

(c) Suggested Points of Discussion

(i) Situational crime prevention – reduction of crime by the improvement of urban planning.
- How to identify target areas – mapping analysis of reported crimes
- Measures for preventing victimization – reduction of risk factors for victims, i.e., target hardening
- Implementation of the “Broken Windows Theory”

(ii) Crime prevention measures in the community by the active participation of community residents.

- Cooperation and collaboration of agencies, organizations concerned and community residents and the utilization of volunteers.

Group 2
(a) Main Theme
Effective Measures for Youth at Risk
(b)Topic for Discussion
(i) Early intervention for youth at risk
(ii) The establishment and management of a flexible disposition and treatment system/measures to tackle youth offending/juvenile delinquency
(iii) Effective institutional treatment for youth/juveniles
(iv) Effective community-based treatment for youth/juveniles
(c) Suggested Points of Discussion
Integrated approach (multidisciplinary approach) for youth at risk by the cooperation and collaboration of multiple agencies such as the criminal justice system, schools, welfare services, hospitals and others.

Group 3
(a) Main Theme
Role of the community in the reintegration of victims and offenders into the community
(b) Topics for Discussion
(i) Ways in which the community can become actively involved in the effective treatment of offenders.
(ii) Holistic approach for the reintegration of victims and offenders into the community such as restorative justice approaches.
(c) Suggested Points of Discussion
(i) Establishment of a community network with relevant agencies and organizations for an integrated aftercare system.
(ii) Methods of recruitment and utilization of community resources and citizen volunteers.

4. Some Suggestions and Future Prospects for Training and Technical Assistance
Based upon my discussions with personnel who are involved in this field and my experience as a UNAFEI professor, I offer the following suggestions to improve technical assistance and training.

a) Encouraging a strong commitment by high-ranking officials and the establishment of an integrated policy. The problems of urban crime and youth at risk are rooted in various causes of society. Therefore, if we try to provide effective assistance to the countries which suffer from these problems, the establishment of an integrated policy (approach) by the central government is indispensable. This can be realized by the strong political will of the prime minister, congressmen and the senior management of leading governmental agencies, etc.
b) Promotion of a multi-agency approach. Along the same lines, multi-faceted problems can only be solved by the establishment and promotion of multi-agency collaboration and cooperation.
c) Systematic training. Training should be conducted in a systematic way based upon regulations or national standards.
    - An annual training plan needs to be established and sufficient resources should be allocated based upon the plan.
    - Systematic training should consist of (i) regular training from the primary level to senior level and (ii) special (thematic) training on an ad hoc basis to supplement the regular training.
d) Systematic inspection and feedback system - Maintain sustainability and further improvement of the entire system. To realize the desired outcome of technical assistance and systematic training, they have to be monitored by systematic inspection and followed

up by the competent authorities. As for systematic inspection, it should be conducted based upon regulations or national standards and the outcome of the inspection should reflect the further improvement of urban crime prevention and effective measures for youth at risk. In practice, maintaining sustainability is a very difficult issue, which supporting countries and organizations have been faced with for a long period, but this is vitally important in order to realize effective technical assistance.

e) Exploring the most suitable method of introducing new methodologies and technology. It is commonly found that recipient agencies and organizations are interested in the latest/advanced technology and methodologies which require expensive equipment. For instance, at the 129th UNAFEI Seminar, we introduced crime mapping technology to prevent urban crime with a case study on the New York Police Department's (NYPD) COMPSTAT system. Currently, the NYPD's system is equipped with advanced computer technology. However, when they first established mapping they operated the system with handwritten mapping. When participating countries consider the introduction of crime mapping, if they at least have accurate maps of specific areas, they can start with handwritten mapping. Participating countries should be encouraged to avoid relying on expensive equipment if they are to maintain sustainability.

Workshop 3

The shape of the future technical assistance

Slawomir Redo
United Nations Office on Drugs and Crime

INTRODUCTION
The title of this presentation may suggest, as if its author were holding at this workshop a crystal ball in which he can read what shape technical assistance may take in the future with regard to strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk.

Obviously, this is not the case. How future technical assistance may look like will be instead projected through the spectrum of the general topic of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, namely “Synergies and responses: Strategic alliances in crime prevention and criminal justice” and the crisscrossing input from the other Congress’ workshop on “Measures to combat computer-related crime”, plus inputs from other world conferences.

Two adages from that other workshop may be a departure point for showing the way for the future technical cooperation in the area under consideration: “Those who forget the past are condemned to repeat it” (George Santayana, 1863-1952) and/or “those who fail to anticipate the future are in for a rude shock when it arrives”. Both were articulated by Peter Grabosky, one of the panellist of the computer-crime workshop, who paraphrased the first adage.

In the light of the above, the following points help to see, how the future shape of technical cooperation in crime prevention may look like.

POPULATION TRENDS
Year 2050
A very high percentage of people will likely be living in urban agglomerations. World population will increase from 6.4 billion today to 8.9 billion by 2050[139]; the 50 poorest countries will triple in size, to 1.7 billion people. The planet can then sustain only 2 billion people at a western standard of living[140].

Year 2030
The urban population is projected to grow by 1.8 per cent per year between 2000 – 2030, almost twice as fact as global population growth. The number of urban dwellers will rise from 3 billion in 2003 (48 per cent of the total population) to 5 billion in 2030 (60 percent). By 2030 all regions will have urban majorities.

Year 2020

139 All population estimates drawn from: United Nations Population Fund, State of World 2004. The Cairo Consensus at Ten: Population, Reproductive Health and the Global Effort to End poverty, UNFPA, New York, 2004.

140 Donella Meadows, Jorgen Randers and Dennis Meadows, Limits to Growth: The 30-Year Update, Chelsea Green Publishing, White River Jct, VT, USA, 2004.

The United Nations Millennium Development Goal 7 on ensuring environmental sustainability foresees by 2020 to achieve significant improvement in the lives of at least 100 million slum dwellers.

Year 2017
Less developed regions will grow by 2.3 per cent and are expected to be majority urban in 2017.

Year 2015
Today there are 20 cities of more than 10 million people (15 in developing countries), containing 4 percent of the global population; by 2015 there will be 22 such mega-cities (16 in developing countries), with 5 per cent of the global population.

Year 2007
By 2007, for the first time in human history, more than half the people in the world will be living in cities.

Year 2005
The gap between rich and poor nations is 10 times what it was 30 years ago[141]**.** Some 2.8 billion people – two in five – still struggle to survive on less than US $ 2 a day.

Today, Sub-Saharan Africa has the fastest urbanizing rate of all continents, accompanied by high rates of infant mortality, low life expectancy, low literacy and high rates of HIV/AIDS. In Sub-Saharan Africa, some 49% of the population lives on less than US $ 1 a day (70% in urban slums), and their numbers are expected to double, on average, every 15 years.

THE SHAPE OF TECHNICAL ASSISTANCE IN THE FUTURE: FOUR DIMENSIONS

From rights- to evidence-based crime prevention
The United Nations Economic and Social Council in its resolution on "Action to promote effective crime prevention" (ECOSOC resolution 2002/13) provided "Guidelines for the prevention of crime" which emphasize that "crime prevention strategies, policies, programmes and actions should be based on a broad, multidisciplinary foundation of knowledge about crime prevention problems, their multiply causes and promising and proven practices".

There have been other resolutions underlying the need to pursue evidence based crime prevention, for example articulated by the World Health Assembly requesting Director-General of the World Health Organization, in collaboration with other organizations of the United Nations system and other international agencies, "to continue work on integrating a science-based public health approach to violence prevention into other major global prevention initiatives"[142]. However desirable this direction is, as yet, there has been too little progress from rights to evidence based crime prevention.

A review of 91 studies published between 1980 and 2002, which covered 82 studies with programmes and 31 studies with practices, including 18 studies that had both programme and practice, revealed that although there seems little dispute that, whatever the setting, widespread crime disrupts prospects for growth and development and reduces the quality of life for citizens, particularly the poorest groups. Despite the importance of crime reduction as a key social and economic target, the quality of research on criminal justice policy, and criminal justice interventions in particular, remains rather modest. Moreover, regional breakdown of studies meeting the inclusion criteria showed how limited was their number. In: East Asia and the Pacific -13 studies; Europe and Central Asia - 1 study; Middle East and North Africa - 3 studies; South Asia -

141 Donella Meadows and others...., op. cit..

142 WHA56.24 of 28 May 2003, http://www.who.int/gb/ebwha/pdf_files/WHA56/ea56r24.pdf

14 studies; Sub-Saharan Africa: 34 studies; Latin America and the Caribbean - 18 studies; worldwide and others - 8 studies[143].

The above leads to one conclusion: in order to have more evaluation research there is a need for capacity-building in most parts of the world. Consequently, there should be more technical assistance projects which include elements enabling building up own capacities, particularly in developing countries and in countries with economies in transition, to institute and carry out evidence based crime prevention projects with an evaluation component.

a) ODC has been working in this direction. One most recent example is “South- South Cooperation for Determining Good Practices for Crime Prevention in the Developing World (Southern Africa and the Caribbean)”.The project involves:

I. refinement of national crime prevention strategies through review and evaluation and application of good practices in new projects and/or plans;
II. increased dissemination and exchange of lessons learned and good practices within and in between the two regions through a publication and website;
III. enhanced research capacity on crime prevention strategies of the national crime prevention commissions and the CARICOM Task Force on Crime and Security, Association of Caribbean Commissioners of Police, and the Southern African Regional Police Chiefs Cooperation Organization, through the linking of learning institutions to policy units of governments and by creating a cadre and regional network of experts.

From official to victimization data
Capacity-building by expanding the availability of official crime statistics for measurements and evaluation of practical impact of crime prevention projects should therefore be one of the most important features of the future technical assistance. Because of poor availability of crime data, especially from developing countries, it could be noticed, for example at the Seventh World Conference on Injury Prevention and Safety Promotion (Vienna, Austria, 6-9 June 2004), that current projects addressing the prevention of violence were based on alternative data (e.g., emergency ward records), rather than official police homicide and assault statistics, let alone criminal victimization surveys.

At the same time, however, whenever technical assistance projects include the use of such surveys to address the prevention of violence, it would be necessary to establish better coordination and collaboration among donors to promote the use of standard instruments (such as the International Crime Victim Survey) and to have baseline data as well as regular monitoring instead of uncoordinated efforts.

From global to local crime prevention
The popular saying “think globally act locally” has made its inroads into crime prevention. Once more, this could be observed at the Seventh World Conference on Injury Prevention and Safety Promotion, where very many presented projects concentrated on small groups of victims or local areas. It looked like a “grass roots” movement of promoters of anti-violence embraces the international scene with their local findings and recommendations.

From alternative development to sustainable livelihood
The report of the Executive Director of the UNODC on the “Development, security and justice for all” (E/CN. 15/2005/2), submitted in 2005 to the Commission on Narcotic Drugs at its forty-eight session and the Commission on Crime Prevention and Criminal at its fourteenth session, informs that ODC initiated work in the area of promoting sustainable livelihoods to prevent crime in urban

143 SSR Project R8189: Research on Evidence-Based Crime Prevention Study, Final Report, Evidence-based approaches to crime prevention in developing countries - A scoping review of the literature, by Joseph Akpokodje, Roger Bowles, Emmanuel Tigere Centre for Criminal Justice Economics and Psychology University of York, YORK YO10 5DD, 29 November 2002, http://www.york.ac.uk/criminaljustice/word/Evidence-Based-Crime-Prevention-Study.pdf

contexts, pursuant to the Trafficking in Persons Protocol of the United Nation Convention against Transnational Organized Crime (para. 27).

Although from very different perspectives, the question of promotion of sustainable livelihood has been in the focus for both Commissions. The present paper notes this because the concept of "sustainable livelihood" generically covers "alternative development"[144], applied to urban and rural settings, respectively.

That latter concept, as explained in another report of the Executive Director on the "Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development" (E/CN.7/2005/2/Add.2) has been successfully applied to the elimination of illicit crop cultivation "which can be achieved and sustained… Moreover, alternative development programmes need to include improved and innovative approaches. These should, inter alia, promote community participation and democratic values, include appropriate demand reduction measures, incorporate a gender dimension and observe environmental sustainability criteria" (para. 4).

As for "sustainable livelihood", on the basis of United Nations Development Programme glossary, it may be defined as a legitimate "occupation or employment enabling someone to provide for his/her basic needs and to be secure that this will continue to be the case in the future"[145]. However, the meaning of sustainable livelihood should be much broader than this. In the crime prevention programme and projects it should include[146]:

a) civic and school-based on the development of legitimate sustainable attitudes, and enabling people to participate in the making and implementation of laws that bind all of them and their institutions, including the government itself,
b) creation and promotion of centeres of moral authority to develop and sustain a culture of lawfulness. For example, religious institutions and/or individuals ("significant others") are in a position to identify the types of behaviour and correct relations between people. However, in either case, institutions and individuals involved may also formerly have past criminal history, but now as "significant others" may tell their story of reformation. Best example for the institutions may be the Tajik Drug Control Agency, funded from donors' money, by the UNODC. Created on the basis of a less efficient State Drug Control Agency of Tajikistan, it now gives a good example of performance meeting international rule of law standards[147]. Rehabilitated individuals can also play a positive role: former drug addicts, prostitutes or robbers may be extremely influential in getting the message of lawfulness across a wide audience.
c) media and popular culture, which can promote lawfulness, based on such positive examples.

By no means, the above three additional elements of the concept of sustainable livelihood exhaust its great potential. They only show that indeed there is much to do in spearheading it, based also on the generic experience from the alternative development programmes involving illicit drug crop substitution. Moreover, a particular crime prevention technical assistance project would contain still additional sustainable livelihood elements which should make it effective.

CONCLUSION

The aforementioned UNODC report on alternative development offers initial conclusions that are relevant to the present paper, i.e., that: (a) increased and better-targeted technical assistance is

144 In the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, resolution III E, adopted by the General Assembly (1998), the concept was expressed as follows: "Defining alternative development as a process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs, recognizing the particular sociocultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs".

145 www.undp.org/rbec/nhdr/1996/georgia/glossary.htm

146 Roy Godson, Guide to developing a culture of lawfulness, prepared for the Symposium on the Role of Civil Society in Countering Organized Crime: Global Implications of the Palermo, Sicily Renaissance, December 14, 2000, Palermo, Italy.

147 See, e.g., E/CN.7/2004/7, Report of the Executive Director on international assistance to the States affected by the transit of illicit drugs, paras. 46-47.

required, including in the area of capacity-building, to enable recipient Governments to deal adequately with matters relating to the coordination of programmes (para. 57), and (b) further efforts are required, in particular among countries, international organizations and other entities with expertise in implementing alternative development programmes, to document, disseminate and promote the exchange of experience, best practices and lessons learned (para. 60).

Against these two generic conclusions, the specific one is as follows: the shape of future technical cooperation will largely be determined by changing population trends, showing more and more people living in urban areas with more and more income inequalities, both, within individual countries and between developed and developing countries.

Poverty as a main factor driving crime has been and will remain in the world focus, at least up to 2020. One should surely expect that in 2006, at the two global conferences: The Eighth World Conference on Injury Prevention and Safety Promotion (19-22 March, Johannesburg, South Africa), and The HABITAT World Urban Forum III (Vancouver, B.C., Canada, 19-23 June), there will be new inroads made to meet that Millennium Development Goal.

In order not to get a rude shock when it arrives, we must face the poverty challenge now.

Workshop 3

Integrated responses to youth at risk: Effective prevention programmes in England & Wales

Brendan Finegan
Director of Policy
Youth Justice Board for England & Wales
and
Sohail Husain
Deputy Chief Executive
Crime Concern

Three propositions
Well-designed well-implemented prevention programmes that address 'risk factors' can achieve significant reductions in offending by the most troubled and troublesome youth.

Investment in prevention can be highly cost effective compared to judicial/custodial responses.
Close collaboration between government agencies and civil society can achieve more than either working in isolation.

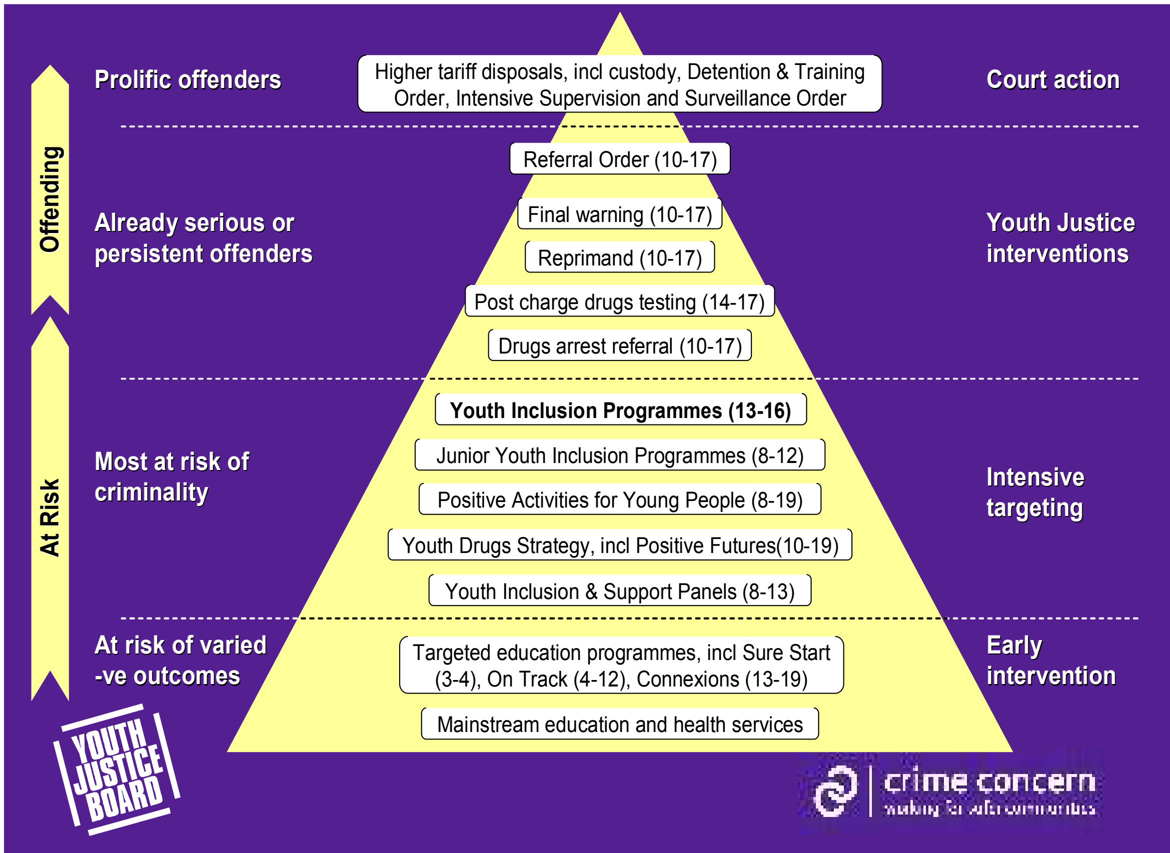
Crime Concern

- A non-profit civil society organisation based in England working with local and national partners to create safe environments
- Deliver community-based crime prevention services
- Develop skills of crime prevention practitioners
- Influence policy and use of resources
- Focus on youth at risk in most deprived neighbourhoods

Youth Justice Board
Purpose: To prevent offending in children and young people (aged 17 and under)
Status: Home Office Non-Departmental Public Body
Origin: Created by the Crime & Disorder Act 1998
Responsibilities:

- Set up and monitor standards
- Disseminate good practice
- Advise Home Secretary
- Purchase / commission custodial accommodation

The Prevention Programme Framework



Youth Inclusion Programme

- A neighbourhood programme to prevent youth offending
- Based on a model developed by Crime Concern
- Adapted by the Youth Justice Board
- Informed by research and experience

Youth Inclusion Programme

- A neighbourhood programme to prevent youth offending
- Targets 50 13-16 year olds at high risk of offending, truancy or exclusion
- Located in neighbourhoods with high levels of crime or deprivation
- Individually assessed needs inform interventions to reduce risk factors
- Multi-agency information sharing and co-operation essential
- 72 projects operating with 50% expansion planned

YIP Core Processes
Identification---Referral---Engagement---Assessment---Intervention

YIP Targets
Inputs

- Engage 75% of target group in the programme
- Ensure participants get at least 5 hours of appropriate interventions weekly

Outcomes

- Reduce arrest rates of target group by 70% compared to previous 12 months
- Ensure 90% of the target group are in suitable full-time education or employment

YIP Operational Arrangements

- Funding National funding matched by local contributions
- Delivery Local voluntary or statutory partners
- Multi-agency collaboration required
- Quality Nationally defined structure and model
- Individual assessment and action planning
- Quality standards and assurance
- Rigorous performance management
- Implementation support (by Crime Concern)

YIP Achievements

- Individuals in 'Core 50' engaged 2000-03: 7300 - 82%
- Reduction in arrest rates of participants: 65%
- Reduction in gravity or frequency: 68% (of those that re-offended)
- In training, education or employment: 85%

YIP Roles and Responsibilities

- Programme direction
- National funding
- Performance monitoring
- Agency influence
- Evaluation
- Dissemination of findings
- Extending availability

YIP Roles and Responsibilities

- As National Supporter:
- Programme management
- Written guidance
- Communication
- Implementation support
- Targeted/crisis help
- Practitioner training
- Regional networking
- As Local Delivery Agent
- Project management (15 sites)

YIP Cost Effectiveness

- £150,000 buys .
- 45 places in the YIP programme vs. 3 places in a youth offender institution

Critical Success Factors

- Shared ethos and commitment
- An evidenced-based approach
- Well-defined model with local flexibility
- Complementary expertise
- Good centre-local communication
- Rigorous implementation.

Workhop 3

Youth sexual exploitation
a strategic approach t trafficking of youth in the Czech Republic

Radim Bureš
Ministry of Interior
of the Czech Republic

BACKGROUND
After political changes and the opening of borders in early 1990's, the Czech Republic quickly became a target country for human trafficking and traffickers.

The country has since transformed from a country of origin into a transit country and, increasingly, a country of destination.

Steps have been taken in both the legislative and criminal justice areas to fight this, yet they have only provided partial solutions. For anti-trafficking strategies to be effective, they need to include both prevention and victim support as well.

GOALS
- Prevent trafficking of Czech citizens abroad,
- Provide fast and effective support to both foreign and resident victims of human trafficking in the Czech Republic,
- Encourage victims of human trafficking to testify against traffickers,
- Create informal networks in the fight against human trafficking,
- Support local agents in the identification of victims and ensure proper referral to supporting organizations.

Information campaign
A major information campaign was launched in 1999 with financial support from the US government.

It was implemented by the International Organization for Migration (IOM), with the support of the Czech government, and a number of NGO's, including La Strada, which has been working to prevent human trafficking since 1995. Focused on Czech victims and possible victims.

UN anti-trafficking project
The Project was implemented between November 2002 and May 2004 within the framework of this project, the *National Strategy Against Human Trafficking* was drafted and approved by the Czech government.

The Victim/Witness Assistance Program has been developed and implemented.

Coalitions against trafficking
The Ministry of the Interior, along with specialised police units and NGOs work closely together in identifying victims of human trafficking. Both district and regional local authorities have been

mobilised to provide guidance and support to regionally based NGOs and other civil society members that aid in the identification of victims.

Training for all partners

- Training schemes for specific police units, with special attention to alien and border police, have been developed and implemented,
- NGOs participate at the training as partners and trainers,
- Special training and awareness rising seminars are developed for local and regional authorities,
- International co-operation in developing of training tools.

Indispensable role of NGOs

- NGOs play a crucial role in prevention activities and assisting victims,
- Foreign victims often distrust police and state bodies,
- Czech victims are often shamed to contact public bodies including social services,
- NGOs ensure that once victims have been identified, they are referred to the proper services,
- Government contributes funds which are used to aid in the identification of victims and assistance, protection and voluntary return and reintegration in their home countries.

Prevention

- General information campaign for youth about the risk of working abroad – national wide media,
- Safety and security tips for legal to work abroad,
- Targeted campaign at schools and foster homes, training for teachers, targeted brochures and video program,
- Targeted information campaign for youth at risk – prostitutes, runaways, drug edicts
- Information for Czech consulates abroad and foreign consulates in Prague.

La Strada – SOS line

Můžeme ti nabídnout:
přechodné (dočasné) ubytování,
jídlo, ošacení,
právní poradenství,
lékařská ošetření,
psychologickou a psychoterapeutickou pomoc,
sociální pomoc a poradenství,
finanční podporu.

La Strada – SOS linka

222 71 71 71

Pomoc obětem obchodu s lidmi, ženám zneužívaným v práci či nuceným k prostituci.
Služby jsou zdarma a anonymní.
www.strada.cz

Victim care

- When victims agree to fulfill the conditions of the assistance program they are entitled to some benefits.
- Shelter and subsistence
- Social and psychological rehabilitation,
- Language and skills training,
- Legal and social counseling,
- Aliens with illegal status are offered temporary residence.

An information leaflet for potential victims has been developed

Developing targeted activities at the local level
Objective – to find a reliable partner at the local level,
Sensitize and rise awareness of local public bodies to the phenomenon of trafficking,
Inform, train and support local public bodies (social, health and education services) to enhance a targeted approach to potential victims and on youth in risk in general,
Identify suitable local NGOs and develop regular co-operation.

Workshop 3

Prevention Does Pay!
Local Crime Prevention Toolkit

Laura Petrella,
UN-HABITAT
and
Themba Shabangu,
CSIR – Crime Prevention Centre

UN-HABITAT - Safer Cities Experience
Direct support to cities that intend to formulate and implement crime prevention strategies - Pilot

- Africa: 20 Municipalities:
- Asia: Papua New Guinea, Bangladesh
- Latin America: Brazil, Bogota, Santo Andre, Chile
- Eastern Europe: Serbia (7 municipalities)

Support to Networking and City to City Collaboration

- African Forum, National Forums
- City to City exchange and Safer Cities Network

Development or Adaptation, and Dissemination of Tools

- Audit Tools, Partnership Building, Strategy development
- Implementation: Municipal Police; Neighborhood Watch; Victim Support; Public Space Planning and Management; Employment and Support to Youth-at-Risk
- Evaluation and Monitoring: Local indicators and Local Urban Observatories
- Documentation and Best Practices

Advocacy and Normative Development

- The Role of Local Government in Crime Prevention
- Youth at Risk Strategies: Africa; Latin America
- Crime Prevention and Urban Planning
- Gender Based Violence in Urban Settings

BACKGROUND AND AIMS

- Demand from Local Governments for Crime Prevention Tools
- International Debates by Cities (Barcelona, 1987, Montreal, 1989, Paris, 1996, Vancouver, 1996, Johannesburg, 1998, Naples (EFUS), 2000, Durban and Africities Summit, 2003)
- ECOSOC Guidelines of 1995 and 2002
- Process Tool for Integrated Multidisciplinary Partnership
- Consolidate Crime Prevention Experiences of Government and Non-Governmental Organisations into a I Practical Toolkit
- Local Preventative Approach
- Capacity Building of Local Actors

INSTITUTIONAL FRAMEWORKS

CSIR CRIME PREVENTION CENTRE

THREE SPHERES CONVERGENCE CRIME PREVENTION MODEL

ROLE PLAYERS

OFFENDER

VULNERABLE VICTIM

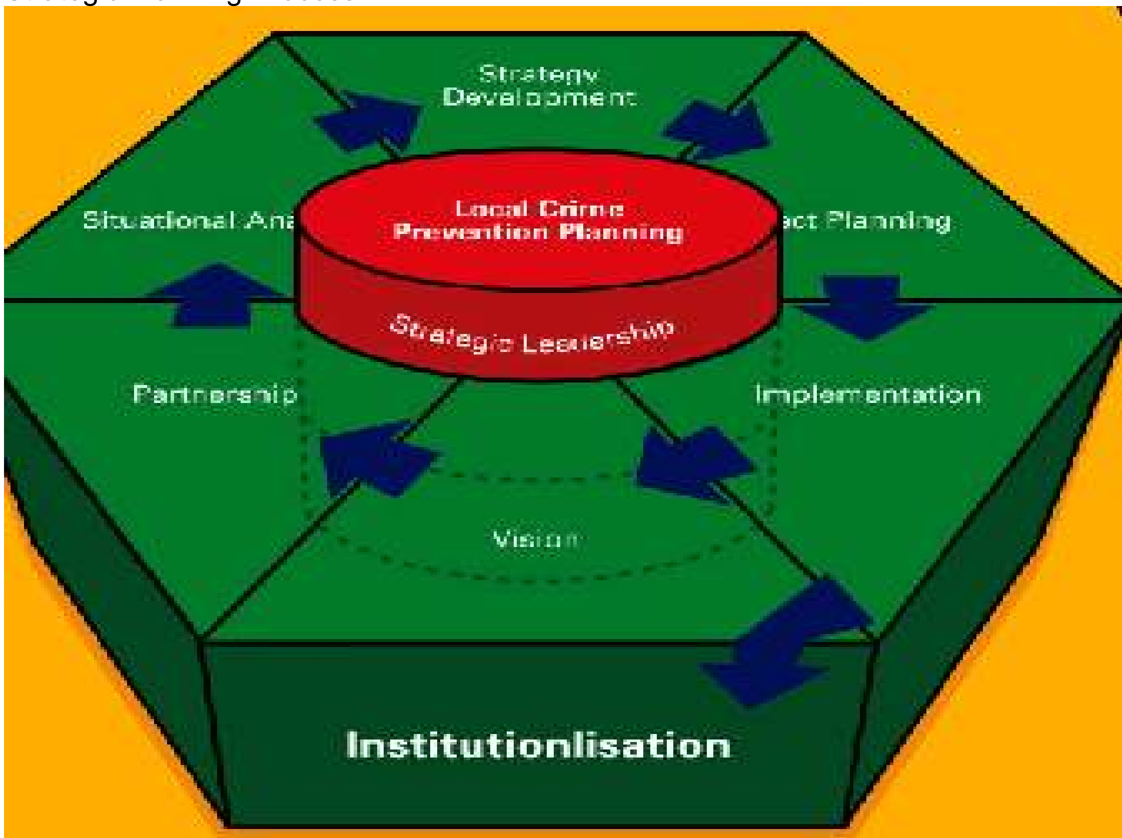
CRIME

ROLE PLAYERS

ENVIRONMENT

ROLE PLAYERS

Strategic Planning Process



Planning Tools

- Building Local Crime Prevention Partnership
- Overview - Role Players and Roles
- Stakeholders analysis
- Local Resource Directory
- Templates of Invitation Letter and Meeting Agenda
- Local Coalition Structure
- Partnership Management Structure
- Visioning Tool
- Templates for Partnership Agreement

Situational Analysis

- Checklist - Reliable Information Base
- Methods, Tools and Techniques
- Profiling and Survey Tools
- Participatory Assessment Tools
- Structure of Diagnosis of Insecurity Report

Strategy Development

- Strategy Templates
- Prioritization Criteria
- Logical Framework
- Community Safety Pact
- Checklist for Exit Strategy

Action Planning and Implementation

- Checklist - Balanced Action Planning
- Checklist - Resource Mobilization
- Checklist - Demonstration Projects Formats

Institutionalization

- Local Government Structures Examples
- Departmental Mainstreaming
- National Support Frameworks
- Examples of Municipal Deliberation and Budgets

Support Process

Local Crime Prevention Planning---Strategic Leadership---Monitoring and Evaluation---Information and Communication

Support Tools

- Leadership and Management
- Templates – management

Information, Education and Communication

- Briefing documents on Crime Prevention
- Checklist – Internal and external Communication
- Templates – Communication Status Report.
- Communication Strategy examples

Capacity Building

- Needs assessment
- Field and exchange visits
- City-to-City Cooperation
- Local Governments Networks and resources

Monitoring and Evaluation

- Examples of indicators
- Templates – Indicators Development
- M & E Template
- Checklists – Identifying Indicators, Evaluation Workplans, Information Collection Method.

Local Crime Prevention Toolkit: Components

- STRATEGIC WORKBOOK: Explains Toolkit Processes and Tools Options
- TOOLS BOOKLET: Tools detailed Description; Templates; Examples
- RESOURCE GUIDE: International Resource Databases
- ICT TOOLS:. A Computerised Program to Prompt and Guide Users in all the Toolkit Stages
- TOOLS (Puzzle, Year Planner, Mapping Tool): from RSA Toolkit
- CD-ROMs for Local adaptation

Way Forward

- Finalize and publish the Toolkit (Peer Review Group)
- International Dissemination (as part of UN-HABITAT Good Governance Toolkit)
- Further and Use at Local Level
- Adaptation in National Contexts (Tanzania, Philippines, Serbia, ...)
- Strategic Alliances at Regional and Global Level
- Mainstreaming the Toolkit in South Africa
- Testing (Central Karoo, RSA) and Peer Learning

- National Conference in Mangaung Local Municipality (4 May)
- Expansion and Further Development
- Expansion of the Tools 'database' towards a Resource / Reference Library of Local Crime Prevention Tools
- Documentation of Thematic Tools (Youth; Physical Planning and Design; Victim Support; etc.)

Workshop 4
Measures to Combat Terrorism, with reference to the Relevant International Conventions and Protocols

Organised by
International Institute of Higher Studies in Criminal Sciences
ISISC

Workshop 4

Measure to Combat Terrorism, with Reference to the Relevant International Conventions and Protocols

AGENDA

Thursday 21 April 2005

Panel I: The International Legal Regime against Terrorism: Strength and Weaknesses

10.00 Opening of the workshop: Chairperson
Introduction: Chairman, Dr. Iskandar **Ghattas**, Assistant Minister of Justice for International and Cultural Cooperation, Egypt
Dr. Giovanni **Pasqua**, Scientific Director, International Institute of Higher Studies In Criminal Sciences (ISISC), Italy
Keynote address: Mr. Jean Paul **Laborde**, Chief, Terrorism Prevention Branch, United Nations Office on Drugs and Crime (UNODC), Vienna

10.30 Panel One
Panellists:
Mr. Pornchai **Danvivathana**, Director of Legal Affairs Division, Ministry of Foreign Affairs, Thailand
Mr. Joel **Sollier**, Expert-Advisor, Counter-Terrorism Committee to the Security Council, United Nations, New York
Mr. Alejandro W. **Slokar**, Undersecretary for Criminal Policy, Ministry of Justice and Human Rights, Argentina
Mr. Gioacchino **Polimeni**, Director, United Nations Interregional Crime and Justice Research Institute (UNICRI), Italy

Interaction between the audience and the panellists

11.45 –12.45 Statements from the floor

12.45 –13.00 Conclusions by the Chairman

Friday 22 April 2005

Panel II: Technical Assistance for Reinforcing Anti-Terrorist Capacities

15.00: **Panel Two**
Moderator: Dr. Giovanni **Pasqua**, Scientific Director, ISISC
Panellists: Advocate Vusumzi Patrick **Pikoli**, National Director of Public Prosecutions National Prosecuting Authority, South Africa
Dr. Iskandar **Ghattas**, Assistant Minister of Justice, Egypt
H.E. Mrs. Snjezana **Bagic**, State Secretary, Ministry of Justice, Croatia
Mr. Stefano **Dambruoso**, Legal Expert, Permanent Mission of Italy to the United Nations, Vienna
Mr. Obaid Khan **Noori**, Director, UN Department, Ministry of Foreign Affairs, Afghanistan

Interaction between the panellists and the audience, guided by the Moderator

16.30-17.30 Statements from the floor

17.30-17.45 Conclusions by the Moderator

17.45 -18.00 Overall conclusions and recommendations by the Chairman

18.00 Closing of the workshop by the Chairman

Workshop 4

Le droit international du terrorisme après le 11 septembre 2001: forces et faiblesses.

Joel Sollier
Expert, Counter-Terrorism Committee to the Security Council
United Nations

La survenance des attaques terroristes du 11 septembre 2001 a profondément modifiée le contexte des relations internationales contemporaines entraînant des recompositions majeures dans l'équilibre des alliances, la conduite des politiques de sécurité ou le rôle des organisations internationales.

Le droit international n'a pas échappé à ces évolutions majeures avec l'ébranlement de certains principes classiques du droit international public tels que la notion de guerre, d'agression, de légitime défense ou encore la pertinence des mécanismes de sécurité collective hérités de l'après guerre. Comme vous le savez, ces sujets donnent lieu à de grandes polémiques de nature politique mais aussi juridique.

Je voudrais, pour ma part, prendre quelques distances avec ces débats très conflictuels et m'en tenir au seul thème qui nous intéresse aujourd'hui, le droit international du terrorisme, afin d'essayer de voir comment les événements du 11 septembre 2001 ont également affecté ce secteur essentiel à la mise en œuvre de la lutte anti-terroriste.

Je vous propose de manière assez simple d'examiner, dans un premier temps, ce qui a changé dans le droit international du terrorisme depuis le 11 septembre et ensuite, dans un second temps, de porter une appréciation sur les évolutions intervenues afin de voir quelles sont les forces et les faiblesses du régime actuel de ce droit.

I. LES CHANGEMENTS INTERVENUS DANS LE DROIT INTERNATIONAL DU TERRORISME DEPUIS LE 11 SEPTEMBRE 2001.

A. La situation avant le 11 septembre 2001.

Un système normatif très complet. La prise en compte du terrorisme par le droit international est une préoccupation ancienne liée au développement de ce phénomène dans les années 70. Les premières résolutions de l'Assemblée générale datent de ces années là avec en particulier la Résolution 2625 du 24 octobre 1970 relative aux principes du droit international touchant les relations amicales et la coopération entre le peuples qui prohibe expressément la tolérance sur leur territoire de groupes terroristes par les Etats. De nombreuses résolutions seront adoptées au cours des années suivantes même si l'on admet que la Résolution fondatrice en la matière est celle adoptée le 9 décembre 1994 (res 49/60) par l'Assemblée générale de l'ONU est qui est intitulée « Déclaration sur les mesures visant à éliminer le terrorisme international ». Ce texte contient l'essentiel des dispositions nécessaires à la prévention et à la répression du terrorisme avec la prohibition de la protection de groupes terroristes sur son territoire, l'obligation de d'arrêter, de traduire en justice ou d'extrader les terroristes, l'obligation de coopérer à l'échelle internationale par l'échange d'information et la conclusion d'accords internationaux et enfin l'obligation de refuser l'asile à des terroristes, conformément a la Convention de Genève de 1951 sur le statut des

réfugiés. Les termes de cette résolution seront repris systématiquement chaque année lors des débats que l'Assemblée générale consacrera à la question du terrorisme.

De même le Conseil de sécurité a adopté toute une série de résolutions très fermes concernant le terrorisme. Un premier groupe de résolutions se réfère à la situation en Afghanistan et s'inquiète de la présence de groupes terroristes sur son territoire au point de décider de sanctions nominatives contre Oussama Ben Laden, les Taliban et leurs associés (Résolutions 1076 du 22 0ct 1996, 1214 du 8 décembre 1998 et 1267 du 15 octobre 1999). Un deuxième groupe de résolutions au titre desquelles figure en particulier, la Résolution 1269 du 19 octobre 1999, est de portée générale et synthétise l'ensemble des mesures que les Etats doivent mettre en œuvre pour lutter contre le terrorisme.

La Cour de Justice Internationale, enfin, a rappelé les obligations de vigilance des Etats en matière de prévention du terrorisme au moyen de deux arrêts importants : Arrêt du 24 mai 1980, Affaire du personnel diplomatique et consulaire à Téhéran et Arrêt du 27 juin 1986, Affaires des activités militaires et paramilitaires au Nicaragua et contre celui-ci.

Des dispositions conventionnelles très élaborées. Sur le plan conventionnel des travaux importants ont eu lieu des le début des années soixante et à la veille des attentats de 2001, la communauté internationale disposait de pas moins de 12 conventions universelles anti-terroristes qui couvraient la quasi-totalité des actes terroristes connus à ce jour. Ce dispositif était complété par de nombreuses conventions régionales qui adaptaient les principes de la lutte anti-terroriste aux spécificités de différents groupes régionaux.

Une absence d'application du droit. Il convient de constater que toutes ces dispositions très pertinentes, qui analysaient bien les manifestations contemporaines du terrorisme et surtout les moyens de le contrer par la coopération internationale et l'adoption de mesures préventives par les Etats, ont eu peu d'effets. Pas plus les dispositions générales que les sanctions spécifiques contre Ben Laden et les Talibans n'ont reçu de réelles applications. Quant aux conventions universelles anti-terroristes, seules celles relatives à la sécurité aérienne ont été largement ratifiées car l'habilitation des aéroports et des compagnies aériennes nationales en dépendait pour une large part. Ainsi, en 2001, seuls deux Etats avaient ratifié l'ensemble des 12 conventions en cause.

Une prise en compte inégale de ce phénomène par les Etats. Si l'on considère maintenant les législations internes des Etats qui sont sensés donner une portee concrète au droit international du terrorisme, il ressort que seuls les Etats qui ont été directement confrontés au terrorisme disposaient d'une authentique législation anti-terroriste. Pour des raisons très diverses, tenant parfois à la sous-évaluation de le menace, à des problèmes politiques internes ou encore à la priorité donnée à d'autres aspects de la lutte anti-criminalité, le droit de l'anti-terrorisme intéressait de manière très inégale les Etats et cela se traduisait par de vastes carences juridiques à l'échelle mondiale, et de fait, à une certaine inapplicabilité du droit international du terrorisme.

B. La situation après le 11 septembre 2001.

Sur le plan institutionnel, la montée en force du Conseil de sécurité. La survenance des attentats du 11 septembre 2001 va complètement bouleverser la situation et l'approche internationale qui avait prévalue jusqu'alors. Pour des raisons politiques, qui tiennent à la situation très particulière du moment, des décisions fondamentales vont être prises par le Conseil de sécurité. La première est contemporaine des attentats puisqu'elle date du 12 septembre 2001 (résolution 1368) qui érige « tout acte de terrorisme en atteinte à la paix et à la sécurité internationales » et autorise donc le Conseil à faire usage des pouvoirs exceptionnels que lui confère le Chapitre VII de la Charte des Nations Unies.

Adoption de la Résolution 1373 qui détermine un régime international de lutte anti-terroriste de portée obligatoire. Le 28 septembre 2001, le Conseil de sécurité adopte à l'unanimité une résolution de portée historique sous chapitre VII qui rend obligatoire en application de l'article 25, pour tous les Etats un ensemble de principes dans le domaine de la lutte anti-terroriste. Cette résolution ne change rien quant au contenu du droit international du terrorisme puisque toutes les dispositions de la résolution préexistaient soit au titre des résolutions de l'Assemblée générale, soit au titre du droit conventionnel, en particulier s'agissant de la lutte contre le financement du terrorisme, mais elle change tout quant a la portée de ce droit dont la mise en œuvre devient obligatoire. Plus encore en vertu de l'article 103 de la Charte ces règles l'emportent sur toutes les dispositions conventionnelles bilatérales ou multilatérales relatives au terrorisme qui pourraient être en contradiction avec elles.

