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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

**PRELIMINARY REPORT ON RESPONSES OF JUSTICE
TO URBAN VIOLENCE INVOLVING JUVENILES**

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Preliminary report on responses of justice to urban violence involving juveniles

At the 31st Council of Europe Conference of Ministers of Justice held in Vienna from 19 to 21 September 2012, the Ministers of Justice wished the European Committee on Crime Problems (CDPC) to receive instructions to examine the experiences of member states with regard to preventing the involvement of juveniles in urban violence as well as the laws and practices concerning the sanctioning and treatment of these juveniles, and restorative justice, in order to recommend as necessary specific measures adapted to the needs of juveniles at all stages of procedure.

Urban violence is defined as various intense and sometimes completely unexpected collective manifestations in certain major urban areas of Europe, in which juveniles are often implicated as perpetrators and / or victims.

At the 63rd CDPC plenary meeting held from 4 to 7 December 2012, the Committee instructed the Secretariat to make a compilation of the existing Council of Europe recommendations on juvenile offenders together with other relevant legal instruments produced by other international organisations.

A compilation of the various legal instruments relating to juvenile justice and juvenile delinquency, drawn up by the Council of Europe, the European Union and the United Nations, has accordingly been made. This compendium covers almost 30 years of standard-setting action and has its point of origin in the Beijing Rules laid down in 1985 by the United Nations.

The collected documents as a whole reflect the superimposition of the relevant international instruments but also the convergence of goals and principles between the various organisations: the imperative of specialisation of justice for juveniles, the indispensable training of operators, the primacy of the educative over the punitive approach, in a multidisciplinary context, the need to implement a process of diversion and restorative justice, and the imperative of prevention and social integration of juveniles. The question of young adults is also raised and might be useful in combating urban violence.

However, despite the quantitative and qualitative importance of the international instruments dealing with juvenile delinquency, the subject of urban violence involving juveniles has not yet been specifically addressed.

Fundamental principles

The fundamental principles stem from the European Convention on Human Rights and the International Convention on the Rights of the Child.

With specific regard to juveniles, all rights of the European Convention being furthermore secured to them, these are essentially:

- respect at all times for the child's' best interests
- setting a lower limit to the age of criminal responsibility
- primacy of the educative over the punitive approach
- limitation of detention, in time and to premises separate from adults
- adaptation of justice to children

Prevention

It emerges from the body of texts that a sound prevention policy should be based on a comprehensive, multidisciplinary and pluri-institutional approach. Reference is made to prevention of juveniles' maladjustment, anti-social behaviour, and first-time and repeat offending.

Numerous studies have been conducted on the causes of juvenile delinquency.

These can be classified on several levels: family environment (broken homes, socio-economic marginalisation, poverty, etc.), schooling (absenteeism, school failure, etc.), social environment (town planning, ghetto formation, etc.), the world of work (unemployment, discrimination, etc.), social functioning (consumer society, media dissemination of images, of violent behaviour, video games, narcotic substances, etc.).

It is recommended that states institute a serious official policy on prevention of juvenile delinquency, which is a social rather than a criminal policy aimed at:

- social integration through specialised programmes for the most disadvantaged or vulnerable young people;
- access to education: suitable initial schooling, learning a trade or further studies;
- development of voluntary organisations alongside the public authorities to achieve these goals;
- combating stigmatisation, particularly through media involvement aiming at more positive presentation of young people;
- initial and ongoing training of staff working with juveniles;
- promotion of research into prevention of delinquency.

The specificity of urban violence lies in its collective and spontaneous nature, aided by the social networks, necessitating special adaptation of the prevention method.

This violence is plainly an unpremeditated reaction, unconnected with a current of thought but linked with the inexplicit and latent sense of social exclusion. The preventive measures set out above are perfectly suitable but probably insufficient.

Close attention should be paid to districts in towns or on their outskirts which suddenly experience a lull in law-breaking without any specific preventive measures having been applied. This is often a sign of gangland invasion of these places, which has every interest in ostensible social harmony.

Diversion and restorative justice

Since 1985 for the United Nations and 1987 for the Council of Europe, the application of diversion and mediation procedures has been advocated. A recent report has been commissioned by the UN on promotion of this restorative justice.

These procedures presuppose the development of alternatives to prosecution and of innovative, effective measures and sanctions for combating serious, violent, repeated offenses, associating the family and aiming at reparation.

The United Nations recommend that member states as far as possible avoid resorting to judicial proceedings against a juvenile and instead make use of extra-judicial means requiring the consent of the person concerned and/or his/her parents.

It is also recommended that states establish local partnerships bringing together the principal public players – police, services in charge of probation, youth welfare and social work, education, employment, health, housing – and the voluntary and private sector.

Restorative justice can have a positive impact on crime prevention and on the social costs, by boosting social rehabilitation and the citizens' confidence in criminal justice. To be effective, it calls for a multidisciplinary and/or pluri-institutional approach.