Création d'un organisme de suivi de la mise en œuvre de la Résolution. La création du Comite Contre le terrorisme puis d'une direction exécutive rattachée à ce comite (résolution 1535) va donner au Conseil les moyens de vérifier le respect par les Etats des obligations qu'il a défini par un échange de rapports entre le Comite et les Etats suivi de visites sur place. La pratique va permettre non seulement le contrôle de l'application des principes de la Résolution 1373, mais également des conventions internationales que les Etats sont appelés a ratifier tant par la résolution elle même, que par le vaste mouvement diplomatique initiée après les attentats sur la question du terrorisme.

Lancement d'une politique anti-terroriste en partenariat avec les organisations internationales régionales et spécialisées. L'association par le Conseil de sécurité et le Comite contre le terrorisme d'un grand nombre d'organisations internationales régionales ou spécialisées à sa politique anti-terroriste va donner à la promotion du droit de l'anti-terrorisme une impulsion importante. En effet, non seulement ces organisations vont relayer les efforts du Conseil en encourageant leurs Etats-membres à ratifier des conventions et appliquer les principes de la résolutions mais elles vont développer des standards nouveaux dans leurs domaines de spécialité respectifs, étendant par la même le champ du droit de l'antiterrorisme. On peut citer à ce titre, les recommandations spéciales du GAFI en matière de lutte contre le financement du terrorisme, les standards de l'Organisation Mondiale des Douanes sur la prise en compte du risque terroriste lors du contrôle aux frontières, les réglementations de l'ICAO en matière de sécurité aérienne et de protection des aéroports. Ce vaste mouvement se décline également au sein d'organisations régionales qui ont toutes développées des plans d'action comprenant des aspects normatifs (Union européenne, Organisation des Etats Américains, ASEAN, OSCE…).

II. QUELLE APPRECIATION PORTER SUR CES CHANGEMENTS ? QUELLES SONT LES FORCES ET LES FAIBLESSES DU SYSTEME ?

A. Les atouts.

Des obligations qui créent une généralisation et une harmonisation du droit international du terrorisme. Les dispositions générales et obligatoires imposées par le Conseil de sécurité ont pour premier effet de créer un régime harmonisé du droit du terrorisme. Ainsi même en l'absence de traités, les Etats sont liés par les principes posés par la Résolution 1373 et doivent par exemple juger ou extrader les auteurs d'actes terroristes. Les questions de double incrimination sont en partie réglées par la définition au sein même de la Résolution de certains actes terroristes précis comme le financement du terrorisme. L'instauration de mécanismes de base comme la saisie des avoirs criminels est généralisée et devrait faciliter la coopération judiciaire qui est élevée au rang d'obligation. Les dispositions conventionnelles peuvent préciser et ajouter aux dispositions de la Résolution 1373 mais elles lui sont subordonnées. Ainsi par l'adoption d'un seul texte de grande force juridique, le Conseil de sécurité intervenant comme un véritable législateur international a créé des normes générales et impératives qui ont unifié et imposé un droit qui jusqu'alors était marginal et relativement inappliqué.

L'avènement d'un réseau international de coopération judiciaire. L'encouragement des Etats à ratifier les conventions internationales anti-terroristes a eu un effet décisif sur le nombre des ratifications de ces conventions et notamment en ce qui concerne les plus récentes d'entres elles. Le taux de couverture des conventions anti-terroristes tend progressivement vers l'universalité avec plus de 100 ratifications pour les 3 conventions à ce jour les moins ratifiées. Ce résultat a été obtenu en moins de trois années alors que les autres conventions pénales (drogue, criminalité organisée…) ont nécessité des dizaines d'années pour obtenir des taux équivalent de ratification. Un très grand nombre d'Etats est donc désormais lié par un réseau conventionnel dense de règles qui devraient favoriser la coopération. Le défi essentiel est d'activer maintenant ce réseau et d'encourager véritablement les Etats à user de ces dispositions dans leurs relations.

Le développement de standards techniques en matière de lutte anti-terroriste. Les principes posées par le Conseil de sécurité ont été repris est précisé sur le plan normatif et opérationnel par différentes organisations internationales qui ont relayé efficacement l'action du Conseil. Le droit international du terrorisme ne se limite donc plus à l'énoncé de quelques principes généraux mais se décline en un grand nombre de réglementations techniques qui précisent pour le financement, l'asile, le contrôle frontalier, la sécurisation des documents d'identité, la sécurité aérienne ou maritime qu'elles sont les mesures qui doivent être adoptées par les Etats.

Le développement des législations internes. L'incorporation dans le droit interne des Etats des principes de la lutte contre le terrorisme a facilité la généralisation de ce droit et sa meilleure connaissance par les professionnels du droit et de l'application des lois. Le droit international du terrorisme, comme celui de la protection des droits de l'homme ou encore le droit humanitaire, n'est plus un droit lointain, enfermé dans des textes hermétiques, mais un pan du droit national intégré à la vie juridique des pays.

B. Les limites.

Incapacité à trouver une définition concertée du terrorisme. L'absence de définition du terrorisme a pu apparaître à certains auteurs comme une question secondaire des lors que bon nombre d'actes terroristes recevaient une définition conventionnelle largement acceptée. Les résolutions du Conseil de sécurité prennent d'ailleurs soin de toujours se référer à la commission « d'actes de terrorisme » et non au terrorisme en général. Néanmoins l'incapacité à définir de manière uniforme ce phénomène alors que sont crées dans le même temps des obligations générales à l'ensemble des Etats est paradoxal. De même lorsqu'il s'agit d'autoriser par exemple le recours à des actions armées au titre de la légitime défense sur la base d'un concept non défini internationalement. Ceci constitue indéniablement une limite dans la capacité d'autogestion de la communauté internationale dont la responsabilité incombe à tous en général et à aucun en particulier.

Un droit techniquement imparfait. Le régime international résultant des résolutions est par nature moins précis est moins élaboré que le droit conventionnel, il peut en résulter des imprécisions, voire certaines contradictions entre les concepts issus de ces deux sources différentes du droit (par exemple dans le domaine du financement du terrorisme). Les résolutions du Conseil de sécurité sont avant tout des textes politiques destinés à donner une impulsion aux Etats. Elles sont souvent prises en réaction à une situation d'urgence et toujours le résultat d'un compromis politique qui peut conduire à une distorsion de certains concepts juridiques.

La difficulté de mise en œuvre de certaines obligations. Certaines obligations au titre des résolutions du Conseil de sécurité réclament de simples adaptations législatives et il n'est déjà pas simple d'obtenir de manière généralisée une complète mise en œuvre de ces dispositions par les Etats dans leurs législations internes. D'autres obligations nécessitent la création de structures, la mise en place de procédures et de matériels souvent très coûteux (contrôle des frontières, sécurité des documents d'identité, sécurité aérienne et portuaire…) et souvent hors de portée financière des Etats. La lutte anti-terroriste, et donc l'effectivité des régimes juridiques, se heurtent à la

question des moyens, à la problématique du développement, à l'arbitrage des priorités par les gouvernements entre les impératifs de sécurité et parfois les besoins vitaux de leur population.

Les atteintes aux droits de l'homme. Ces atteintes ne tiennent pas à la nature du droit anti-terroriste mais comme l'a souligné le Secrétaire général de l'ONU, à certaines pratiques qui ont tiré prétexte de la lutte anti-terroriste pour restreindre abusivement le régime des libertés publiques ou procéder à des actes contre des opposants politiques. Indéniablement ces actions ternissent indirectement le droit de l'antiterrorisme qui apparaît comme un droit purement répressif à usage politique alors qu'il s'agit comme pour toute branche du droit pénal de trouver un équilibre entre les nécessités de l'ordre public et les droits du citoyen. De nombreux pays ont su mener une politique anti-terroriste parfaitement compatible avec le respect de l'Etat de droit et c'est vers ces exemples qu'il convient de se tourner car ils constituent la seule réponse admissible et efficace contre le terrorisme.

*Je conclurai mon propos en disant que le droit n'apporte qu'une réponse partielle au terrorisme mais c'est une réponse essentielle car « L'arme de la civilisation c'est le droit », selon une formule célèbre.

Il n'y a pas dans ce propos qu'une prise de position morale mais également un souci d'efficacité : les Etats qui ont lutté efficacement contre le terrorisme l'ont fait avec des moyens légaux, ceux qui se sont affranchis de la légalité ont échoué, les exemples de cette réalité abondent.

C'est cette voie que le Conseil de sécurité demande aux Etats de suivre puisque c'est par la coopération internationale et l'application du droit international anti-terroriste qu'il a souhaité que soit menée la lutte contre cette forme moderne d'atteinte à la paix et la sécurité du monde.

Workshop 4

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Alejandro Slokar
Undersecretary for Criminal Policy
Ministry of Justice and Human Rights, Argentina

*El terrorismo es un fenómeno de criminalidad compleja por excelencia. En primer lugar, sus manifestaciones reconocen diversas formas de violencia, y sus propósitos obedecen a las más plurales motivaciones valorativas. En segundo término, los sujetos que llevan a la práctica actividades terroristas han pertenecido a lo largo de la historia reciente a las más disímiles organizaciones: grupos políticos radicalizados, facciones religiosas extremistas, movimientos étnicos fanáticos, pero también -a no dudarlo- formaciones militares y de seguridad que se han ocupado de dar vida a la versión del terrorismo de Estado. En tercer lugar, el espacio territorial en que opera el terrorismo ya no tiene como límite las fronteras nacionales -que devienen virtuales-, sino más bien las redes internacionales que van conformando sus organizaciones. Un cuarto y último dato de la complejidad del fenómeno es que, como ningún otro acto criminal, su itinerario delictivo enlaza una multiplicidad singular de actos ilícitos con otra cantidad enorme de actos regulares, muchos de los cuales son desarrollados por la misma comunidad que luego sufre como víctima la propia violencia terrorista.

Frente a esta complejidad valorativa, organizacional, instrumental y operativa del fenómeno terrorista, el conjunto de instrumentos normativos y el sistema de justicia de que disponen los estados nacionales aparecen -en su gran mayoría- como herramientas parciales, cuando no demasiado rudimentarias o vetustas.

Anclados en la racionalidad decimonónica, los ordenamientos jurídicos y los modelos de enjuiciamiento nacionales fueron pensados para administrar actividades humanas unidireccionales, localizadas en el territorio estatal, con destino a suministrar respuestas estandarizadas. En muchos casos, el fracaso de la reacción del estado con base en esta matriz derivó en respuestas emergenciales, con el consabido deterioro del marco de libertades y garantías individuales. No es extraño entonces que desde la perspectiva teórica, el terrorismo pase a convertirse en un campo privilegiado para la elucubración de algunas versiones que desde el saber jurídico se dan en llamar en los días que corren derecho penal del riesgo y derecho penal del enemigo. El equívoco de la falsa alternativa, que pregona desde el marco conceptual la virtual excepción al estado de derecho y el menoscabo de los derechos humanos para el remedo de la ineficacia, debe ser enfáticamente rechazado, tanto más desde la experiencia de los países de América latina.

Desde esta región del continente, lamentablemente, hemos asistido en muchas oportunidades a la cuestión del terrorismo en una doble dimensión. Por un lado, la región padeció en más de sus dos terceras partes el terror proveniente del propio aparato estatal ligado a la violencia política en algunas ocasiones fraticida, fenómeno que llegó en muchos países a ser la primera causa de muerte en el correr de las últimas décadas. Por otro, la incapacidad de las estructuras estatales establecidas en marcos políticos poco preocupados en dar respuestas legítimas y eficaces, ha terminado por consagrar la impunidad, provocando un impacto enorme en la seguridad y confianza de la sociedad en su conjunto. Así, desde estas dos facetas, el terrorismo representó ante todo un ataque directo contra los derechos humanos y el propio estado de derecho.

El momento planetario presente, signado por el proceso general de la globalización, intrinca aún más este escenario, caracterizado por el deterioro creciente de la eficacia preventiva de los estados frente a amenazas reales de destrucción masiva indiscriminada.

Al respecto, la experiencia regional americana lleva a pensar que los esfuerzos para disminuir a su mínima expresión la amenaza terrorista debe ocupar un lugar de privilegio en el mundo actual, y todos esos esfuerzos deben estar basados en la respuesta democrática, con la gran plataforma de los derechos y libertades construida en especial desde la segunda mitad del siglo pasado en el orden internacional.

Motivados por el brutal impacto que provocaron los atentados terroristas perpetrados en diversas partes del mundo, en años recientes los estados miembros de la comunidad internacional han hecho un fuerte apelo a respuestas multilaterales y mecanismos de cooperación regional para nutrir de nueva sabia a los sistemas normativos e institucionales nacionales. Democracia y derechos humanos como soporte, multilateralidad y estandarización normativa como herramientas, marcan la clara posición que los estados han adoptado frente a las organizaciones y actividades terroristas en el mundo, y constituyen el fundamento del diálogo para la conjunción de respuestas en una cuestión que -probablemente como ninguna otra- requiere del concierto unánime de los países. En referencia a todo este proceso, permítaseme señalar algunos de los aspectos concernientes a la experiencia que mi país ha sufrido en la materia, y cuales han sido los resortes normativos y operativos que se han puesto a funcionar para condenar el terrorismo y reestablecer en la medida de lo posible las bases de justicia y confianza que son necesarias para desarrollar una convivencia libre y democrática.

Como bien ustedes recordaran, la Argentina vivió años aciagos en el último cuarto de siglo, a partir de las convulsiones políticas de la década del 70, y el ingreso en los años 80 empujados por la siniestra dictadura que instauró el estado terrorista con efectos devastadores en términos de vidas humanas. En segundo lugar, ustedes también conocen que los argentinos padecimos ya en plena etapa democrática, durante la década del 90, dos cruentos atentados contra instituciones pertenecientes a la comunidad judía. Significaron la pérdida de más de 100 compatriotas, y particularmente el perpetrado en 1994 contra la mutual AMIA, suma el número más elevado de víctimas de origen judío por atentado fuera del estado de Israel. Frente a las manifestaciones terroristas de ambos períodos históricos gobernó la impunidad. Es evidente que la impunidad de los actos terroristas cumple uno de los efectos deseados por sus propios hacedores: el debilitamiento de la legitimidad del estado y, como correlato, la corrosión de la convivencia organizada conforme a patrones jurídicos.

Estas dos experiencias frente al terrorismo, aunque muy diferentes en su oportunidad y consecuencias, han marcado a fuego a los argentinos en su conjunto y han puesto en evidencia el déficit y la incapacidad estatal para sanear el daño y dolor producidos.

Sólo una altísima cuota de responsabilidad democrática y de institucionalidad activa puede conducir a la verdad y recomponer la justicia. Por ello, el actual gobierno, próximo a cumplir dos años de gestión, se ha empeñado en llevar adelante una franca y decidida política contra la impunidad y en favor del fortalecimiento de la calidad institucional, tal como lo demostró al impulsar la anulación de las leyes de punto final y obediencia debida y también al promover el reconocimiento del Estado argentino de su responsabilidad por los graves incumplimientos en el esclarecimiento del aberrante atentado de la AMIA.

Es en este período, a fines de los años noventa que se institucionaliza el CICTE (Comité Interamericano contra el Terrorismo), como mecanismo de cooperación en el marco de la Organización de Estados Americanos. Tras los sucesos del 11 de setiembre de 2001, el esquema hemisférico reconoció la necesidad de brindar una respuesta integral al fenómeno del terrorismo y en pocos meses se celebró la Convención Interamericana Contra el Terrorismo, la llamada Convención de Bridgetown, en junio de 2002.

Desde sus aspectos centrales, la Convención Interamericana establece el compromiso de los Estados partes de fortalecer fundamentalmente la cooperación internacional y la asistencia mutua

entre los estados, reforzando esas herramientas como alternativas de inestimable significado para la lucha contra el terrorismo.

De otro lado, y como especial preocupación, el instrumento establece la adecuación del derecho interno de cada estado parte a lo dispuesto en la Convención -que remite a los tratados de carácter universal reconociendo la singular importancia de los mismos- siempre en el marco del respeto al estado de derecho y a los derechos humanos y libertades fundamentales. A este respecto, y en orden a la no discriminación y respeto a los derechos humanos, se amplían los mecanismos de protección al proscribirse en la aplicación de esta Convención actos discriminatorios basados en diferencias raciales, religiosas, de nacionalidad o de opinión.

Por fin, la supervisión y vigilancia de las operaciones que realicen los operadores del sistema financiero, tanto a nivel nacional como transnacional, y que puedan ser consideradas sospechosas, marcan una pauta central de este dispositivo internacional. Mediante sus previsiones los estados partes asumieron un importante compromiso de prevenir, combatir y erradicar la financiación del terrorismo. Asimismo, y merece ser destacado, la Convención Interamericana es el primer instrumento que remite en forma mandatoria a los Estados a tener en cuenta las recomendaciones establecidas por el GAFI, el GAFIC y el GAFISUD.

El CICTE se ha convertido en órgano de asistencia técnica para la adecuada implementación de la Convención, y ha desarrollado una importante actividad en la materia, y vale subrayar el punto, en una adecuada coordinación con las actividades de la Oficina contra la Droga y el Delito de la ONU:

En suma, pocas temáticas como el terrorismo son tan próximas al ejercicio de control del estado y a la relación del hombre con las estructuras de poder. Uno de los principales desafíos que enfrenta América latina -junto con la promoción de una economía próspera y con equidad en su distribución-, es el fortalecimiento de la institucionalidad democrática. Para el logro de ese cometido, el terrorismo -en todas sus expresiones- constituye una amenaza inaceptable, que sólo debe ser neutralizada con más estado de derecho. La eficacia en la intervención, que conjure la posibilidad de realización de acciones terroristas y que coloque a las víctimas a resguardo de la impunidad, no puede estructurase al margen de los derechos del hombre, ni arroparse en el voluntarismo unilateral. Sólo la multiplicidad y la creatividad que facilita el multilateralismo pueden conformar dispositivos y mecanismos que nos lleven a un mundo en el que se pueda vivir en paz y libertad, como entre todos queremos.

Workshop 4

Streghts and weaknesses of international legal provisions on terrorism

Gioacchino Polimeni
Director
UNICRI

Thank you Mr. Chairman, for giving me the floor and for your kind words in introducing me.

The international legal regime against terrorism is a complex one and evaluating its strength and weaknesses is an equally complex exercise. However, after the extremely interesting indications given by the other panelists I will be brief.

I believe that in evaluating that regime three separate points of views can be adopted. The first perspective exclusively pertains to the conventions and consists in measuring the level of ratifications. We can considered, in that regard, that today terrorism is international in nature, terrorist acts can affect any country, prosecution can occur in any country and information for investigations, as well as evidence and alleged offenders, are to be found in a multitude of countries. Thus the legal regime, to be effective, should be universal.

I heard yesterday in the debate in plenary that various delegations have recognized that the fight against terrorism will be one of long term. Maybe we should adjust to that idea, but the legal regime should be conceived as a basket of legal tools and in any case – short term or long term - the tools should be available from the beginning of the work. So every possible effort should be made to rapidly increase the number of ratifications of the 13 conventions and the action of UNODC, Terrorism Prevention Branch, is vital to that purpose.

The second point of view in evaluating the antiterrorism legal regime is that related to the scope of application of the available international norms. The question there is: do those norms cover all possible features and forms of the terrorism phenomena, or at least a satisfactory range of them? From my part, while waiting for the comprehensive convention, the answer is a positive one and not only for the already very comprehensive wording of the Security Council resolutions, (especially paragraph 2, e of Res. 1373), but also on the basis of the 13 conventions. We should consider, in particular, the extremely broad criminalization provisions of the 'bombing' convention which cover acts committed by using all types of devices, including chemical, biological and radioactive devices; and such provisions are now complemented by the nuclear terrorism convention. In this connection, we should consider that the three most recent conventions are also very broad in defining the types of participation in the terrorism offences to be criminalized. I am referring to those provisions that expand the criminalization well beyond the traditional 'participation as an accomplice' and oblige the Parties to establish as offences also lower levels of participation, so to say, in a way not far from what in the Convention against transnational organized crime constitutes the offence of participation in an organized criminal group.

An ample common system of criminalization is a double strength for our legal framework against terrorism, since criminalization has a value in itself as a central measure for the national action against terrorism, at the same time being an essential legal basis for the international cooperation, in particular cooperation in investigations and prosecutions. Obviously, discrepancies among the national substantive criminal laws may create difficulties, sometimes insurmountable difficulties, in providing extradition and mutual legal assistance.

The third point of view is that of assessing whether the single measures of international cooperation provided for by conventions and resolutions are complete and effective. Limiting myself to cooperation for investigation and prosecution I would indicate only two aspects:

First, **extradition**.
Within a legal regime based on the principle of 'Aut dedere aut judicare' (meaning: or extradite or prosecute), I identify the strength in the abolition of political offences exception. States cannot refuse extradition on the sole ground that the offence is political: this rule is now explicitly contained in the most recent three conventions and, in my view should also apply to the offences of the other conventions on the basis of paragraph 2 of Res. 1373.

For the rest, the provisions on extradition in the anti terrorism instruments do not substantially differ from what we have in the TOC convention or in the convention against corruption: as you know the 13 instruments do not impose a specific set of substantive and procedural norms, so that general national extradition laws and existing extradition treaties apply also to extradition cases related to terrorism acts.

Second, **mutual legal assistance**, that is to say assistance in investigations, in gathering evidence and in other acts relevant to criminal proceedings. Here the strength consists for sure in the absolute obligation for all States to provide one another "the greatest measure of assistance": an obligation that you find in all the 13 conventions as well as in Res. 1373. However such obligation is not accompanied by a detailed regime of mutual legal assistance. In spite of some additional provisions contained in the most recent conventions, one can say that the practice of mutual legal assistance remains not described in those conventions and many important operational aspects of it not regulated. The comparison is unavoidable with the TOC and the Corruption conventions, where – on the contrary – you find pages and pages on the issues of mutual legal assistance. Is there any reason for this different treatment of the same matter? Is the lacking of details in the anti terrorism conventions and resolutions a weakness of the system? I leave these questions for the debate. Certainly, and as a minimum, the absence of detailed normative schemes for mutual assistance does not facilitate the establishment of common and universally accepted practices of assistance and leaves room for dangerous discrepancies in the national laws and policies. If this is true all possible efforts should be made – and CTC and the Terrorism Prevention Branch of Vienna are already doing them – for States to consider available best practices, and, possibly, to adopt common models in their legislations and operations.

Thank you, Mr. Chairman.

Workshop 4

Advocate Vusumzi Pikoli
National Director of Public Prosecutions
National Prosecuting Authority, South Africa

1. BACKGROUND – THE POST APARTHEID TRANSFORMATION AGENDA

As the pre-democratic era was characterized by political events and the isolation of South Africa from the international arena, serious crime (in particular organized crime and money laundering) was not regarded by the Apartheid regime as posing a serious threat. The former government's efforts were directed at suppressing the democratic movement.

The 1994 new democratic dispensation - South Africa legitimately re-entered the international arena. Consequently, the opening up of South Africa's borders, foreign trade and investment became an integral part of the new South Africa. With these developments, South Africa also experienced an escalation in its crime levels, particularly from organized crime groups (such as the Nigerians, Chinese Triads, Russians and Bulgarians) who took advantage of the well – developed infrastructures of the South African society.

The law enforcement agencies at the time were not designed or equiped to deal with the sophisticated criminal activities that started to infiltrate our social and financial structures. The new democratic government had to contend with major reconstruction processes to rebuild a society that has been destroyed by apartheid. At the same time it had to focus its attention on fighting the escalation in criminal activities with scant resources, as there was an outflow of skilled people from the public sector and law enforcement agencies to the private sector.

Faced with weakened law enforcement and ineffective laws to deal with organized crime in all its manifestations, the new South African Government had to very rapidly provide policy direction and the legislative frameworks to the law enforcement agencies in fighting organized crime. This also happened at a time when there were heightened pressure/demands at an international level for countries to comply with international conventions and instruments to combat organized crime (including corruption).

Despite the enormity of the task, South Africa has put various legislative frameworks and structures in place to combat crime, which posed a serious threat to our efforts to transform our country into a safe and peaceful society. The efforts to combat serious crime and organized crime in South Africa should be seen against the background of our recent history as a young democracy with an emerging economy.

10 years into democracy South Africa has undoubtedly demonstrated its ability to become an important player in international affairs. This rings true not only in the political, economic and social spheres, but also in the fight against global crimes. In a short space of time significant strides have been made to bring most of its legislation pertaining to combating serious crime in line with international standards and instruments.

Societies are becoming more complex due to the information revolution and the speed with which knowledge and information are generated, we are presented with new and daunting challenges. The information technology revolution makes it possible for criminals to communicate with relative ease and anonymity across jurisdictional boundaries. This, we know, provide the ideal breeding ground for organized criminals and terrorist groups to mastermind with military precision any form of criminal attack on States or individuals.

The scale and organization of the events in the United States on September 11 is unmistakably proof of this. These events firmly entrenched the worldview that terrorism poses a global threat to national and international security, which directly challenges the ability of States to protect their citizens. As countries, we are therefore more vulnerable now than ever before.

Terrorism also threatens the economic stability of countries. As we know the 9/11 events destabilized the world financial markets. South Africa like many others did not escape the aftershocks. Immediately after the events South Africa's Business Confidence Index declined which was directly attributed as a result of the reaction in the forex and equity markets to the attacks. The value of the currency dropped significantly, which in turn affected commodities, food prices and exports. It is therefore the poor communities, which ultimately bear the brunt of the effects of events of this nature.

2. DOMESTIC LEGISLATION AND INTERNATIONAL INSTRUMENTS

South Africa has enacted a comprehensive set of legislation to combat organized crime and terrorism, and to facilitate international cooperation. By developing the new legislation South Africa is in compliance with the UN Conventions and International Instruments.

As far as terrorism is concerned, post 1994 (in view of the history of the security legislation) a total number of 34 laws were repealed in 1996 as part of the review process. This was done with a view to develop new legislation, which conforms to international norms and the South African Constitution.

Although at a political level, South Africa is a signatory to international conventions on terrorism and as a member state of the United Nations, is bound by its resolutions, domestic law still governs the combating of international terrorism within the criminal justice system.

The current law makes it difficult to combat terrorism in the global sense in that it is confined to offences committed within the borders of the Republic and by persons who, when committing such offences, were present on South African soil. The Regulation of Foreign Military Assistance Act and the National Conventional Arms Control Act deal with extraterritorial jurisdiction, but only in the case of South African juristic entities. The offences created by these two Acts would only indirectly be linked to international terrorism.

This situation however will shortly change once the new anti-terrorist legislation, The Protection of Constitutional Democracy against Terrorist and Related Activities Act, No. 33 of 2004 is in place (awaiting promulgation in Government Gazette due during May 2005). This legislation attempts to address the above shortcomings and creates a number of offences, which would give the South African courts extraterritorial jurisdiction. The legislation also makes provision for action to be taken against persons resident in South Africa who are listed on the United Nations' terrorists lists. Further legislation is being drafted to also make provision for the seizure of assets in South Africa belonging to persons who are subject to UN sanctions.

The new Terrorism Act broadens the scope of specific offences on terrorism and will make provision for the so-called convention offences (hijacking of an aircraft, endangering the safety of maritime navigation, bombing offences, taking of hostages, protection of internationally protected persons, offences relating to fixed platforms, offences with regard to nuclear material or facilities).

3. CRIMINAL JUSTICE SECTOR EXPERIENCE WITH MULTILATERAL AND BILATERAL ASSISTANCE

3.1 Responses to implementation and development of expertise

There is currently no coordination of the provisioning of technical assistance in the criminal justice sector. The nature of technical assistance and the levels thereof can therefore not be assessed at this stage in order to gain insights into where it has worked or not worked and the lessons to be learned (or how it should be structured for the future).

Following South Africa's participation in the Conference of Parties to the UN Convention Against Transnational Organized Crime in Vienna 2004, a number of recommendations have been made, which, *inter alia*, include the identification and assessment of problems experienced with regard to the implementation of the various legislation and areas required for technical assistance.

Technical assistance is currently happening on an ad hoc basis and left with individual Departments in the criminal justice sector to give effect to bilateral or multilateral arrangements.

The SA legislation mentioned to combat organized crime (including money laundering, terrorism and corruption) was developed without technical assistance. Despite this, the development of these pieces of legislation can be heralded as one of the major successes of South Africa, in that they not only modernized the legislative framework against organized crime, but they are also in line with international standards.

South Africa also succeeded to establish the necessary enforcement structures ensure the effective implementation of the legislation. The South African Police Service has for example reorganized it structures.

The National Prosecution Authority (NPA), which was established in 1998, set up specific specialized units to combat organized crime and corruption. In this regard the Directorate of Operations was established to address national priority crimes of an organized nature; and the Asset Forfeiture Unit to implement the asset forfeiture provisions in the POCA.

The NPA has made use of technical assistance from the United States and the United Kingdom. This involved financing and using their experts for training in areas of corruption and money laundering. Technical advisors have also been used to develop its racketeering and asset forfeiture capacity. To develop world-class investigators for the DSO, the NPA entered into bilateral arrangements with FBI and Scotland Yard where investigators received their training.

One of the drawbacks of technical assistance, including making use of technical advisors is that foreign agencies do not remain objective.

Witness protection is critical element in the fight against organized crime especially crimes of a transnational nature. South Africa has also developed a world-class Witness Protection legislation and established a Witness Protect Unit located in the National Prosecuting Authority. The legislation and the Unit were developed without any formal technical assistance, but participated at various international forums where best practice was shared. South Africa has been very successful with its program so much so that its model and legislation are internationally acclaimed.

The Unit has obtained membership of Europol Heads of Experts Meeting in 2003. Through its membership the Unit has been able to share best practice, explore cross border working arrangements and arrange common training.

Various international organizations have expressed an interest to support a co-coordinated initiative to contribute to the national anti-corruption programme. Representatives of the Public Sector have been engaging with public, international organizations and donors on future support to the national anti-corruption programme, including support to the civil society and business sectors. In particular, the need to have a medium-term support programme with domestic and regional elements has been discussed. Many of the donor-supported projects have contributed to the

development of the anti-corruption environment, specifically those projects related to monitoring, research and advocacy.

3.2 South Africa's assistance to other countries – leading the fight against serious crime

South Africa has developed considerable capacity and experience in the drafting of legislation, setting up of specialist units and adopting new approaches to combating crime.

Because of the successes law enforcement agencies in South Africa have achieved, and the convergence of awareness on the Continent, that improved cooperation is critical to combat organized crime, increasing demands are being made to provide assistance to the rest of the countries in the African Union and the rest of the world.

Various bilateral and multilateral agreements are in place between South Africa and other countries on the African continent and others through which assistance is provided by the South African Police Service. The National Prosecuting Authority also has working relationships with some countries through which training and technical advice are being provided. (For example, Tanzania, Mozambique, Swaziland, Uganda, Mauritius, Namibia).

The Witness Protection Unit has played a key role in assisting with the harmonization of witness protection legislation for application across the European Union. South Africa was one of 8 countries that served on the Europol Working Committee to draft the legislation in March 2005. This legislation could be used as a model legislation for other countries including the African Union. South Africa also participated in the 15th Session of the UN Heads of National Drug Law Enforcement Agencies for Africa during March 2005 in Bukina Faso. WPU SA has received requests from various countries, such as Chile, Mozambique, Denmark, Sweden, Namibia and Finland to assist with the development of witness protection. South Africa was also invited to Australia by the Heads of Experts Forum to assist and share best practice. South Africa has been invited by the UN to provide training in witness protection to the Witnesses and Victims Support Section of the International Crimes Tribunal in Arusha during July 2005.

In the area of corruption, South Africa contributed significantly to the development of the United Nations Handbook for the Training of Prosecutors and Investigators of Corruption. The final version of the Handbook has been the subject of a workshop that was attended by representatives of the Southern African Development Community countries. South Africa is also providing assistance to some countries in the AU to develop an anti-corruption framework and capacity.

The National Prosecuting Authority was also instrumental in the establishment of the Africa Prosecutors Forum in 2004 that is focusing on sharing information and expertise on issues such as organized crime, corruption, money laundering, asset forfeiture and cooperation.

All these bilateral and multilateral arrangements are fairly recent and their impact will have to be determined through a credible review mechanism.

3.3 International Cooperation

No technical assistance has been received in the implementation of our Mutual Legal Assistance and Extradition legislation, Treaties and other international instruments. These areas require development.

The international nature of the crimes makes the use of mutual legal assistance imperative. In this regard, however, we are limited by the restrictive terms of our domestic Mutual Legal Assistance Legislation. This legislation provides that in the absence of a bilateral treaty, a formal public and restrictive procedure must be adopted. This makes it difficult to quickly access sensitive information in a confidential manner. Although our bilateral treaties have a more user-friendly procedure, there are only an extremely limited number of them.

Our domestic legislation cannot bind foreign states and in addition, complications arise when dealing with different legal systems and languages. A more flexible international cooperation regime will have to be developed. A possible solution for the long-term could be the incorporating into international conventions of user-friendly mutual legal assistance and extradition. These would bind all signatories to the convention to cooperate with each other.

Also the establishment of an international forum of prosecutors and investigators (under the auspices of the UN)) focusing on transnational organized crime (including international terrorism) would be a major positive step in augmenting closer international cooperation and also stimulate our own awareness of global threats, which might impact on South Africa.

Despite the fact that there are legal barriers with regard to domestic legislation, law enforcement agencies in South Africa are co-operating with a number of foreign countries in combating organized crime.

Some examples can be highlighted: in a DSO operation (Guanxi) a number of agencies have been involved in the investigation (UK Drug Liaison Officer stationed in SA, USA Drug Liaison Officer stationed in SA, Australian Drug Liaison Officer stationed in SA, Anti-smuggling Bureau of the Mainland Chinese Police Hong Kong Police, Namibian Police, Interpol, International Organization for Migration and the Mozambique Police). This led to various undercover operations, sharing of intelligence and evidence on the primary targets; although differences regarding legislation with regard to specific offences (in this case the export and possession of abalone) are not crimes in China, Namibia or Mozambique.

The Southern African Regional Police Chiefs Co-operation to which South Africa is a member, is used to address organized crime within the Southern African region.

Coordinated cross border operations are being conducted between South Africa and neighbouring states and this has led to a number of successes regarding seizure of stolen vehicles, illegal firearms, drugs and arrests of criminals.

Cross border operations between South Africa and Mozambique to locate and destroy conflict weapons have led to increased information capability to establish the location of the arms.

These examples demonstrate that a transnational multi-agency approach against global crimes is emerging, which could serve as the 21st century strategy for combating global crimes.

3.4 Challenges still facing South African law enforcement

Understanding the phenomenon of transnational organized crime and terrorism

The increasing complexity of transnational organized crime including terrorism requires that investigators and prosecutors gain a greater understanding of the phenomenon, its aims motivation and social context, leadership, individual members, logistics, organizational structures and financial management systems.

Prosecutors and investigators will also be required to understand the phenomena of organized crime, corruption and money laundering, and their links to terrorism. The ability of organized groups to establish international networks by gaining illegal profits through drug trafficking, human trafficking and trafficking in other goods supported by information technology, makes the information systems of many institutions and businesses vulnerable to penetration. Terrorist groups can easily exploit this vulnerability. The increase in Internet crimes and the ability of criminals to hack into tightly secured information systems, adds another dimension to terrorism and other crimes.

Develop and strengthen capacity

The challenge therefore, is for us to ensure that our investigators and prosecutors receive the relevant ongoing training in order to develop and strengthen our capacity to deal with the new environment of transnational organized crime (including terrorism).

In order to prepare investigators and prosecutors to investigate and prosecute global crimes there might be a need to develop a "Universal Manual/Handbook on Prosecuting Transnational Organized Crime (including International Terrorism)" under the auspices of the UN. This would be useful where investigators and prosecutors from across the globe are able to assist with the investigation and prosecution of such cases wherever the trial is being held. This might sound like a remote possibility, but history is teaching us well. The globalization of crime therefore demands the development of a new breed of investigator and prosecutor – *a global investigator/prosecutor*.

Increase cooperation and develop new approach
One of the critical weaknesses that face many countries is the fragmentation of law enforcement efforts to combat crime. Law enforcement at an international level is no different. Organized groups (including terrorist groups) undoubtedly take advantage of this.

Combating transnational organized crime and terrorism will require greater cooperation between prosecutors, investigators and other agencies, both nationally and internationally. The most critical aspect in this regard and a challenge, which remains (even in ordinary transnational crimes), is the ability to share information across boundaries with greater speed and efficiency. The challenge therefore is to work much more closely on a proactive basis with the intelligence communities. The question that we must answer is whether in respect of global crimes, the traditional approach can still serve us adequately. The emergence of a transnational multi-agency approach could be the answer.

In our pursuit to combat global crimes the development of an international prosecution and investigative counter-strategy might be required.

Striking the appropriate balance
The greatest challenge, particularly for South African investigators and prosecutors is to strike an appropriate balance between effective law enforcement and the rights of individuals in order to reverse the culture of the past human rights abuses. Sacrificing individual rights to combat organized crime and terrorism is to accept the belief that the end justifies the means.

CONCLUSION

Given these challenges (in spite of the progress made in combating organized crime in all its manifestations), there is a role for the UN to play, to provide technical assistance. This should, however, be clearly defined, structured and responsive to the particular challenges countries are facing.

Workshop 4

Snjezana Bagic
State Secretary
Ministry of Justice, Croatia

Mr. President, Ladies and Gentlemen,

At the outset of this high level meeting allow me to express my pleasure to be here today and to greet you all on behalf of the Government of the Republic Croatia and personally. It is without any doubt that each and every effort of this kind is moving us a step forward towards better understanding and more efficient co-operation.

With the beginning of new millennium we are challenged with the major threats which are jeopardizing the core of democracy of each and every country. The democracy we want, the democracy we are trying to build is lying at the grounds of the rule of law and sustainable economic development. The essential threats coming out from the crime nowadays intends to destroy and to minimize the same values. Our imperative is and our mission at the same time: to stop these threats and to make a strategic ally in crime prevention. We will give our full and complete contribution in supporting the United Nations in performing the leading role in achieving these goals.

Due to the ever increasing links between national and international criminal activity in the suppression of terrorism, organized crime and corruption it is imperative to work on two levels: within international organizations on a global and regional level and on a national level by harmonizing legislation and implementing it efficiently and effectively.

The Republic of Croatia recognized from the very beginning the importance of the suppression and fight against terrorism, organized crime and corruption.

The Republic of Croatia most strongly condemns acts of terrorism. It is also actively involved in all initiatives and activities as a member of the Antiterrorism Coalition founded in relation to the implementation of the United Nations Security Council Resolution 1373 (2001) on the suppression of the terrorism. Out of the twelve universal antiterrorist instruments of the UN, the Republic of Croatia has ratified 10 Conventions, while the process of the ratification for the rest of 2 will be ended soon.

The Republic of Croatia is geographically located on routes which are used by the international criminal organizations when illegally trading in drugs, arms, people and for the purpose of illegal migration.

Therefore, although the Republic of Croatia is taking measures to prevent the growth of crime both through preventive action and also through the prosecution of perpetrators of criminal offences, there are negative trends present in this region which may be seen in the growth in organized crime and corruption. All this, as well as technological innovations, with Croatia’s position on international routes, has a significant influence on and determines the form and extent of the organized crime that exists in the territory of the Republic of Croatia, and the nature of the danger it involves. When talking about organized crime it has to be particularly emphasized that the discovery and proof of these criminal offences is extremely difficult and complex, with the view of secrecy and intimidation and their trans-national nature.

The Republic of Croatia was one of the first countries in the world to sign the UN Transnational Organized Crime Convention (UNTOCC) in Palermo 2000 and the UN Convention against Corruption in Merida 2003. The both of the Conventions have been ratified.

Mr Chairman, Croatian criminal legislation contains a whole range of incrimination measure and procedure which provide the necessary legal framework for the fight against transnational organized crime and corruption.

The Penal Code regulates several criminal offences, incriminating various forms of terrorism, organized crime and corruption and in this part is harmonized with international legal documents. The prison sentences have been increased in the latest amendments in accordance with the increased danger of these criminal acts.

With the adoption of the Act on International Legal Assistance in Criminal Matters, coming in force in July 2005, the provisions of international legal assistance will be implemented in the widest possible scope and in the manner which will facilitate the more rapid conduct of criminal proceedings. These changes will significantly contribute to the prevention, discovery and sanctioning of serious forms of transnational crime, including terrorism.

By the adoption of the Act on Liability of Legal Entities for Criminal Offences the Republic of Croatia has introduced the institution of the criminal law liability of legal entities, which creates the further legal conditions for suppression of organized crime and terrorism, all often linked with the legal forms of association.

The New Act on International Restrictive Measures, the Government of the Republic of Croatia was given an authority to introduce international restrictive measures, to implement or abolish them. Restrictive measures may be implemented against states, international organizations, territorial entities, movements or natural or legal persons and other entities, for violations of internationally legally binding decisions of the United Nations Organizations, and in order to participate in restrictive measures of other international organizations and in other cases.

The Republic of Croatia has adopted the Witness Protection Act, which makes possible the effective protection of all persons who are prepared to testify and cooperate with the justice system for the more efficient discovery and sanctioning of organized crime offences, corruption and other serious criminal acts. The purpose of this law is to make possible to provide the permanent protection of persons, who perform the witnesses role in criminal proceedings and whose testifying make possible to apprehend and sentence the perpetrators of criminal offences. In this respect, the Ministry of Internal Affairs has set up a witness protection unit.

The Office for the Suppression of Corruption and Organized Crime is a special body for international cooperation and joint investigation for the corruption and organized crime offences, as being defined in that way, it represents the most important body entrusted with the task of the fight against corruption and the suppression of organized crime in the Republic of Croatia. Based on the latest amendments to the Act on the Office, its role has been significantly broadened up and it’s authority in criminal procedure has been strengthened.

The Money Laundering Prevention Office is a specialized financial intelligence agency (FIU Financial Intelligence Unit) dealing with the gathering of data on cash and suspect transactions (and those prescribed by the Act on the Prevention of Money Laundering) which are considered to contain or which could contain indications of the criminal offence of money laundering or predicate criminal offences relating to money laundering.

Further, The Croatian Parliament has adopted in September 2004 the National Plan for Combating Organized Crime which is a document of general character, whose aim is to provide an overview of the Republic of Croatia’s legislative and institutional framework in the fight against organized crime,

a presentation of the trends and structure of organized crime and a proposal of specific concrete measures for the suppression of crime.

Additionally, the Republic of Croatia is in a late stage of finalizing the National Strategy against Corruption. Although, the National Programme against Corruption has been adopted in 2001, it needed to be redefined. Additionally, the project of establishing the Independent Anticorruption body is planned to be realized by the end of this year. The aim of this body is to substantially combine the monitoring, educational and preventive measure. The body will include the public and private sector and will be established according to the Article 6 of the United Nations Convention against Corruption.

Further, the Croatian National Committee established for this event has prepared two documents: Making Standards Work: Fifty Years of Standard Setting in Crime Prevention and Criminal Justice, the Report which was drawn by the expert group of the National Committee of the Republic of Croatia for Participation at the 11th UN Congress on Crime and Prevention and Criminal Justice; and second document: The Implementation of UN Convention Standards against Transnational Organized Crime in Croatian Legislation. The both documents are at your disposal.

Mr Chairman, the Republic of Croatia is aware of the facts that the menace of terrorism, organized crime and corruption can not be fight individually. Therefore, the Republic of Croatia supports and seeks for co-operation, both, international and regional in order to strengthen and improve international co-operation, hence, to be more efficient in combating these acts of crime. Related to that, the Republic of Croatia and the UNODC has jointly organized the Regional Workshop on International Co-operation on Encounter Terrorism, Corruption and Fight against Organized Crime, held in Zagreb, from 07 to 09. March 2005. The hosting of this conference is a proof of the continuation of the successful and active co-operation between the Republic of Croatia and the United Nations. The Republic of Croatia fully supports the important work of the United Nations regarding the establishment of new appropriate legal standards, and will continue to improve this co-operation.

The Republic of Croatia shares the opinion that the United Nation's influence derives not from power but from the values it represents. These values, reflecting the spirit of the Charter: Freedom, Equity and Solidarity, Tolerance, Non Violence, urge us to do our best in making these values sustainable and implement able.

Thank you.

Workshop 4

Combating Al Quaeda Terrorist Acts and Aspects of Judicial Cooperation

Stefano Dambruoso
Legal Expert
Permanent Mission of the Republic of Italy to the United Nations (Vienna)

Mr. Chairman; Ladies and Gentlemen,

I would firstly like to thank you for having invited me today. This is for me an excellent opportunity to share my professional experiences with such a qualified and, as me, well- intentioned public in promoting and enhancing the fight against organized crime and more specifically against international terrorism. The technical assistance provided by the TPB is certainly an essential mean in order to spread the common legal knowledge. In fact, only with a common initiative, based on common legal principles, and respectful of the fundamental rights of the human being (especially the right to defense), will it be possible to reach an appropriate level of judicial cooperation amongst the countries interested in fighting against the action of transnational terrorist groups. I would therefore like to express my sincere gratitude to the friends and colleagues of the TPB, who, with admirable professionalism, work to achieve the important task of spreading the common legal knowledge.

I would like to point out that my contribution intends to underline the difficulties arising from the malfunctions of judicial cooperation during transnational investigations. As a matter of fact, it will be necessary to face the differences among national legislations dealing with the same issues (so far international community has not shared yet a definition of terrorist act and international terrorism) and it will lead the jurists to cope with different trial and investigating procedures peculiar to every country. Moreover, judicial operators will be called to check the freedom of movement of terrorist networks with respect to the difficulty of sharing evidences from a court to another; by this way, it is worthwhile noting that several efforts have been made in order to overcome these difficulties, since conventional means are already available.

The most of European countries involved in such an effort have established judicial systems in which the results of investigations flow into the trial, during which the defendant is provided of full freedom to plea his case. In parallel, as precautionary measure, intelligence sources are started up in order to determine the presence of terrorists inside the country and only a part of these sources are meant to be disclosed. Large part of them will be kept secret as opportunism. For instance, it would be of little use disclosing information gained through infiltrated agents or through wire-tapings, because any use of this information could compromise the sources themselves. On the contrary, it would be better not to disclose them, with the consequence that these sources, used during the investigations, will not be able to serve as evidence during the trial.

After September 11th one fundamental lesson has been learnt by Law Enforcement officials in the different countries –among which undeniably Italy –long actively committed to preventing andcombating terrorism: qualms or red tape must not in any way hamper information sharing,necessary to effectively investigate international terrorist organizations' cells.

Underestimating thephenomenon of terrorism –as it was the case in Europe until September 11th- is equally no longer admissible.

Nevertheless, only last July, a sensational co-operation defect was discovered in the course of important proceedings in Hamburg, Germany, where, since November, 2001 one of the members of the group that helped carry out the attacks on the World Trade Centre, has been held prisoner. In fact, competent authority of country where were detained, did not allow to authorise the examination, by the German judicial authority, of key witnesses to the process bringing forth reasons linked to its intelligence strategies .The immediate effect of such decision is the concrete risk that, after three years of preventive incarceration based on overwhelming evidence of culpability, a presumed dangerous terrorist could be liberated on the basis of reasons for, what I would submit are, reasons of procedural technicality, and not on the basis of tangible evidence of non-culpability

As a result, we are once again facing the discrepancy between procedural and historical truth. In my view, it means that it is not always possible to bring an undisputed historical truth in front of a judge, the only place would be the trial were the necessary evidence for the judge to pronounce a conviction can be adduced.

Having given a concrete example of a cooperation default, it seems increasingly important to analyse some of the procedural issues that often arise in the course of investigations concerning the criminal activities of terrorist entities and their members. In order to do so, I will refer to the Italian investigative experience which, even if with different characteristics from one investigation to the next, is equal in substance, and can give a clear idea of what happens in the rest of Europe.

Information and Evidence Sharing and their Possible Use

One of the most frequent problems arising during the investigations into transnational organized crime as well as terrorist-type crime- is the sharing of evidence regarding a proceedings via rogatory letters. In the course of the information and/or evidence sharing process via rogatory letters a serious and recurring problem has immediately emerged that hampers judicial cooperation. Actually in some countries the investigation activity is conducted during the so called intelligence phase that does not differ from the evidence acquisition activity only because it is managed by different authorities (intelligence activities are usually but not necessarily carried out by secret services while pieces of evidence are acquired by the judicial police). The main difference is their possible use during the pre-trial phase or –before that- in the course of investigations.

The problem arose of whether statements issued by persons detained abroad in absence of a defense attorney were receivable, even if the said statements had been duly transmitted by the police officials of the States involved that had cooperated to that extent. Thus any possible use of those statements during the pre-trial phase had to be excluded as it was not possible to acquire them through rogatory letters. Then a further issue was at stake: whether those statements could at least be used during the preliminary investigation phase.

A further aspect of the same problem is the transmission of important information – sometimes essential to the continuation and a positive result of the criminal proceeding- resorting to cooperation among police worldwide. However the foreign policing authorities or the judicial entities sharing such information request that it be covered by the strictest secret.

On these premises EU legislation directives aimed to harmonize the laws of the different UE countries are urgently needed to counter this criminal phenomenon effectively. As a matter of fact various legislation also presuppose different investigation modes which creates further difficulties in terms of judicial cooperation. Taking a specific example, this happens when cooperating with countries of different legal traditions where thanks to the possibility of arresting a person on a mere suspicion of terrorism the prevention strategy adopted by the police consists in

"speedy operations" with arrests up to four months. Within this time window -and subject to the expiration of the maxim detention period- criminal proceedings must be initiated. Then, since what the investigators have are only "suspicions" those countries send out frantic rogatory letters to acquire evidence possessed by the judicial or policing authorities of foreign countries pertaining to the international terrorism charge and aimed at substantiating it. In case the country receiving rogatory letters is Italy -with a tradition of long investigations in the matter of organized crime before enforcing precaution measures so as to get as many pieces of information as possible on the activity of the criminal organization and its members- rogatory letters may not be complied with. In fact, it is not always possible to transmit proceedings still under investigation secret and requested to be used for the indictment of the arrested before a foreign judge. In practice, the invoked cooperation does not concretely result in proceedings sharing despite the good will of the relevant institutions of the respective countries.

It is sometimes impossible to carry out rogatory letter because of the lack of a judiciary authority to talk to. For example in Iraq. During the last investigation about a Kurdish-Iraqi group that arranged from Italy expeditions to Iraq of Mujhaiddin ready to fight in the current conflict, it would have been useful to disclose during the trial intelligence sources (and press sources, too), that have discovered that dozens of fake Italian documents printed in Milan had been found out in the availability of Iraqi prisoners and victims. In this way the prosecution would have found a decisive evidence checking to its allegations. But who would have been sent the rogatory letter to in Iraq, during the war, in order to acquire the documents found? Thus demonstrating the nexus between the use of the false documents handed over in Italy and any act of violence carried out by the terrorist organization becomes an "impossible" search for evidence –a probatio diabolica- on account of the various phases and several persons involved in the preparation of an act of violence.

CONCLUSIONS

The recent international terrorism and organized crime's attacks stress the urgent need for the creation of new bodies for transnational investigations, vested with the power of collecting evidence and conducting prosecution without the hindrance of national borders.

To date the avenues of cooperation and judicial and police assistance in criminal matters to the end of a common legal framework have not proven as effective and speedy as it was hoped in order to crack down on the most dangerous international criminal organizations.

After the recent gravest attacks launched by international terrorism, swifter and more efficient modes are also required at European level to thwart these most awesome forms of criminality.To that extent we hereafter point out the following cooperation-oriented initiatives aimed to counter terrorism more effectively.

It has thus urged a broader application of cooperation instruments set forth by the EU, namely: Europol created in 1995 with experts in the war on terror (with at its interior an inter-state body of Police Chiefs; Europol is composed of representatives of every European country police force and it aims at developing the analysis of transnational criminal cases in order to indicate investigating strategies and coordinate the investigating efforts in every country involved. However, for obscure reasons the information disclosed by the States to Europol are stale and useless to the investigating coordination.
The creation of Eurojust, definitively established only in 2002**;** for the same reason, Eurojust, body composed of prosecutors coming from each European country, that should facilitate the exchange of evidence among the European countries, has not been able to overcome the traditional bilateral form of exchange. Both Europol and Eurojust have been pressed to set up an informal collaboration with the US, while a formal collaboration protocol initiated on June 2003 is underway. In particular, relating to Europol it envisages exchanging liaison officers with the American agencies operating in the policing sector. conversely it foresees the official presence of the US representative in the Eurojust meetings on counter terrorism activities led by Eurojust. An

additionally interesting perspective is the short-term creation of common investigation squads consisting of magistrates and police officers. As for extradition, after the protocols signed in 1995 and 1996 by the member States, it is important to point out the intent to replace extradition with the turning over the authors of the terrorist attacks, -on the basis of a European arrest warrant. However to reach this objective it is essential to agree on a common definition of "terrorism" (in Europe a common consensus on the definition of terrorism has been reached, although this is has not yet been attained within in the UN conventions).

It is also important to relate the implementation of the exchange –among EU member States- of "liaison magistrates" active in the field of judicial assistance, extradition and information sharing. Later on, the 6/29 1998 protocol set up a "European Judicial Network" consisting of a series of contact points to guarantee the exchange of information and statistical data among the different juridical systems for better enactment of the request for cooperation and swifter material execution.

But obviously cooperation is carried out by those directly involved and to date it has not always been possible to experience a more open-minded approach and "stronger" cooperation will on the part of prosecutors and police officers still sticking to a national border-oriented policy typical of limiting and "proud" investigation modes. So even now it is not uncommon that cooperation functions when the member States share an interest in a given investigation. Conversely this is not always the case with cooperation requests made by a State pursuing "unilateral" investigation results, i.e. when the State receiving the request is not necessarily interested in the results. And this feature, along with the States' traditional difficulty to renounce to their sovereignty in the administration of penal justice, constitutes a weakness we can no longer afford in the fight against global terror.

More importantly, the underestimation of the trial process is no longer acceptable for numerous reasons. Firstly, in some countries, trials are necessary to pronounce convictions; as a consequence they are necessary in order to fight certain criminal phenomena. Secondly, on a more symbolic level, and especially in regard to the foreign communities with whom dialogue is essential, the trial process gives legitimacy to the actions of the police acting in those countries where the above mentioned communities are well established. Only by increasing their faith in the functioning of our institutions will we be able to persuade them that they are not being persecuted because of a religious prejudice. And only in this way will they accept to condemn unequivocally the minority terrorist groups that hide within their communities. Furthermore, in this way, we will obtain a major cooperation on their side, because the moderate people will not want, in the course of investigations, to be confused with the terrorists and they will have faith in us. On the contrary, if after three years of preventive imprisonment an acquittal is pronounced, they will speak against the judicial system, against a perceived judicial persecutory attitude .As a consequence, a major effort in cooperation among the countries that fight the difficult battle against global terrorism is required: the possible acquittal for terrorism acts is indicative of the weakening of the counter terrorism activities of all the countries of the world, and not only of the country that pronounced the acquittal. The national security of one country could be ensured only if the national security of all the other countries participating in the difficult process of prevention and repression of terrorism is taken in due consideration.

Workshop 4

Obaid Khan Noori
Director of the UN Department
Ministry of Foreign Affairs, Afghanistan

Mr. President,
Excellencies,
Distinguished delegates,
Ladies and Gentlemen,

Since the general part of terrorism have been exclusively discussed and debated yesterday during the first part of this workshop, therefore, I would like to limit my presentation to terrorism and measures that have been taken by the government of Afghanistan.

Mr. President, it is a great honor for me to participate here in the 11th UN Congress and especially in its Workshop 4: Measures to Combat Terrorism, with reference to the Relevant International Conventions and Protocols as a panelist.

As long as 25 years back, Afghanistan was neither faced with a drug problem nor threatened by international terrorism. The country has always been a nation that depended upon its agricultural capacity as the mainstay for its people's livelihoods and its legitimate economy. It is a sad reality that Afghanistan has become now a major narcotics producer in the world.

The international terrorists used the dependency of the farmers on opium cultivation and other vulnerable groups of the Afghan society, as a welcome opportunity to secure financial support for their attacks. For that purpose they eagerly promoted opium cultivation in Afghanistan, enhanced trafficking in illicit drugs outside the country, actively encouraged corruption among criminals and drug lords inside Afghanistan and strengthened their links with crime groups across the Afghan borders. Realizing this fact, H.E. Hamid Karzai the first ever elected president of Islamic Republic of Afghanistan has established a new ministry that is exclusively to combat narcotics and drugs problems.

Conflicts as well as civil and political strife are closely linked to the formation of criminal networks. In Afghanistan, those who co-operated with Al-Qaida, as well as the warlord/drug lords used their power to trade in weapons, drugs and local primary resources. This was not only a result of destabilization in a conflict-ridden country, but also a factor conducive to further triggering and financing of deadly conflicts.

Measures to Combat Terrorism:
The transitional authority of Afghanistan from its inception in December 2001, supported by the international coalition forces, established as first priority on its agenda, to fight and dismantle the international terrorist group Al-Qaida and the remnants of the Taliban regime.

During the last three years, the government has been engaged in systematic eradication and serious fights against terrorism and Taliban regime. As a result, the international terrorist group is basically dismantled and their leadership has become fugitive. Although they embark upon hidden and sporadic activities, particularly by Taliban elements, we still observe a relatively weak escalation of terrorist attacks, mainly because the attackers are acting as isolated pockets inside the country, but with a growing base of support outside our borders.

We believe, therefore, that global-scale terrorism is still public enemy number one, the fight against which requires formulation and implementation of concerted and well coordinated counter-terrorism programs at national, regional and international levels.

1-At the National Level:
The government of Afghanistan is finalizing, with the support of UNODC, the formulation of the counter- terrorism law that includes the offences established by the 12 conventions against terrorism and the Security Council resolution 1373 (2001), as well as provisions on jurisdiction contained therein.

In finalizing the counter-terrorism law, the government was assisted by UNODC through organization of an “Expert Workshop on the Legislative Implementation of the Twelve Counter-Terrorism Instruments and the United Nations Convention against Transnational Organized Crime” in Vienna from 22-24 Nov. 2004, where the draft was discussed by a team of 9 Afghan experts representing the Ministries of Foreign Affairs, Justice, Interior and Finance; and the UNODC officials. The recommendations of the workshop were subsequently included in the draft law which is being finalized. This workshop was preceded by a UNODC mission to Kabul in June 2004, during which the government was advised on the role of the international legal frame work against terrorism and organized crime and encouraged to participate in the above mentioned workshop.

At the same time, draft legislation against terrorism and transnational organized crime is being prepared, in co-operation with the Secretariat of UNODC. Both legislations will become operational within a few months. It is pertinent to mention here that Afghanistan has already drafted, finalized and issued in the official gazette, October 2004, with the help and assistance of UNODC, two national laws first " against money laundry and second against financing of terrorists. These laws reflect UN Convention and International standards.

In the area of capacity building, the government has established, in co-operation with UNODC, the Counter Narcotic Police of Afghanistan (CNPA), with an Interdiction Unit. This law enforcement mechanism enabled the government to seize almost 150 tons of Narcotic and precursor chemicals, a numbers of weapons, ammunitions and radio communication equipments and to destroy 120 Heroin rudimentary labs in the remote areas of Afghanistan. One of the UNODC projects helps in equipping the border control posts along the border between Afghanistan and the IR of Iran. The project would consider ways and means to introduce a basic criminal intelligence system and establish a mechanism in order to enable the Afghan and IR of Iran border control officers' cooperation more effectively on law enforcement issues and establish a means of sharing information.

In the area of criminal justice, UNODC is implementing a numbers of programs which aim at strengthening the capacity of mainly three judicial institutions, namely Supreme Court, Attorney General Office and Ministry of Justice.

My government notes with appreciation the importance of this assistance to the Criminal Justice System of Afghanistan which has been severely affected through the years of war and conflict. The main constraint of judiciary system can be seen in the area of human resources as well as social and physical infrastructure. Reform of prison system and training of executive and administrative personnel with a view to enhancing Rule of Law and strengthening law enforcement's capabilities are the most urgent needs and requirements of Afghanistan.

2- At the Regional Level:
At the regional level the government has been engaged in enhancing further coordination with its neighboring counties. The Kabul Good Neighborly Relations Declaration as well as Tripartite Commission between Afghanistan and Pakistan are examples of the government's efforts towards strengthening the regional co-operation. I would not go into details of these co-operations as they

have been extensively elaborated in our statement that was presented under agenda item 3, during the 3rd plenary meeting on 19th April 2005.

3- At Global Level:
Afghanistan has already ratified the United Nations Convention against Transnational Organized Crime on 24 September 2003. The government is very seriously considering ratification of the three protocols thereto. On 20 February 2004, Afghanistan signed the United Nations Convention against Corruption. Ratification of the Convention is being foreseen in the nearest future. The government has already ratified the 12 Universal Conventions against Terrorism.

Afghanistan has been and will continue to be part of every multilateral effort that addresses this global problem, because we firmly believe that within this embryonic link between terrorism and organized crime, we are all negatively affected, and share a responsibility to seek solutions that work in practical terms.
In this spirit and with little means and resources at its disposal, the Afghan government, supported by valuable assistance of United Kingdom, Germany, USA, Italy, France, Japan, and others as well as the help of EU and international organizations, in particular the UNODC, has taken bold and practical steps to combat the menace of drug-terrorism.

However, Afghanistan needs to be actively supported in rebuilding of its security institutions, law enforcement capacity as well as reviving its economy, if the country is expected to successfully play its role in the global efforts for fighting against terrorism, drug production and trafficking in illicit drugs. In this context, I would like to re-iterate the following recommendations which were also presented in the 3rd plenary meeting.

While appreciating the generous co-operation of our development partners, the international community is requested to enhance financial and technical assistance to Afghanistan with a view to strengthening capacity building, law enforcement and rehabilitation of the country's productive sectors.

The Afghan government should be actively involved in the formulation and implementation of coordinated border control programs with its neighbors. It is recommended that appropriate measures be initiated with a view to networking the border control programs, thereby enabling Afghanistan to increasingly take active part in the formulation and implementation of counter-terrorism programs and projects.

In line with the recommendations stipulated in Kabul and Berlin Declarations, Afghanistan would be ready to enter into bilateral agreements and arrangements with its neighboring countries, in the area of co-operation against terrorism, drug-trafficking and organized crime in order to ensure peace and security at the regional and international levels.

Thank you Mr. President and distinguished delegates for your kind attention.

Workshop 5
Measures to Combat Economic Crime, including Money Laundering

Organised by
United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of the Offenders
UNAFEI

Workshop 5

Keynote Speech

Gudrun Antemar
Director-General of the Swedish National Economic Crimes Bureau
Sweden

Mr/Mrs Chairman/Chairperson, Ladies and Gentlemen,

It is an honour and a privilege to be allowed to open the substantive part of this important Workshop on Economic Crimes including Money Laundering. It has been a pleasure for me and my colleagues to elaborate the workshop together with United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), United Nations Office on Drugs and Crime (UNODC) and our Thai hosts. I am looking forward to an active discussion with a fruitful exchange of views, knowledge and experience in the following sessions. To give food for thoughts I will address the issue of economic crimes from a general perspective focusing on issues of concern and possible solutions with the aim to facilitate our joint struggle against economic crimes.

Transnational economic activities are increasing all over the world. The rapid developments in communications technology and transportation have promoted globalisation of the world economy and diversification of activities in the economic field. The quantity of economic transactions has increased tremendously. The concept of economic crimes has been globalised and the modus operandi of such crimes has become more advanced and their scale has increased considerably. This has led to difficulties in their detection, investigation and prosecution.
Economic crimes include a range of illegal activities from conventional types such as fraud, embezzlement, breach of trust and corruption to newly recognized types such as insider trading, money-laundering, financing of terrorism and violation of intellectual property rights. Economic crimes also cover many activities instrumental to the mentioned offences such as forgery of documents and payment cards, identity theft and computer related crimes, especially the misuse of the Internet. Furthermore, economic crimes encompass corporate crimes, tax fraud, tax evasion, consumer fraud and investment fraud.

It is important to be able to detect, investigate and prosecute economic crimes, but it is even more important to be able to apply focused and effective preventive measures. The advantages to the society are enormous if economic crimes could be prevented. Crime preventive measures must be based on knowledge. Thus it is important to allocate the necessary resources to research and development. The public sector, the business community and the civil society have a shared responsibility. It is important to establish and implement a legal and administrative system of good governance including integrity, transparency, openness, equity and accountability. Targeted awareness raising actions must be carried out. Information on economic crimes and their serious effects on and consequences for the society as a whole must be widely disseminated. The fight against economic crimes can only be successful if it is supported by the public. The establishment of shared values to reject economic crimes is of utmost importance. The crime preventive work must have its base in the local communities. A continuous dialogue with business organisations, trade unions and others is an effective tool in the combat of economic crimes.

The national legislation in general – not only criminal law but also corporate and taxation law – must be easy to comply with and counteract economic crimes. The legislation itself must prevent violations and facilitate supervision and control of its enforcement. A balance has to be struck

between the need of the society to control the implementation and the integrity of the individual. The risk of detection has to be increased, especially in relation to tax crimes.

The United Nations has granted priority to tackling economic crime as well as transnational crime, organized crime, money laundering and financing of terrorism. The International Convention for the Suppression of the Financing of Terrorism certainly is a necessary tool for States all over the world to be able to fight terrorism. Also the adoption of the United Nations Convention against Transnational Organized Crime and its protocols on trafficking in firearms, trafficking in persons and smuggling of migrants is a milestone in the fight against transnational organised crime. It is important that the Convention is rapidly and thoroughly implemented in all states. Another important instrument is the United Nations Convention against Corruption. Corruption has great impact on the economy. It is a catalyst that promotes other types of economic crimes and prevents the detection and investigation of them. The global fight against corruption should continue under the auspices of the United Nations.

To be able to combat economic crimes it is necessary to elaborate a well thought-out and comprehensive multidisciplinary national strategy and action plan against economic crimes. Risk assessment and exchange of information should be integrated parts in this process. The different actions must interact and complement each other with a view to reinforce their impact. Such a programme should address legislative issues, supervision and control, organisation of public authorities including continuous and long-term inter-agency cooperation on all levels of the administration, investigation and prosecution as well as international co-operation and crime preventive measures. The Swedish government and parliament have since long recognised the importance of such national strategies and action plans against economic crimes. This is an area in which an increased international co-operation can be fruitful. Dissemination of knowledge and exchange of views and experience can be further promoted with United Nations as an important interlocutor. I hope that this workshop can be the starting point for such a process.

This workshop will try to address new trends and features of economic crimes. As example of such trends and features the quick proliferation of computers, the rapid increase in the number of customers for Internet services and the expansion of a credit-card society can be mentioned. The criminals fully exploit the Internet and the electronic commerce to commit economic crimes transnationally. The transnational nature of economic crimes hampers their detection and makes the investigation more difficult. Also the tracing and return of proceeds of crime become more complicated. The international co-operation has to be enhanced in order to launch effective countermeasures. Especially the occurrence of shell corporations and off-shore financial centres as safe havens for illicit funds must be addressed. The involvement of professionals such as lawyers and accountants acting as advisers and facilitators is also of great concern. Access to transaction records of banks and other financial institutions is also an important issue.

The co-operation and exchange of information amongst law enforcement agencies and other organisations involved in the combat of economic crimes are indispensable tools in the effective investigation of economic crimes. Such co-operation and information exchange should be conducted both at national and international level. Mutual legal assistance as well as police co-operation must be promoted to facilitate transnational crime investigations.

Reciprocity or bilateral agreements should not be conditions for affording mutual legal assistance. Mutual recognition of decisions is another way to improve international cooperation. All countries should strive to provide the widest co-operation in all cases. Apart from an enhanced international co-operation it is also important to consider harmonization of countermeasures in order to avoid lacunas in the legal framework and the enforcement. Corporate crime is an economic crime committed in a well-organized and complex manner on a large scale causing damage with substantive effect on the economy. Criminals participate in the management of companies and in their capacity as representatives of the companies disguise proceeds of crime under what seem to be legal business activities or commit other crimes in framework of the company. The prevention,

detection and investigation of such crimes are difficult. One way to address the problem is the establishment of a system of trading prohibition on natural persons. A person who is subject to a trading prohibition should neither be allowed to be a majority owner of a legal person nor exercise any function in a legal person. Another way to address the problem is to develop sanctions – criminal as well as administrative and civil – for legal persons.

It is also vital that proceeds of crime can be eliminated. Economic crimes are committed in order to gain profit. It is most effective and critical to deprive criminals of the proceeds of crime. By doing so the criminals are deprived of their incentive to commit crime. It is in this context appropriate to consider means that would facilitate such elimination. One way is to encourage an enlarged forfeiture with a lower level of proof or a reversed burden of proof in certain situations.

Apart from these basic preconditions an effective working method has to be developed.
One way to tackle severe and complicated forms of economic crimes that has proven successful in Sweden is the application of a multidisciplinary approach. My authority, the Swedish National Economic Crimes Bureau, has for many years applied such a working method with a good result. The investigative work is carried out in teams consisting of experts with different knowledge and experience. Prosecutors work together with police officers as well as financial investigators and other experts such as computer technology specialists. It is a daily interactive process where the experience and knowledge of each participant are made use of to the fullest extent. A step on the path to apply a multidisciplinary approach can be to invite experts to participate in specific investigations or special investigative units.

It is important that the procedures for preliminary investigation and court proceedings are carefully considered with the aim to make them as effective as possible. The substantive provisions as well as the procedural rules must be elaborated with this in mind. The procedural rules must in general be simplified and provide flexibility to allow the necessary concentration of the preliminary investigation. Another way to facilitate crime investigations is to consider co-operation with law enforcement agencies as a mitigating circumstance when deciding on the penalty. It should also be stressed that an effective protection of whistle-blowers and witnesses is essential to a successful collection of information and evidence. Economic crimes put special demands on the investigative techniques. Therefore, new types of investigative techniques such as interception of communication, electronic surveillance and modern forensic science as well as traditional techniques must – when possible – be fully used in the fight against economic crimes. To conclude my presentation I would like to emphasise once more the necessity to combat economic crimes. This criminality affects not only individual natural and legal persons but also the society as a whole with repercussions on national and global economy. To secure a sustainable development and improved welfare to all, the available resources must be used for these purposes and not end up in the hands of criminals. We have a joint responsibility to continue and reinforce the fight against economic crime. In a global context this work should preferably be carried out under the auspices of the United Nations. I look forward to participating in this important workshop with its many distinguished panellists and hope for an interactive dialogue with the esteemed participants. I am convinced that we will have a fruitful discussion and that we will stand better prepared to face the challenges in our joint struggle against economic crimes at the conclusion of the workshop.

Thank you for your attention.

Workshop 5

Keynote Speech

Peeraphan Prempooti
Police Major General
Secretary-General, Anti-Money Laundering Board, Thailand

Good Morning Distinguished Ladies and Gentlemen,

1. Introduction
It is a great pleasure for me to have an opportunity to deliver a keynote speech at this important 11th United Nations Congress Workshop to my esteemed colleagues and distinguished delegates from all over the world. First of all, I would like to welcome all of you to the Kingdom of Thailand --- the land of thousand smiles, and hope you enjoy your stay in Thailand. I also wish to express my sincere thanks to all staff of the UN Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) who have been working to organize and make this Workshop possible.

My keynote today will provide an introduction on issues related to anti-money laundering --- or AML in short. The focus is on legal framework, the importance of international cooperation and enhanced role of the financial intelligence units or FIU. I will also touch on capacity building and technical assistance required by new AML entities.

"Money Laundering" has a long history dated back to 1931 when the United States Court convicted a Mafia group headed by Al Capone, on charge of tax evasion. The Mafia group obtained dirty money from underground business undertakings that yielded them huge profits of which they claimed to come from Laundromat that was, in fact, just a front business. In 1973, with an incidence of the Watergate scandal, the term "money laundering" was officially used to explain the process of how "dirty money" moved into the campaign in a US political party.

We all have recognized that transnational organized crime, money laundering, and economic crime are often linked and organized crime groups will use their ill gotten gained profit to infiltrate or acquire control of legitimate businesses. The consequence of money laundering will put all of legal establishments out of business with the practice of bribing individuals and even governments with the dirty money.

Money laundering is one of the growing and ongoing problems facing the international economy, whilst the fundamentals of this crime remain largely the same, technology has offered, and will continue to offer a more sophisticated and circuitous means to convert ill-gotten proceeds into legal tender and assets.

We are all aware that money laundering consists of 3 stages: (1) ***Placement;*** remove dirty cash to avoid detection from law enforcement (2) ***Layering***; attempt to conceal, disguise by moving money in and out off shore bank accounts of front companies (3) ***Integration***; final stage in the process where money is integrated into legitimate financial system.

The reasons why criminals launder their dirty money are: (1) To avoid tax; (2) To make it appear legal (3) To avoid prosecution (4) To increase profits, and (5) To avoid the seizure of their illegal wealth.

Money laundering is related to unlawful undertakings that can only yield dirty money. Because the ill-gotten gains are not safe to keep and could cause suspicion about the source, criminals must find ways to clean or launder the money to make it appear legal in order to use such disguised proceeds of crime. And because money is an effective tool for all serious organized crimes, the whole justice systems are urged to run around the clock to cut off the criminals' chance to use their ill-gotten gains.

2. Typologies and New Trends

Some laundering techniques can be very simple such as using the money to buy luxurious cars or transferring the money to someone else. More complicated means may include using commercial loopholes to conceal the actual source of the funds or assets.

In the Asia-Pacific region, the most common methods are the purchase of valuable commodities such as gems and jewelleries; use of casinos; structuring of transactions; informal money transfer using underground banking and alternative remittance services; use of false identities; investment in business; use of nominees, trusts, family members or third parties; and use of foreign bank accounts. In a couple of years to come, it is likely that this region will be faced with even more complex methods, such as investment in capital markets; use of shell companies/ corporations; and the use of offshore banks and corporations.

These more complex ways make scrutinizing very difficult. So the methods of scrutiny need to be supported by an efficient legal backbone.

3. International Standards and Norms

The legal backbone can be stretched by a promulgation of anti-money laundering law. We have seen many countries that have established and improved their anti-money laundering framework from time to time by making money laundering a crime under their domestic law. Certainly the criminalization of money laundering should be conducted in accordance with global standards, such as those laid down in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) and the United Nations Convention against Transnational Organized Crime 2000 (Palermo Convention) which lay a foundation for the criminalization of money laundering.

The Vienna Convention is perhaps the most important drug control instrument. But the limitation is that predicate offenses for money laundering would relate only to drug trafficking offenses.

So, later the world community adopted the Palermo Convention that imposes an obligation on all member states to apply its money laundering offenses to "the widest range of predicate offenses".

I am pleased to say that the Thai Government has shown a strong commitment to combat money laundering by promulgating the Anti-Money Laundering Act of 1999 (AMLA 1999). The Anti-Money Laundering Office – AMLO, a new law enforcement agency, is established under the AMLA 1999 and is the national focal point of Thailand Financial Intelligence Unit or FIU.

4. International Standards

Perhaps the best player in the field at the moment is the Financial Action Task Force (FATF). In April 1990, it issued a set of international standards on anti-money laundering known as the "Forty Recommendations". These recommendations were first revised in 1996 and again in June 2003.

The Forty Recommendations were complemented by Eight Special Recommendations on combating the financing of terrorism, which were adopted following the 9/11 events. In September

2004, the FATF issued additional recommendation, the Ninth Special Recommendation, regarding cash courier. The FATF encourages countries to specify in their money laundering law beyond its minimum recommendation of predicate offenses to be included in their money laundering law. So the revised FATF Forty plus Nine Recommendations apply not only to money laundering but also to terrorist financing. This has a great deal of impacts on most countries that will take time to implement the changes.

Countries now have to be sure that they have the anti-money laundering and combating the financing of terrorism (we know as AML/CFT in short) system in place, if they do not wish to be listed as non-cooperative countries and territories. This of course calls for cooperation from all sectors --- the legislature has to amend laws; banking as well as non-banking businesses are required to know the customers and act on Customer Due Diligence. The money laundering message is already heard across the world. Many regions formed up the so-called "FATF-style Regional Bodies" (FSRBs) aiming to strengthen member countries' capability to comply with the FATF standards.

In the Asia/Pacific region, most states are members or observers of the Asia-Pacific Group on Money Laundering (APG). The APG adopted the FATF Recommendations at its annual meeting in 2003 in Macao. So far the members have been assisting each other in capacity building efforts and organizing mutual evaluation exercises.

5. Investigation and International Cooperation

As the world's technology advances, money laundering techniques become faster, easier, and more complicated. This poses a big obstacle for officials to investigate and arrest the perpetrators.

No doubt, fighting against cross border money laundering will be more effective with the help of colleagues overseas. The support may be rendered for the analysis and investigation of suspicious transactions, or for investigation of money laundering crimes, confiscation of assets, or extradition.

A gateway to the cooperation is through the mutual legal assistance. It is assistance provided by one country to another. Countries could make assistance available, for instance, in requesting for information, enforcing overseas freezing and confiscation orders, and sharing of assets. But, please note that what assistance can be given and what assistance can be requested will vary from country to country.

Member states in the Asia-Pacific region have had information exchange and enhanced the implementation of money laundering and terrorist financing counter-measures through the Asia/Pacific Group on Money Laundering (APG) as I had mentioned earlier. Thailand became an APG member in April 2001.

Another gateway to get external cooperation is through the Financial Intelligence Unit. Since the 1990's, many countries have been keen to justify their national strategies in order to combat money laundering that has become a serious crime that goes beyond boundary lines. A group of officers are tasked to work as a national focal point called "Financial Intelligence Unit", normally referred to as FIUs. This special unit will be responsible for receiving, analyzing financial information and then disseminating to relevant law enforcement agencies to take proper action in order to combat a new crime of the century - "money laundering".

The FIUs work and share information among themselves usually on the basis of memorandum of understanding. As an example, AMLO Thailand has entered into arrangements with 15 states for the exchange of financial intelligence. If there is no such agreement, the exchange of information can be undertaken on a reciprocal basis.

A number of FIUs had formed up into an international body known as the Egmont Group following the Seven Industrial Countries (G7) meeting in 1995 at the Egmont-Arenberg Palace in Brussels.

The Group provides a forum for member states to discuss issues common to FIUs and to foster cooperation as well as to advise FIUs under development. As of June 2004, there are 95 FIU members of the Egmont Group from all over the world and this will continue to grow. Thailand has officially joined the Egmont Group in October 2001 and is one of the eight countries from Asia.

Therefore I would like to recommend that each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance as well as information exchange. Assistance in criminal matter and, if possible, civil matters should help every country to achieve the mutual goal in combating money laundering at global scale.

6. Technical Assistance for AML/CFT
In improving the capability of AML/CFT regime, technical assistance has real role to play.

Technical assistance and capacity building in national anti-money laundering operations and systems can be extended to countries in the following main areas:

- Develop regional training program for law enforcement officials and related entities, namely prosecutors, judges, asset freezing and forfeiture officers;
- Assistance and resource mobilization to develop AML/CFT legislation, financial sector and FIU legislation, and updating of AML legislation to reflect the FATF 40 plus 9 Recommendations;
- Establishment of FIU in countries where there is no FIU in place yet;
- Boost information exchange and intelligence network. Now the range of reporting entities is widened to include non-banking sector, such as casinos, company service providers, and legal and accounting professionals. This makes the nature of reports received become more varied and brings up issues of methods of analysis and training of staff.

In the past years a wide variety of assistance is being provided across the whole continuum of AML/CFT systems ranging from legislative drafting to awareness raising. Many organizations and governments lend hands to raise AML/CFT capability for the less advanced countries. Among these are the World Bank, the IMF, the Asian Development Bank – to name but a few.

Some of the programs come in the form of regional project, such as the ASEM Anti-Money Laundering Project which aims to develop sustainable institutional capacity in Asian ASEM countries to address money laundering at a national, regional and international level. AMLO Thailand is proud to be part of this important project by hosting the project office at our building.

Technical cooperation program can also be arranged on a bilateral basis like what AMLO had with AUSTRAC of Australia, namely exchanges of experts and work attachment. We are more than willing to have foreign FIU staff attached with us for the purpose of knowledge exchange.

7. Conclusion
To conclude my remarks here, I would like to say that no matter what money laundering trends will be, it is important for law enforcement regime worldwide to beep up our capability "One Step Ahead" of the criminals. Briefly speaking, money laundering is the 'Crime of the Century' that is not a duty of one nation but rather of all nations to reduce the threat to world security.

Lastly, may I say again that the Royal Thai Government is proud to co-host this important UN Congress. If we can be of any help at all to make your stay more pleasurable, please do not hesitate to let us know.

Thank you for your attention.

Workshop 5

Concept of Economic Crimes as perceived across the world: Typology, New trends and Countermeasures

Prof. Dr. Abboud AL-SARRAJ

I. Concept of economic crime and new trends

It is difficult to have one legal definition of the concept of economic and financial crimes across all over the world because the criminal policy, especially in economic area, varies greatly from one country to another. It is also difficult to determine the overall extent of these crimes because their growing perception evolves some of the most rapidly growing predicate offences, as well as the fact that many cases are not reported and the investigation to discover these crimes requires high levels of expertise which is not well developed in many countries, especially in developing countries.

The emergence of new forms of economic and financial crimes over the past decades with a series of high-profile cases in Europe and North America as well as in developed countries, makes the problem more complicated. The significant increase in all forms of economic and financial crimes in the era of globalization, the transnational nature of these crimes, the integration of the world's financial markets and the growth of the transnational organized crime made the implications of these crimes truly global and consequently not easy to identify.

The trends (in policy, strategy, plans, incrimination and countermeasures) to combat this phenomenon especially the new forms of economic and financial crimes, vary in accordance with the Political and Economic System. However, we can identify between all the trends two principle trends:

Trend I: It is a broad trend which defines economic and financial crimes as "any action or omission that runs counter to the public economic policy".

This trend considers that the economic and financial laws are comprehensively organize economic activity of various description carried on by the government or private sector. To be more precise we can say: The economic and financial crimes are all actions conducive to inflicting damage on public funds, production activities, distribution, circulation and consumption of commodities and services, as well as the relations related to supply, planning, training and manufacture, to the support of industry, credit, insurance, transport, trade, companies, cooperative societies, taxes and the protection of animal, plant, water and mineral resources.

Trend II: It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions: it suffices for the economic law to observe the basic principles of economic public order and to lay down in the light of these principles the rules related to planning, manufacture, money, banking, import, export, insurance, transport, trade, customs…etc.

Whatever is the economic policy of the country, there is an unanimous position for the incrimination (although the differences are very large for the Countermeasures) of these economic crimes.
To cite few examples of economic crimes covered by both trends:

- Fraud: consumer fraud, corporate fraud, credit card fraud, advanced fee fraud, computer related fraud...;
- Corruption: bribery, embezzlement, trading in influence, abuse of function, illicit enrichment

- Money-laundering;
- Cyber crime;
- Identity theft and counterfeiting of currency;
- Crimes of money contraband, counterfeit and imitation;
- Banking offences inclusive of money laundering;
- Fiscal offences;
- Tax evasion;
- Customs offences;
- Trade offences (adulteration, illicit competition, trademark imitation, fraudulent bankruptcy, default bankruptcy, high prices, monopoly…);
- Intellectual property offences;
- Embezzlement, theft, breach of trust, and sabotage of public funds;
- Cheating the State in the course of tenders, bids and production quality and in execution of the State economic projects;
- Manipulation of stock markets, including the abuse privileged legal information and capital flight.

II. Countermeasures

As we have seen from the concept of economic and financial crimes, the countermeasures vary also from one country to another. However we can divide the different trends into two principle trends.

Trend I: prevail the penalties even the severe penalties for some crimes such as imprisonment reaching to three years in the case of felonies and 15 years in the case of crimes, plus confiscation and fine to be assessed according to the damage sustained.

Trend II: prevail non-criminal sanctions (or measures) as:

1. Civil sanctions;
2. Administrative sanctions;
3. Disciplinary sanctions;
4. Economic sanctions.

When the violation of the economic regulations is dangerous this trend accepts to go further to the penalties, as fine and imprisonment.

III. Useful Results And Possible Recommendations

Results and recommendations could be divided into three principle directions:

A. Prevention:

1. The United Nations office on Drugs and Crime carries out appropriate studies, in cooperation with relevant institutions and other United Nations entities, on the incidence, effects, consequences and seriousness of economic and financial crimes, with a view to developing more effective strategies to prevent and control them;
2. The Eleventh Congress consider the possibility of initiating negotiations on a draft United Nations convention against economic and financial crime, on the basis of a comprehensive study to be conducted by a group of recognized experts;
3. Where feasible commercial codes and regulations, financial laws and administrative controls be reformed to increase the transparency of operations;
4. Economic activities should be subjected to a legal order that lays down clear-cut limits for the civil servants, rights and obligations and for the rights and obligations of the economic private sector personnel who carry out State related economic projects;
5. Economic legislations should be accessible to the public through the media for the purpose of the familiarizing the public opinion with the importance of implementing these legislations and informing them about the risk involved in the contravention of these legislations on economic life and national economy;

6. Social and educational institutions may join in disseminating awareness of economic offences;
7. Meticulous control should be imposed on all economic firms, especially banks, customs and fiscal departments, through appointment of inspection committees specialized in the control of economic offences; and
8. The perpetrators of economic crimes should be tried by specialist judges.

B. Criminal sanctions:

1. The main criminal sanctions which should apply to the dangerous economic offences are fining and sentencing (imprison). These offences include embezzlement, theft, corruption, crimes of money contraband, counterfeit, and premeditate sabotage of public funds ---.
2. The judge may confiscate the objects or instruments used in commission of the crime or still the funds arising there from.

C. Non-criminal sanctions:

It is advisable to apply “non-criminal” civil and economic sanctions to some economic offences.
The civil sanctions recommended are:

1. Indemnification of the damage;
2. Ordering that the work be completed;
3. Annulment of the work that runs counter to the economic law;
4. Reinstatement of the status quo to what it was.

The economic sanctions recommended are:

1. Prohibition of carrying on economic activities;
2. Shutdown of the economic firms;
3. Business discontinuation or dissolution of the economic firm;
4. Placement of the economic firm under receivership;
5. Withdrawal of export/import permit;
6. Withdrawal of the economic firm’s incorporation act;
7. Exclusion from certain exemptions prescribed in the law.

CONCLUSION

In this era where the world changed to be a small village, where the trends of economic system get closer, and the concept of crimes and deviations gets almost unified across the world, it is time to consider the following:

The Eleventh Congress may recommend initiating negotiations on a draft United Nations convention against economic and financial crimes, to clearly define Economic Crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts.

Workshop 5

Measuring the impact of economic crime: can indicators assist?

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'These five characteristics – specialisation in market-based crimes, hierarchical and durable structures, use of violence and corruption to achieve monopoly power, high rates of return, and penetration of the legal economy, seem to be what organized crime is all about.' R. T. Naylor Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy (2002) Cornell University p. 16

INTRODUCTION

As a general proposition all crime has economic consequences. The result of crime is potentially measurable in economic terms. Some crimes are committed in order to yield material benefit to the perpetrator(s). It is the prospect of acquiring tangible assets which motivates them. Criminologists have drawn a further distinction between predatory offences committed sporadically, when opportunities present themselves on the one hand, and on the other, market based offences[148]. The key distinguishing characteristic is that the former are episodic and do not always require supportive infrastructure, while the latter have to be supported by a modicum of long term organisation and a viable market. Examples of such activities include trafficking - in humans, arms and drugs. Financial crime committed systematically could also be described as market based economic crime. This paper is confined to market based economic crimes encountered in Southern African countries. It is however important at the outset to point out that the cleavage between predatory and market based economic crime is not clinical, as there are areas of overlap between them. The drug trafficking industry perhaps illustrates this reality as well as any other. Typically, cannabis cultivation is carried out at a peasant, subsistence level for downstream international criminal syndicates engaged in marketing the drug, often very far from the source regions[149]. Corruption, even at a grand level, demonstrates a symbiotic link between predatory and market-driven economic crime. Where bribery involves a large corporate institution and state officials, the executives that corrupt the public officials are likely to be repeat offenders, and could be said to be engaging in market based crime, while from the perspective of the recipients of bribes, their activities are *ad hoc* opportunistic acts of delinquency.

The underlying premise of this paper is that market driven economic crime is organised. It manifests itself as various activities or kinds of activities that occur in society, in the same environment in which lawful activities occur. As a result, and depending on its scale, economic crime is able to compete with lawful activity, and even penetrate and undermine it. The paper further assumes that in both developed and developing economies, participation in organised crime is not confined to dedicated or professional criminal groups. Entities established for legitimate business enterprises are just as liable to engage in organised crime as recognised criminal syndicates.[150] There seems to be agreement about the negative impact of organised crime

148 On the distinction, see Naylor Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy (2002) Cornell University pp. 14-16

149 See P Bagenda, Chapter 4 of P Gastrow (editor) Penetrating Sate and Business: Organised Crime in Southern Africa, (2003) ISS Monograph series number 86, pp. 81-2.

150 The debate on paradigms in organised crime discourse is explored further by A Standing in Rival Views of Organised Crime (2003) ISS Monograph series number 77.

on economies. General spheres in which the impact is encountered include inflation, poverty, commercial crime, development, and corruption.

Aware of this, most countries accept the need to conduct reform in key areas, such as legislation. At the political level, the importance of adopting an enlightened approach to crime detection, and law enforcement seems to have been accepted. It is clear that these initiatives have to be underpinned by an assessment of the precise form of threat that organised economic crime presents.

This paper profiles the nature of the harm attributable to economic crime. It follows up with a discussion of manifestations of harm. In the final part, the paper proposes indicative factors of incidence and scale of economic crime, and suggests possible sources of data.

The relativity of economic crime as a detrimental factor to society as compared to other factors is beyond the scope of this paper. A comprehensive analysis should juxtapose economic crime alongside other phenomena that constitute threats to society. Among those well known to the developing world are 'the depletion of raw materials and capital, an over-dependence on imports, a high ratio of foreign to domestic investment, surpluses of imports over exports, and inadequate regulation of competition from foreign producers.'[151] The true significance of economic crime as a threat can be better demonstrated in that way.

Economic crime: areas of common concern

The forms of organised economic crime on which there is consensus, in terms of definition and incidence are:

- armed robbery, including robbery of cash-in-transit;
- theft of motor vehicles;
- serious commercial fraud;
- currency counterfeiting;
- extortion rackets;
- drug trafficking;
- smuggling of precious resources, predominantly diamond, gold, timber and wildlife products; and
- corruption.

One mode of economic crime on which there is unanimity as to its existence, but not quite as to its definition or magnitude, is money laundering. It appears that money laundering, being concerned with the management and disposal of proceeds of crime, has come to be regarded as seriously as any of the other criminal activities. On account of its significance, money laundering is treated in some depth in this paper.

A profile of economic crime as a threat

If the proposition that economic crime occurs in the same environment as lawful economic activity is accepted, it follows that economic crime has an impact on such activity. The precise ways in which the impact will be encountered depends on how unlawful activity relates to lawful activity.

In Southern Africa it is widely acknowledged that the relationship is predatory. At one end of the emerging spectrum is the perception that proceeds of illicit activity sponsor unfair competition for lawful business. The following statements summarise this view:

'Criminal organizations dealing only in illicit goods and services are no great threat to the nation. The danger of organised crime arises because the vast profits acquired from the sale of illicit goods and services are being invested in licit enterprise, in both the business sphere and the

151 A. N. Gorodysky, 'Ukraine, International Money Laundering and the Investigation of Organized Crime' unpublished paper, accessible at http://www.ojp.usdoj.gov/nij/international/ programs/Laundering.PDF

government sphere. It is when criminal syndicates start to undermine basic economic and political traditions that the real trouble begins.' (Cressey 1969)[152]

'…The real harm done by organised crime comes not from selling inherently illegal goods and services but form the way the profits are subsequently invested' (Naylor 2002)

'There are also significant social costs if efforts are not made to counter money laundering. Money laundering, organised crime and economic crime are often integrally linked, and criminal organisations will use their profits to infiltrate or acquire control of legitimate businesses, and to bribe individuals and even governments. Over time, this can seriously weaken the moral and ethical fabric and standards of society, and damage the principles underlying democracy. One cannot rule out the possibility of criminals installing puppet governments by deploying the proceeds of crime to rig and win elections.' (Sithole, 2002)[153].

This view substantially forms the bedrock of economic policy based responses to organised crime, which seek to draw illegally acquired funds into the public financial system, through taxation and asset forfeiture. Measures inspired by these objectives aim to deprive criminals of the competitive advantage that they would otherwise derive from the proceeds.

The advantage which stems from economic crime does not arise only from the deployment of proceeds. As many economists have noted, sometimes it is inherent in the trade in commodities obtained by stealth - through theft, falsification or smuggling.[154] The cost to society is greater, perhaps even disproportionate to the benefits that accrue to the perpetrators. The illicit commodities can displace commodities produced and marketed in compliance with the applicable taxation and import laws, and even precipitate de-industrialization. Unemployment inevitably results. The costs of unemployment in social, economic and political terms can be quite drastic.

There are other forms of harm to legitimate business and the communities in which it exists. Among the costs regularly cited by organized business are:[155]

- Costs of establishing and maintaining security systems that are proactive, reactive and forensic
- Inflated insurance premiums that take into account increased risk and higher levels of crime;
- Higher levels of taxation to support public expenditure to combat crime

As Altbeker points out, the impact that crime has on business confidence is just as significant as the effect on the so-called bottom lines. Business confidence, which is a matter of perception, is described as:[156]

'the subjective feelings of investors and managers that impacts on decisions to expand, contract, or change direction.'

The kind of decisions taken by investors and managers can therefore be regarded as the barometer by which to measure such confidence.

Fraudulent dealings with savings and investments inevitably precipitate losses to depositors and investors.[157] So can speculative dealings. Occasionally, they result in the collapse of financial institutions. The latest illustrations have been witnessed in Zimbabwe, where losses from banking

152 D. Cressey Theft of the nation (1969) Harper & Row, New York, p. 3-4.

153 Majozi Sithole, 'Taking Action Against Money Laundering', in C Goredema (editor) Profiling Money Laundering in Eastern and Southern Africa (2002) ISS Monograph series, number 90, p. 2

154 Finance Week, 8-10 December 2004.

155 See A Altbeker, 'Losing our nerve?: Business Confidence and Crime in South Africa' (2001) NEDBANK ISS Crime Index number 4 pp. 16-7

156 Altbeker, op cit, at p. 17

157 In many parts of the world, fraudulent investment schemes have been used to lure gullible investors to part with their savings. The notorious advance fee fraud schemes (colloquially referred to as '419' fraud) are symptomatic of these kinds of fraud.

and asset management sector failures in the period 2003-4 cost investors an estimated Z$251 billion (USD41 833 333.40).

Indicators of vulnerability

The classic view is that economic crime is endemic in states overwhelmed by challenges of transition, or caught up in political crises. At these junctures, the level of vulnerability is acute. The features of a transitional state which produce a peculiar vulnerability may be summarised as follows:

- diminished social control, as reflected by no (or weakly enforced) laws against economic crime;
- greater mobility of personnel within the country and transnationally;
- corruption precipitated by declining wages, increased opportunities, diminished penalties and falling moral values;
- close linkage between political power and access to economic leverage; and
- imbalance in resources between the law enforcement structures and criminal organisations; leading to
- frustration of law enforcement functionaries, and their absorption into the private sector or by organised crime; and
- opening up of avenues for unbridled opportunism to flourish.

With regards to Southern Africa, Gastrow offers a summary of the situation that most countries were in by the beginning of the 90s. He observes:[158]

> 'Many recently independent states were then faced with the overwhelming task of managing a double transition, namely from state-led to market-led economies, and from autocratic rule to transparent democratic politics. With some exceptions, such as Botswana, the SAPs (structural adjustment programmes – *author's note*) tended to produce unintended consequences. Besides being ineffective on a macro-economic level in many countries, there were elements in the political leadership and in bureaucracies who skilfully managed the reforms in a way to suit themselves. These elements were able to use the new ideological changes to engage in "practices of accumulation", by staking out for themselves profitable areas for their own business activities. They straddled positions of public office with positions of accumulation, inevitably leading to corruption. This development was bound to impact on corruption and organised crime. The corrupt practices of so-called accumulators in high positions brought them into contact with 'middlemen', increasingly foreigners, and other entrepreneurs who were operating in the criminal markets…
>
> …It therefore appears that by 1990, obscured by the major transformation processes and turmoil that were experienced during the post-independence years and by the political conflicts in South Africa during the 1970s and 1980s, transnational organised crime had come of age in the SADC region. The precise causes of its growth are complex and multiple and differ from country to country in the region. However, one experience that all SADC countries went through after independence was a fundamental transformation process. As a general rule, the growth of organised crime is most rapid in those countries, which experience not only a significant political change, but also an associated economic one. This has certainly been the case in a number of SADC states. However, the transition processes experienced in these states differed in content and intensity, and took place over different periods of time. It would therefore be too simplistic to ascribe the growth of organised crime in the region solely to the political and economic transitions that followed independence.'

Within that environment certain indicative factors of economic crime are evident.

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158 Gastrow, op cit, p. 11-13.

Economic crime: the indicative factors
Proceeds of economic crime and other illegally acquired income tend to be transferred abroad within a relatively short period of acquisition. The objectives are to prevent detection of the predicate activities or to invest. To facilitate transmission and infusion into foreign economies and financial systems, conversion into acceptable currencies or marketable commodities is often necessary. The availability of such currencies and avenues through which to acquire them can be regarded both as characteristics engendering vulnerability to economic crime, as well as indicators of incidence. Currency exchange establishments, in the formal and informal sector, have been linked with money laundering in many parts of southern Africa and elsewhere. Records of transactions conducted through them, if genuine and comprehensive, would provide evidence of scale. Unfortunately, indications are that in too many instances, they are neither available nor reliable.

Investments of unexplained or undeclared wealth in external markets and foreign jurisdictions. Investments of this kind by nationals in politically connected or exposed positions invariably provide illustrations of this phenomenon.

Since the 1980s, large quantities of money have been transmitted to South Africa. Source countries include Angola, the DRC, Malawi, Mozambique, Zambia and Zimbabwe. With the advent of Frelimo rule in the mid-seventies in Mozambique, there was capital flight by the erstwhile Portuguese settler community, facilitated by banks, through direct transfers and payment for fictitious goods. It is estimated that 90% of the Portuguese left the country within the first five years following independence.

The trend does not seem to have abated, Part of the reason is that the factors that encourage the trend have remained virtually intact. In certain cases, developments in the source countries have increased the flow. Asset flows to South Africa are influenced by:

The scope for investment in residential property. With the exception of Botswana, Lesotho, Swaziland and Zimbabwe, the average price of good quality residential property in South Africa is relatively lower than in other parts of the region.[159] This oddity is probably attributable to the creeping dollarisation of economies in Southern Africa. In addition, the prevailing security of property rights in South Africa is rather less fragile than it is in some other parts of the region.

The presence in South Africa of a relatively developed financial system and safe investment climate/environment provides an incentive for cross border asset transmission. The presence of migrant communities across national borders enriches the environment for the transmission of resources between the respective countries, often informally and with no recourse to the financial institutions and regularly in violation of currency movement control laws. An example is the spread of the Lundas in Angola, the DRC and Zambia, the Tutsi in Rwanda, Uganda and the DRC, the Venda in South Africa and Zimbabwe, or the Chewa-speaking communities on either side of the Malawi/Zambia border. In addition, dual nationality eases movement between the countries, and makes it difficult to regulate currency transmission.

Conspicuous consumption in luxury commodities. It has been observed that illegal income is likely to be consumed quicker or invested outside the financial sector than legal income. There are several reasons for this inclination, partly the desire to conceal such income from detection, and partly to exploit lawful markets with the proceeds.[160] The latter motivation is particularly compelling if the environment in which consumption occurs is afflicted by inflation and unattractive interest

159 The average price of a dwelling house in middle-income areas of South Africa in May 2004 was ZAR488 456 (US$75 147). This is lower than that for similar property in neighbouring Mozambique (US$135,000) or Tanzania (US$120 000). Information based on Property Section in the Weekend Argus (29 May 2004), which circulates in Cape Town, South Africa.

160 In the words of Naylor: 'Usually a legal firm works on the premise that it will be around for a long, perhaps indefinite time, even if the time horizon of any particular set of executives is shorter. On the other hand, an illegal; enterprise has a time horizon equal to that of the illegal entrepreneur. Thus, with its time horizon short to begin with, the illegal enterprise is always in danger of being abruptly terminated, reinforcing its tendency to take a grab-and-run attitude toward market exploitation.'

rates. Proceeds of crime are then likely to be invested in real estate, commercial properties and luxury motor vehicles.

The market for luxury motor vehicles in Southern Africa transcends borders, which has led to the growth of symbiotic links among crime syndicates. An indeterminate number of South African syndicates engage in theft of motor vehicles in South Africa. The vehicles are thereafter smuggled across borders to Zimbabwe, Namibia and Mozambique for sale to syndicates which sell them on to syndicates that thrive on smuggling precious resources, drug trafficking and currency speculation.[161]

In these circumstances, indicators of incidence and scale of economic crime are likely to be:

1. data on vehicles stolen in South Africa, less recoveries
2. data on average incomes in economic hub centres in Zimbabwe, Namibia, and Mozambique
3. data on registration of vehicles imported into those countries
4. aggregate values of imported vehicles

Abuse of state institutions for private accumulation of capital. Various scenarios have been encountered in Africa. The first two arise within a context of economic and financial crisis, precipitated by external or internal factors. This usually leads to crisis management, and the creation of an environment replete with opportunities for economic crime on a grand scale. In the first scenario, the state is desperate for foreign currency to support trading activities and debt servicing. The 'bogus exports' fraud that led to the notorious Goldenberg scam in Kenya stemmed from an arrangement ostensibly introduced as an incentive to diversify the national export base. The judicial inquiry conducted over the last two years exposed a corrupt scheme that involved, and was facilitated by government departments at various levels, including the Office of the President, the Ministry of Finance, the Customs & Excise Department, the Ministry of Environment & Natural Resources, the Mines & Geology Department, and the Central Bank of Kenya.

The total funds yielded by the Goldenberg grand corruption and fraud scheme have not been quantified. They are estimated to be between US$600m and US$1 billion. Having been accumulated over a period of time, the funds were consumed gradually. Various entities have benefited from them. At the centre was the Pan Africa Banking Group. Others were – the Pan African Building Society; the Pan African Credit & Finance; the Uhuru Highway Development Corporation - which in turn constructed and managed a large hotel in Nairobi called the Grand Regency Hotel; the Kenya Duty Free shopping complexes at airport terminals; the United Touring Company and the Safari Park Hotel. In fact, the resources illegally gained through fraudulent compensation claims 'provided seed money for criminal infiltration of legal business…' and set up a foundation for the capture of 'major sectors of the legitimate economy'. This typified the classic threat of systematic economic crime on which drastic measures against money laundering appear to be premised.[162] There is speculation that some of the criminally earned assets were used to fund the campaign of a political party in the elections in Kenya in 1992.

In the second scenario, government, under pressure from economic and civil strife, resorts to ill advised ways of earning money, for instance by printing money. During the civil war in Mozambique (1977-1992), the state printed money to pay war-related expenses, and to finance a commodities black market. The market had in turn been fuelled by the war. The capacity of the formal economy and the state to provide goods and services was severely eroded by the war, creating a huge gap for the informal economy to exploit. Large amounts of money in circulation ended up in the hands of speculators.

The third scenario involves the ubiquitous *front companies* and *foreign banking accounts* established ostensibly to support security (espionage and economic) activities of the state. Funds are transmitted directly from the treasury to foreign financial repositories to pay for the activities of 'state security agents' operating abroad. The system leads to the treasury being virtually turned

161 'Police smash alleged smuggling ring' Independent on Line (31 March 2005), accessible at http://www.iol.co.za/index

162 Authors like Naylor are cynical about the incidence of this kind of scenario. See R T Naylor, op cit, p. 34-7.

into part of the banking system. To be sure, some of the payments processed in this manner are not looted. Its weakness lies in the absence of rigorous safeguards against theft, and its reliance on the honesty of individual officials. In the '80s and '90s, this avenue was exploited by state officials in various positions in South Africa, Zaire (now the DRC), Nigeria and Zambia to fraudulently transfer money to private accounts held in foreign banking institutions. Where these funds have since been traced, they have yet to be repatriated or fully accounted for.

The fourth scenario revolves around investment undertakings ostensibly undertaken in the interests of the state. Indications of the criminal abuse of these undertakings lie in the lack of accountability on their funding and performance during their existence. Evidence of this kind of criminal conduct has been observed in mining undertakings that originated in Zimbabwe and Namibia. The mining locations were in the Democratic Republic of the Congo.[163] A study on the implications of inadequately conceived military undertakings by Zimbabwe in the DRC showed unsustainable levels of defence spending. Figures released by the Ministry of Finance revealed that more than 12% of the entire budget for 2001-2 was committed to defence. No provision was made for inflows from the commercial ventures in the DRC. To date, none of the expenditure incurred in that country has been offset by income from the ventures. The scale of the economic decline in Zimbabwe after 2000 appears to be partly attributable to the costs of the DRC campaign. The lack of accountability also creates opportunities for corruption and secondary asset laundering. The latter takes the form of mingling of resources, such as rough diamonds originating from one source with those extracted from another.

In view of the history of its evolution, it is not surprising that market-based economic crime in Southern Africa has cross-border dimensions. Illicit business emulates legitimate business in creating and using trans-national markets. Criminal groups have proved to be adept at taking advantage of globalisation and rapid technological innovation. The composition of these groups has for long been cosmopolitan,[164] and the nature of the activities of engagement varies with the demands of the market. One of the implications of this is the likelihood of cross-border transmission of proceeds of crime. The impact of crime is experienced in both the place where the criminal activity occurs and the destination of the proceeds. Indicators of economic crime cannot be complete if they do not take account of corresponding data in relevant foreign countries. It has been suggested that, as a research tool, data collection should occur on a corresponding basis among affected countries in the region. Major predicate activities should be identified, using material such as police and court records. Patterns of transmission should be mapped out, on the basis of information collected from within the criminal justice system as well as from data sources on routes of trade and other commercial activity. Departments of trade and customs will be important in this exercise. The resulting information is then organised in the form of a table, in which the source activities constitute a vertical column, and the destinations of transmission or consumption are arranged in a horizontal row. For Southern Africa, the table could resemble Table 1 below.[165]

Table 1: Framework for comparative indicative proceeds of crime data between countries

163 C Goredema 'Organised Crime in Zimbabwe' in P Gastrow (editor) Penetrating Sate and Business: Organised Crime in Southern Africa, Volume II (2003) ISS Monograph series number 89, pp. 22-4 and J Grobler 'Organised Crime in Namibia' in P Gastrow, op cit, p. 30.

164 See P Gastrow, Organised Crime in the SADC Region: Police Perceptions (2001) ISS Monograph series number 60, pp. 39-65. The author employs tables to illustrate the picture as perceived by police agencies in the region. For a historical overview of the developments in this area, refer to P Gastrow, op cit, p. 1-17 On the role of networks from West Africa, see Crime as Business, and Business as Crime (2003) South African Institute for International Affairs.

165 Adapted from a methodological framework proposed by John Walker, a criminal justice researcher based in Melbourne, Australia, in 2004 to facilitate a global survey of money laundering trends

Source activity of proceeds	Consumed locally	Transmitted to country 1	Transmitted to country 2	Transmitted to country 3	Transmitted to country 4
Drug trafficking					
Theft of motor vehicles					
Commercial fraud					
Armed robbery (excluding motor vehicles)					
Extortion rackets					
Corruption					
Smuggling of precious resources					
Externalisation of currency					
Money laundering					

Sources of data
There are significant challenges that can impede the collection of the data required to collate indicators of economic crime. For data on criminal activity to be available at all, it is necessary not just for the activity to be recognised as a crime, but also for it to be officially recorded, and for the records to be stored in an organised and retrievable form. Furthermore, if what is sought is information on impact of crime, there should be a modicum of analytical content to the record. The preferable record is one that can be objectively verified. It is matter of debate whether the impact of crime is recordable in this sense, and if so, at what stage this can be done.

Table 1 rests on the assumption that the police are the main repositories of the relevant information on crime trends. The reality is that in some cases, police statistics are deficient. In other instances, it may not be practical to expect all the information to be available to the police. Agencies mandated to detect, investigate and prosecute species of organised crime, playing a complementary but not subordinate role to that of the police, are occasionally better placed. In respect of corruption, the advent of dedicated anti-corruption agencies is a promising development. There has been growth in the establishment of these agencies in the last few years, in the wake of the adoption of the SADC Protocol Against Corruption. The position at the end of 2004 is shown in Table 2.

Table 2. Dedicated Anti-Corruption Agencies in Southern Africa (2004)

Group I: countries with dedicated anti-corruption agencies	Group II: countries contemplating the establishment of a dedicated anti-corruption agency	Group III: countries not contemplating establishing dedicated anti-corruption agency.
Botswana, Malawi, South Africa, Swaziland, Tanzania, Zambia, Lesotho, Mauritius, Mozambique and	Namibia	DRC, the Seychelles

Zimbabwe		

The focus on anti-corruption agencies is influenced by the noticeable tendency to require such agencies to investigate the laundering of proceeds of crime.[166] It is suggested that anti-corruption agencies should be required to collect and exchange data on the magnitude of economic losses attributable to corruption.

Apart from the agencies mandated to tackle corruption, one should also be able to obtain usable information from other sectors which are particularly vulnerable to economic crime. In a survey of auditors in seven countries in the region in 2003, Standing and Van Vuuren found that in most, the banking and finance sector was perceived to fall into this category.[167] With specific reference to money laundering, it was found that other sectors were:

- vehicle retailing
- mining
- entertainment
- precious commodities trading
- real estate
- fuel industry
- sugar trading.

It has been observed that the impact of economic crime manifests itself in the phenomena of inflation, poverty, commercial crime, development, and corruption. In each of the stipulated sectors, a key objective of the inquiry will to determine the causal connection with criminal business. In each case, the nature and scale of economic crime is compared with the nature and scale of inflation, poverty, commercial crime, development, and corruption. The result should be capable of being presented in the form of a series of graphs, on each of which one pole of the axis represents the scale of economic crime, and the other shows the scale of for instance, poverty.

In order to secure data relevant to the relationship, one has to look beyond the stipulated sectors. Table 3 presents a possible list of other data repositories that could be relied on to construct a comprehensive picture. It is adapted from an analysis of sources developed at a workshop on money laundering in Blantyre, Malawi.[168] For each source of information, it is important not only to recognise the type of data to be sought, but also the possible limitations that may affect either the source or the utility of data.

166 As has occurred in Botswana, South Africa, Swaziland, Mauritius, Mozambique and Zimbabwe. The proposed bill in Lesotho adopts the same approach.

167 A Standing & H van Vuuren 'The role of auditors: Research into organised crime and money laundering' (2003) ISS Occasional paper, number 73.

168 ISS Workshop on Money Laundering in Malawi, Protea Ryalls hotel, 29 September, 2004.

Workshop 5

DISCUSSION PAPER

Justice Anthony Smellie

I have been asked to speak to the hypothetical case[169] scenario with particular focus upon the position of offshore jurisdictions, coming, as I do, from the Cayman Islands.

However the true implications of the case scenario and the true nature of the position of offshore jurisdictions can only properly be considered by acknowledging the increasing globalisation of crime.

While it is true that cross-border crime is not a new phenomenon[170], the increasing concern about cross-border crime of all kinds, and its implications for the international community, is clearly manifested in the very theme of this 11th U.N. world congress.

Modern economic and social conditions have combined to create a situation that is readily exploitable. The increased mobility of people across borders, the seemingly ungovernable technology of the internet, the creation of the free market in goods and services and the encouragement given to the free movement of capital have all enabled the growth of cross-border criminality and the internationalisation of criminal enterprises. These concerns are clearly expressed in the European council's opening statement in its first 30-point action plan to combat organised crime;[171]

> "Organised crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour is no longer the domain of individuals only, but also of organizations that pervade the various structures of civil society, and indeed society as a whole. Crime is increasingly organizing itself across national borders, also taking advantage of the movement of goods, capital, services and persons. Technological innovations such as internet and electronic banking turn out to be extremely convenient vehicles either for committing crime of for transferring the resulting profits into seemingly licit activities. Fraud and corruption take on massive proportions, defrauding citizens and civic institutions alike".

To this litany of weaknesses must of course, regrettably now be added the ability of terrorist organisations to access the international financial system. Offshore financial centers, as part of the phenomenal emergence of this new global economy, are by definition no more or no less prone to being abused by the organized criminal than other financial centers.

The Caribbean region encompasses several such jurisdictions.[172] It is therefore important that the Caribbean regional response, in the form of the Caribbean financial action task force (the CFATF) as an offshoot of the FATF of the g15,[173] has been a signal success. Through its mutual evaluation process, all CFATF member states have been evaluated and now meet at least the minimum

169 See Annex 1 "Management of the Hypothetical Case"

170 International co-operation and strategies for dealing with cross-border crime date back to at least the 17th century, and are commonly to be found in Treaty laws which establish or confirm them (see N. Boistev "Transnational Criminal Law" 2003 EJ1L).

171 [1997] OJ C.251/1] Similar sentiments are expressed in the second version of the Plan which was created because of the problems created by lack of harmonization of laws and procedures across the member states of the E.U.: "The Prevention and Control of Organized Crime: A European Union Strategy for the New Millennium". Accompanying this, the Commission created a new scoreboard system to monitor the progress of the states in both of the Action Plans (http://www.ex.ac.uk/politics/pol).

172 Within the Caribbean region, the Cayman Islands apart, the following countries have or are developing different levels of international financial services industries: Anguilla, the Bahamas, Barbados, the British Virgin Islands, the Netherlands Antilles (Aruba, Curacao), Costa Rica, Panama and the Turks & Caicos Islands. (Bermuda, which is a mid-Atlantic territory, is often referred to as one of the regions offshore centers).

standards set by the FATF and the Vienna convention.[174] The Cayman Islands assumed a leadership role in the formation of the CFATF and was the first member state to be evaluated.[175]

With the major international financial centers having criminalised the laundering of the proceeds of crime and having adopted measures to ensure that mutual legal assistance can be given for the restraint and confiscation of the proceeds,[176] such centers can fairly be regarded as having taken important initial steps to combat and discourage economic crime. Indeed, experience has shown that the likelihood of criminal proceeds being restrained and confiscated is highly increased once they enter a well regulated jurisdiction such as the Cayman islands.[177]

it is against this back drop, which for some will no doubt present a paradigm shift, that one should consider the position of offshore centers when examining the hypothetical case at hand.

the term “offshore” is relative and properly understood in the context of global financial activity, should be taken shorn of pejorative connotations, as meaning simply that another overseas jurisdiction is regarded as offering certain advantages, relative to a local jurisdiction. So, for instance, New York or London may be regarded as an alternative offshore center for investments relative to states in main land Europe; Singapore or Hong Kong relative to the rest of South East Asia or the Cayman islands relative to main land America.

No less a body than the IMF has concluded that “offshore” jurisdictions play an important role in managing and facilitating the flow of international capital and pose no threat to world economic stability.[178] That being the relative position of offshore jurisdictions, it nonetheless cannot be over-emphasised that the nature of the responsibility of offshore jurisdictions to interdict international crime or to assist in the recovery of assets or proceeds, is no different from that of the rest of the global economic community. There can therefore be no question that offshore financial jurisdictions share the same responsibilities and burdens for the interdiction and prevention of economic crimes.[179]

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173 First convened in Aruba, June 1990 when the conference of representations of Caribbean regional states resolved to adopt the 40 recommendations of the G15 Financial Action Task Force on money laundering as well as 21 original recommendations (later reduced to 19) of their own.

174 For a summary of the first mutual evaluation report on the Cayman Islands see www.1.oecd.org/fatf/FATdocs_en.htm

175 For a list of the rounds of evaluations through 2000 see “Mutual Evaluations” at the same web site.

176 The Vienna Convention having been adopted by more than 150 countries and with Article 7 continuing a form a mutual legal assistance arrangement in respect of drugs case and the proceeds of drug trafficking, mutual legal assistance is now globally available in relation to such matters. The United States of America has MLAT with 33 other countries, including that between the United States and Great Britain on behalf of the Cayman Islands which was third such and was ratified by the Cayman Islands legislature in 1984.

177Apart from the mutual evaluation process of the CFATF and latter less transparent “blacklisting” process of the FATF, the Cayman Islands has co-operated with and participated in several international or institutional initiatives for the enhancement of anti-money laundering and regulatory regimes. The most recent such initiative has been taken by the IMF which, in a two volume report on the Cayman Islands noted: “A sound legal basis and robust legal framework for combating money laundering and terrorist financing has resulted from major regulatory revisions and improvements in the past four years” and

“An intense awareness of anti-money laundering and combating the financing of terrorism (AML/CFT) is supported by a sound supervisory programme. The Cayman Islands has been a leader in developing anti-money laundering programs throughout the Caribbean region”. Both volumes of the IMF Report on the Cayman Islands are available at www.imf.org or www.gov.ky . Offshore Financial Centres (OFCs), to date do not appear to have been a major causal factor in the creation of systemic financial problems….Not all OFCs are the same. Some are well supervised and prepared to share information with other centres, and co-operate with international initiatives to improve supervisory practices. (See Financial Stability Forum- Report of the Working Group on Offshore Centres, 5th April 2000 at www.fsforum.org/publications/OFC_Report_-_5_April_2000a.pdf).

178 See Report of the FSF Working Group on Offshore Centers, 5th April 2000 at www.fsforum.org. See also address by the Cayman Islands Government to the OECD Forum on Harmful Tax Competition: Paris, France, 30 August 1999.

The Cayman Islands is recognized as one of the leading offshore centres offering the following major advantages: (i) a competent and efficient public service;(ii) a competent, fair, flexible and unencumbering regulatory system;(iii) stable, democratic, even-handed and transparent government;(iv) a highly developed and sophisticated legal system based upon British common-law;(v) an independent and respected judiciary and judicial administration;(vi) a highly skilled and knowledgeable body of professional expertise;(vii) a sophisticated and knowledgeable private sector, providing all types of ancillary goods and services required by the financial sector;(viii) the presence of all the world’s major banks and financial houses;(ix)modern infrastructure;(x) geographic proximity to some of the world’s largest economies and; and (xi) a relatively crime-free and hospitable social environment.

179 Apart from this principle now being reflected in the universal adoption of the Vienna Conventions, of the FATF 40 original recommendations and the widening adoption of the U.N. Convention.

“Offshore” jurisdiction have through, the Offshore Groups of Banking Supervisors formed in 1980, long since adopted the Bash Concordat of 1992 in “minimum standards for the Supervision of International Banking Groups and their cross- Border Establishments”.

In the Bash Committee’s Report of 8thOctober 1996, 29 further recommendations were adopted designed to strengthen the effectiveness of the supervision by home and host-country authorities of banks which operate outside their national boundaries. For this Report at www.bis.org/publ/bcb585.htm.

The view was taken at the United Nations Offshore Forum held in the Cayman Islands on 30th – 31st March 2000 and hosted jointly by the UNODCCP and the Cayman Islands Government, that the responsibility to adopt and enforce counter-measures against financial crimes is globally the same. The implementation of international standards and compliance thereto are all issues with which the well regulated offshore centres, like the Cayman Islands, have already been addressed: See FATF Twelfth Annual Report on Money Laundering, Paris, 22nd June 2001.

There are, however, different dynamics at work in the manner that offshore jurisdictions become involved with economic crimes and these must be identified and recognised in order to ensure the best co-ordinated and most effective response in conjunction with other jurisdictions.

Typically, as in the given hypothetical case scenario, the predicate crimes are committed elsewhere, and the proceeds sought to be kept in or laundered through an offshore center, such as, in this case, the cayman islands.

The connection with the offshore jurisdiction will therefore typically arise because the proceeds have been transferred there in the hope of secreting them away or of laundering them through the international banking system for onward transfer to yet another jurisdiction or back to the first jurisdiction; with the origin of the proceeds being thus disguised.

Often, the predicate criminal will also seek to launder the proceeds through intermediaries – personal or corporate – both in the jurisdiction of origin of the proceeds and in the offshore jurisdiction. He will seek to exploit the differences between the laws and enforcement regimes that exist from one state to the other. Often the victims of crime will be in one country, the perpetrators of the crime in a second country, the evidence required to prosecute or recover the proceeds in a third, whilst the proceeds themselves are in a fourth. this means that there must be harmonisation of national laws and procedures to enable the prosecuting state to prosecute the offenders, to secure the evidence and to recover the proceeds.

When considering the dynamics of economic crime these concerns bring into sharp focus the importance of three specific factors:

(i) The ability of the legal and law enforcement systems of the original jurisdiction to interdict the predicate offence and to prevent its financial system from being used for money laundering;

(ii) The ability of the international banking systems which are used for the transfer of the proceeds, to detect and prevent money laundering; and

(iii) The ability of the offshore jurisdiction at the receiving end of the spectrum, also to detect and prevent money laundering, as well as to restrain and recover the proceeds of crime and to honour requests for international legal assistance.

The point to be emphasised is that the greater the lack of symmetry between the law and the enforcement capabilities of countries, the greater is the potential for the exploitation of the international financial system by the criminal.

Our hypothetical case provides a useful practical scenario that brings together for discussion, many of those concerns described above. The central core of the facts of the hypothetical case actually represent the facts of a real case, dealt with between the united states and the Cayman Islands. It was a case which engaged the Cayman Islands authorities and went as far as the Cayman Islands court of appeal, over a period of some 3 years. Many lessons were learnt from it, not least the importance of ensuring that international requests for assistance by way of the restraint and forfeiture of the proceeds of crime, are properly grounded; and this was both in terms of the law of the requesting state, as well as that of the requested state.

The circumstances of the case

Mr. and Mrs. McCorkle were the perpetrators of a bold tele-marketing fraud in the United States. Through the use of "infomercials" and seminars, the McCorkles promised potential customers that they would partner them in real estate transactions by providing the capital necessary to purchase such properties. The McCorkles offered a 30 day money-back guarantee in relation to the introductory video-tape, the price of which was USD 69.00. They sold tens of thousands of these tapes. But the McCorkles failed to provide the capital for the real estate ventures as promised and frequently failed to honour the 30 day money back guarantee. When complaints were made, the introductory video-tape turned out to be nothing but a fraudulent misrepresentation by which the

McCorkles enticed people to part with their money. Investigations in the United States showed that the McCorkles had wire-transferred millions of dollars of the proceeds of their fraudulent telemarketing activities to the Cayman Islands, through the international banking system.

by use of further information provided by the Cayman authorities pursuant to a request under the mutual legal assistance treaty (MLAT) between the united states and the Cayman Islands – these monies were traced to accounts which had been opened with the royal bank of Canada by the McCorkles in the Cayman Islands, using corporate entities and in their own names.

The request from the United States for assistance in the case fell within the ambit of art 1 para 2 (g) and (h) of the MLAT which is enforced by the mutual legal assistance law of the Cayman Islands.
This reads:
"for the purposes of paragraph 1. assistance shall include -----
(g) immobiling criminally obtained assets;
(h) assistance in proceedings related to forfeiture, restitution and collection of fines ---"

No detailed provisions are set out in the treaty for the implementation of these forms of assistance. However art. 16 states:
"1. the central authority of one party may notify the central authority of the other party where it has reason to believe that proceeds of a criminal offence are located in the territory of the other party.
2. the parties shall assist each other to the extent permitted by their respective laws in proceedings related to;
(a) the forfeiture of the proceeds of criminal offences. -----------".

The request for restraint of the bank accounts came to the Cayman Islands from the United States in early 1997, shortly after the enactment of legislation in December 1996, which makes it a crime to launder the proceeds of all serious crimes and which gives power to the courts of the Cayman Islands, to restrain and ultimately to forfeit such proceeds. Legislation had been in place from 1986 enabling the restraint and forfeiture of the proceeds of drug trafficking.[180] But as these were the proceeds of the McCorkles' fraud, the new 1996 law, the proceeds of criminal conduct law ("the PCCL") applied to the case.

However, being conviction based, the PCCL required the showing of a prima facie case that a conviction would be obtained against the McCorkles and a confiscation order thus likely to be obtained against them, before a restraint order over the accounts could be obtained.[181] This involved showing that criminal proceedings would be brought against the McCorkles themselves, not just civil "in rem" proceedings for the recovery of the proceeds of their fraud.

The PCCL further required at that time, that the united states authorities, if they did not already have such proceedings instituted against the McCorkles, must have, within 7 days of the restraint order being obtained in the Caymans, instituted such proceedings.

When, after the passage of more than 7 days after the making of the restraint order by the Cayman court, the U.S. authorities had not managed to institute proceedings against them; the McCorkles sought and obtained an order discharging the restraint orders.

The grand (high) court held that the restraint order being in place for more than 7 days without the institution of criminal proceeding in the united states, exceeded the jurisdiction given by the PCCL.[182] The court of appeal agreed.[183] The provision in the MLAT which required that assistance

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180 The Misuse of Drug Law, which also contained provisions (prior to the advent of the Vienna Convention) for the restraint and forfeiture of drugs proceeds in aid of a foreign request from a designated country, including in respect of foreign in rem proceedings

181 See Attorney General v Carbonneau et al [2001 CILR Note 11]

182See In re McCorkle 1998 CILR 1

183 Affirmed by the Court of Appeal. 1998 CILR 224.

be given, including for the restraint and forfeiture of criminal proceeds, could operate only insofar as allowed by local law. Orders for costs were also made in favour of the McCorkles against the Cayman Attorney General, albeit without his opposition.

Fortunately, however, the United States authorities were able to institute proceedings against the McCorkles and re-submit a request under the MLAT for restraint orders, before the McCorkles were able to transfer the funds out of the Cayman Islands.

The accounts were restrained again and, when the McCorkles entered into a plea agreement with the U.S. authorities, most of the funds in the Cayman Islands – approximately 7 million dollars - were immediately returned to the U.S. authorities for restoration of the victims.

As it transpired, further funds totalling over usd2.5 million which the McCorkles had given over in trust to their attorneys in the Cayman Islands to be used as their "legal defence fund"; became the subject of more protracted litigation. Their lead attorney in the United States was charged for refusing to pay over much of that trust money, which the Cayman attorneys had paid to him, purportedly as legal fees for his representation of the McCorkles. Only after his imprisonment for contempt did he reluctantly relinquish the fund.

Still further sums of money (approximately $450,000) came to light much later when it was discovered that the McCorkles had opened other accounts with the banks in the Cayman Islands and those sums of money were only recently - more than 6 years later - returned to the united states authorities.[184]

Another point of interest arising in the Cayman Islands from the Mccorkle case had to do with the non-retrospectivity of the PCCL which had come into effect only so shortly before that case came to light. on behalf of the McCorkles it was argued that the provisions of that law could not apply to their case because the monies had been in the accounts in the Cayman islands before the law came into effect and, as the PCCL was expressed in section 2 (4) not to have retrospective effect, the powers could not be used to restrain or forfeit the accounts. The court of appeal held that although the law did not have retrospective effect, since the McCorkles' criminal activity of laundering the proceeds within the Cayman Islands was an ongoing scheme of deception, both before and after the commencement date of the PCCL, a purposive construction could be applied to permit assistance being given to the united states authorities under the law.[185]

At the end of the day, and after the matter of restoration of the victims of the fraud was settled, there turned out to be a significant amount of the McCorkles' proceeds of crime available to be shared between the U.S. department of justice and the Cayman Islands authorities.

Such proceeds are to be applied, in keeping with the spirit (if not the letter) of the U.S. – Cayman asset sharing agreement; to drug rehabilitation, law enforcement and justice administration programmes.[186]

It will be apparent from the McCorkles case that there are many lessons to be learned:

1. The importance of due diligence to prevent the misuse by criminals of the financial system at all levels and stages of transactions: domestic, international and offshore.
2. Equally, the importance of ready access to financial records generated at all levels and stages of the financial systems in order to be able to trace, restrain and recover the proceeds of crime.
3. The unending ingenuity of the money launderers in the creation and use of artifices for the laundering and even the apparent alienation of proceeds of crime from themselves.

184ByOrder of the Cayman Island Grand Court dated 4th November 2003 (containing $330,000 of which the Legal Defense Fund contained $300,000) and 10th August 2004 (containing $121,000).

1851998 CILR 224 at 235 lines 5-12.

186 This is now standard rubric in Asset Sharing Agreements.

Witness for instance the use of the McCorkles of different corporate entities and even the legal defence trust fund, in their attempt to put proceeds beyond the reach of the authorities. This ingenuity calls not only for due diligence, but also hand in hand with due diligence, constant study and analysis of the methodologies and typologies of money laundering.[187]

4. The importance of having in place effective mutual legal assistance arrangements for the provision of information to trace and restrain and ultimately, to forfeit the proceeds of crime.
5. That point noted, the importance also of compliance with any deadlines or other requirements of foreign law in the place where the restraint and forfeiture of the assets are to take place. In the ultimate spirit of co-operation, it is pleasing to note that the 7 day deadline imposed by the Cayman law was recognised by the Cayman government as imposing too short a response time for the u.s. authorities for the institution of proceedings; and so the PCCL was amended to allow 14 days from the making of the restraint order.
6. Nonetheless such deadlines, as well as the ultimate requirement upon the requesting state, to be able to provide a conviction based order of forfeiture before the proceeds can be forfeited in the requested state, are unnecessary obstacles to the proper and final objective of depriving the criminal of the proceeds of crime. Those requirements point to the need for the adoption of international standards for the civil in rem forfeiture of the proceeds of crime. And thus, without the need, in the first place, to obtain a conviction against anyone for the predicate crime which produced those proceeds or for laundering them. Several states, including a number of the G8 countries; have adopted such civil in rem provisions for forfeiture.[188]
7. The need where anti-money laundering legislation is being introduced or updated, to recognise that money laundering is a continuing offence and so allow for the restraint and forfeiture of the proceeds which were in the banking system before, but which continued in it, after the law came into effect and after the money laundering offence was created.
8. Such legislation must also of course allow for the restraint and forfeiture of proceeds based upon a foreign request and for the enforcement of the forfeiture orders (including ideally foreign in rem orders) of foreign courts. The cayman islands legislation now does this where the orders come from courts of foreign countries which are specifically designated under the law.[189]
9. As to the matter of legal costs, it is important in the public interest that the authorities in a requested state should not be at risk of having to pay the legal and other costs of the alleged criminals or money launderers resulting from an unsuccessful attempt to enforce a foreign request to restrain or forfeit the proceeds of crime. Costs were ordered against the crown in the McCorkles case when the restraint orders were at first discharged, but that order was unopposed by the attorney general. Since then, such orders have been repeatedly refused by the courts of the Cayman islands on the basis, as was stated in the latest such judgment:

   > "Having received the request from france, the attorney general's obligation was to carry the matter forward and seek a ruling, as he did. i think he would have opened himself to justifiable criticism if he had said to the french government that he was refusing to bring the application [(for restraint of certain bank accounts)]. These are matters which i can and should take into account when exercising my discretion on the subject of costs. When acting at the behest of a foreign government the attorney general is not "a litigant like any other" [(quoting the standard dictum applied in costs ruling)] --- I

187 A fact which is recognized by the CFATF and the FATF in their annual programmes of analysis. See "Money Laundering Methods and Trends": www1.oecd.org/fatf/fatdocs_en.htm#trends

188 For a survey of the adoption of this type of provision, see Smellie: "Prosecutorial Challenges in Freezing and Forfeiting Proceeds of Transnational Crime and the use of International Asset Sharing to Promote International Co-operation," Journal of Money Laundering Control, Vol. 8. No. 2. November 2, 2004, HENRY STENART PUBLICATIONS.

189See Cayman Islands Proceeds of Criminal Conduct Law (2003 Revision) Section 29 and The Misuse of Drugs Law (1999 Revision), Section 48.

have concluded that it would be inappropriate to award costs against the attorney general on the present application".

Per Henderson J. in cause 10 of 2003, in the matter of an application by the Attorney General pursuant to the proceeds of criminal conduct law (2001 revision), in the matter of a request by the French government, and in the matter of Pierre Falcone (defendant), judgment given on 11th February 2004.

10. Finally, the importance of asset sharing as a means of enhancing international co-operation and law enforcement is not to be overlooked. the mccorkle case is but one example of many cases in which asset sharing has taken place as between the united states and the cayman islands in respect of assistance given in the tracing, restraint and recovery of the proceeds of crime.

ANNEX 1

Hypothetical Case

Breach of trust by a bank manager

1. Mr ALAN is a national of country XANADU and a manager of FINEBILLS BANK established in that country.
1. Mr BANNER is also a national of country XANADU and runs a real estate agency Company KONDO INC., also established in that country.
2. The financial situation of KONDO INC. deteriorated and Mr BANNER asked Mr ALAN to grant the Company a loan of 1,000,000 US dollars.
3. Since Mr ALAN was an old friend of Mr. BANNER, he agreed to grant the loan without any collateral although he knew that there was a possibility that this loan would not be paid back (Mr ALAN's decision was against the internal regulations of the FINEBILLS BANK) (improving integrity in the public and private sector, corporate governance and other preventive measures).
4. After three months, it became evident that KONDO INC. could not repay the debt (informants or whistle-blowers, assuming that this bad loan contract was reported by a bank employee).

Consumer fraud

1. Mr ALAN feared that he would be held responsible for this bad loan and asked Mr BANNER to find a way to pay it back.
2. Mr BANNER consulted his mistress Ms CHUNG, a national and resident of country YOUNGLAND, about this matter, and Ms CHUNG proposed the following:
   - Ms CHUNG will set up a shell company LOWNET INC. in YOUNGLAND to conduct a consumer fraud.
   - Ms CHUNG will place an advertisement via the Internet (use of information technology) that LOWNET INC. could teach consumers how to purchase foreclosed and distressed real estate properties and promise it would provide the capital for such purchases.
   - LOWNET INC. will further promise to pay each customer $2,500 every time they partnered with it in a real estate deal and claimed the Company could split the profits after the property was sold. LOWNET INC. will lure each consumer into purchasing an introductory videotape for $60 and advertise a 30-day full money back guarantee. A portion of one million dollars was used to produce videotapes.
   - LOWNET INC. will also sell additional videotapes which will be much more expensive than the first videotapes sold.
   - The purpose of this advertisement is to lure the consumers to buy the videotapes and Ms CHUNG has no intention of actually helping customers to obtain real estate.
   - Customers are solicited to transfer the price of the videotapes to the bank account of LOWNET INC.
   - When approached by possible customers, Ms CHUNG, introducing herself as Ms PETAL, an executive of LOWNET INC., will say that her company has had many transactions with

FINEBILLS BANK and give them the name of Mr ALAN as a reference.
- When contacted by customers enquiring about LOWNET INC., Mr ALAN will assure them that LOWNET INC. is a company in good standing (liability of legal persons)[190.]
- Ms CHUNG will pay $2,000,000 to Mr ALAN and Mr BANNER if this scheme succeeds.

3. Mr ALAN and Mr BANNER agreed to Ms CHUNG's proposal.
4. Ms CHUNG asked a friend of hers, who is a bank employee, about the disposal of bank records and Mr ALAN indicated that all bank trash is simply left outside of the bank in a large bin (integrity of the system)[191]. Ms CHUNG accesses the bank trash and collects personal information from discarded bank records for the purpose of opening bank accounts in another country (identity theft)[192].
5. Ms CHUNG set up a shell company LOWNET INC. (shell companies, role of professionals)[193] in country YOUNGLAND, which is considered an "offshore centre" by the international community, and opened an account in GOLDFINGERS BANK of that country (conspiracy or participation, customer due diligence)[194 195.]
6. Lured by an Internet advertisement and sometimes with the assurances of Mr ALAN, many customers worldwide purchased the videotapes and the proceeds of this fraud scheme amounted to $5,000,000, which was remitted into LOWNET INC's account in GOLDFINGERS BANK (investigative techniques, immunity, inter-agency cooperation)[196].

Money Laundering and the control of the proceeds of crime

1. Ms CHUNG transferred the proceeds $5,000,000 in GOLDFINGERS BANK to 15 bank accounts in country ZEITSTADT (suspicious transaction reporting)[197].
2. Ms CHUNG provided the personal information from the bank trash to Ms DEE and asked Ms DEE to use the information to forge false identification documents (identity theft)[198]. Ms DEE used the false identification to open 15 bank accounts in ZEITSTADT. Ms DEE is a national of ZEITSTADT and works as an accountant there. (role of professionals as gatekeepers)[199]
3. Ms DEE withdrew the funds ($5,000,000) from the 15 individuals' accounts from numerous Automatic Teller Machines (ATMs) in small denominations in ZEITSTADT over a period (suspicious transaction reporting, including the use of information technology for the purpose of its analysis).
4. At the request by Ms CHUNG, Ms DEE brought $2,000,000 in cash into XANADU and handed it to Mr BANNER. Ms DEE did not declare that she was carrying $2,000,000 to the authorities of XANADU or ZEITSTADT (cash courier, and possibly controlled delivery of cash), and handed it to Mr BANNER. Mr BANNER deposited $1,200,000 into an account of KONDO INC. at FINEBILLS BANK using numerous ATMs in small denominations (suspicious transaction reporting, information sharing among FIUs, role of financial institutions), which was used to pay back the loan of $1,000,000 and its interest[200]. Mr BANNER kept $400,000 for himself, and gave $400,000 to Mr ALAN. Both of them kept the money for their personal use.
5. At the request of Ms CHUNG, Ms DEE purchased a villa in ZEITSTADT on her behalf for

190 i.e, the possibility of whether Finebills Bank can be held legally responsible for the action of Mr Alan.

191 This fact raises the issue of the confidentiality of the institution's data and the protection of that data from interference by third parties.

192 "Identity theft" involves the collection of personal information data for future criminal use. In this instance the specific form of "identity theft" is called "dumpster diving".

193 Identity theft could also be discussed. If Ms Chung set up a shell company with the help of a lawyer, the Workshop may wish to discuss, at the beginning of its discussion in the money laundering part, the issue of the role of professionals in preventing these activities.

194 By asking the question "What can be done if law enforcement officials know about this scheme before any consumers actually become victims?", the workshop can discuss the application of conspiracy or participation, stipulated in the TOC Convention.

195 At the beginning of the discussion on money-laundering, the Workshop may wish to discuss what should be done by Goldfingers Bank to prevent the opening of accounts by a shell company.

196 The investigative techniques could be introduced whereby a law enforcement officer pretends to be a potential customer and approaches Ms Chung to get information. Also, the issue of granting immunity can be discussed here by asking "What can prosecutors do to obtain enough evidence to prosecute Ms Chung?" Issues related to mutual legal assistance could also be dealt with. In addition, issues related to inter-agency cooperation could be discussed here by introducing the scenario that claims to the consumer protection agency lead to the law enforcement agencies getting involved.

197 It could be noted here that the criteria for suspicious transaction reporting vary from country to country; some countries set out a certain amount of money as the threshold for reporting; whereas other countries take a more generic approach where banks are required to report transactions which they think are "suspicious", regardless of the amount. If the transfer was made by electronic methods such as SWIFT, issues related to the use of information technology by money-launderers could also be discussed.

198 These facts illustrate another form of "identity theft" which involves the actual use of personal information data to make false documents and to use those documents to commit additional crimes (in this case the offence of money laundering).

199 Criminalization of money laundering, including the issue of laundering of self proceeds as far as Ms. Chung is concerned, could also be discussed here.

200 It could be mentioned here that in some countries, Mr Alan is not criminally responsible for the breach of trust since the loan has been repaid.

$2,000,000. Ms DEE sent the rest of the money ($1,000,000) to Ms CHUNG in YOUNGLAND, by an underground banker Mr EZURA in ZEITSTADT who has his counterpart Ms JABBAR in YOUNGLAND (Alternative remittance system)[201]. Ms CHUNG paid $10,000 to Ms DEE as a fee for her services, and spent $90,000 for her personal pleasure (gambling, wining and dining, etc.), purchased bearer securities amounting to $500,000 from Security Company MIDMINT SECURITIES and kept $400,000 in cash at her residence. The bearer securities[202] were kept in a safe deposit box of HANDYFUNDS BANK in YOUNGLAND.

Issues related to the recovery of the proceeds of this fraud scheme from both countries XANADU, ZEITSTAT and YOUNGLAND (domestic measures and international cooperation in the control of the proceeds of crime, including freezing, confiscation, civil forfeiture or asset sharing), for the purpose of restitution to the victims, should be discussed in addition to the criminal liabilities of all the persons above.

201 Other forms of Alternative Remittance System, such as Hundi or Hwala, could also be discussed here. In addition, other modus operandi (typology) of money-laundering could be discussed.

202 This could also be presented as use of other negotiable instruments, or insurance.

Workshop 5

An outline of the Presentation
of
The Governor of the Central Bank of the UAE

1- ***Typology and new trends of Money-Laundering in cash based economies of the GCC***
- (i) Challenges
- (ii) Action Taken by countries of the region to encounter the new challenges
- (iii) Coordination among countries in the region
  - a- exchange of information
  - b- coordination of supervision
  - c- legal cooperation

2 ***An outline of the steps taken by the UAE to regulate the Hawala System***

(i) The regulations system in the UAE is based on the Abu Dhabi Declaration on Hawala

a- **Regulations not overly restrictive**

b- The 40 recommendations of Financial Action Task Force (FATF) on Money-Laundering and the additional 9 special recommendations on Terrorist Financing are observed through awareness campaigns

c- **The objective is to prevent the Hawala System's misuse by criminals and others**

(ii) The press announcement by the Central Bank of the UAE to Hawala Brokers (Hawaladars)

a- The Hawala System is very important to handle transfers of low paid workers who are mostly illiterate

b- The system is also important because it reaches remote places that are not serviced by normal banking networks

c- **A simple system of registration and reporting**

d- The Central Bank assured Hawala Brokers that their names will be kept safe at the Central Bank

(iii) The Certificate that is issued by Hawala Brokers (Hawaladars) in the UAE

a- The Central Bank of the UAE will issue certificates to all Hawaladars

b- This Certificate will be necessary to do transactions through banks or moneychangers

and avoid money laundering suspicion

(iv) Reports to be submitted by Hawala Brokers (Hawaladars) to the Central Bank

a- Hawala Brokers (Hawaladars) would provide the Central Bank with details of remitters (Table-A)

b- They would also provide details on beneficiaries

(Table-B)

c- They would have to report all suspicious transfers whenever they doubt such transfers occurred (Table –C)

Workshop 5

Mercosur: Money Laundering and International Cooperation.

Pedro R. David
Judge of the Penal Court of Cassation Penal of Argentina

THE PROSPECTS OF A LEGISLATIVE HARMONISATION

Section 1 of the Asuncion Treaty sets up the Common Market of the Southern Cone (Mercosur). It stablishes, *inter alia*, ´the commitment of the Member Parties to harmonize their laws in the relevant areas, with a view to strengthening the integration process´. Such a harmonisation implies an intention to establish increasingly common criteria and similar patterns at a sub-regional level to deal with a specific set of rules that are currently dissimilar.

In doing so, a first step towards harmonisation could make use of assimilation practices between national legislation and common-market interests, by virtue of which judges may initially apply national legislation in their decisions while harmonisation is in progress. However, the possibility that such harmonisation may be achieved by the adoption of supranational laws cannot be excluded. Nor can the possibility of a common body for judicial decisions be excluded, a Court of Mercosur, apart from the already existing jurisdiction of the Inter-American Court on Human Rights, the Pact of San José, Costa Rica, which was approved in Argentina pursuant to Act 23054.

The Inter-American Court is a limited but encouraging sign of the prospective creation of a Mercosur Court of Justice. Furthermore, Argentina´s Supreme Court of Justice has ratified the supremacy of treaties on national legislation, which leads to a less strict interpretation of s.100 of the Constitution of the Republic of Argentina.

In substantive and procedural criminal law matters, the Meeting of Justice Ministers, 6th-8th November, 1991, convened by Argentina´s then Justice Minister, Leon Arslanián, was attended by Chile, Uruguay, Brazil and Paraguay representatives. It aimed at establishing the fundamental basis for understanding and cooperation to comply with the requirements of the harmonisation of laws as set forth in s.1 of the Asuncion Treaty. They agreed on instituting within the Common Market Group a meeting of Mercosur´s Justice Ministers, to be supported by a technical committee comprised of representatives of the Justice Ministry. They also agreed on developing a common framework for legal cooperation in civil, commercial, labour and administrative criminal matters, special consideration being given to extradition and other modern developments in connection with the criminal law of nations. To facilitate cooperation among the Justice Ministers, the organization of central authorities was required. Likewise, a system for permanent exchange and updating of information in connection with the laws of the states parties, based on foreign law information agreements and information technology, was recommended.

The meeting advocated the harmonisation of the domestic laws of member states. To that end, it recommended the adoption of model legislation, with a particular emphasis on the existence of model codes for Latin America, in connection with civil law of procedure, criminal law of procedure and a model Criminal Code for Latin America. Finally, it recommended the enactment of common rules on international jurisdiction.

All this focused on the process of harmonisation of criminal policy in these countries. This will afford a great opportunity for adjusting criminal substantive law, the criminal law of procedure and the law pertaining to prisons or jails to new modes of transnational and national delinquency,

the so-called white-collar crimes. As the pioneering work of Edwin Sutherland has indicated, white-collar crime encompasses a wide range of crimes with an organizational basis.

ANTI MONEY-LAUNDERING PROVISIONS IN MERCOSUR MEMBER COUNTRIES

As far as money laundering is concerned, Mercosur member countries are cooperating actively in this fight. Specific legislation against money laundering has been enacted in various countries. On 7th September, 1994, the Republic of Uruguay incorporated into its domestic law, by means of Act 16,759 the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. In October 1997 some provisions of an executive order passed into Act 14, 294 so that the types of crime related to the laundering of assets derived from drug trafficking and the financial sector were modified and extended to supplement the prevention of and fight against such actions.

Chile´s Act 19366 of 1995 penalised illicit trafficking in narcotic drugs and psychotropic substances. It provides a legal definition of criminal offences for the laundering of money derived from drug trafficking and related crimes, and established rules of administration and jurisdiction aimed at both prevention and control.

Bolivia´s Act of 19th July, 1988 considers narcotics trafficking an international crime that threatens international security and is contrary to international law. Act 1015 of 3rd November, 1996 governs the duties, proceedings and procedures to be used in the prevention of the use of financial sector, or any other economic sector, for the carrying out of any acts aimed at the legitimisation of money or property flowing, directly or indirectly, from criminal activities prohibited by law. It also sets forth the types of crime related to property or money laundering and their respective punishments.

Act 9613 of 1st March, 1988 in Brazil provides a legal description of the crime involved in money laundering and concealment of property, rights and securities. Section 1 provides three to ten years´ punishment for concealing or hiding the nature, source, location or transactions of properties or goods, rights or securities flowing from the illicit traffic in psychotropic substances or related drugs. Further, terrorism, smuggling, the traffic in weapons, ammunition or any material for the manufacture of weapons, kidnapping for ransom, offences against the public administration or the national financial system or offences committed by a criminal organization are also precursors for money-laundering offences. Act 9034/95, passed some tieme ago in Brazil, concerns instruments of evidence and investigation procedures for crimes resulting from the action of gangs or bands.

In Argentina, Act 23737/89 as amended provides that:

´Any person who, without having taken part or cooperated in the execution of the acts provided in this law, intervenes in the investment, sale, pledging, transfer or cession of profits, property or rights derived from them, or benefit obtained from the crime, shall be sentenced to two to ten years´ imprisonment. He or she shall also pay a fine of Australes five hundred thousand, if he or she had known or suspected the source of such property. Any person who purchased, kept, concealed or hid those profits, property or rights or benefits having known or suspected its sources shall receive the same punishment. This section shall apply no matter whether the transaction which originated such profit, property, rights or benefits has taken place in foreign territory or not.

A court shall institute the procedures necessary to ensure that the profits or property supposed to be derived from the facts described in this law are forfeited. During the course of proceedings the interested party may prove its legitimate source, in which case the court shall order the restitution of the property or shall order the corresponding indemnification. Otherwise, the court shall dispose of profits or property as provided by that section´.

RECOVERY OF CRIMINAL ASSETS

The argentine legislation in relation to the recovery of criminal assets has been recently modified by Law 21.815 of 2003 (2). According to the new law; confiscation both of the instruments and gains of crime, is mandatory in all criminal sentences (art. 23) in relation to all crimes of the

Penal Code and special laws. All assets are included, personal and real corporal and incorporal, cars, boats, and also real estate property in cases of kidnapping respect of the house in which the victims were deprived of liberty, that is when assets are elements of the perpetration of crimes. All restrain measures are authorized in order to secure the assets, and whatever their economic nature might be. The law also modifies art 277 of the Penal Code, authorizing forfeiture of illegitimate assets when a person receiving them had reasons to suspect, according to the circumstances of the situation, the legitimate origin of the transacted assets (3).

All assets confiscated shall be allocated for programs of victim assistance and support. The criminal sentence in all cases, will decide forfeiture of the assets to benefit the federal state, the provinces or the municipalities. Bona fide parties and victims maintain, however, their rights to prove legitimate ownership. However if third parties have received benefits from the crime they are subject to forfeiture procedures. If the forfeited assets possess a cultural value, the judge can decide to transfer ownership to public or private enterprises. If there is no value, assets could be destroyed. If there any comercial value the judge will order to sell them.

In relation to restrain measures, art. 231 of the Federal Procedural Code gives great latitude to the judge to secure all objects related to the crime and amenable of forfeiture. The same code by art. 518, authorizes the judge to adopt all restrain measures against the patrimony of participants even before the ordering the initiation of criminal proceedings. When there is danger in not acting swiftly (*periculum mora and bonus fumus juris*).

Let´s remember here, that law N°25.246, the money laundering prevention and repression law, in art. 27, gives all forfeited proceeds of crime to the Unit of Financial Information, and to programs of rehabilitation of addicts, and programs of labor rehabilitation and health.

Law 25.246 has established that all assets will be allocated by the judge, to the National Executive Power during the duration of penal proceedings, to be administered by the state. To these effects, since these assets should be under the administration of the state until devolution or forfeiture, the administrative authority should have a provisional reserve not less than 50% of all assets received in provisional manner.

The idea of establishing in the Argentine legal system a procedure similar to the American civil forfeiture has been advocated (4).

The introduction of a lesser standard of proof in civil forfeiture will certainly help in the effectiveness of the efforts to prevent and repress serious forms of criminality.

Though the argentine constitution in art. 17 prohibits the confiscation of assets saying that confiscation should be for always barred from the Argentine Penal Code, the prohibition does not refer to assets related to criminality, but only to a total and general confiscation of all assets of a person.

HUMAN RIGHTS ISSUES

Special consideration in relation to the protection of fundamental rights of due process, merits art. 268, 2 of the Argentine Penal Code dealing with the offence of “illicit enrichment” of public employees (6).

The article punish with prison from 3 to 6 years and absolute inhabilitation from 3 to 10 years, those who duly required, do not justify a substantial enrichment of their patrimony, personally or of a person placed to abscond it. The article is structured in the fashion suggested later by art. 20, of the UN convention against transnational organized criminality. Article 20 recomend countries, the incoporation of illicit enrichment subject to its constitution and fundamental principles of its legal system.

One of the principal objections to art 268, 2 of the Penal Code is that ignores the principle in dubio pro-reo introduced in 1889 in the Procedural Penal Code of the Federal Capital (7). In this manner the crime of illicit enrichment is in fact a punishment for the crime of suspitiousness, a punishment extra-ordinem, (Verdachtsstraffe) applicable to crimes when it was not possible a complete proof of its commission; and it was sanctioned with a lesser penalty.

Additionally, it was said, in the legislative debates of the times, that illicit enrichment would permit persecutions and vengeance against all functionaries whose patrimony could be in a light fashion, labelled “excessive”. The inversion of the *onus probandi*, is not the most serious objection, but the fact of the lack of determination about what is the forbiden conduct (8).

Finally, the fact that the accused has to produced proof to legitimize the prohibited conduct, implies violation of art. 18 of the Argentine national institution, that nobody is obliged to declared against himself”.

In concluding: let´s add that Argentine money laundering regime was based on Drug Law N°23.737 enacted on 10 October 1989. The law contained provision in order to authorize the quizing and forfeiture of assets related to illicit drug traffic and money laundering crimes.

JURIDICAL AND TECHNICAL COOPERATION IN THE MERCOSUR

There is an increasing interest on the part of Mercosur countries to strengthen cooperation mechanisms to provide effectiveness to the fight against money laundering and various forms of international transnational criminality, including the financing of terrorism. The Mercosur countries have also signed accords of cooperation with the European Union in 1995 (9).

An important dimension to provide for more effective and practical ways to enhance international cooperation is provided by GAFISUD -the South America Group of Financial Action against Money Laundering and the Financing of Terrorism-.

GAFISUD has organized a conference of countries in Cartagena de Indias (Colombia, 7 to 9 December 2000) signing a Political Declaration and many accords and projects to share experiences and technology.

One of the conclusions of the Conference of Cartagena de Indias was the importance, for countries of the area to enact legislative comprehensive frameworks to incriminate a vast arrays of crimes, and provide for innovative investigative procedures, including seizing and confiscation of criminal assets.

An important aspect was the need to establish UFI´s, at the national level with mixed functions, police, penal and administrative. Gafisud, with the cooperations of the IMF and the World Bank, the Egmont Group and the Organization of American States have organized seminars for the coordination of regional strategies and the training of practitioner for mutual evaluation of the Units of Financial Investigations, *inter alia*, one in Santa Cruz de la Sierra, Bolivia (16-19 September 2001) and Montevideo, Uruguay, (18-20 September of 2002).

In summary, Mercosur countries are now pressing for more effective and prompt response to the challenges posed by the increasing threat of economic criminality.

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Workshop 6
Measures to Combat Computer-related Crime

Organised by
Korean Institute of Criminology
KIC

Workshop 6
MEASURES TO COMBAT COMPUTER-RELATED CRIME

AGENDA

Friday, 22 April (15:00-18:00)

Theme: Cybercrime. Theory and Practice

15:00-15:30 **Opening Address**
Welcoming Remarks
Taehoon Lee (*President*, Korean Institute of Criminology)
Keynote Address
Kraisorn Pornsutee (*Permanent Secretary*, Ministry of Information and Communication Technology, Thailand)

15:30-16:00 **Recent Trends in Cybercrime**
Peter Grabosky (*Professor,* Australian National University)

16:00-16:15 **The Digital Divide and Cybercrime**
Gareth Sansom (*Director*, Technology & Analysis, Criminal Law Policy Section, Department of Justice, Canada)

16:15-16:45 **Discussion**

16:45-17:15 **Case Studies in International Cooperation**
Amanda Hubbard (*Trial Attorney*, Computer Crime and Intellectual Property Section, Department of Justice, U.S.)

17:15-17:30 Hamish McCulloch (Assistant Director, Specialised Crime Directorate, Interpol)

17:30-18:00 **Discussion**

Saturday, 23April (10:00-13:00)

Theme: Resources and International Cooperation for Combating Cybercrime

10:00-10:15 **Introduction: Universality of the Problem and the Need for International Responses**
Henning Wegener (*Chairman,* Permanent Monitoring Panel on Information Security, World Federation of Scientists)

10:15-10:50 **Cyber Crime, New Suit or Different Cut? Harmonization is the way!**
Ehab Maher Elsonbaty (*Judge,* Ministry of Justice, Office for International and Culture Cooperation,Egypt)
International Co-operation to Prevent and Combat Cybercrime
Guy De Vel (*Director General*, Legal Affairs, Council of Europe)

10:50-11:05 **International Cooperation in Cybercrime Research**
Roderic Broadhurst (*Professor,* Hong Kong University)

11:05-11:35 **Discussion**
Stein Schjolberg (*Chief judge*,Moss tingrett Court, Norway)

11:35-12:05 **Technical Assistance in Investigating Computer-related Crime**
Taeeun Koo (*Public Prosecutor*, Ministry of Justice, Korea)
Training Programs for Law Enforcement Personnel, Legislators, Judges and Prosecutors Claudio Peguero (*Chief*, High Tech Crime Investigation Department, National Police, Dominican Republic)

12:05-12:20 **Combating Cybercrime : A Public-Private Strategy in the Digital Environment**
Scott Charney (*Vice President*, Trustworthy Computing Microsoft Corporation)

12:20-12:50	**Discussion**
12:50-13:00	**Closing Remarks and Closure of the Workshop**

Workshop 6

Recent Trends in Cybercrime

Peter Grabosky

1. Introduction

It has become trite to suggest that the convergence of computing and communications has created unprecedented opportunities for crime. Criminal activities that were not foreseeable two decades ago have become facts of life. Digital technologies now provide ordinary citizens, even juveniles, with the capacity to inflict massive harm. The continued uptake of digital technology will create new opportunities for criminal exploitation.

Over the next few minutes, I would like to discuss some of the contemporary manifestations of cybercrime, and to suggest what lies ahead of us. But before I do, it is important to appreciate that novelty or "newness" varies over time and space. The diffusion of criminal innovation does not occur uniformly. Nor does the diffusion of technological innovation. We are all familiar with the term "digital divide". The uptake and penetration of digital technology is quite uneven around the world. What is new in a highly "wired" country may not yet appear on the figurative radar screen of a country that has just entered the digital age.

This, of course, does have its blessings. Countries that are lagging in the uptake of digital technology can learn from the experience of the digitally advantaged. But there is a downside. Countries that are "digitally challenged" may still lack the capacity to defend themselves from electronic criminal exploitation. What limited assets they have will be even more vulnerable. While details are understandably sketchy, it was alleged some years ago that cyber criminals nearly succeeded in transferring the assets of the national bank of a small island nation into their own accounts elsewhere.

And just as transnational organized criminals are able to use weak and failing states as "criminal havens" so too may digitally challenged countries serve as "electronic criminal havens".

2. Trends in Cybercrime

Let us begin by discussing three basic trends in cybercrime, each evident today and each likely to persist. We shall call them sophistication, commercialization, and integration.

Sophistication

Cyber crime is becoming more sophisticated. Thompson (2004) describes the highly creative virus writers who design malicious code of great complexity. Here are some general examples of the growing sophistication of cybercrime:

- The speed with which viruses infect computers around the world has increased dramatically in recent years.
- Hacking tools are becoming more powerful and easier to use. The term "intelligent malware" has been used to describe malicious code that seeks out vulnerable systems and/or covers its own tracks.
- Web pages may be counterfeit in a manner such that the fake will be indistinguishable from the original legitimate page. The fake page may communicate false or misleading information in furtherance of an investment solicitation.

- Techniques of “phishing” have been refined to the extent that apparently legitimate web-links can be placed in an email message. When activated, the site will mimic a legitimate web page and invite the visitor to confirm his or her account and PIN numbers
- Digital technology permits perfect reproduction and instantaneous dissemination of text, images, sound, video and multimedia combinations. This facilitates not only the unauthorized duplication of software, music and video, but also the fabrication of identity documents.

The best terrestrial criminals tend to be resourceful and adaptive; the best cybercriminals are no less so. Thus one may expect to see continuing refinements of cybercrime techniques, at least on the part of the most competent cybercriminals. The term “arms race” has been used to refer to the ongoing technological competition between cybercriminals and law enforcement agencies.

There is an old saying in criminology that “crime follows opportunity”. This applies just as much in cyberspace as it does on the ground. You can bet that each new development in digital technology will be accompanied by new forms of crime. The advent of wireless technology, for all its benefits, is creating new criminal opportunities. Wireless local area networks (LANS) are vulnerable to penetration. All one needs to access an internal wireless network is a computer, a wireless local area network card that costs about 75 Euros, and software that is downloadable from the Web. The term “war driving” has been coined to refer to the act of locating and logging wireless access points (or .hot spots.) while in motion. Toward the end of 2003, one began to see prosecutions for unauthorized access to wireless systems from “mobile hackers”. In November of that year, two men in Michigan were charged with cracking a home improvement store’s nationwide network from a car parked outside one of the stores (Poulsen 2003).

The following news item is also illustrative:

> “Toronto police said they stopped a car last week for a traffic infraction when they found the driver naked from the waist down with a laptop computer on the front seat, playing a pornographic video that had apparently been streamed over a residential wireless hot spot. The driver was charged with possession, distribution and creation of child pornography, as well as theft of telecommunications - a first in Canada, according to local authorities.” (Shim 2003)

The article neglected to mention whether any charges relating to the traffic infraction were also laid.

Continuing refinements in digital technology mean that increasingly powerful devices are becoming more widely available and within the financial means of offenders. The increasing use of automatic teller machines (ATMs) has been accompanied by the refinement of devices designed to deceive users. Unobtrusive attachments to ATMs including skimming devices, cameras with memory, and wireless transmitters now enable offenders to remotely capture credit card and PIN numbers.

The advent of internet telephony will make it easier for a hacker to shut down an organization’s phone system, or to eavesdrop on voice communications. The implications for corporate espionage go without saying. Software already exists that will scan files in a server in search of packets of internet phone data. One of these programs is called VOMIT (Voice Over Misconfigured Internet Telephony) (Belson 2004).

The sophistication of cybercrime is compounded by the widespread availability of cryptography. Once the monopoly of military organizations and intelligence services, technologies for concealing the content of electronic communications from all but the intended recipient are now widely available. Encryption is ideally suited to those offenders who wish to communicate in furtherance of criminal conspiracies, or who wish to conceal information that might be used against them in court. These might include records of criminal transactions, or illicit images. In addition to cryptography (and steganography, which embeds text within an image), technologies enable individuals to

conceal their identities on line, or to impersonate other users. These technologies make it very difficult to identify suspects (Morris 2004a).

Commercialization

If crime does follow opportunity, you can be sure that where there is money to be made, cyber criminals will try their hand. Today, more and more commercial activity occurs in an online environment. By definition, this creates an increasing number of opportunities for criminal exploitation. It follows that the incidence of cybercrime with a financial motive may be expected to increase. From online auction scams, to bogus investment solicitations, to "419" advance fee cons, fraud, in a rich diversity of forms, is flourishing in cyberspace (Newman and Clarke 2003).

Cyberspace illegalities that have not previously been characterized by commercialism are becoming increasingly subject to financial motivation. Consider child pornography. The earliest forms of Internet child pornography entailed noncommercial exchange or barter between collectors. Little if any commercial activity was evident (Grant, David and Grabosky 1997). More recently commercial exchange has become apparent, including service providers who are able and willing to refer users to illicit content sites for a fee (BBC News 2002; Ashcroft 2004).

Similar patterns characterized unauthorized access to computer systems, and the dissemination of malicious code. At the dawn of the digital age, hackers and virus writers were amateurs (albeit sometimes very competent ones). Today the term "hackers-for-hire" is becoming more familiar, and there are those virus writers who work on a fee-for-service basis.

The ability to communicate instantaneously with millions of people at negligible cost is not lost on legitimate marketers or on criminal fraudsters. If a message sent to a million recipients elicits responses from a mere one tenth of one percent of them, this still adds up to one thousand prospective victims. The collection and sale of active email addresses serves a niche market. There are entrepreneurs who harvest valid email addresses for sale to legitimate as well as criminal entrepreneurs.

The numerous opportunities for criminal exploitation of cyberspace are not lost on criminal organizations. One may expect to see organized crime embrace digital technology with increasing enthusiasm in the years ahead (Williams, 2001).

Integration

The third important trend in cybercrime is integration. As is the case with terrestrial crime, cybercrimes are not always committed in isolation. For example, armed robbers may steal a motor vehicle to travel to the robbery and to facilitate a getaway. So it is that certain types of cybercrime will entail a combination of different criminal acts. A recent development has seen the integration of distinct forms of computer crime to achieve synergies. Consider the following: Unsolicited electronic mail or "spam" may contain malicious code that can be activated if the mail is opened or if the recipient clicks on a link (such as one that reads "Click Here For Free Teen Sex Pix"). This code can be designed so, if activated, it will allow the offender to "commandeer" the infected computer and use it in furtherance of criminal purposes. This can entail recording the victim's password and credit card details, or it may entail directing the victim computer against another target. This latter scenario combines the scope of a virus infection with the intensity of a distributed denial of service attack. Such an attack may in turn be an element of extortion.

Extortion

Let us look more broadly for a moment at the offence of cyber-extortion. By this we mean the use of digital technology to obtain something of value by threatening harm to the victim. Digital technology may be applied to extortion in numerous ways (Grabosky, Smith and Dempsey 2001, Ch. 3).

- The internet can be used as the medium by which a threat is communicated.
- The victim's information systems may be the target of the extortion threat.

- Where the offence entails blackmail, the internet may be the medium through which the offensive information is communicated
- Electronic funds transfer may be used as a means of effecting an extortion payment
- The internet and World Wide Web may be used to obtain personal information that may identify or be used against prospective victims.

http://computercops.biz/article4091.html (visited 13 March 2005)

Manipulation of financial markets
Most countries have stock markets. Increasingly, ordinary investors are able to buy and sell shares on-line without dealing through intermediaries such as underwriters, brokers, and investment advisers. The convenience of online share trading is such that will be introduced in newly capitalist societies and transitional economies in the fullness of time. While this may enhance the efficiency of securities markets, it also provides opportunities for criminal exploitation. Meanwhile, these countries may expect to encounter some of the same difficulties that the United States faced in the 1990s. The fundamental criminality is still reducible to the basics: misrepresenting the underlying value of a security at the time of the initial public offering, or market manipulation during secondary trading of a security, through the dissemination of false information, or by engineering a deceptive pattern of transactions to attract the attention of the unwitting investor (Grabosky, Smith and Dempsey 2001, Ch. 6).

Common practices that may be expected to re-appear in "newly wired" countries include:

- The use of the internet and World Wide Web to spread false tips or rumours about a particular company and its shares. This would include spamming, infiltration of chatrooms, and counterfeiting of websites for the purpose of introducing price-sensitive information.
- The use of multiple aliases and coordinated trading to create momentum in a company's share price.

Industrial Espionage
In the competitive global economy of the 21st century, obtaining a competitor.s trade secrets and other economic information of a sensitive nature can be extremely lucrative. Depending on the methods employed, it can also be extremely illegal (Nasheri 2005). Traditional espionage techniques are now complemented by high tech methods. Given that much, if not most, information today exists in digital form, industrial espionage will have its digital manifestations. Web-based research through open sources may be legitimate. But the insertion of a Trojan horse or backdoor into a competitor's computer network is quite another matter.

http://www.nacic.gov/publications/reports_speeches/reports/fecie_all/Index_fecie.html
(visited 13 March 2005). The vulnerability of wireless technology and internet telephony to industrial espionage goes without saying.

CyberTerrorism
One of the more prominent issues of our time is the threat of terrorism. The term "cyber Terrorism" has been used rather loosely to refer to the application of digital technology to terrorist activity. Let us accept Denning's (2000, 10) definition of cyberterrorism: "unlawful attacks against computers, networks and the information stored therein when done to intimidate or coerce a government or its people in furtherance of political or social objectives".

For some years now, thoughtful people in industrialized societies have been alert to the threat of attacks against what we call critical infrastructure. In other words, communications, electric power, air traffic control and financial systems all depend on software and are vulnerable to disruption. The annals of cybercrime contain examples of successful attacks against air traffic control systems, sewage treatment facilities, and large electronic retailers, as well as the occasional mail

bombing of government servers and defacement of government websites. But none of these meet Denning.s definition, as they have lacked the essential elements of intimidation and coercion.

Although the “electronic Pearl Harbor” scenario may be remote, there are a number of ways in which digital technology may be used in furtherance of, or complementary to, terrorist activity. Digital technology of course may be used for the remote detonation of explosive devices. And while I would agree with Denning that terrorists continue to prefer truck bombs to logic bombs, the use of a cyber attack to complement or enhance a terrestrial attack should not be discounted. Imagine if an attack on the scale of 9/11 were accompanied by a takedown of the telephone and electric power systems in the target metropolitan area.

Of course, digital technology can enhance the efficiency of any organization, legitimate or otherwise, that makes use of it. For example, it lends itself nicely to the following terrorist applications (Thomas 2003):

Intelligence
Terrorists may seek to acquire open source intelligence on an adversary, or collect classified information by hacking into the adversary’s computer systems.

Communications
Terrorist groups may send and receive messages, often concealing their content through encryption and steganography (concealing messages within images). The nature of the internet and World Wide Web are ideally suited to communications across widely dispersed elements of a network.

Propaganda
Terrorist groups may communicate directly to a general worldwide audience, or to specialist target audiences, bypassing journalistic editing and government censorship. This may include inflammatory hate speech intended to legitimize violence against specified adversaries.

Psychological Warfare
The internet may be used as a means of tactical deception by terrorist organizations. By generating anomalous patterns of traffic they can give the erroneous impression that an operation may be imminent. The fabrication of “chatter” may distract law enforcement and intelligence services from true terrorist activity.

Another form of psychological warfare can involve general or specific threats or displays of force. Webcasts of hostages, and even hostage executions, can reach the world. These may be coupled with threats against nationals of specific countries who may be identified with causes anathema to the terrorist organization.

Fund Raising and Recruitment
Terrorist groups may raise funds through charity and other front organizations, or they may actively seek to recruit new members. The cities of the world house many young unemployed, marginalized and resentful people. Some of them may well be attracted to militant causes.

Training
Terrorist groups may use the internet and the Web for instructional purposes, to teach attack techniques and skills. For example, an English translation of an Al Qaeda Training Manual found on a computer file in Manchester, England is posted on the website of the US Department of Justice.
http://www.usdoj.gov/ag/trainingmanual.htm (visited 13 March 2005)

New challenges for the state

Perhaps the most remarkable developments relating to crime in the digital age are its transnational implications. The speed of electronic transactions allow an offender to inflict loss or damage on the other side of the world, bringing new meaning to the term "remote control". In addition, digital technology facilitates surveillance, by public agencies and the private sector, to a degree that is quite revolutionary.

3. Conclusion

Predicting precisely what the "next big cybercrime" will be in a given country is not easy. What is easier is the identification of vulnerabilities. As we have seen, the take-up of digital technology across the world has not been even. There is a real "digital divide", and it will remain for some time to come. Countries that are relatively new to the digital age may expect to experience some of the same growing pains that more tech savvy nations have experienced in recent years. As countries begin to cross the digital divide, they may encounter what for them are new forms of criminal exploitation, but which may be all too familiar to those who have gone before.

The pace of technological change will provide computer criminals with new tools and new targets. The effective prevention and control of cybercrime will require adequate resources and adequate training for law enforcement on a widespread continuing basis. As we know, the borderless nature of cyberspace requires a degree of legal harmonization and cooperation between sovereign states. The private sector must also play a large role to ensure prosperity and security (Morris 2004b). All users of information technology should be aware of their risks and vulnerabilities; individuals and institutions throughout society should take necessary precautions to protect their assets. Time will tell whether non-governmental efforts will be able to defend themselves against new forms of digital harm-doing. Meanwhile, the information security industry seems destined to flourish for some time to come.

To sum up, one can build upon Santayana's dictum that those who forget the past are condemned to repeat it. Today, those who fail to anticipate the future are in for a rude shock when it arrives.

ACKNOWLEDGEMENTS

The author is grateful to Alastair MacGibbon of eBay and Betty-Ellen Shave of the US Department of Justice for their observations on cybercrime trends, and to Dr Alex Schmid of the United Nations Office of Drugs and Crime for his insights on the use of digital technology in furtherance of terrorism.

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Workshop 6

Introduction
Universality of the Problem and the Need for International Responses

Ambassador Henning Wegener

The purpose of this introduction is not to pre-empt the speakers by touching on the substance of the various sub-items of this morning's agenda, but rather to sketch out the framework in which discussion is to take place, to remind ourselves of the terms of reference established for our proceedings, and to define some of the overriding problems and challenges in order to sharpen the focus of the debate.

In each nation state, the *domestic* dimension of cybercrime is worrisome enough and growing, commensurate with the relentless digitalization permeating all aspects of our lives. Since the 10th UN Congress and its clairvoyant work on the subject, the ubiquity of the computer and the resulting exponential growth of interconnectivities have reached new heights. The emerging technological trends analyzed in yesterday's Workshop session have demonstrated the birth of the "next generation of digital disruption possibilities and, indeed, a sea change in how we must view the criminal perspectives". The challenges for national lawmakers and law enforcement organs have grown. They are immense.

But in this growth process, the transfrontier impact of ITC has perhaps been even more striking. It is now clear that, in comparison to computer-related crimes and their invisible, virtual, geographically unconstrained environment, there is no other category of opportunities for criminal endeavour that denies and defies national boundaries to the same extent, and none where damage can be inflicted with the same ease and without any physical interference or presence at the place where the crime produces its effects. The case for the universality of the digital age and its challenges does not have to be made, it is self-evident. Globality is a built-in feature. I will thus not dwell on the ever-growing array of scenarios and threats of cybercrime and cyberterrorism, up to the specter of cyberwar.

The excellent Background Paper for our Workshop provides an adequate fact base. It also proves, by implication, that any narrowly national attempt to cope with the borderless criminal challenges of the digital age is necessarily futile. Global calamities need global responses. Our task is to define the mechanism and the actors in constructing such international responses as are practical and viable, correspond to the framework conditions of a community of nations where national sovereignty still needs to be respected, and meet the requirements of time-urgency. Computer-related crime is instant.

Let me now briefly review the reference material. In the first place, we must be mindful of the overall theme and agenda of the 11th Congress. The main theme reads "Synergies and responses: strategic alliances in crime prevention and criminal justice". The term "strategic alliance" already points to the global framework in which we must think. Then, our debate must heed the assignments contained in the Discussion Guide conferred to us by the UN General Assembly (A/CONF.203/PM.1). In para. 28 et seq. we are reminded of the importance of creating a *global culture of cybersecurity* and protecting critical infrastructures. We are then told to discuss measures for extending and improving cooperation among States to prevent and control computer-related crime and to suggest the initiation of appropriate international action to be undertaken by the UN, especially in the field of international cybercrime research, the preparation of model

legislation, compilation of best practices, the promotion of technical cooperation and assistance projects. There is a special call to consider the feasibility of negotiation of an international instrument on preventing and combating crimes involving information technologies. Our Workshop is specifically asked to make an input to these ends. To contribute to this, the Guidelines lists the most relevant international documents in the field, with special emphasis on the far-reaching recommendations by the World Federation of Scientists, "Towards a Universal Order of Cyberspace: Managing Threats from Cybercrime to Cyberwar" which is thus expressly brought to the attention of the Workshop[203]. Paras. 187 to 195 of the Guidelines formulate our discussion assignment in even more detail. The focus is clearly on the international aspects and the need for universal solutions. We are asked to devise .a comprehensive, multifaceted international response.. I recommend that we keep these guiding texts closely on hand during our debates.

A further, and especially useful reference is the Background Paper for the Workshop. It devotes a major part to international responses. On p.1, there is a convenient summary of the recommendations submitted by three regional preparatory meetings. I would like to draw your attention specifically to the 7 Draft Recommendations at the end of the paper which have been elaborated by the Preparatory Meetings for the Workshop held at the invitation of the Korean Institute of Criminology. From my perspective it is highly desirable that these recommendations, the product of consensus by a regionally balanced experts group, be considered and adopted by the Workshop in order to ensure an operational and future-oriented conclusion of our work.

Draft Recommendations 1, 2, 3 and 5 are of direct relevance to our session. Rec. 2 proposes to assign the leading role in intergovernmental cyberspace activities to the United Nations system which should be instrumental in advancing global approaches. Rec. 3 expresses our shared view that computer security is a global problem requiring a global solution and calls upon countries, in an international perspective, to update national crime and procedural codes. Rec. 5 deals with the need for enhanced international cooperation in information sharing, early warning and response mechanisms. I limit myself to these short-hand descriptions, but here again recommend that participants keep the full texts on hand.

Let me now set out to indicate some of the overriding "structural" issues which we need to be clear about in the discussion of our agenda items. The starting point might well be the observation in the Discussion Guidelines that both national and international regimes to combat computer-related crime are as yet inadequate. True enough, in most countries, especially those where the information revolution has been most marked, national legislators have acted early on to provide sanctions and procedures for crimes in cyberspace. From the beginning, cyberspace has not been allowed to remain an area free of law. Yet, no matter how well-conceived and effective many of these legislative and law enforcement initiatives on the national level, there remain considerable differences between nations of standards, legal coverage and levels of protection. Some countries have remained inactive altogether. And even more is needed in terms of international equivalence of codes and international cooperation. For a computer criminal at large, there are giant legal loopholes that cannot be allowed to endure, especially in the face of the dynamics of change and growth in cyberthreats. The weakest link in the chain will be the best entry gate for roaming cybercriminals. Internationally binding and effective prescriptive instruments are needed to guide and achieve degrees of uniformity in national crime codes and procedures, and effective international cooperation in the application of measures is required. We need a universal framework of penal law.

From among our agenda items, several deal with these normative requirements – certainly the ones on substantive criminal law, procedural law and the legal basis for transfrontier cooperation. The remaining items (research, technical assistance, training, capacity-building, division of labour between various actors) are more practical, but may also require some substantial degree of regulation.

203 A Conference Room Paper on the activities of the World Federation of Scientists, especially in the area of information security, is available at the Workshop.

For the normative action required in these areas, and in order to bring us nearer the desired universality of norms, there are some basic modalities that bear discussion at this point. I discuss them under the auspices of practical value, not with the purpose of erecting a theoretical edifice.

Universal, central law-making through UN treaties may ideally be best suited to ensure world-wide law. It certainly corresponds to the central role the UN must play in the ordering of cyberspace, enabling all States to participate. Draft Recommendation 2 calls for the UN to be instrumental in advancing global approaches to combating cybercrime and establishing procedures for international cooperation. In this perspective many nations advocate a *new* international convention which unifies computer crime rules, both substantive and procedural, and standards for cooperation between countries.

UN treaty-making, however, is inordinately cumbersome and certainly unduly time-consuming if the treaty-making effort were to start from scratch. An alternative method for moving towards a global framework would be to take an existing treaty and broaden its affiliation. This procedure is advocated by many for the Council of Europe Convention on Cybercrime. I am certain that there will be lively debate on this issue. For the existing convention with its broad coverage to be put to a more global use and thus to save precious negotiation time, it would be necessary to focus on its intrinsic merits and built-in flexibilities, and forego the luxury of stigmatizing it because of its geographical, in this case European, origin.

Another method to promote uniform international responses would be to come forward with model prescription elaborated in a UN context or by independent experts, as for instance the Proposal for an International Convention on Cyber Crime and Terrorism sponsored by the Hoover Institution at Stanford University. Such texts could form a point of crystallization around which multilateral treaty-making could take place.

Draft Recommendation 3 focuses on a bottom-up approach by calling on States to undertake efforts at updating their laws on computer-crime on their own initiative, along tandards .as strong. as the Council of Europe Convention. This process would work by emulation. National bodies of law would increasingly be harmonized. In devising and updating penal prescription and putting in place law enforcement mechanisms, one important criterion for nations would certainly be that their work be compatible with a nascent global consensus.

All these methods are not mutually exclusive, but indeed mutually supportive. They help the emergence and consolidation of an international *code of conduct,* resulting in the closing of loopholes and the increasing approximation of a universal penal framework. The guiding principle in choosing or combining legal approaches must be the net contribution to an effective system ensuring essential substantial equivalence of norms.

All the methodological approaches mentioned are, however, faced with the same inherent challenges. Apart from the political dilemma of striking a balance between the privacy of communication and freedom of expression in cyberspace on the one hand, and the requirements of just and speedy law enforcement on the other, all efforts are beset by the time requirements of negotiation; by often grotesquely time-consuming ratification procedures of treaties containing criminal and civil, as well as procedural requirements; by the need to transform treaty obligations into applicable national law - in fact, we are dealing with a “double transformation” - ; and by the need to ensure essential equivalence of these laws in the face of very general directive language in the international texts; further, by the time requirements for setting up functioning transnational cooperation mechanisms. Lastly, the process is beset by the complex problem of including content-related cyber offenses in transnational legislation. Even the Council of Europe Convention on Cybercrime singles out for criminal treatment only two, child pornography and infringement of copyrights; on other matters consensus among the international community may be much harder to achieve.

There are, however, two legal techniques that may help with the time-critical nature of the universal prescription we seek. In the first place, there is often the possibility of declaring an international undertaking provisionally applicable or of essentially following it in practice, pending the completion of the double legislative transformation process. Also, some important international agreements may be self-executing. Obligations undertaken to cooperate and lend mutual assistance in law enforcement matters, participation in alert systems, communication and information exchanges may be enacted instantly, especially where experience in transfrontier cooperation already exists.

In this context, it is also worth mentioning a phenomenon that is peculiar to computer-related crime and its global effects. The extent of criminal jurisdiction is normally defined by the traditional principles of territoriality or nationality of the perpetrator. But when, for instance, an internet user can call up his e-mail anywhere on earth, and be instantly subject, there and then, to the effects of fraud or destruction of data, these principles become hazy. Even though an attacker may have acted from far away, e.g. out of a non-cooperative State with an inadequate penal regime or a State which chooses not to prosecute, the law can strike where the victim of the cybercrime resides or experiences its damaging effects. The universality of the effect of cyberspace offenses will thus, to a certain extent, compensate for a lack of universality of existence, or application, of penal statutes. Indeed, the ubiquity of the effects of cybercrime raises the question whether, as the web of harmonized cybercrime codes becomes denser, we may not be witnessing a process of development of a new chapter of world penal law, in the sense of Art. 13 of the UN Charter and in keeping with current tendencies to broaden jurisdictional concepts.

In conclusion, I would like to emphasize that normative efforts aiming at universal penal prescription as discussed here will be unsuitable for containing and penalizing *all* cyber attacks. Attacks by nation States and international terrorist groups on critical societal and economic infrastructures and the national defense establishment of other countries - in other words, cyberwar scenarios - require different international responses. Here we are moving beyond the realm of criminal law and procedures onto UN Charter territory and the laws of armed conflict. I urge not only to recognize the *limits* of what international cooperation under criminal law auspices can achieve, but also the collective development of an international legal framework for defining the limits of legitimate cyber actions by nation States, and sanctions if these limits are transgressed. There is hard work ahead.

Workshop 6

Cyber Crime, New Suit or Different Cut? Harmonization Is The Way!

Judge Ehab Maher Elsonbaty

Computer presence in our every day life is very obvious; it has become the major tool used in many sectors not only on the public levels such as governments and companies but also for private individuals[204]. Many of us would be in big mass with out their computers in front of them.

With this huge role played by computer in our lives many fears and worries rise. Many parties are concerned about maintaining the performance of this important tool as secure, reliable, integrate and functional as possible. In this scope this paper - divided into three sections - tries to examine the interaction between computer and criminal law rules on the national and international levels, explaining the need to regulate computer crime, what are the challenges for these regulations and how these challenges may be answered.

I must note here that these areas need even more than this concise paper, that is why I will be keeping my self to the limit required by the organizers.

1. Regulate or not to regulate, is this the question?

It is not right at all what some are saying that computer world is a non regulated area. We are seeing in the daily basis how governments and different organizations are playing huge role in regulating the computer and related areas such as Internet and e-commerce[205]. I want to make it clear that when I say "computer must be regulated" that regulating here should not mean limiting its potential developments, but it is making it more functional, less complicated and most importantly as safe and reliable as possible. It is one of the main functions of any legal system - in the process of governing the relations between all the figures of a nation - to respond to the new development in its society[206], therefore the technological development such as computer must be responded by the legal systems. This respond will - as any other issue - contain two angles, the first one is telling the players what to do and what not to do, and the second one is telling them the procedures either to do or not to do. So when the legal systems move to regulate computers they are doing their required role by the society.

Under this concept the law has many dimensions to the extent that it should not only respond and collaborate with the different developments in the society but further more to change or even create norms of behaviour to be adopted by the citizens. The faster the new developments are regulated properly, the lesser the litigations and disputes will occur. It is better to prevent the problems to happen rather than waiting for them and then start struggling about the right cure for them, considering - of course - the usual rush in these situations with many parties like media and some businesses screaming that some thing should be done!

1.1. Different approaches:

In the era of regulating the computer world[207] there are many opinions and approaches. We can see that there are three general approaches[208]:

204 Unfortunately computer is the main mean of communication most of terrorist activities are recorded and announced through.

205 Jay Forder and Patrick Quirk, Electronic Commerce and the Law, Willey, 2001, p. 8.

206 Toshiyuki Kono, Christoph G. Paulus and Harry Rajak (ed.), Selected Legal Issues of E . Commerce, Kluwer Law International, 2002, P. 146.

207 For a wide range of opinions and approaches about regulation see Christopher T. Marsden (ed.), regulating the Global Information Society, Routledge, 2001.

208 See Jurgen Basedow & Toshiyuki Kono, Legal Aspects of Globalization, Conflict of Laws, Internet, Capital Markets and Insolvency in a Global Economy, Kluwer Law International, 2000, P. 29.

The first one is saying that there is no need to panic, nothing is new about computer and the existing legal structures are capable of governing and organizing its different angels. The supporters of this opinion claim that it had worked with all the other mediums such as telephone and fax; they also say that all the crimes done through or with computer can be handled by the existing legal systems.

The second approach is the opposite completely, its believers are saying that the computer world is a new world and it needs a whole new and complete system to govern it, they are sure that days will show the establishment of this system thanks to the initiatives and behavior of the computer and on line players, this approach does not believe that there should be one system govern both the “old world” and the new world “cyber space” which is unique and this must kept on this way[209], [210].

The third approach is a collection from both of the previous approach, its believer say that the existing legal systems are not capable to govern cyber issues in a comprehensive way and in the same time the assumption that a new legal system will govern the cyber space is very unrealistic, so this approach see the best solution is to make the existing legal system capable of the adoption and the accommodation of new concepts of the cyber space [211].

1.2. The right approach:

I agree with the third approach and I emphasize that the existing legal system is covering many areas which computers did not change or effect (from the legal application point of view) but on the other side there are some new concepts and challenges which must be covered by different means of law nationally and internationally or even under the consent on a self regulated system for some issues.

The first approach is running to the easy way, every thing is ok; we do not need to bother! This opinion is very naïve and based on a non complete idea about the nature and process of computer and their repercussions. The concept that nothing needed to be added to the legal system means that in a short time the state which will adopt this approach will be completely out of the game and will be tied and restricted from the interaction with other parties. This is of course besides putting the courts in a very hard situation dealing with new subjects with old tools using a classical, traditional and slow process which was criticized usually by different parties.

On the other side the opinion of creating a new legal system will be formulated by time thanks to the evolution of cyber space, is exaggerating and have false expectations. Firstly, no mater how much new practices will create some legal principles this will not ever arrive to be a real legal system with all the features (such as stability, fairness,..Etc) established in the existing legal systems and which were results of the long process of the human civilization. Secondly, assuming that the online world is separated from the real world is a fantasy, both of the worlds are interacting and meeting in a very complicated and connected way every second, so making a different legal standard to both of them will create a chaos[212]. Finally, the mere fact is that internet crime figures soar and the victims of such crimes be they individuals, institutions or sovereign states, find their property, security and sensibilities cynically violated by unidentified, unidentifiable criminals, who remain free to perpetrate--and perpetrate again such crimes. Privacy, personal liability and even individual and institutional security are already the subject of the ultimate infringement by such criminals[213].

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209 See Lawrence Lessig, Code and other laws of Cyber Space, Basic Books, 1999, P.6. And also see John Perry Barlow, Selling Wine Without Bottles, The Economy of Mind on the Global Net, http://www.eff.org/IP/idea_economy.article

210 See also this Website which is devoted for the defending of that approach http://www.eff.org/

211 For further reading see E.A. Cprioli & R.Sorieul, Le commerce international elecronique: ver l’emergence de regales juridiques transnationales, Clunet 1997, p. 323.

212 See Christopher Reed, Internet Law, Text and Materials, Butterworths, 2000, P.188.

213 Natasha Jarvie, “Control Of Cybercrime - Is An End To Our Privacy On The Internet A Price Worth Paying?” PART1, Computer and Telecommunications Law Review, 2003, 9(3), 76-81.

The main concept should be encouraging the individuals to use computers, but under the umbrella of the existing legal system after filling the empty gaps between the existing rules and the new features and concepts of computers. The regulation of computers should achieve a main aim and concern which is creating trust. This trust may be created by adopting a high level of security for computer systems and a proper legal framework. This concept must be handled carefully because the legislator may tend to adopt sophisticated level of technology for securing the transactions which may create difficulties for businesses and other parties in applying them, also the growth of the technological ways to interrupt these security standards must be faced[214].

We should not - while legislating for computers - bother by detailed technological issues, but rather a main frame which enables the law to adopt the best technology exists in the field in order to apply its provisions properly. We must note that this is not an easy job, during the process of regulating computer, the ability of the legislations of many states to govern computer activities properly is under question thanks to the rapid development of technology which cause new problems on a speed regular bases. These problems are not even easy to be handled because of the interaction problems between technicians and lawyers. This may even get worth when it comes to judges and law enforcement officers who are usually standing strongly against any new ideas or methods.

1.3. The current situation:

Most of the countries were aware of the importance to face computer crimes by legislations. There are many examples such as Italy (1978); Australia (state law, 1979)[215]; United Kingdom (1981, 1990)[216],[217]; United States of America (federal and state legislation in the 1980s); New Zealand (1994)[218]; Canada and Denmark (1985); the Federal Republic of Germany and Sweden (1986); Austria, Japan and Norway (1987); France and Greece (1988); Finland (1990, 1995); the Netherlands (1993)[219]; Taiwan (1997)[220]; Luxembourg (1993); Switzerland (1994); Spain (1995); Israel (1995) [221], and Malaysia (1997).

All the previous examples are good evidence that our approach - which we defended previously - is the most accepted and applied one worldwide.

2. Computer crimes challenges to criminal laws:

After discussing the notion of Computer activities regulation[222] as a must to respond to the new developments and concepts, we shall review the challenges computer crimes are performing against the existing classical criminal laws either for substantial rules or procedural rules.

2.1. Challenges to the substantive rules:

Computer crimes may result in challenges for the substantive rules of criminal law. First, we will define the computer crimes then we will see the different kinds of computer crimes and how the current substantial rules may interact with them.

2.1.1. Definitions:

Definitions in the field of computer crime are a very important thing but in the same time it is a hard and complicated task. They are very important because they draw the lines and limits any legislation or international convention will operate within. Definitions of computer and cyber crime

214 We have to keep in mind the failure of the German Digital Signature law thanks to the complex of its sophisticated technological standards which was not commercially beneficent for the businesses or even individuals to apply.

215 See Anne Fitzgerald, “Australia: E-Crime - Proposed Legislation”, Computer and Telecommunications Law Review, . 2001, 7(2), N17-18.

216 See Ian Walden, UPDATE ON THE COMPUTER MISUSE ACT 1990, Journal of Business Law, 1994, Sep, 522-527.

217 See Peter Alldridge, “Computer Misuse Act 1990”, International Banking Law, 1990, 9(6), 339-342.

218 Malcolm Webb, “New Zealand: Criminal Law And Telecommunications”, European Intellectual Property Review, 1995, 17(11), D314-315.

219 See Nora Mout-Bouwman, “The Netherlands: New Law To Combat Computer Crime”, European Intellectual Property Review, 1993, 15(5), D108-109.

220 Hubert Hsu, “Taiwan: Computers - Criminal Legislation - Taiwan Revised Its Criminal Code -Computer Crime Provisions”, Computer and Telecommunications Law Review, 1997, 3(6), T139-140.

221 See Neil J. Wilkof, “Israel Attempts To Legislate Computer-Related Issues: The Computer LAW” 1995, 1996, 2(4), 150-155.

222 See for more about that debate Robin McCusker, “E-Commerce, Business And Crime: Inextricably Linked, Diametrically Opposed, Company Lawyer”, 2002, 23(1), 3-8.

must be made very carefully otherwise the result will be either a large scope which will govern unrelated issues or a narrow scope which will fall to cover all the required matters. In this concern many terms are used to reflect the same meaning such as 'cyber crime', 'computer crime', 'Information Technology crime,' and 'high-tech crime'. They all refer to the crimes committing with or via or on computers.

Some countries adopted the approach of not giving a definition for a "computer" such as the United Kingdom, France and Germany. Some other countries like the United states were it was keen to define the computer in the Computer Fraud and Abuse Act as "an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device"[223],[224].

2.1.2. Different types of computer crimes:
We have to differentiate between three kinds of computer crimes: the crimes where the computer is used as a tool or instrument such as murder and fraud, the crimes where the computer is the object of the crime such as the theft of processor chips and the crimes where the computer is the subject of the crime such as hacking and distributing viruses[225].

In the light of the comparative laws and international conventions we can see that computer crimes can be divided into three groups, the computer related crimes, content related crimes and computer sabotage offences.

2.1.2. A-Computer related crimes:
Computer related crimes are the crimes which already existed before the computer does, the only new thing that computer opened new prospective for criminals in the way and the techniques they use in their operation. There are some examples for this type of crime such as theft, fraud, industrial espionage, facilitation of prostitution, terrorism and forgery.

Theft and Fraud:
Using computer in fraud has many shapes it may be by altering information being input into a system or altering the outputs. In most of the legal system computer fraud will not need a new law, it may be covered by the existing legal rules.

Yet there will be some problems in accommodating the computer techniques of fraud under the existing laws[226]. An example of these problems may be if the law makes a condition that a person has been deceived, this would put a question about the fraud made against automated systems and not a person.

Another problem that in most legal systems that the theft or fraud should be on property, and in the case where the subject is information or data, the interested parties they will not fall under the classical scope of property. In the field of computers materials and properties have different meaning. In spite of the classical shape of tangible property, in cyber space many properties are not materialized[227]. Things such as digital products and information are virtue even though they are very important in this era and need to be governed. In this situation we have assets which need protection but do not fall under the normal categorization of the classical penal laws[228]. There is also an interesting example of these problems, in the case of copying but not stealing, again the protection of trade secrets will have another challenge.

223 18 U.S.C. section 1030(e)(1)

224 See also the Singapore Computer Misuse Act 1988,s.2.1

225 See Ian Walden in Chris Reed and John Angel, Computer law, Oxford University Press, Fifth edition, 2003, P. 295.

226 See Simon Dawson, "Computer Fraud: Part 1: The Risk To Business", Computer and Telecommunications Law Review, 1999, 5(3), 70-73 and Simon Dawson, "Computer Fraud: Part 2: Prevention And Detection", Telecommunications Law Review, 1999, 5(4), 114-117.

227 See Ejan Mackaay, Daniel Poulin & Pierre Trudel, The Electronic Superhighway, Kluwer Law International, 1995, P.94.

228 See Sue Grossey, Goodness, hasn't it grown since last year, F.I. 2000, 32(Nov), 1-4.

Industrial espionage:
Industrial espionage is a classical crime and was criminalized under the existing criminal laws. Yet, computers open new dimensions for this crime. On a side computers may be a very good tool for industrial espionage, for example industrial secrets may be saved from a computer in a company and send via e-mail immediately to its competitor.

On the other side computers may be an interesting subject for this crime, an innovation in computer industry may be sailed for a large amount of money. In all the cases the criminal law should cover the two possibilities and a special attention should be given to civil remedies since the subject of this crime may equal millions of dollars.

Facilitation of prostitution:
Computer gives the prostitution facilitation much new option. On the web there are thousands of websites which advertise and market for prostitution with out any control either by national or international laws. This secret world business has a massive amount of money running in it, therefore the criminals will use the most recent technologies in the world and their tracing would be difficult.

Forgery:
Some computer programs has made forgery much easier and extremely hard to be discovered[229], this is a very good new for forgers but it makes the life of law enforcement officers harder. Apart from the classical forgery under the existing legal systems many new challenges may arise. Would fixing a password be criminalized as a forgery or not? Can we consider creating an electronic signal a forgery? The last challenge is that in many legal systems there is a “person” to be induced; in this case how a forgery meant to induce a computer system or a network would be categorized?

Terrorism:
Last but not least terrorists are one of the winners from computer facilities. They can operate, communicate, advertise and even conduct their operations with the use of computers.

Under this type of computer related crime I believe that our existing legal systems can accommodate them in many cases, but regarding the challenges I mentioned above it is better in my opinion that some articles in the penal code should be modified in order to make this accommodation process nice and easy for all the interested parties such as law enforcement bodies and judges. (Not the criminals of course!)

2.1.2. B- Content related crimes:
It is not arguable that the information and the data which are processed by computers are most of the times much more valuable than the hardware itself. That is why the crimes conducted against the content of computers are of a great importance. Some example may be given here such as copyrights Stalking, Harassment, Hate Speech, and Offences against Morality.

Copy rights:
In the many existing copyright laws information is protected in relation to the know-how and trade secrets, but in cyber crimes information it self may be a product and therefore needs a protection.
"Domain names" is another non materialistic product, they are of a great importance in the e-commerce transactions[230] they are the identifications for businesses on the Internet, and they make part of all the advertisement, brochures...etc of any business. Till now states are not intervening in the distribution of domain names[231], they only intervene if there is a decision to be made about a

229 Take the example of Adobe Photoshop program.

230 There is an opinion that domain name importance is vanishing with the rise of sophisticated search engines and robots which will facilitate finding any kind of domain names on the net. See Jurgen Basedow & Toshiyuki Kono, p.38. But I do not agree with this opinion and I still believe that the domain names are very important and a simple evidence of their growing importance is the number of money paid to buy and sell the famous ones and the number of disputes made upon them.

231 For more about the administration of domain names see www.icann.com.

domain name dispute (apart from the areas governed by ICANN systems), but one may wonder about the extent the states will struggle against the passion to regulate this important area[232].

Stalking, Harassment, Hate Speech:
Stalking and harassment are malicious activities directed at a particular person, or may not be criminal activities, depending on the jurisdiction. But when these activities are committed via computers all types of jurisdictions will be able to receive them, which a serious challenge to every domestic criminal law even if its updated to cover computer crimes.

Offences against Morality:
This is a very sensitive issue for many countries, some times issues such as pornography is a crime in every single type, some other times it is only a crime if it is Considered "indecent"[233].

In all the cases a questions will rise: whether making such pornography available online falls under the criminalizing articles or not? Would a pornography saved in a computer data by a "copy"? Would the cash memory[234] savings be a criminalized "copy"? Challenges are not yet finished, if your answer is yes to all the previous question, how would we prove it? Another related matter which is receiving the criminalized pornography via e-mail, would you be a perpetrator of keeping pornography if a friend of you send you some?

It is argued that most, if not all, of the difficulties posed by computer offences against morality are ones that can be remedied relatively easily by amendments to the statutory definitions[235] and giving a wider scope of what may be considered a copy of a photograph[236].

Under this section of computer crime I would say the same opinion I made for the previous type that these crimes enforce us to update the existing penal articles to accommodate them without the need to change the law as a whole.

2.1.2. C- Computer sabotage crimes:
This type of cyber crimes covers the crimes which affect the security, integrity, confidentiality, reliability and availability of computer systems. It includes the unauthorized access and unauthorized modification.

Unauthorised access to computer systems:
Unauthorized access to computer systems crimes may be divided into two parts, the unauthorized access crimes and the unauthorized access with the intention to commit a further crime.

Unauthorized access:
This section covers the famous "hacking"[237] and "cracking" crimes where a person who is not authorized to enter a particular computer system does this. It covers also the intercepting without authorization. But would the try only be a crime even if it has failed? Would the law be strict to the extent that only switching an unauthorized access computer fall under this section of cyber crimes? We should be careful criminalizing the unconditional access with no exception, there are many possibilities where this access should be legitimate such as examining unintended laptops computers.

The importance of a clear definition for computer is very important in this concern since it will be a chaos if we criminalize the unauthorized access for any electronic device which for example saves data such as mobile phones. The mistake of putting a wide definition for computer has occurred in

232 In any way the problems rises from domain names not only for the general generic names but also for the national domain names with the possibility of different parties registering different domain names will obviously challenge the existing copy rights and trade marks rules considering that the whole system of domain names administration is managed in a very unprecedented way.

233 Such as in England where the criminalized sub-sector of pornography is only in relation to Pedophilia, see Children Protection Act 1978 and the Criminal Justice Act 1998.http://www.hmso.gov.uk/

234 This part of the computer saves a copy of each page entered online for efficiency reasons.

235 See Colin Manchester, COMPUTER PORNOGRAPHY, Criminal Law Review, 1995, JUL, 546-555.

236 See "More About Computer Pornography", Criminal Law Review, 1996, SEP, 645-649.

237 Hacking means gaining unauthorized access to a computer system, programs or data.

the English[238], Singapore[239], and Malaysian[240] acts[241].

The Cyber Crime Convention[242] - in a position that I do not agree with - criminalize only the unauthorized access if it is done by another computer, while a real harmful access can be done from a physical person not using another computer. In all the cases we have to know if the criminalizing of this crime should be conditioned to a minimum level of security made by the victims or a particular knowledge of the criminal.

A major thing we have to deal with under this section is the cases of employee use of their authorized access especially when they use their authorized access in an unauthorized purpose[243].

Unauthorized access with the intention to commit another crime:
In many times the unauthorized access is done for the sake of committing another crime either in the recent future or the far one. Such as collecting bank data of a particular person to use it in withdrawing money from his account to the one of the criminal. We would wonder if this crime will still valid even if the further one was impossible to achieve, I think the answer is yes because we are compacting the criminal operation regardless to the result.

Some people say that the hackers are only curious individuals who like the adventure of doing it, but I think that this opinion is not realistic and not even fair for the victims we have seen many examples where the hackers had done the unauthorized access crime to conduct a worse one. In these days where many critical infrastructures depend on computer systems, we should make no mistakes.

In some cases their will be inside the organization or the company a person who is helping the criminal by providing him by passwords for example. I believe there is no doubt that he should be receiving the same level of punishment the perpetrator is receiving, specially that in some cases the main perpetrators did not touch the computer system him self and left this part to his accomplisher from inside the victim organization. There is also the case where the authorization is limited to viewing, copying or altering.

On the European level a group of decisions[244] were taken to highlight the criminalization of unconditional access which is claimed to form a formidable regulatory barrier to piracy of digital content on various platforms including the internet[245].

Unauthorized modification:
The crime of unauthorized modification is a serious one since it affects the integrity and the availability of the computer system. It has a clear example in the terrorist attempts to ruin a critical infrastructure of a particular nation. Viruses are also a usual tool in this sort of crimes.

A modification can be made by changing, adding or abolishing a particular data on the computer system. It can be also either permanent or temporary[246]. For the importance of crime some acts were strict in putting two years of imprisonment for such crimes[247].

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238 See the U.K. Computer Misuse Act 1990.

239 See the Singapore Computer Misuse Act 1993.

240 See the Malaysian Computer Crimes Act 1997, section 2 .

241 See for a comparative study between the English, Singaporean and Malaysian computer crime acts, Nagavalli Annamalai, "Cyber Law Of Malaysia - The Multimedia Super Corridor", International Trade Law & Regulation, 1997, 3(6), 213-220.

242 See Sec. 9.5.1.of the Council of Europe Convention.

243 See D. Bainbridge, "Cannot employees also be hackers?", pp. 352-354, Computer Law and Security Report, vol. 13, no. 5, 1997; and P. Spink, .Misuse of Police Computers., P.219-231, Juridical Review,1997.

244 Such as the European Parliament and Council Directive 98/84 on the legal protection of services based on, and consisting of, conditional access, The European Parliament and Council Directive 2001/29 on the harmonization of certain aspects of copyright and related rights in the information society the Proposal for a Council Framework Decision on attacks against information systems COM(2002) 173 final.

245 See Rico Calleja, Conditional Access Piracy, Computer and Telecommunications Law Review, 2003, 9(8), 239-240.

246 See The Malaysian Computer Crimes Act 1997, Section 5.

247 See sections 3(2), 5(2) and 6(2) of the Computer Misuse Act (Chapter 50) Singapore

Under this subject we have to decide if deleting or modifying any data in the computer system fall under the concept of property damaging, with the existing legal system which recognize the property as a tangible thing, this will need a consideration.

We have to consider here the condition of criminalizing the unauthorized modification such as the intention and knowledge of the perpetrator especially in the case of virus writing where the criminal does not know which computer his virus is going to hit.

Another thing may seem rare but it happens, that is when the modification does not affect the content of the computer system meaning that it has been neutral. Furthermore the modification can improve the computer system. Unauthorized modification also can affect copyrights, the example for this case what some software companies start doing by program their soft ware not to function properly if the client does not pay his payments in time.

--- this section of computer crime is completely new, simply because it is based upon the use of computer which was developed years after the issuing of most of the exiting legal systems, having new laws to draw the lines, criminalize the new crime and assure the punishments and the remedies will keep the trust in computer systems and will open many potential grounds for its development thanks to a stable, secure and effective legal framework.

---- After reviewing the previous types of computer crimes and there place under the existing legal system we may ensure that existing protection provided by the Criminal Code is not eroded by developments in technology. Although the criminal laws as they currently stand have been used in some cases to successfully prosecute e-crime some major amendments will clarify unsettled issues and facilitate e-crime prosecutions and trials.

2.2. Challenges to procedures rules and law enforcement:
Under this section we shall review the computer crimes challenges to procedures rules and law enforcements.

2.2.1. Challenges to procedures rules:
Having criminalized and surrounded the computer crimes is not enough; we will face the problems of how to prove them? And the forensic issues such as how to search and seize the related evidence? We should note that this sort of evidence will be challenged in the court and any error or technological malfunction in it will result in destroying the power of this evidence. In addition to that would we allow the law enforcements them self to “hack” in order to trace a criminal?[248]
Computer derived evidence has to have all the attributes of conventional evidence--it must be admissible, authentic, accurate and complete. But it also has certain qualities which create difficulties for those who wish to rely on it - it is very volatile, easily unintentionally altered without obvious trace, and it is highly novel, creating problems not only of explanation but also of forensic testing. Computer forensics is now a reasonably well-established subject area46, but unlike most forms of forensic science many of its techniques have not been around long enough to have been properly tested by peer-reviewed publication.

A simple way of procedural regulation may be an article which provides for the search of any premise and seizure of any evidence with a warrant, if there is reasonable cause to believe that an offence under the Act has been committed. This may be accompanied with legitimizing the activities of the various units that investigate and prosecute computer crime. This should cover new means of scrutinising activity on the internet, use new and advanced techniques to recover data from seized computers and data media, and seek to infer actions and intent on the part of defendants by interpreting the way in which a computer may have been set up and, over a period, used.

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248 See for some new forensic techniques, Peter Sommer, “Evidence In Internet Paedophilia Cases”, Computer and Telecommunications Law Review, . 2002, 8(7), 176-184.

2.2.2. Challenges to law enforcements:

There is a need to ensure that the police force has the required resources and expertise to handle the investigations. It is a big challenge for law enforcement bodies because the subject of these crimes is not as the regular ones and they have to deal expertly with technological issues through their investigations. They are required to try to apply existing law to criminal activities in cyberspace while they are concerned that publication of some of its methods may make future similar investigations more difficult sometimes leads to coyness in their witness statements, or attempts to exclude particular aspects on public interest grounds.

Answering these challenges needs not only a law to draw the procedures to be followed in computer crime but also to develop sort of Quality Assurance protocols that are used in more established areas of forensic science. It needs also to assure an adequate level of training for law enforcement bodies meaning police, prosecutors and also the judges. Training for police officers should cover all the related area of forensic issues of computer crime such as searching, seizing recording, intercepting...etc.

Prosecutors should be trained to carry the prove of electronic evidence to the court and stand strongly (upon an understanding of course) behind them, they should also be trained about the limits they should give their warrants within, in a way that assure a flexibility of movement for the police and maintain the basic human rights of the accused.

I noticed that in many times the talk is about only training law enforcements and some time the prosecutors but I find no reason why judges should not receive this type of training. Saying that there is no need for that because their will be an expert to testify after the examination of the evidence is a false argument, because when it comes to this type of complicated crimes a good (if not excellent) background about the area is required for judges. Speaking about my self I believe that I should seek to be trained to any new medium or norm which may arrive to my court. In Egypt the National Judicial Centre under the Ministry of Justice management organized many training programs about the new developments in the world such as the WTO, copyrights law, digital signature...Etc.

The same reasoning may apply for legislators; a good training may be needed to help legislators understand the different aspects of computer crimes while they are tailoring the laws.

3. International cooperation and harmonization

Cyber crime is unique because it may be committed from any place in the world in any other place in the world with the evidences flying through the telephony lines every second. A criminal may commit all the phases of his crime in a country in which he did not ever enter before. The classical criminal co-operation between the countries is not capable of handling this type of crime, this classical co-operation may take months to conduct a procedure in another country or to operate a particular investigation on the territories of different jurisdictions. Mechanisms of co-operation across national borders to solve and prosecute crimes are complex and slow.

If we look at the practical (and logical) point of view there is no much to achieve f we keep on working individually and each state makes what ever it suits it. The need is clear to substantive rules either for criminalization or for the criminal procedures. I shall review the work done on the international level towards a solution for computer crimes and then propose my opinion about the solution.

3.1. Important backgrounds:

In order to observe the international directions in the field of computer crimes, three foundations may be reviewed under this section: The declaration of the 10th conference and the up held workshop, the discussion guide for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice and the regional preparatory meetings for it.

3.1. A- The declaration of the 10th conference and the up held workshop:
It is important to stop in front of the declaration the 10th conference issued-in Vienna within year 2000[249], and the background paper of the workshop[250] upheld under a similar title of the prepared for workshop. It is clear to us that the previous workshop had made a significant progress as a way of extraordinary facing of computer- related crimes, so the logical sequence and by the very nature of the cases impose that the upcoming workshop actions take a step - or say steps - forward, and therefore, our concentration should focus on putting envisions and measures which introduce a new prospective for the international community.

3.1. B- The discussion guide:
The discussion guide[251] opens a wide horizon for international performance concerning computer-related crimes since it declares the importance of facing them with many extraordinary mechanisms as legislation modification and training of personals responsible for law enforcement, respecting fundamental interests as human rights without violating country's national sovereignty.

The guide mentions the actions and the initiatives which some international organization had undertake, and it points to the different horizon for international cooperation in the field of computer-related crimes and brings up the idea of technical cooperation and the idea of preparing model law to be a lamp for all local legislations.

3.1. C- The regional preparatory meetings:
The United Nations - in the process of preparing for the 11th conference - had upheld many preparatory regional meetings to reach a schedule and a declaration reveals the interest of the international community. Going through what these conferences concluded, we can explore the international approach towards this important issue.

As for the West Asia preparatory meeting held in Beirut April 2004, Egypt had presented an excellent initiative of eight points for international action procedures concerning computer-related crimes[252]. The final report[253] did not reflect a unanimous agreement on this subject, it rather settled its recommendations for reinforce cooperation and experience exchange between governments and private sector to construct and implement mechanism for computer-related crimes control. The recommendations emphasized also on exploring methods to enhance governmental ability to modernize and use enough investigation and tracing methods.
Concerning the African preparatory meeting held in Addis Ababa March 2004, its final report[254] did not mention any important remarks concerning computer-related crimes, and was satisfied by passing on workshop titles which to be held including the computer-related crimes.

As for the Asia region and pacific preparatory meeting held in Bangkok in March 2004, its report[255] included positive remarks somehow identical to those issued by the West Asia meeting.

3.2. The solution should be international:
For an international phenomenon such cyber crime the solution must be international, and when it comes to the substantive and procedures law which raises the possibility of the application of different legal systems the international solution is more than a must[256]. Especially with the complications of classical norms of international co-operation in this concern such as extradition[257].

249 See the United Nation tenth Conference Report, A/CONF.187/15.

250 See the Background paper for the workshop on crimes related to the computer network, A/CONF.187/1.

251 Discussion Guide for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice Bangkok, 18-25 April 2005, A/CONF.203/PM.1

252 See the Egyptian declaration presented at the West Asia preparatory meeting, April 2004, Beirut.

253 See the final report of the West Asia preparatory meeting, April 2004, Beirut, A/CONF.203/RPM.4/L.2

254 See the final report of the African preparatory meeting, A/CONF.203/RPM. 3/L.2.

255 See the final report of Asia and the Pacific preparatory meeting A/CONF.203/RPM.1/1

256 For more about the international solution see Yaman Akdaniz, Clive Walker and David Wall (eds.), The Internet, Law and Society, Longman Pearson Education, 2000, P. 12.

257 See Marc D Goodman & Suzan W Brenner, The Emerging Consensus On Criminal Conduct In Cyberspace, INTERNATIONAL JOURNAL OF LAW AND IT, 2002.10(139)

One of the important conventions about cyber crime is the convention of the Council of Europe[258]. A very good piece of work but it is not what may be an “international convention”, none of the developing countries was involved, many technical problems were neglected and many criticisms were pointed to it especially concerning human rights[259].

This international solution may be granted by concluding an international convention which unifies computer crimes rules either substantive rules or procedures rules, founding standards of the cooperation between countries. This convention will establish a global legal system to govern cyber crime with unified rules. This international convention must cover points such as the mutual legal assistance, establishing a 24/7 centers in each state to operate in any investigation needed by another country, and of course the extradition.

I may predict that the establishment of such a convention may give birth to an international organization - under the flag of the United Nation - to govern and regulate the computer crime globally. The steps to make this convention is neither easy nor difficult, it needs only work and faith. Usually there are some worries against harmonization, in the following lines I shall answer the worries which may be raised about harmonizing computer crime rules.

3.2. A. Model laws and guidelines:

Various international and supranational organizations have recognized the inherently transborder nature of cyber crime, the ensuing limitations of unilateral approaches, and the need for international harmonization of legal, technical, and other solutions.

This is a very good starting point. The convention negotiations may start from the work done by international organizations such as The Organization for Economic Co-operation and Development OECD[260], the European Union[261],[262], the Interpol and the G8 group[263]. These model laws or guidelines are a great step since they are - most of the time - the result of consent between many countries through long process and negotiations. May be we should consider what was argued that Cautious must be given to the organizations efforts since they reflect different interests and lobbying[264].

3.2. B. Successful examples:

There is an opinion refusing the idea of substantive rules because of the great practical difficulties to arrive to an international convention but this opinion neglect the mere fact that this has happened and is happening many times. Take the example of the World Trade Organization with 147 members[265] and a successful dispute settlement mechanism. There are also the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958) (the "New York" Convention) with 162 memberstates[266], the United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 with 72 member states[267], or let us return backward to the successful Berne convention 1886 with 155 member states[268].

These organizations and conventions and many other similar ones are a strong answer against the argument of the difficulties of establishing harmonized rules. They prove that harmonization is possible and its results are superb.

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258 See http://www.coe.int/DefaultEN.asp (last visited 10/07/04) the convention was done at Budapest, on the 23rd of November 2001, see also the Explanatory Report adopted on 8 November 2001.

259 See for example Indira Carr. & Katherine S. Williams, “Cyber-Crime And The Council Of Europe: Reflections On A Draft Convention, International Trade Law & Regulation”, 2001, 7(4), 93-96.

260 See in general www.oecd.org (last visited 10/06/2004).

261 See http://europa.eu.int/index_en.htm (last visited 13/07/04).

262 See “Commission Proposes To Combat Cybercrime”, Sweet and Maxwell Limited and Contributors, EU Focus, 2002, 99, 11-13.

263 See http://g8.market2000.ca/about_g8.asp (last visited 13/07/04)

264 Toshiyuki Kono and others, Selected Legal Issues of E-Commerce, Kluwer Law International, 2002, p.21.

265 See http://www.wto.org/english/thewto_e/thewto_e.htm(last visited 10/06/2004)

266 See http://www.kluwerarbitration.com/arbitration/arb/home/cstates/default.asp?ipn=cstates;legis:nyc (last visited 10/06/2004)

267 See http://www.cisg.law.pace.edu/cisg/countries/cntries.html (last visited 10/06/2004).

268 See http://www.wipo.int/treaties/en/documents/word/e-berne.doc(last visited 10/06/2004).

3.2. C. Civil and common law, the gap between the legend and the reality![269]

Another argument against the unified substantive rules is the differences between the civil and common law systems. I would argue that some scholars in each of the systems are fond of making the other system look very "far-away" and complicated.

You can see this in many books and lectures in a legal system where the reference to the other legal system tries to emphasize that the gap between the two systems is very wide.

As a matter of fact and logic this is not true. We should not forget that any legal system was primarily established to achieve justice. In the same time the interaction between different cultures (including concepts of law) did not ever stop. This would normally create norms and principles for the law, which are not completely equal (thanks to the different cultures and environments) but are similar in many sides. So the main concepts and aspects of both of the legal systems are rather similar than some would love to claim. Only the way these concepts are applied and adopted that make the difference. In the particular part of criminal law I think it is even easier. The differences are usually from the application approaches which are usually depending in many elements such as culture, traditions, habits and life styles. One example would explain this largely.

It is always a belief between the common law scholars that in civil law countries the courts decisions are not given an importance and a reference to the other lower courts. This is completely false; the decisions of the cassation court in France and in Egypt are treated with a very high respect from the judges and the lawyers. These decisions are collected in a book published yearly and the principles made by them are followed by all the players in the legal field, to the extent that a court decision in contravention with a principle made by the cassation court is most probably going to be cancelled in the appeal level, unless of course it has a great justification which may convince the cassation court to change its principle.

The claimed gap between the two legal systems should not bother us because it is not a big problem as it seems so long there is an intention to arrive to a harmonized agreement.

4. Conclusion

1- Computers are very important in our life and this importance will increase. There is an urgent need to assure that the integrity, confidentiality, availability, reliability and security of computer systems and networks.
2- This explains the need to regulate computer crimes - and all the other related areas - such as Internet and e-commerce - comprehensively, especially that one of the main functions of any law is a protective one.
3- Updating the criminal law is needed to accommodate the particular nature of cyber crime. This updating may be done by modifying some articles regarding the classical crimes done via new mediums, abolishing some others which are not adequate completely, or even by creating new rules to the completely new issues
4- The levels of punishment either by imprisonment or fining should be reviewed and this also goes for the accomplishers.
5- A successful updating for the law should secure that the civil remedies are given in the cases of computer crimes.
6- Training is extremely important, not only for law enforcements and prosecutors but also for judges and legislators.

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269 In the world of law, there are two main legal systems which are the source for most - if not all - the national legal systems. These are the common law system and the civil law system. The leader and the creator of the common law system is the United Kingdom, it was followed by many of its ex-colony and other Anglo-effected countries such as the United States of America, Australia and Malaysia. The civil law system finds its routs in the famous Napoleon French code, so France is a very significant country in this concern, in addition to it many other countries adopted the civil law system either in Europe such as Italy or in Africa such as Egypt and many others.

In this concern Egypt is a civil law country; the Egyptian laws are affected greatly from the French law. Most of the Egyptian codes were drafted in the light of the French ones. Most of the scholars and legislators had done their postgraduate studies in France. Given also that Egypt is an effective member of the "Francophone". In Egypt's laws there are also some principles or ideas taken from Sharia. The government is always keen to observe that in any law drafting there is no contravention with the principles of Islam. Generally speaking Egypt is a model for a civil law legal system either from the side of legislations or from the side of the judicial system.

7- The international nature of cyber crime creates the need to an international unified substantive rules through a convention which should cover substantive, procedures and international co-operation rules. This convention may establish a global legal system for cyber crime and therefore an international organization to control the regulation process.

E:/cybercrime/intervention gdv bangkok cybercrime

Workshop 6

International co-operation to prevent and combat cybercrime

Guy De Vel

I. INTRODUCTION

I am grateful to the organisers for the opportunity of addressing today the importance of international co-operation in the area of preventing and combating cybercrime. This intervention will address this topic with particular attention to the work carried out by the G8, by the Council of Europe and by the Commonwealth.

The fight against cybercrime either is a global one or it makes no sense. This is, by now, beyond any doubt. Hackers and computer criminals act throughout the globe, thereby putting in crisis traditional international co-operation mechanisms, (i) because on the net everything is more rapid than in the real world and (ii) because existing treaties on international co-operation in criminal matters either may not cover the crimes committed through computer systems or may not cover all the countries/jurisdictions concerned by the given cybercrime.

Cybercrime is a threat to the global economy. This is also, by now, beyond any doubt. Figures speak for themselves: 1999 Melissa Virus = 80 million $ damage, 2000 Love bug = 10 billion $ damage, etc.

For human coexistence (both in the virtual and real world) to be respectful of the rights and interests of all, there needs to be a minimum of rules. Only self-regulation is not enough. Specifically, in the cyberworld, there needs to be close co-operation among all those concerned (eg. users (both for personal and business purposes), Internet Service Providers, law-enforcement and other State bodies) in order to make of the Internet a safe place for all.

II. THE G8 SYSTEM OF INTERNATIONAL CO-OPERATION AGAINST CYBERCRIME

The G8 has certainly been the precursor of the setting up of a very innovative system in the traditional landscape of international co-operation: the so-called 24/7 network. This network has been used also by the Council of Europe Convention on cybercrime.

We live in a world where criminals can bypass national borders through new communication technologies and plan an criminal actions in one part of the world from a physical location thousands of kilometers away.

Networked computers are not only tools available to criminals to advance their schemes on an international basis, but these computers may also be the target of attacks. In investigations involving computer networks it is often important to move at unprecedented speed to preserve data and detect suspects. Often, a criminal can only be stopped if evidence of his/her conduct is preserved within minutes, a time frame too short for us to rely on traditional mutual assistance and extradition agreements and treaties. Therefore, to enhance and supplement (but not to replace) traditional methods of obtaining assistance in cases involving networked communications and other related technologies, the G8 created in 1997 a new mechanism to expedite contacts between countries. Today, some 40 countries around the world have joined the 24-hour point of contact for cases involving electronic evidence. These contacts are available at all hours, 7 days a week, to receive information and/or requests for co-operation.

Having an “around-the-clock” capability is critical not only because terrorist plans and other criminality involving computer networks can occur at any hour of the day, but also because of time-zones differences between our countries. In other words, even if a police uncover a threat in Tokyo at noon, the evidence they need to prevent the activity may be stored on a computer in the US, where it is 10 pm.

The 24/7 capability does not necessarily entail the establishment of a high-tech operation centre open around the clock; rather the capability can be accomplished simply by ensuring that an already established traditional operations centre knows how to reach a high-tech expert at all hours.

III. INTERNATIONAL CO-OPERATION IN THE CONTEXT OF THE COUNCIL OF EUROPE CONVENTION ON CYBERCRIME

Let me now turn to the Council of Europe Convention on cybercrime and the international co-operation system that it sets up and let me eliminate from the outset any ambiguity. The 24/7network point of contact required by the Convention on cybercrime is exactly the same as the G8 one. Once a country becomes a Party to our Convention, it must be able to show a 24/7 capability and join the network. Also, to eliminate a second ambiguity, the Council of Europe Convention is open to accession to all countries around the world. Once a country has become a Party to it, it participates in the implementation process foreseen by Article 46 of this Convention on an equal footing with Council of Europe member States which have ratified the Convention.

Our Convention on cybercrime was opened to signature in Budapest on 23 November 2001 and has so far been signed by 32 European and non-European States and ratified by 9. It entered into force in July 2004. Its Additional Protocol on the criminalisation of acts of a racist and xenophobic nature committed through computer systems has been signed by 23 States and ratified by 2. These treaties have throughout the years received strong support from law-makers and practitioners in Europe and beyond.

The Convention on Cybercrime has three aims:

- to lay down common definitions of certain criminal offences . nine are mentioned in the Convention (including, for instance, the criminalisation of child pornography). thus enabling relevant legislation to be harmonised at national level;
- to define common types of investigative powers better suited to the information technology environment, thus enabling criminal procedures to be brought into line between countries;
- to determine both traditional and new types of international co-operation, thus enabling co-operating countries to rapidly implement the arrangements for investigation and prosecution advocated by the Convention in concert, e.g. by using a network of permanent contacts.

The part of the Convention concerning international co-operation is, in the eyes of many, the most important, as it makes it possible to implement the rapid and effective co-operation required in investigations into computer-related crimes. Where electronic evidence - which is very volatile by nature - is concerned, it is essential that law-enforcement agencies should be able to carry out investigations on behalf of other States, and pass on the information with greater rapidity. Clearly, one of the fundamental objectives of the Convention is to enable the application of common computer-crime specific procedural powers at an international level, through a range of cooperation channels, including existing mutual assistance arrangements and also new avenues (the 24/7 network).

The Convention makes it clear that international cooperation is to be provided among contracting States .to the widest extent possible.. This principle requires them to provide extensive cooperation to each other, and to minimize impediments to the smooth and rapid flow of

information and evidence internationally. Co-operation is to be provided in relation to the offences established by it, as well as all to criminal offences related to computer systems and data, and to the collection of evidence in electronic form of a criminal offence. This means that either where the crime is committed by use of a computer system, or where an ordinary crime not committed by use of a computer system (e.g., a murder) involves electronic evidence, the convention is applicable.

The Convention also creates an internationally binding legal basis for the .24/7 network.. 24/7 contacts must have the capacity to carry out communications with other members of the network on an expedited basis and have proper equipment. The Convention also requires that personnel participating as part of a national team for the network be properly trained regarding computer- or computer-related crime and how to respond to it effectively.

IV. THE COMMONWEALTH WORK TO FACILITATE INTERNATIONAL CO-OPERATION AGAINST CYBERCRIME

The 1999 meeting of the Law Ministers of the Commonwealth (3-7 May 1999) in Port of Spain considered the impact of technology on various aspects of law. One of the issues highlighted for further consideration was computer-related crimes. Ministers asked an expert group to be convened to consider the content of a model law on the basis of the work of the Council of Europe Convention on cybercrime (which, at that time, was still in a draft form).

As regards questions relating to international co-operation and mutual assistance, the expert group recommended substantial modifications to the Commonwealth Harare Scheme on Mutual Assistance in Criminal Matters to cover such issues as preservation orders, disclosure of traffic data and assistance with collection of real time data.

As a result, in 2001 the Commonwealth published .Law in Cyber Space., which contains the reports of two Commonwealth expert groups considering issues relating to law and information technology. Part 2 of this report examines the specific criminal law issues relating to information technology, with particular regard to the Council of Europe Convention on cybercrime. Consideration is also given to international co-operation relating to computer-crimes and other related issues.

V. CONCLUSIONS

In presenting an overview of the tools available to carry out international co-operation to combat computer-related crimes, I hope I managed to show that (a) the response to computer-related crimes or crimes committed through computer systems can only be international and (b) the Council of Europe Convention on Cybercrime is a sound basis, and so far the only internationally binding legal basis, for strengthened co-operation amongst countries around the globe to combat successfully cybercrime.

I would like to point out that non-member States, in particular the United States, Canada, Japan, Mexico and South Africa, have been involved in this work from the outset. These countries took an active part in the negotiations and made a major contribution to its conclusion.

The mobilisation of the international community in favour of an accession to the Council of Europe Convention on cybercrime is growing. In 2002, at their meeting in Bangkok, the leaders of the “Asia Pacific Economic Co-operation” (APEC) have asked member Economies to adopt anti-cybercrime legislation consistent with the Cybercrime Convention.. In April 2004, the Justice Ministers and Attorneys Generals of the Organisation of American States (OAS) have invited their members .to evaluate the advisability of implementing the principles of the Council of Europe Convention on cybercrime (2001), and consider the possibility of acceding to that Convention.

These decisions, together with the firm commitment by all 46 Council of Europe member States to ratify soon the Convention on cybercrime, will pave the way for a more coherent and rational approach of the international community to fight cybercrime.

Let me express here the hope that (i) as many countries as possible around the globe become Parties to the Convention on cybercrime, thereby avoiding the creation of safe havens for cybercriminals and (ii) closer co-operation be set up between international and national institutions, law-enforcement authorities and ISPs, within an internationally agreed legal framework, to counter the threats posed by cybercrime.

Workshop 6

International Cooperation in Cyber-crime Research

R.G. Broadhurst

ABSTRACT
A wide range of research methods and comparative approaches need to be employed to provide basic data on the prevalence and severity of the various types of cyber-crime now confronted. In addition research on the effectiveness of new laws, policing strategies and prosecution via case review and attrition studies are crucial. Research must not be limited to police or court data and these sources often need to be more specific and uniform. Amongst the most pressing research questions is to learn more about victim and offender behaviour, as well as keeping track of legislative and enforcement developments across the globe. Mechanisms for the commissioning and sharing of research need to be developed that involve partnerships or networks between industry, government, academia and grass-root groups.

INTRODUCTION
In general three basic research objectives or phases can be identified in the legal response to cyber-crime over the 30 years since the birth of the Internet: exposé, criminalization and evaluation research. First, exposé research had an emphasis on revealing new modes of crime and new types of criminals (i.e. the "hacker") via detailed case examples while the second phase focused on the best measures to combat cyber-crime by considering the forms of regulation (i.e. criminalization) or technologies best suited to control it. The most recent phase has been research on the effects of governmental and private sector interventions aimed at reducing the impact of cyber-crime by understanding both the scope of cyber-crime and the relative costs and benefits of different security responses.

Research on cyber-crime will increasingly focus on the problems of crime prevention in "cyberspace". Evaluative research will attach greater importance to evidence-based methods of research and will assay various groups, including cross-national populations of end-users, criminals, law enforcement and information security specialists and the numerous digital or other means employed by these actors.

The research and investigations that dramatized cyber-crime and contributed to the perception of an excessively lawless and dangerous medium of the Internet was a necessary phase in the response to national and international regulation of the criminal use of information communication technology (ICT). While there continues to be a role for investigative or "exposé research"[270] the complexities and demands of e-commerce, public safety and privacy create the need for a systematic long-term research process that can inform the regulatory policy of governments at the national, regional and global level. An international approach to research on computer-related crime is necessary for an effective international law enforcement and crime prevention response.

The diversity of research on the "information age" engages many disciplines and crucially, novel cross-disciplinary approaches. Such multi-disciplinary collaborations have been fostered within the academy and are successful when partnerships with police, and the ICT industry occurs. Given the cross-border character of many crimes experienced on the Internet, mobile telephones and other networked environments, a strong comparative element will also be obligatory. As we learn more about the dynamic phenomena of cyber-crime, and especially the response of governments, industry and private actors, the dissemination of what is known will be a vital element in crime

270 An early example was the account of an espionage case involving a Californian research centre triggered by an accounting error observed by the computer system.s manager (Stoll, 1991).

prevention.

Global Context

The emergence of trans-national networks of Computer Emergency Response Teams (CERTs), G8 24/7 law enforcement contact points[271], Internet Crime Reporting Centres, On-line Child Safety Networks[272] and other public/user interest groups (e.g. cyber-patrol, cyber angels) with a crime prevention mandate demonstrate that research and action iterate when communities perceive that they indeed ”share the same fate” regardless of how distant or different they may be. The pressing need for international cooperation also stimulates self-help[273].

The risks of cyber-crime are not uniform and will reflect the diversity of criminal opportunity, the capacity of policing agencies (public and private) and the scope of the digital divide (in terms of e-commerce activity and extent technology uptake) both within and across nations. Risk of cyber-crime and the capacity to respond varies dramatically across nations but nearly half of Interpol’s member countries lack the infrastructure for online communication (Noble 2003)[274]. Thus the cliché that the response to cyber-crime (as with trans-national crimes in general) can be no stronger than the “weakest link” applies and compels the more able to assist the less able. A key research priority is therefore the continual *monitoring of legislative and enforcement capability* across nations given differential risks arising from the relative development of ICT. A number of multi-lateral organizations (e.g. Council of Europe [CoE], Asia Pacific Economic Forum, Organization of American States, European Union, Organisation for Economic and Cooperative Development) have already undertaken initiatives to monitor legislative developments but without co-ordination there is a risk of duplication. Macro-risk or global assessment protocols have not been developed although strategies for harmonising legal definitions and procedures have been suggested (Kaspersen 2004).

Because of the digital divide, only a small number of jurisdictions will have the capacity to provide for comprehensive research capabilities. In the advanced ICT countries that underwent a fundamental shift after the “millennium bug” and the associated hubris, governments and relevant corporations have taken the initiative to support research; however, the focus has largely been on criminalization and intellectual property issues with child pornography catching most attention as a public safety problem.

While Internet and ICT connectivity continues to grow exponentially, how ready are the key players in the academy, private sector and government to undertake a global program of research and dissemination? What should such a research program look like and how can it be done? This paper explores the likely research agenda through the prism of criminology (with its cross-disciplinary approach) rather than the systems engineering or information security perspective. Such a perspective sees cyber-crime as a social rather than as a technical problem and, although it recognizes that the criminal behaviour is said to be taking place in “cyberspace” or “virtual world”, the actors involved and their intentions are not, as sometimes supposed, literally in another dimension. Thus any research agenda must begin by finding a common language to identify the research priorities. For example translating frequent references to “social engineering” (referring to the human element by technology experts) into meaningful questions about offender and victim interactions would be a good place to start.

Research networks and the cost of collective security

271 Co-ordinated by US Department of Justice Computer Crime and Intellectual Property Section, involving some 40 countries in mutual legal assistance: http://www.cert.org

272 A number of US sites illustrate: CyberSpacers.org, Cyber-Hood-Watch.org, and StaySafeonline.info: an example is the animated program created by Microsoft and Boys and Girls of America to help children make safe use of the Internet, chat rooms and e-mail.

273 For example, the Scientific Working Group on Digital Evidence (SWGDE) standardizes the exchange of computer forensics information among law enforcement agencies and guides the judicial system about the admissibility of digital evidence and the qualifications of experts.

274 Interpol has stressed financial and high-technology along with drugs, terrorism, people smuggling and organised crime as it’s top five priorities. Note mobile telephone technologies may reduce these disparities rapidly.

The Interpol-payment card industry model could also be applied as a means for co-ordinating the many emerging networks interested in cyber-crime research. Generic problems of forgery and counterfeiting were the focus of Interpol's secure website for a universal Classification System for Counterfeit Payment Cards, that provided up-to-date information on trends and techniques of forgery of payment cards and fraud. Apart from illustrating how Interpol's unique clearing house function can be adapted to meet new problems, the site serves as an example of how international agencies can assist with essential tasks, such as secure shared intelligence, and the potential role of private non-state actors in the prevention of crime.

An on-line research network, with several *nodes* of reference in government agencies, private industry, and university research centres and self-help groups would enable an *international forum on cyber-crime research* to be developed. This may require a *virtual hub* located in an international agency (e.g. United Nations Office on Drugs and Crime, or regional agencies such as UNAFEI) or one of the university centres focusing on the social and technical problems of ICT[275]. An *on-line research forum* mediated and supported by the relevant international agencies could act as a clearing house about developments in cyber-crime, legislative innovations, the scope of relevant laws, capacities of law enforcement agencies, as well as disseminate research findings and act as an "honest broker" of what constitutes best practice.

A research network would entail closer cooperation between the private IT security sector, academia and law enforcement than is usual and a degree of mutual suspicion and uncertainty about who pays and what form this cooperation should take is evident (Grabosky, Smith & Dempsey 2001). Increasingly costs rather than technology determine the kinds of security used but paradoxically the more successful the security investment, the less visible and less measurable the prevention results (Schneier 2003). Businesses often fail to account for the collateral costs of non-investment in security or consider crime prevention as an external cost[276]. Consequently incentives for doing the right thing (i.e. installing a patch) may be needed to minimize vulnerabilities. Although sharing information about cyber-threats (e.g. the FBI's InfraGard Information Sharing Analysis Centers) is essential collective security systems rely on exchanges about failures and sensitive problem areas and therefore must operate in a climate of trust. Important information is routinely hidden from those who need it most, and providers of IT security seldom pay the costs when they fail (see Loeb & Lucyshyn 2003). Thus a crucial issue will involve means to assess the real effectiveness of investments in cyber-crime prevention.

The legal response to cyber-crime

A key research focus is on how to regulate behaviour in ICT environments such as the Internet and mobile phone networks. A decade ago the need to create new laws to address high-tech crimes was pressing. Many jurisdictions sought to use their existing criminal statutes to cope with unauthorized access, ID theft, malicious computer soft-ware and other offences, others introduced purpose built criminal laws or sought technologically neutral definitions to reduce ambiguities about devices and media that were rapidly evolving[277]

Consequently a degree of uncertainty surrounds the behaviour of interest and the best means to define these diverse crimes (Schjolberg 2004).

The CoE's *Cybercrime Convention*, which came into force in mid-2004 offered the prospect of a potential global treaty for the prosecution of cyber-crime. The convention provides a sound model of the definitions of cyber-crime and is a force for comity and harmonisation of law. It has been drawn on by many non-CoE nations in the framing of their own laws (e.g. Thailand). The many jurisdictions involved in the CoE convention quickly realized there mutual legal assistance

275 The non-profit Computer Crime Research Center (CCRC) located in Zaporizhzhya, Ukraine is an example of cross-border initiative supported by public and private sponsors that seeks to improve co-operation on computer-related crime research, child pornography and cyber terrorism between CIS countries, Europe and the USA (see http://www.crime-research.org/, visited March 3, 2005).

276 For example worms are relevant since they do no direct harm to the infected computer but use it to launch .phishing. or similar programmes that in turn have real affects on other computers.

277 Useful sites include .FindLaw. see http://cyber.lp.findlaw.com/criminal/; and McConnell International see http://www.mcconnellinternational.com/services/Updatedlaws.htm.

arrangements [MLA] were inadequate to deal with the speed and diversity of crimes generated by greater connectivity and efforts in improving MLA are as vital as harmonised definitions of the offences. While the monitoring or mapping of legal changes (Kaspersen 2004) and jurisdiction (e.g. Brenner & Frederiksen 2002) across the globe are crucial research priorities because there are many challenges in achieving uniformity of terminology and practice such that cyber-crimes might be prosecuted by any competent tribunal anywhere as now happens with piracy.

Diversity of cyber-crime

A typology of computer-related crime comprises a) crimes in which computers are instrumental to the offence, such as child pornography and intellectual property theft; b) attacks on computer networks; and c) conventional criminal cases in which evidence exists in digital form. All of these different forms of cyber-crime raise different questions and specific kinds of research methods. Morris (2004) surveyed relevant experts and reported that online paedophiles, fraud and various forms of espionage (including corporate spying) were ranked the most serious cyber-crime threats. The ability of .net-criminals. to use cryptography, steganography and anonymous re-mailers and the abuse of websites and email also ranked highly as significant threats. As with conventional criminality it would be prudent to assess if online offenders are generalists rather than specialists.

Many public police agencies in ICT advanced nations have recognised the increased interdependence of global markets and have responded to the general risks of cyber crime especially to commerce and financial services. The response of the Hong Kong Police is typical and its mission broadly reflects the scope of public policing now required:

- maintaining a professional investigation capability and broadening the investigation; i.e. specialising and mainstreaming expertise;
- developing accredited computer forensics;
- proposing changes in laws and policies;
- prevention and education;
- intelligence management, and liaison with industry and professionals; and
- liaison with overseas law enforcement agencies and international MLA cooperation.

Each of these goals needs to be informed by adequately resourced research capable of informing the operational demands of the comprehensive role envisaged by public policing agencies. A highly useful function is formal risk assessment9. However, how best to promote public education about on-line crime prevention is equally important. Other issues that require both primary and policy research (often with a comparative context) are for example:

- the modus operandi of .new. crimes exploiting new forms of ICT;
- the most efficient means to train law enforcement agents;
- the optimum periods to compel ISPs to store traffic or content data;
- the impact of "virtual deterrence" in the on-line environment[278].
- .the characteristics of user responses to security emergencies, patch compliance and other attributes of effective crime prevention; how individuals and private industry can contribute to their own security; and
- the investigative protocols to apply in the proactive identification of unlawful conduct on the Internet.

Emerging prevention priorities

Although there is consensus about the risks of computer-related crime, apart from criminalising the conduct at a global level, there is much less consensus about what might be done to prevent it. There is concern that the technological solution is a mirage despite improved software resistance to intrusion. Faith in a deterrence-based approach where the criminal law is deployed as the principal instrument of prevention may also be misguided since deterrence is likely to succeed only

278 The UK, National Hi-Tech Crime Unit for example produces an annual hi-tech criminal and technological threat assessment as a component of the National Criminal Intelligence Service's national assessment

in some circumstances, and experience with conventional crime suggests that over-reliance on law as a deterrent or moral educator alone is unlikely to enough despite community support. Research about the effectiveness of different sanctions and the attrition of cases from reporting to prosecution will be one means of gauging the role of conventional interventions. Most incidents of cyber-crime do not proceed to conviction and we know little about the eventual sentences imposed or the levels of disparity within and across nations[279]. Systematic studies of sentencing can help clarify the role of deterrence-based responses to cyber-crime[280] (Smith, Grabosky & Urbas 2004).

Recent developments in the general context of more data, places, customers and complexity suggest *likely priorities* for research as follows:

- Accounting for changes in the form (i.e. greater sophistication) and profit focus of criminal activity, especially fraud and deception-like offences (see Morris 2004).
- The scope, prevalence, severity, and duration of cyber-crimes among different populations and how best to identify high-risk populations (see below).
- Understanding the role of organised crime and, the overlap between traditional organized crime and new modes of crime facilitated by computers and Internet connectivity (see Council of Europe 2004, Brenner 2002).
- Increases in the virulence and sophistication of malicious code now required identifying the best mechanism for the co-ordination of rapid and secure information sharing about such threats among CERTs.
- The nature and efficiency of private sector investments in security as an aspect of .true. external costs (Schneier 2003).
- The effectiveness and efficiency of civil law deterrents and the role of government requires the attention of policy research (Grabosky et al. 2001).
- Despite increased cross-national cooperation, systematic evaluation of the progress made in developing comprehensive forms of MLA has yet to occur. Action is necessary to map the .density. of these relationships (including intelligence-sharing networks) and assay the effectiveness of MLA in closing the gaps in the international legal system. The monitoring of compliance is now a priority (Kaspersen 2004).
- Observing trends in public confidence in e-commerce over time in one country is important and could be conducted on a cross-national comparative basis. Comparing findings relating to public confidence with actual levels of e-commerce can also be useful (Grabosky & Broadhurst 2005).
- The parlous state of some law enforcement agencies and the consequent risk of cyber-crime safe havens required the attention of development economics and cross-cultural specialists.

Much of what we think will help in preventing cyber-crime is based on too little knowledge about offender and victim behaviour as it applies in the online environment. To guide research a number of theoretical approaches will need to be tested.

"There is nothing more practical than a good theory"[281]

That criminal behaviour need not depend on social deviance is a fact that makes distinguishing good or bad behaviour from good or bad people one of the natural conundrums of policing. In the online "situation" the theft of information and the manipulation of identity and trust are the key. Leading crime prevention scholars Newman and Clarke (2003) argue that crime follows *opportunity* when the presence of motivated offenders, and attractive and tempting targets in the absence of effective guardians combine in time and place. When this situation arises crime will occur providing the offenders also have appropriate resources (i.e. social and technical capital) to undertake the crime. A crucial factor is how trust is acquired and maintained when on-line

279 We know very little from any country about what constitutes aggravating or mitigating circumstances in cyber-crime cases.

280 The longest sentence yet by a US court was 108 months to Brian Salcedo in December 2004, for his role in a conspiracy to hack the nationwide computer system of a retail corporation. Previously Kevin Mitnick received the longest sentence of 68-months (see www.cybercrime.gov/cccases.html visited March 6, 2005).

281 The quote is attributed to Emmanuel Kant

merchants must be more intrusive about their (unseen) customers' identity and credit risk and the apparent ease in which trust is manipulated by fraudsters and others. Clarke and Newman also note the risks posed in the post-transaction phase (i.e. the delivery of goods or services ordered), a matter often overlooked. Efforts to reduce cyber-crime need to recognise these ingredients and the numerous pathways for crime. Therefore in the online environment crime prevention must be more integrated than the conventional environment.

Most measures designed to counter cyber-crime rely on either identifying potential offenders or shoring up "guardianship". Identifying the relationship between the offender's motivation (e.g. fraud, espionage, extortion or thrill seeker) and the kinds of target or victim (specifically targeted, the product of opportunity or merely an unfortunate victim of random offending behaviour) can provide the basis of offence profiles.

It is through a network of relationships that the resources necessary to complete a criminal transaction are mustered; coupled with the availability of targets and, the absence of capable guardians, this is what gives criminals their sustenance. In the context of cyber-crime we are only now beginning to understand the complexity of these networks (often operating in "chat rooms" or closed or encrypted access sites) and new research methods based on sophisticated "search engines", "traffic analysis" and data mining techniques are required. These methods help visualise web communities and the key players in on-line illicit markets.

Motivation of offenders: the "hacker" myth?

While the situational crime prevention model outlined above rests on the basic rationality of actors and the intrinsic role of deterrence other theories that include the role of deviant learning (i.e. differential association), social control or conditioning and the impact of labelling also require attention. Too much credence has been given to the "hacker" as the relevant offender and "techniques of neutralization" are frequently paraded as "hacker" motivations for criminality[282]. Yet motives will vary depending on the nature of the crime in question, and include greed, lust, revenge, challenge and adventure. Offenders have always been quick to adopt the benefits technology and tend to be generalists rather than specialists in choice of crime and computers are a means to illicit profits or pleasures.

Demetriou and Silke (2003) provide an example of how criminological research may help evaluate enforcement by reporting on a research project that monitored the illegal and deviant activities (motivated hacker or not) that ensued when a website trap ("honey-pot") was developed. The research showed that 56% of 803 on-line users accessed illegal or pornographic sections of the website and as with "real" sting operations[283] raise questions about user perceptions of detection risk, the severity of the offending and the ethics of the method used. It is perhaps easier to create problematic entrapment websites than to identify the actual victims of child pornography and hence gather evidence against the producers of such images.

Prevalence of cyber-crime

Developing uniform and reliable measures of the nature, incidence, prevalence, duration and severity of crime is a major challenge in computer-related and Internet crime. Not only are the methods and medium novel but also a significant proportion of computer-crime *events* take place across *two or more jurisdictions.* Many policing agencies have only recently developed specific measures for recording cyber-crimes, but often these may be not be differentiated from other commercial crime, fraud reports or criminal damage statistics. Thus the extent of computer-related

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282 An example offered by the editor of 2600: The Hacker Quarterly defines the hacker as ..asking a lot of questions and refusing to stop asking. This is why computers are perfect for inquisitive people. and hackers are ..drawn to the sites and systems that are said to be impossible to access., but ..the ability to go anywhere, talk to anyone, and not reveal your personal information unless you choose to.attracts people to the hacker culture, which is slowly becoming the Internet culture.: cited in CNN.com, April 19, 2004 visited November 10, 2004.

283 For example, .Operation PIN. involved a website that purports to contain images of child abuse but anyone who entered the site and attempted to download images was confronted by an on-line law enforcement presence and informed that he has committed an offence, his details captured and passed to the relevant national authorities. The aim is to undermine ..the confidence of those who think that the Internet is an anonymous place where paedophiles and other criminals can operate without fear of being caught. (see http//www.virtualglobaltaskforce.com, visited March, 3 2005)

crimes, even when reported, remains unclear. Official measures of crime incidence on the Internet will be more useful if they develop user-friendly reporting systems that fully utilize the new mediums. Digital technology affords new opportunities for individual citizens to communicate efficiently with police[284].

Police statistics about reported crime often tell us more about the activities and priorities of police than they do about the extent of crime. This is because in many traditional crimes, victims do not report them and this is undoubtedly also the case for computer crime. Replicated random surveys of crime victims in many jurisdictions over the past 30 years have shown there are various reasons why victims do not report to police. These include, for example: the belief that police cannot (or will not) do anything; the offence was trivial or the victim felt the matter was better dealt with privately; reporting the case was too troublesome; or fear of reprisal or further trouble if they did report the incident (Alvazzi del Frate 1998).

Cyber Crime Victim Surveys (CVS)

Criminological interest in cyber-crime victimization has recently been recognized by the inclusion for the first time of questions about Internet crimes in the 2003 US National Institute of Justice household Crime Victim Survey (CVS). The scope is restricted to the *personal use* of computers (at home, school or work), or for operating a home business and also asks if any monetary loss occurred and if the matter was reported to police or other agencies. Over time CVS will yield valuable data about the cyber-crime experience of ordinary users and provide tracking data helpful in evaluating policy responses[285].

Specifically the CVS asks . Have you experienced any of include the following computer-related incidents in the last 6 months:

- Fraud in purchasing something over the Internet?
- Computer virus attack?
- Threats of harm or physical attack made while online or through E-mail?
- Un-requested lewd or obscene messages, communications, or images while online or through E-mail?
- Software copyright violation in connection with a home business?
- Something else that you consider a computer- related crime?

Another useful alternative model or strategy is the annual Computer Security Institute (CSI) and the San Francisco Federal Bureau of Investigation's Computer Intrusion Squad (FBI) *Computer Crime and Security Survey*[286], which focuses on ICT professionals[287]. Such an approach relies on an informed and knowledgeable group to assay how often crimes occurs, the costs and risks on the Internet[288]. As a tracking survey this method provides information about trends in cyber-crime as perceived by security specialists and goes some way in evaluating the impact of counter-measures. The latest survey (9th) shows a decline in cyber-crime and in particular intrusions.

Surveys of vulnerable groups

Also useful alternative or complimentary measures will be purpose-built surveys of victims. Such surveys must develop suitable means of involving respondents and overcome the complex “denominator problem” or unknown dimensions of the Internet. Many of the methodologies that will need to be deployed, especially those that are implemented on-line will be untried. Generally the “metrics” of the prevalence or extent of cyber-crimes among, for example, the estimated (in 2000) 18 million active but volatile domains and 1.4 billion publicly accessible pages are unreliable and

284 An example is the US Internet Fraud Complaint Center, which receives on-line information from the public relating to questionable on-line activity. Personnel at the centre evaluate these communications and refer them to the appropriate agency or jurisdiction.

285 A Chinese translation of these questions is to be implemented in the UN International CVS to be conducted in Hong Kong [HK] China in 2005.

286 Gordon, L.A., Martin P. Loeb, M.P., William, Lucyshyn, W. & R. Richardson (2005) Ninth Annual 2004 CSI/FBI Computer Crime and Security Survey, see GoCSI.Com.

287 The 2004 survey is based on responses from 494 computer security practitioners in corporations, government agencies, financial institutions, medical institutions and universities.

288 In 2003, the Computer Crime and Security Survey reported average losses per respondent of about $800,000.

few studies can be confidently generalised[289].

A relatively well-researched area has been the risks to children of unsolicited sexual contacts, but the data is limited and as yet no trends that may help us evaluate the impact of interventions[290]. Although often of varying quality and using a variety of methods to obtain respondents, these surveys provide useful material for local responses to the risks for children. Typically such surveys focus on “exposé”. For example a 2001 US study found one in five 10.17-year-olds had received sexual contacts in the preceding year, and 4% received “aggressive” solicitations (off-line contact sought)[291] while a 2004 Hong Kong survey of 1,175 high-school students (aged 12-15) on-line activities showed that 55% of them had made friends with strangers contacted on the Internet. Of these 39.5% went on to meet their on-line contact, 12.3% subsequently dated and 6.9% had sexual contact. A significant proportion (11.6%) suffered financial loss after meeting their on-line acquaintance and 9% were sexually assaulted or harassed (Moy 2004). Recent research on cyber-stalking also broadens our perspective by including organizations (businesses, agencies etc.) as well as individuals and our understanding of the differences between “off-line” and “on-line” behaviour (Bocij 2004). Considerable more research needs to be undertaken to account for differences amongst victims and for the assumed role of anonymity on the Internet in such behaviours

Industry may also support research and the Internet Watch Federation (IWF) 2004 survey of ICT personnel’s awareness about their duties as defined by the UK *Sexual Offences Act* (SOA) 2003 provides an example. The SOA was devised to provide ICT professionals with a legal defense for viewing and holding illegal child abuse images found on company networks for the purpose of evidence forwarded to the police. According to this on-line survey only 13% of ICT personnel knew about the law and 30% were not sure what constituted illegal content[292]. In addition the regular loss estimates reported by intellectual property businesses and periodic client or industry surveys by large accounting firms to determine the incidence and prevalence of computer-related crime are also available. If these survey methods are clearly specified they could, along with official and CVS statistics, contribute as one of several components of an evidence-based surveillance system.

Developing evidence based research

Research on cyber-crime is in its infancy and providing an international evidence base for future policy development is a challenging task. Knowledgeable individuals and institutions may for commercial, political or national security reasons be disinclined to share their wisdom with researchers. Information that enters the public record often may actually be misinformation or disinformation. The creation of a *cyber-crime research network* supported by international and regional agencies in partnership with industry and academia will play a vital role in improving the quality of information and reducing overload.

Given the cross-national nature of cyber-crime, country case studies, focusing on individual incidents and more general developments, can help raise public awareness of policy imperatives. It would also be instructive to analyse known cases of cross-border offending. Were 24/7 arrangements in place, and did they function as intended? Were the laws of the country from which the offending originated adequate to deal with the matter? Was there agreement or disagreement on the part of the authorities about whether domestic prosecution was preferable to extradition? Other issues call out for comparative study: for example the ways in which different national law enforcement agencies of cope with evidence of possible criminal activity that may be encrypted. When evidence exists in a form that is not accessible to investigators, what do they do? Do they

289 E. O.Neil, B. Lavoie & R. Bennet, 2003, .Trends in the evolution of the public web., cited in www.caslon.com.au/metricsguide1.htm.

290 Commercial enterprises provide content filtering and these may offer further data on the nature of problems.

291 The sample comprised 1501 teenagers who used the net regularly; see D. Finkelhor, K. Mitchell & J. Wolak, 2001, Risk factors for and impact of online sexual solicitation. Journal of the American Medical Association: cited at www.caslon.com.au/securityguide11.htm.

292 IWF (see http://www.iwf.org.uk) an Internet .Hotline. also noted that although 90% of respondents thought their organization had an acceptable Internet use policy, 27% did not monitor staff use or report such matters to police (70% claimed they would dismiss staff involved) and 35% had no policies for dealing with such images.

seek to mobilise decryption technology to "break" the code (less effective given the widespread availability of strong encryption technology)? Do they issue, subject to judicial oversight, "decryption orders requiring assistance in rendering the evidence intelligible, with penalties for non-compliance? Do they use high-technology means of identifying encryption keys, such as keystroke logging devices or the technologies of remote search?

Similarly, case studies of individual investigations, successful or otherwise, can also be instructive. Success stories can help build confidence among new investigators, or among public officials. "Recipes" for success may also be useful for training purposes. Studies of unsuccessful investigations are no less important. Despite the fact that individuals or agencies do not like to dwell on failure, it is important to understand what went wrong, in order to reduce the likelihood of subsequent similar mishap. Just as hospital staff meets in regular mortality and morbidity conferences, and aviation safety specialists analyse the circumstances of aircraft accidents, so too should cyber-crime specialists reflect systematically on cases that .go wrong. (Broadhurst &Grabosky 2005).

Countries differ in terms of their policy priorities. It would be useful to develop an overview of priorities in the different regions and to observe how priorities change, both within individual countries and in multilateral forums. What are individual countries concerned about and what sorts of trade-offs between security levels that decrease e-commerce and levels of crime are they prepared to accept? What kinds of cyber-crime take precedence: hacking, fraud, or theft of intellectual property? Are governments more concerned about infrastructure protection or child pornography? What explains the elevation or decline of an issue on the public agenda: lobbying by the affected industries or a real increase in the underlying behaviour, or international pressure?

Government has driven much of the response to cyber-crime but the private sector plays a crucial role in the prevention of crime in the digital age and can also contribute to research. Apart from the need for coordinated research three issues remain essential: the creation of a viable international law enforcement mechanism; the role of trans-national criminal networks; and making private and public partnerships genuinely collaborative.

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Workshop 6

Technical Assistance in investigating Computer-related crime

Tae-Eon Koo

1. Introduction

Computer-related crimes are a growing trend as computers or internet become a significant part of modern human lives. Technology has made it easier for criminals who use high technologies to hide information about their crimes and more difficult for law enforcements to investigate criminal cases which committed by them.

Commonly, the growth of computer-related crime can be attributed generally to the following main factors.

- Technology: The easy availability of new technologies with high operational speeds, capacity and connectivity makes it easier for unlawful activities to escape detection. Conversely, the majority of computer-related crime victims are not sophisticated technologically or well equipped to prevent, detect or deal with computer-related crime.
- Low Levels of Awareness: Lack of awareness about how to maintain a minimum level of security with regard to personal information or electronic property presents an opportunity and identifies targets for the criminals.
- Fear of adverse publicity: In some cases when a crime is detected, businesses have been reluctant to report criminal activity because of concern about the adverse publicity, which can cause embarrassment, loss of public confidence, loss of investors or economic repercussions.
- Outdated laws and regulation: Criminal laws in some jurisdictions have not kept up with the challenge of new technologies. While some countries may have addressed the threat, some laws already need to be amended to address new kinds of computer-related crimes. Only a few countries have attempted to address the issue of prosecuting computer-related crimes committed by criminals from another jurisdiction.
- Law enforcement agencies: Many law enforcement agencies lack the technical expertise as well as sufficient regulatory powers or equipment to investigate and prosecute computer-related crimes.

There are two types of computer-related crimes. 1) Crimes facilitated by a computer and 2) Crimes where a computer or network is the target. When a computer is used as a tool to aid criminal activity, it may include storing records of fraud, producing false identification, reproducing and distributing copyright material, collecting and distributing child pornography, and many other crimes. Crimes where computers are the targets can result in damage or alteration to the computer system. Computers which have been compromised may be used to launch attacks on other computers or networks.

Information technology has been permeating every phase of daily lives. The integration of the computer and its contents into everyday life makes electronic evidence increasingly important as admissible evidence in the legal world. Likewise, because of the growing complexity of the digital environment, evidence is collected and handled differently than it was in the past and often requires careful "computer forensic investigation". Thus, to fight computer-related crime, technical assistance is more needed than before and become more important factor in capacity building. Law enforcement should train their officers to equip skills about investigation on computer-related

crimes, hire computer experts to assist investigators, and furnish the facilities where digital evidence is to be properly handled.

2. Requirements for effective legal enforcement to combat computer-related crime

Most of the law enforcement agents are not specialized in computer technology. They have difficulties in understanding what has been going on and determining what to do for tracing criminals. More than ever, people involve computers in wrongful activities, making it critical for legal professionals to have a good understanding of how electronic evidence plays a role in both investigation and litigation. So, it is important to investigate and prosecute those kind of crimes properly that proper technical assistance is been offered to those in charge.

To meet the threat of computer-related crime, law enforcement agencies all over the world are developing highly trained and well-equipped law enforcement officers to handle the increasing sophistication and international reach of computer-related crime. The training would be on a regular basis to counter the rapidly evolving nature of computer technologies.

Due to the technical complexities and the grave legal issues raised by such crimes, each jurisdiction is developing the necessary teams of experts who are able to dedicate themselves to the investigation and prosecution of computer-related crime. The online customer could patronize any virtual shop on the internet at all hours of the day, which means that enforcement agencies should have investigation experts available 24 hours and seven days a week. In addition to domestic training, agencies also receive international exposure at internationally conferences or training sessions that cover the latest innovations and technologies or criminal investigation techniques. Coordinated training sessions between nations would be of great benefit to ensure that new information and methods are being shared quickly among neighbouring countries.

It is unfortunate that many law enforcement offices do not have the necessary skilled officers to deal with computer-related crime. I will prove how technical assistance is important in investigating computer-related crime throughout this paper.

3. Importance of Technical Assistance in computer-related crime investigation

In investigating computer-related crimes, so called "computer forensics" is key to acquiring and preserving electronic evidence. Proper collection and analysis of electronic evidence is critical in most of computer-related crime investigations. But, even the best evidence can easily be voided if the investigator cannot establish in a court of law that the subject computer was not corrupted or tampered with. Trained forensic specialists must take the necessary measures to prevent malicious acts that can result in disruption to the evidence. In some cases, a suspect's computer can be "booby trapped" whereby a disconnected secondary hard drive is installed inside a computer. The control of a computer may be accessible from a remote location through Internet or network connections. Each of these situations can easily result in the destruction of valuable evidence if not handled properly.

Computer forensics is the discovery, analysis, and reconstruction of evidence extracted from any element of computer systems, computer networks, computer media and computer peripherals that allow investigators to solve the crime. Recently, even the concept of "Cyber Forensics" has been emerged. Cyber forensics focuses on real-time, on-line evidence gathering rather than the traditional off-line computer disk forensic technology.

4. What computer forensics can do?

Computer forensics enables the systematic and careful identification of evidence in computer-related crime cases. This may range from tracing the tracks of a hacker through network systems,

to tracing the originator of apparently anonymous defamatory emails, to recovering signs of fraud. It has now become a recognised forensic discipline with industry standards and a formal protocol.

Computer forensic can tell everything from the character of the user to their interests, activities, financial health, acquaintances and more. It is all there to be recovered from applications, email systems, web browsers and free space.

These are steps in investigating computer-related crime in view of computer forensics:

- Identifying the evidence: Once a computer-related crime takes place and an investigation is subsequently initiated, identifying which computers are involved must be the most important step of early investigation. Law enforcement officers should determine: did the suspect have access to more than one computer?, What kind of rights did the suspect have on the network?, Is the home computer involved in illegal activities?
- Securing the evidence: Digital evidence is prudently handled during this step. Computer forensics specialist has to intervene for proper handling of electronic evidence.
- Data acquisition: Once the evidence is properly secured, an image f the hard disk or any original files will then be made. This image should be a bit stream image and it can be verified through a mathematical hashing algorithm. This ensures the integrity of the evidence as a valid copy of the original.
- Data recovery: At this point, the computer forensic specialist should be working exclusively from the imaged data. The original media should be catalogued, sealed and properly stored as evidence. The imaged data can now be analysed and interrogated by special forensic tools that are recognized in court. The experience and training of a forensic specialist is critical at this stage, as it is not uncommon for files to be hidden by altering filenames or extensions.

When in a computer-related crime investigation, an investigator must make sure that he don't change any of the time and date stamps of files, don't change the contents of the data itself, maintain a complete and comprehensive audit trail of the steps he has taken, and know what operations the computer performs when he turns it on or off. He is to be wary of changing time and date stamps when booting the machine, overwriting information in the "free space" of the disk during boot up, spreading viruses corrupting files and resulting in claims for damages, shutting down server-based systems that cannot be brought back to life after being turned off. It is so hard to know for an average law enforcement agent all the things about what could concur when he touches a computer or a system. That is why computer forensics specialists in various fields should assist law enforcement officers and law enforcement officers need to be trained to catch up trends in new technology of computer science.

5. How to build computer forensics capacity

It is very hard for every law enforcement offices to equip own computer forensic laboratories and computer forensics experts because of insufficient budgets. To strengthen law enforcement's computer forensics capabilities practically, it is more efficient to install "regional" computer forensics laboratory which can be shared by neighbour law enforcement offices.

FBI's .Regional Computer Forensics Laboratory (RCFL) Program' is a good example. RCFLs Provide much needed computer forensic expertise and training to thousands of law enforcement personnel. FBI's RCFL initiative was chosen as one of the "Top 50" programs in the 2005 innovations in American Government Awards competition over 1,000 government organizations submissions.

The RCFL Program is a national network of one-stop, full-service digital evidence laboratories. The FBI provides start-up and operational funding, training, personnel and equipment, while local area law enforcement agencies assign personnel to work as Examiners. During Fiscal Year 2004, the program supplied full service digital forensics support to over 1,000 law enforcement agencies in

nearly a half dozen states; accepted 1,548 requests for service; conducted 1,304 forensics examinations, and trained 2,040 law enforcement personnel in various digital forensics techniques. Currently, there are seven RCFLs in operation, with another six laboratories opening in 2005. The efficiencies of RCFL program are:

- The RCFL model is based on two guiding principles: cooperation and partnership. Although the program is technical in nature, collaboration between an array of law enforcement agencies is the main driver behind the program's continued success.
- Standardization: To ensure uniformity throughout the program, all RCFLs must follow a well-defined quality assurance program, complete with FBI approved standard operating procedures and quality assurance manuals. These standards govern policies and procedures concerning evidence handling; search and seizure operations; the examination of seized electronic equipment, including computers; and courtroom testimony. The notion of following a uniform set of procedures also applies to data gathering.
- A powerful network: As new RCFLs are formed, they gain access to a powerful, and growing network of resources and manpower. For instance, if a case is particularly complex, or if a specific expertise is needed, RCFLs cooperate to identify what resources are available to them within the program. ! Computer forensics expertise: RCFLs can collect computer forensics expertise.
- Computer forensics expertise may fall into the following categories; pre-seizure consultation, on-site seizure collection, duplication/storage and preservation of digital evidence, impartial examinations of digital evidence, documenting the work and nature of requests in preparation for testimony, courtroom testimony.
- Training, research and development

6. Conclusion

To find the efficient method of technical assistance is core factor in combating computer-related crime. Continuous effort of training law enforcement is also important as well as equipment of computer forensics laboratories. Computer forensics experts can also cooperate effectively in translational computer-related crime.

One of the first impediments that investigators face is identifying suspects. Occasionally, this can lead to considerable problems when the wrong person is arrested. In cyberspace, identification problems are amplified. Digital technologies enable people to disguise their identity in a wide range of ways making it difficult to know for certain who was using the terminal from which an illegal communication came.

As a field prosecutor, I can hardly emphasize enough the importance of technical assistance. Rapid, exact analysis of digital evidence often lead the criminal cases to success and law enforcement agents to the correct decision of what to do next. It is time for governments to recognize the significance of training law enforcement officers and hiring computer forensics experts to combat computer-related crime. Our everyday life has been going into digital and hi-tech criminals use sophisticated advantages of up to date techniques. If we fail to catch up those kind of digital trends, we are always prone to be behind the criminals.

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Workshop 6

Educating Legislators and Criminal Justice Professionals

Claudio Peguero

Those who make, enforce, and carry out the law already understand the basics of legislation, investigation, and prosecution. They need the training in the basis of information technology: how computers work, how networks work, what can and cannot be accomplished with computer technology, and most important, how crimes can be committed using computers and networks.

This training, to be most useful, should be targeted at the criminal justice audience rather than a repackaging of the same material, taught the same way that is used to train IT professionals. Although much of the information might be the same, the focus and scope should be different. A cybercrime investigator doesn't need to know the details of how to install and configure an operating system. He or she *does* need to know how a hacker can exploit the default configuration settings to gain unauthorized access to the system.

The training necessary for legislators to understand the laws they propose and vote on is different from the training needed for detectives to ferret out digital evidence. The latter should receive not only theoretical but hands-on training in working with data discovery and recovery, encryption and decryption, and reading and interpreting audit file and event logs. Prosecuting attorneys need training to understand the meanings of various types of digital evidence and how to best present them at trial.

Police academies should include a block on computer crime investigation in their basic criminal investigation courses; agencies should provide more advanced computer crime training to in-service officers as a matter of course. Many good computer forensics training programs are available, but in many areas these tend to be either high-priced, short-duration seminars, put on by companies in business to make a profit or in-house programs limited to larger and more urban police agencies. Enrollees primarily tend to be detectives.

In the United States few states have standard mandated curricula for computer crime training in their basic academy programs or as a required part of officers' continuing education. In rural areas and small-town jurisdictions, few if any officers have training in computer crime investigation, although this situation is slowly changing.

Again, officers who do have training are usually detectives or higher-ranking officers - yet it is the patrol officer who generally is the first responder to a crime scene. He or she is in a position to recognize and preserve (or inadvertently destroy or allow to be destroyed) valuable digital evidence.

Ideally, all members of the criminal justice system would receive some basic training in computer and network technology and forensics. However, that is an unrealistic goal in the short term. The next best solution is to establish and train units or teams that specialize in computer-related crime. If every legislative body had a committee of members who are trained in and focus on technology issues; if every police department had a computer crime investigation unit with special training and expertise; and if every district attorney's office had one or more prosecutors who are computer crime specialists, we would be a long way toward building an effective and coordinated cybercrime-fighting mechanism.

For years law enforcement lagged behind in the adoption of computer technology within departments. Over the last decade, the law enforcement community has begun to catch up. In the United States, Federal agencies such as the FBI have excellent computer forensics capabilities. Large police organizations such as the IACP and Police Futurists International (PFI) have embraced modern technology issues and provide excellent resources to agencies. Metropolitan police departments and state police agencies have recognized the importance of understanding computer technology and established special units and training programs to address computer crime issues.

There's similar, and very good and advanced efforts in other countries, for example the National High Tech Crime Unit in the United Kingdom, the Cybercrime Group - *GDT (Grupo de Delitos Telematicos)* in Spain, the Cybercrime Investigative Brigade - *BRICIB (Brigada Investigadora del Cibercrimen)* in Chile, the Cyber Police in Mexico among others. Other countries are starting to work with the issue, like the Dominican Republic with the National Police's High Tech Crimes Investigation Department.

But law enforcement in the United States and other countries still has a long way to go before all law enforcement agencies have the technical savvy to understand and fight cybercrime.

Those agencies that are still lacking in such expertise can benefit greatly by working together with other more technically sophisticated agencies and partnering with carefully selected members of the IT community to get the training they need and develop a cybercrime-fighting plan for their jurisdictions. The Internet reaches into the most remote areas of countries and the world. Cybercrime cannot remain only the province of law enforcement in big cities; cybercriminals and their victims can be found in any jurisdiction.

WORKSHOP 6

Combating Cybercrime:
A Public-Private Strategy in the Digital Environment

Scott Charney

A strategy for combating computer-related crime must begin with an assessment of the environment in which such crime occurs. We are now entering a digital era that is transforming every aspect of civic and private life. Indeed, the Internet has spawned commercial growth, influenced political transformations, enabled new opportunities in education, and provided instant communications to friends, family, and colleagues around the world.

This digital transformation - like all other major systemic changes that preceded it - also presents potential pitfalls. The transformation is occurring over a medium and through associated technologies that have created previously unforeseen capabilities to store, access, and share information. But this architecture, which is everywhere and open to anyone, was originally developed in a tightly controlled environment for use only by a group of trusted users. As a result, the transformation to a completely open virtual environment has created unanticipated threats to our security (e.g., botnets, spam), new threats to our privacy (e.g., spyware, phishing to commit fraud), and new ways to perpetrate old crimes (e.g., the use of computers to create and distribute child pornography).

In this context, the creation of a global culture of security. is vital to preserve our core values of security and privacy and realize the potential of the digital age. But how do we create such a culture? Personal and national security are too important to allow such a culture to arise unplanned and reactively. Rather, we must develop a comprehensive approach to security in which both the public and private sectors play leading roles, share responsibility, and support one another. In particular, government and the private sector, with information technology companies in a leading role, should work together to ensure the development of strong criminal laws and the capability to enforce them, to share information that will enhance security, and to support the security education and training of citizens.

This paper provides an overview of the inherent challenges of the digital age, and outlines the elements of a public-private sector cooperative strategy that will meet those challenges. Specifically, Part A addresses the conceptual and practical challenges to security and privacy in light of the unique characteristics of the digital age. Part A then discusses why neither traditional models of government protection nor a purely market-based approach to security is sufficient in the virtual world and identifies the need for a true public-private sector strategy to security. Part B details the five elements of a sound public-private sector strategy, using Microsoft's experience to illustrate the roles that industry and government can play in pursuing the strategy.

A. Background on the Security and Law Enforcement Challenges

1. Characteristics of the Digital Era

The Internet presents both conceptual and practical challenges to maintaining public safety and national security. The Internet originally developed as a means of sharing research and facilitating cross-network communications among military researchers[293]. Thus, at its inception, the Internet was available only to a group of trusted users, and Internet crime was not a concern. There was a

293 National Research Council, Development of the Internet and the World Wide Web, in Funding a Revolution (1999).

high degree of inherent security, which reduced the need for multi-faceted, conceptual approaches to security. The rise of personal computing (the vision to have a computer in every home and on every desk) and the opening of the Internet (first to the academic community, then to all non-commercial uses, and finally to commerce) ushered in the digital age and all of its benefits, but also fundamentally changed the scope of the security problem. Suddenly, everyone was able to access the Internet, but it was not clear who "everyone" was, and the decentralized nature of Internet management meant no individual entity was chiefly responsible for its security. The vulnerabilities of computer networks quickly became known, and as more data was stored on the Internet, more was compromised. Thus, security and privacy have become the twin pillars of debate over the merits and dangers of the digital age.

Attacks on data accessible online, distributed denial of service attacks, and attacks on the physical infrastructure of the Internet (e.g., the destruction to lower Manhattan on September 11, 2001)[294] have resulted in more advanced thinking about the risks created by our increasing dependence on information technology and the inter-dependence of critical infrastructure sectors and IT systems. For example, policymakers and thought leaders in the private sector, academia, and in the non-profit world are increasingly considering security in the virtual world in terms of "cascading" effects: What consequences would follow a terrorist attack upon a major Internet exchange facility?[295] How would the disabling of a telecommunications backbone provider affect banking and financial sector infrastructure? How would a cyber attack on a power grid affect other critical infrastructure sectors?[296] Such concerns are not theoretical; many years ago a hacker disabled a telephone switch in a city in the eastern United States, which in turn forced the metropolitan airport to close for six hours[297].

Perhaps as a result, governments have entered into agreements with private sector companies to protect against precisely such cascading effects[298] and cross-industry groups have formed associations to increase cooperation on IT-related security issues[299]. Likewise, on the privacy front, there has been much consideration given to preserving privacy while strengthening the ability to authenticate the identity of online users.

Tackling these fundamental "big picture" questions is essential to assuring security and privacy in the digital world. Yet, the implementation of the strategies to confront these challenges must deal with the practical as well as the conceptual. Specifically, they must address how, as a practical matter, to combat *real* crime committed in a *virtual* world.

In the pre-digital world, there were physical limits to what a burglar or vandal could achieve; time was of the essence and the amount of property that could be transported was limited. Additionally, physical crimes left physical clues. There were sometimes eyewitnesses, sometimes surveillance cameras, sometimes fingerprints. Such physical and temporal limitations typically do not apply in the digital environment. Criminals seeking to steal certain information or damage property can perpetrate their conduct from anywhere in the world in a matter of minutes; the amount of information they can steal and the harm they can cause is limited only by their technical capacity and the sophistication of their victim's cyber defenses. Moreover, because the Internet provides global connectivity, anonymity, and lack of traceability, it is an excellent medium to commit crime. Finally, as cybercriminals become more adept, they continually find new ways to thwart defenses and hide their tracks. In this environment, it is not enough for society simply to recognize the

294 National Research Council, The Internet Under Crisis Conditions: Learning from September 11 (2003).

295 Id., at 54-60.

296 For example, according to press reports, the U.S. Federal Energy Regulatory Commission, acting in response to unending efforts by hackers to access systems feeding the nation's power grid, warned U.S. electric companies in January 2005 to increase efforts to prevent against cyber attacks. See Justin Blum, Hackers Target U.S. Power Grid, Washington Post, Mar. 11, 2005, at E1.

297 The airport tower was unmanned. As planes approached the airport they would send a signal -- which was relayed across the telecommunications network -- to turn on the landing lights on the runway. Because the telephone switch was disabled, the next plane attempting to land was unable to activate the runway lights, thus leading to a closing of the airport.

298 For example, the U.S. government conditioned approval of the sale of Global Crossing, a telecommunications backbone provider, to Singapore Technologies Telemedia on the signing of a Network Security Agreement with the Departments of Defense, Homeland Security and Justice, and the Federal Bureau of Investigation. The Network Security Agreement included a number of security-related measures to preserve the integrity of the Global Crossing network in the event of an attack. The agreement is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-3121A3.pdf.

299 See, e.g., DigitalPhishNet.org, discussed infra at Part B.3.

values at risk in the digital age and conceptualize the right framework to preserve them. We must also ensure that our law enforcers have the requisite cutting-edge knowledge, tradecraft, and tools to track down and prosecute criminals; that citizens have the necessary knowledge and tools to facilitate the safety of their digital environment; and that all elements of society have sufficient information about proximate threats and available resources to guard against those threats. The challenge, of course, is how to develop a strategy to achieve these ends.

2. Choosing the Right Approach

Citizens typically rely upon government to protect and preserve public safety and national security. How the government achieves such protection, however, depends on the nature of the threat. To protect against general crime, we hire, train and equip law enforcement personnel; to protect against those who would try to steal our nations' secrets, we rely upon the intelligence community; and to protect against those who would physically attack our states, we rely upon the military, the intelligence community, and, to a degree, law enforcement.

Such a traditional model of protection - a specific government entity or entities geared to guard against a specific threat - only works when the threat guarded against falls squarely under the government's authority and when, with the right intelligence, one can readily identify the nature and perpetrator of the attack. This model fails in the case of computer crime, where both the identity and motive of the attacker may be unknown. This is not to say that government does not have a role in guarding against cybercrime - it most certainly does. But the government cannot be primarily responsible for defending against attacks in the virtual world. The potential avenues for abuse and the number of potential attackers are simply too many and too hard to identify, and government cannot control the networks that are the avenues and targets of attack - at least not as long as we want to preserve the inherent openness and decentralized structure of the virtual environment that makes it so valuable.

A purely market-based approach to guarding against cyber threats likewise is not workable. Like the government, the private sector also has an important role in creating a secure environment - after all, the private sector designs, deploys, and maintains much of the infrastructure at issue, and therefore is responsible for the preservation of public safety and national security in the virtual world. And, fortunately, many companies have embraced their responsibilities in protecting and furthering the values of security and privacy. There are inherent limitations, however, to how much the private sector can do. Private sector companies do not have authority to create and enforce laws, and the markets impose limits on companies' capital expenditures - shareholders would undoubtedly object if a company operated at a loss and drove itself into bankruptcy in a futile attempt to protect public safety.

"Public sector-private sector cooperation", therefore, has become the leading public safety and national security strategy. Yet, to term the strategy a joint or "cooperative" effort only provides part of the answer - what really a matter is how the public-private partnership is defined and implemented. In particular, a comprehensive approach to the challenges of the digital era must be neither public sector-led, with private sector support, nor private sector led, with public sector support. Rather, both government and companies, particularly IT companies, must assume leading roles, while also acting to facilitate the other's actions.

In this regard, the international community has provided instructive guidance and principles. The following are a few examples of some of the important work a variety of multilateral organizations have conducted:

- ***The Organization for Economic Co-operation and Development*** issued *Guidelines on the Security of Information Systems and Networks*, which provide nine principles, ranging from increasing public awareness to improving security designs and implementation, to be followed by "participants at all levels, including policy and operational levels" in creating a

culture of security[300].

- ***The United Nations General Assembly*** adopted a resolution that, among other things, recognizes the value inherent in an environment that permits the free, secure flow of information and "the need for cooperation between States and private industry in combating the criminal misuse of information technologies," and encourages the adoption of certain enumerated measures to combat such misuse[301].
- ***APEC*** issued and has taken significant steps to implement a *Cybersecurity Strategy* to serve as a basis for APEC members' efforts on cybercrime and critical infrastructure protection[302].
- ***The European Union*** has issued multiple communications on computer crime and network and information security[303].
- ***The Council of Europe Convention on Cybercrime*** requires signatories to adopt computer crime-related laws, procedures, and policies to help combat cybercrime including, for example, laws that address breaches of confidentiality, integrity and availability of data and systems; content-related offenses; and infringements of intellectual property rights. The instrument also provides comprehensive mechanisms for intergovernmental cooperation in addressing cybercrime[304].
- ***ASEAN*** Ministers of Telecommunications and Information Technology issued a joint statement pledging to develop common frameworks for sharing cyber threat information and to create national Computer Emergency Response Teams (CERTs)[305].
- The ***Group of Eight*** (comprised of Canada, Germany, France, Italy, Japan, Russia, the United Kingdom, and the United States), through a working group of senior government experts, established 40 recommendations to increase the efficiency of collective government action against transnational organized crime, including stressing the importance of a coordinated approach in addressing high-tech crime[306].
- ***Interpol*** has recognized the need for law enforcement officials to acquire specialized knowledge and has developed international training courses related to information technology crime (some of which are discussed below), a handbook providing useful guidance for novice investigators working on computer-related crime, and a computer crime manual for more experienced investigators[307].

While the activities of each of these organizations are distinct, when they are considered together, they point to five elements of a sound, comprehensive public-private sector approach to cybercrime: (1) the existence of strong laws and adequate resources for enforcement; (2) proper training of law enforcement; (3) coordination among domestic and international law enforcement agencies and improved information sharing that is closely related to such coordination; (4) heightened public awareness of the risks of cyberspace and proper user practices; and (5) improved technology.

B. Implementing the Strategy: Case Studies in Public-Private Sector Cooperation

Microsoft's own experience provides a useful case study in considering how to implement each of the five elements of a public-private sector cooperative strategy. As a leading software developer, Microsoft has recognized and embraced its responsibility to be at the forefront of efforts to enhance the security of the digital environment. Indeed, Microsoft's Trustworthy Computing Initiative, launched in 2002, has resulted in organizational, cultural, and process changes that

300 OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security, available at http://www.oecd.org/document/42/0,2340,en_2649_34255_15582250_1_1_1_1,00.html

301 G.A. Res. 63, 55th Sess. (2001).

302 Recommendation by the APEC Telecommunications and Information Working Group (TEL) to APEC Senior Officials for an APEC Cybersecurity Strategy, available at http://www.apecsec.org.sg/apec/apec_groups/working_groups/telecommunications_and_information.downloadlinks.0002.LinkURL.Download.ver5.1.9.

303 E.g., Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Creating a Safer Information Society by Improving the Security of Information Infrastructure and Combating Computer-related Crime (2001).

304 See http://conventions.coe.int/Treaty/en/Treaties/ Html/185.htm.

305 Joint Statement, Third ASEAN Telecommunications and Information Technology Ministers Meeting, available at http://www.aseansec.org/15123.htm.

306 At the June 1996 summit in Lyon, G8 heads of state endorsed (and commended to all States) the Forty Recommendations and directed the Lyon Group to ensure active follow-up in implementation. See http://www.state.gov/www/issues/economic/summit/lyonsummary.html.

307 See http://www.interpol.int/Public/TechnologyCrime/WorkingParties/steeringCom.

involve every aspect of the company and reflects the company's long-term commitment to protecting the security and privacy of online users. At the same time, the company also recognizes that there will never be perfect security in the online world, and therefore is committed to working with government and industry partners in supporting efforts to create a strong security environment. Accordingly, Microsoft has undertaken efforts that encompass each of the elements of a comprehensive public-private sector approach to cybercrime.

1. Enacting and Enforcing Strong Laws

One of the most important steps that governments can take to promote security on the Internet is to enact and vigorously enforce well-conceived laws against online crimes, including against criminals that reside in other countries. Existing criminal laws in many jurisdictions were drafted to deal with off-line acts, and thus do not clearly prohibit equivalent acts performed online. Other jurisdictions have yet to update their laws to prohibit "new" crimes such as hacking and denial-of-service attacks or to penalize such crimes sufficiently to act as a deterrent. Further, those jurisdictions that do have clear criminal laws may not have adopted the procedural mechanisms necessary to enable law enforcement to investigate online crime effectively and in a manner that respects other fundamental rights, or they may not have established treaties and policies that enable the international cooperation that is essential to combat online crime.

Industry can support the development of strong legal regimes in a number of ways. First, and most directly, industry can help identify those areas where existing laws are inadequate, bring them to the attention of lawmakers, and support efforts at reform. For example, spam has become one of most disruptive byproducts of the Internet and often is associated with criminal online behavior, including phishing scams, spyware programs, and other malicious code. In response to this threat, Microsoft and other industry leaders supported the enactment of new laws, in numerous countries around the world, designed to address spam and other false or deceptive commercial e-mail practices - laws that are increasingly proving to be important legal tools in the global battle against spam. Legislative reform in this area has taken or is taking place in multiple markets across Europe, in a number of markets in Asia Pacific (anti-spam laws now exist or are being considered in Korea, Japan, Australia, China, Hong Kong, Singapore, Malaysia, and other countries), and in the United States (where a new federal anti-spam law, commonly referred to as the CAN-SPAM Act[308] went into effect in early 2004).

Second, Microsoft has joined others in industry to encourage countries to adopt and ratify the Council of Europe Convention on Cybercrime, which is a powerful international instrument on cybercrime and is increasingly viewed as providing a global standard for criminalization obligations and governmental cooperation in this area. The Cybercrime Convention provides an important baseline for effective international cybercrime enforcement by requiring signatories to update and adopt laws and procedures to address crime in the online environment (as noted above), and by providing for mutual investigative assistance between signatories.

Third, industry can support the efforts of law enforcement to ensure that where laws exist, they are vigorously enforced. Again, the anti-spam laws around the world serve as an example. Microsoft (along with other leading IT companies) have partnered with enforcement officials worldwide to bring successful actions against unlawful spam. In addition, in March 2004, Microsoft and three other large Internet service providers - America Online, Earthlink, and Yahoo - filed multiple complaints in federal courts in the United States against hundreds of defendants for violating the CAN-SPAM Act. Likewise, in September 2004, Microsoft joined with Amazon.com to file several lawsuits against chronic spammers who had targeted consumers by spoofing domains and phishing for consumers' personal information. In total, Microsoft's efforts to enforce anti-spam laws have produced more than 100 legal actions worldwide - with enforcement efforts in Asia Pacific, Europe and the Middle East, and the United States - and have resulted in approximately $100 million in legal judgments against spammers[309].

308 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (.CAN-SPAM Act.), Pub. L. 108-187.

2. Training Law Enforcers

A principal impediment to effective law enforcement against computer crime has been the lack of sufficient training of law enforcers. In addition to understanding the fundamentals of computers - i.e., training on basic hardware and software issues - law enforcement officials must be familiar with the latest technologies, since it is those technologies that criminals will use to commit their crimes. While cyber investigators and prosecutors do not necessarily need to be computer science experts, they must at a minimum understand the terminology used by criminals and victims alike, know how to use the technology to gather and preserve evidence, be able to interact with witnesses who will themselves have varying degrees of technical sophistication, and, ultimately, present a case in terms that are understandable to courts.

Governments bear an obvious responsibility to prioritize and provide sufficient resources to conduct training for law enforcement personnel at all levels, but governments are not alone in this responsibility. IT companies, independently or in partnership with other entities such as international organizations and universities, can lend their expertise and resources to training law enforcement personnel in combating computer-facilitated crimes. Microsoft has engaged with partners in a number of such training efforts:

- On April 19-22, 2005, Microsoft and the Asian Development Bank Institute are co-hosting an International Workshop on Cybercrime and Digital Forensics in connection with this 11th UN Congress on Crime Prevention and Criminal Justice. The workshop, developed for cybercrime investigators from countries across the Asia Pacific region, will include practical, hands-on training from Microsoft specialists on the latest techniques in combating a range of computer crimes, including the use of botnets[310], phishing, child exploitation, and the propagation of viruses, worms, and other forms of malicious code.
- In October 2004, Microsoft hosted the first International Botnet Task Force meeting, which provided training to law enforcement officials from around the world who have confronted the task of investigating botnet abuses. Law enforcement officers from 15 other countries attended the Task Force meeting and will attend a follow-up meeting in April 2005.
- In December 2003, Microsoft, in coordination with the International Center for Missing and Exploited Children and Interpol, launched an international training program for law enforcement personnel worldwide to combat computer-related crimes against children. The training program, which has been held in half a dozen cities around the world and includes instruction from renowned experts in the field, covers such topics as investigating online child predators, collecting evidence and computer forensic information, and seeking private industry support in child exploitation investigations. To date, nearly 500 law enforcement officials from over 90 countries have been trained.

3. Coordinating Investigations (Domestically and Internationally) and Sharing Information

The Internet permits those who use it to transit national borders, thus leaving victims and evidence in multiple jurisdictions and raising the problem of investigative coordination. Accordingly, a thorough strategy to combat cybercrime must include an element of enhanced law enforcement cooperation across local, state or provincial, and international borders.

Central to such cooperation, of course, is the ability of law enforcement and the private sector - which as the most frequent victim of online crime and owner of much of the Internet infrastructure is often the first to have information relevant to stemming computer crime - to share information with one another. As noted, threats to the security of users' systems and our infrastructures will always exist in the digital era, and the attacks, when they occur, will be perpetrated quickly and with ever-evolving technologies. In this context, voluntary information sharing and industry-led initiatives, supported by government cyber security initiatives, comprise an essential first line of

309 Microsoft's effort to facilitate the investigation and prosecution of perpetrators of deceptive practices and other unlawful uses of the Internet, of course, are not limited to spam. For example, in the spyware context, Microsoft supported the U.S. Federal Trade Commission's investigation that culminated in October 2004 with the agency taking the first federal enforcement action and obtaining a temporary restraining order against a major distributor of spyware for unfair and deceptive practices that violated federal law.

310 "Botnets" are compromised systems that use scan, attack, and exploit tools for nefarious purposes. In addition to sending malicious code, botnets can be used to steal documents or data from an infected computer, send spam, and launch denial of service attacks.

defense. The need for enhanced law enforcement coordination and public-private sector information sharing gives rise to a number of action items. First, in terms of improving coordination, public sector agencies can facilitate both domestic and international cooperation by establishing clear lines of communication, including through the establishment of working groups or task forces to tackle particular issues related to online crime. Industry can support these efforts by providing resources to such working groups and by helping law enforcement agencies create technologies that will enable increased information sharing and coordination. For example, Microsoft has assigned personnel to participate on Interpol's task force on Computer Facilitated Crimes Against Children and, in Canada, Microsoft has collaborated with the Toronto Police Child Exploitation Sex Crimes Unit to develop a national Child Exploitation Tracking System ("CETS"), which allows police forces across Canada to track online predators and share information with other law enforcement officials.

Second, industry and government can jointly establish institutions and partnerships to facilitate the exchange of information and develop investigative leads on criminals. For example, a number of countries have established CERTs or Information Sharing and Analysis Centers (ISACs) that include industry participation. Microsoft also has been involved in several prominent examples of such public-private sector information sharing:

- In the United States, Microsoft is a founding member of the National Cyber-Forensics and Training Alliance (NCFTA)[311], a cyberforensics organization established by the FBI, the National White Collar Crime Center, Carnegie Mellon University and West Virginia University to test and investigate cybercrime tactics, help fight online threats, and prepare businesses and organizations to guard against such threats. In addition to being a founding member, Microsoft has provided software to NCFTA in support of its mission and has assigned a full-time analyst to work at NCFTA.
- In early February 2005, Microsoft announced the formation of the Microsoft Security Cooperation Program to provide a structured way for governments and Microsoft to engage in cooperative security activities in the areas of computer incident response, attack mitigation and citizen outreach. The program currently includes Canada's Department of Public Safety and Emergency Preparedness, Chile's Ministry of the Interior, the Norwegian National Security Authority, and the state of Delaware (USA) Department of Technology and Information. These participants will work with Microsoft to exchange a variety of security-related information to anticipate, help prevent, and respond to and mitigate the effects of cyber attacks.
- In June 2004, Microsoft entered into an agreement with the Korean Information Security Agency (.KISA.) which provides for cooperation between Microsoft and KISA in addressing a wide range of Internet safety challenges, including through information sharing on technology and security best practices, training for government officials, raising public awareness, and joint efforts to tackle spam.
- Microsoft helped to drive the establishment of and actively participates in DigitalPhishNet.org ("DPN")[312], an alliance of industry and government agencies that targets phishers for identification, arrest and prosecution. Industry members in DPN include ISPs, financial institutions (including Citigroup, Bank One, and Bank of America), and other online businesses and payment services (e.g., eBay and PayPal).
- In September 2004, Microsoft joined with the Internet Society of China, AOL, eBay and Yahoo! in developing a memorandum of understanding providing a vehicle for cooperation among the parties in addressing the growing spam problem in the People's Republic of China.

Third, related to the industry's efforts to ensure laws are vigorously enforced (discussed in B.1 above), industry can help develop leads in criminal cases that involve multiple jurisdictions and can work with authorities in each of the relevant jurisdictions to investigate and prosecute cases. For

311 http://www.ncfta.net

312 http://www.digitalphishnet.org

example, in connection with the Agobot Trojan, Microsoft provided information and technical analysis to law enforcement authorities in the United Kingdom and Germany that ultimately contributed to the German authorities' arrest of the malicious code's author in May 2004. Industry also can provide real-time assistance that facilitates investigations. For example, in August 2003, the FBI, the Secret Service, and the U.S. Attorney's Office in Minneapolis, Minnesota (USA) arrested two individuals in connection with the Blaster worm following real-time assistance provided by Microsoft.

Fourth, and finally, industry can engage the public at large in helping to develop leads for online criminal investigations. In November 2003, Microsoft announced the creation of the Anti-Virus Rewards Program, initially funded with $5 million (USD), to help law enforcement agencies identify and bring to justice cybercriminals who release malicious code on the Internet. The Anti-Virus Rewards Program helped develop the information that enabled German authorities in May 2004 to arrest the author and distributor of the Sasser Worm and 24 variants of the Netsky Internet virus. The individual arrested is believed to have been responsible for 70 percent of all virus activity in the first six months of 2004[313].

4. Educating the Public

While industry and governments, primarily through their law enforcement agencies, can help curb the threat of illegal conduct over the Internet, public administrations, enterprises, and individual users alike must also be able to create reasonably secure computing environments for their particular needs. Accordingly, it is critical that users of information and communications technology have the necessary knowledge and tools to help protect themselves from cyber criminals. This need is particularly acute where the users of the Internet are children. Studies confirm that children are routinely exposed to inappropriate content over the Internet and are frequently engaged in online conversations by strangers. To limit children's exposure to such risks, it is important to educate parents and childcare providers about the risks present on the Internet as well as proper online security practices.

The issue of education is one in which the private sector, by virtue of its ability to interact with and reach consumers, can have a tremendous impact. Recognizing this potential, Microsoft has undertaken a number of measures including launching the "Protect Your PC" campaign[314], hosting security summits in markets around the world, and alerting all levels of users to what they can do to protect themselves and their businesses. Moreover, on the issue of the online threats facing children, Microsoft, along with several partners, has launched a number of targeted educational campaigns, such as Stay Safe Online[315] and GetNetWise[316], to provide practical and straightforward advice to educators, parents, and childcare providers. For its part, government can help raise awareness by supporting these private-sector educational efforts and/or undertaking its own campaigns, by engaging in the type of information sharing with the private sector identified above, and by making computer training a more central part of basic educational curricula.

5. Developing and Implementing Technology

Finally, in addition to wise public policies and laws, effective law enforcement and training, and proper awareness by users, a comprehensive response to the challenges of cyber security depends on strong technology. Developing such technology is an area where industry necessarily must lead, and it is a responsibility that Microsoft has embraced. As noted, the Trustworthy Computing Initiative launched a company-wide effort focused in large part on security and privacy. The Trustworthy Computing Initiative encompasses each of the efforts outlined above with respect

313 See John Mello, Jr., Virus Attacks Climb 21 Percent in First Half of 2004, July 29, 2004, at http://www.macnewsworld.com/story/35434.html.

314 See www.microsoft.com/protect

315 Microsoft has worked closely with the Boys & Girls Clubs of America to develop the Stay Safe Online program. This program offers a holistic approach to online safety and features a free interactive CD-ROM that teaches children to develop online safety habits. This educational tool enables children and parents to make informed choices about the use of Internet chat rooms, e-mail, and websites, among other things. The program is available without charge at www.staysafeonline.com.

316 Microsoft and several other leading technology companies, including AOL and AT&T, launched GetNetWise (available at www.getnetwise.org) to be an online industry resource for parents and childcare providers. GetNetWise educates parents about the potential risks to children on the Internet and offers parents suggestions on how to interact with children regarding these risks. Additionally, GetNetWise provides parents with information on technological tools that can be employed to help limit children's access to inappropriate content and communications on the Internet.

to supporting the development of strong laws; supporting law enforcement training, investigations, coordination and prosecutions; promoting information sharing; and encouraging customers to adopt security best practices. At its heart, however, the Trustworthy Computing Initiative is a long-term effort to create a secure, private and reliable computing experience for everyone and to increase user confidence in information technologies. In particular, Microsoft is working to create products and services that are Secure by Design (e.g., writing more secure code and architecting more secure products and services), Secure by Default (e.g., shipping products so that they are secure out of the box, whether in a home environment or an IT department), and Secure in Deployment (e.g., making it easier for consumers and IT professionals to maintain the security of their systems). Microsoft also is working to ensure that when problems do arise, they can be resolved promptly and predictably.

These efforts are real and specific. In 2003, Microsoft stopped the work of 8,500 developers on the Windows Server team so that they could be trained on security, build formal threat models, conduct manual and automated reviews of existing code, and conduct penetration testing. The effort cost an estimated $200 million dollars, and delayed by over four months the release of the Windows Server 2003 product. A comparison to Microsoft's predecessor product - Windows Server 2000 - reveals that the security effort on Windows Server 2003 led to a sixty-seven percent reduction in the number of publicly reported critical and important vulnerabilities. The company remains committed to continuing to enhance its software development processes, developing more sophisticated security tools, and reducing security vulnerabilities in its products.

Microsoft and other industry players, however, should not be alone in the pursuit of ever more secure technologies. Governments can support these efforts by funding cyber security-related research and development, and by assuring that innovations developed with public funds are made available to the private sector for further development and
commercial application.

C. CONCLUSION

The digital age is presenting wondrous opportunities in commerce, education, discourse, and communications at an unprecedented pace. Yet, the global, open, data rich, and anonymous nature of the Internet also provides both numerous avenues for abuse and tremendous incentive for criminals to perpetrate such abuse. These privacy and security challenges will only increase as we progress in the digital age. Faced with these realities, societies must re-evaluate how we conceive of responsibilities for protecting public safety and national security in an interconnected world. The path forward must include a coordinated effort among government and industry in which each is equally responsible for leading the fight to secure cyberspace and creating a culture of security, and each must also lend support to the efforts of the other. The full potential of the Internet can only be achieved through such a comprehensive strategy to combat computer crime and the creation of a more secure environment.