Where do these mechanisms stand in relation to urban violence? There is no reason why they should not have a place in this context.

As the prevailing principle of this restorative justice is to understand the underlying reasons for a certain type of behaviour, and the values contributing to it, this means that it is particularly suitable to urban violence which is often seen to be an expression of feelings of alienation. It should allow these feelings (justified or not) of inequality, discrimination, failure to be expressed and be a remedy to them.

The above-mentioned ONU report indicates that studies suggest that “restorative justice programmes that do not address the underlying reasons for offending or fail to encompass rehabilitative and preventive measures show a lower success rate in preventing recidivism”.

The strong conviction that this report expresses regarding the effectiveness of restorative justice is particularly encouraging.

A specific justice system for juveniles

Particular reference is made here to the Guidelines on child friendly justice.

While the principles of criminal justice for adults must be conscientiously observed, the judicial process for juveniles should be especially directed at education and integration.

The idea of specialised courts for juveniles is taken up by all three international organisations, and alternatively they recommend setting up specialised divisions in the existing courts, or the specialisation of certain members of the judicial service in order to secure children's rights and the enforcement of the international rules on justice for juveniles. Procedure should also be specialised, with the aim of involving parents, families, guardians, etc., as well as the community. Legal responses to criminal behaviour by juveniles should respect their rights and where appropriate take proper account of their views, educational development and other specific needs in keeping with their age.

Where custodial measures are concerned, the seminal idea of all instruments studied is that any form of deprivation of liberty should be a last resort and as brief as possible. Thus there are regular reminders of the need to develop alternative measures to imprisonment, particularly in the framework of community programmes for re-education and social rehabilitation.

The texts recommend that juveniles be separated from adults unless their interest precludes it.

Family ties should also be preserved, owing to the primary objective of keeping juveniles in their natural family surroundings.

Conditions of custody should be adjusted for juveniles in accordance with children's individual rights and dignity. Police officers should make the notification of rights in language understandable to the child, and inform the parents or guardian. The assistance of a lawyer

or the presence of a parent is mandatory during questioning of a juvenile, and no declaration may be signed by a juvenile in their absence.

Regarding detention pending trial, the United Nations are anxious about states' undue recourse to deprivation of liberty before trial and urge them to reduce its application and its duration. It is recommended that states eventually replace it by measures such as close surveillance, help, placement, care, protection or individual assistance for social, educational, occupational, psychological, medical and physical welfare, etc.

Where a juvenile is sentenced to a term of imprisonment, rehabilitation must always be pursued as the primary aim. Sentenced juveniles should be separated from juveniles held pending trial and none should be confined in prisons for adults, but in specially designed establishments with special rules guaranteeing juveniles' access to schooling and to social, psychological and educational services.

Any establishment receiving juveniles should undergo regular inspections and checks.

The principles, objectives and recommendations, though not making reference to urban violence, seem to remain relevant as a whole to this new type of juvenile delinquency.

However, it is of great interest to find out whether specific answers have been given to this question of urban violence committed by juveniles in certain states, in terms of prevention and penalties, within the judicial institution and outside it (see proposal for a succinct and targeted questionnaire directed at member states).

Whatever the answer, it will be necessary to reflect on measures to be proposed to states.

After that, it will be time to assess the expediency of having recourse to a new instrument (guidelines, recommendation or convention).

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Appendix: List of legal instruments analysed

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1. **R(87)20** on social reactions to juvenile delinquency, **1987 (4 p.)**
2. **R(88)6** on social reactions to juvenile delinquency among young people coming from migrant families, **1988 (3 p.)**
3. **Rec(2000)20** on the role of early psychosocial intervention in the prevention of criminality, **2000 (6 p.)**
4. **Rec(2003)20** concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, **2003 (5 p.)**
5. **Rec(2005)5** on the rights of children living in residential institutions, **2005 (5 p.)**
6. **MJU-26(2005) Res. 2** on the Social Mission of the Criminal Justice System - Restorative Justice, adopted at the 26th Council of Europe Conference of Ministers of Justice, **2005 (3 p.)**
7. **Rec(2006)2** on the European Prison Rules, **2006 (6 p.)**
8. **MJU-28 (2007) Res. 2** on child-friendly justice, adopted at the 28th Council of Europe Conference of Ministers of Justice, **2007 (4 p.)**
9. **CM/Rec(2008)11** on the European Rules for juvenile offenders subject to sanctions or measures, **2008 (20 p.)**
10. **Guidelines of the Committee of Ministers of the Council of Europe** on child friendly justice, **2010 (39 p.)**
11. **MJU-31 (2012) Res. F** on responses of justice to urban violence, adopted at the 31st Council of Europe Conference of Ministers of Justice, **2012 (4 p.)**

EUROPEAN UNION:

1. **2006/C 110/13**, Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency, **2006 (8 p.)**
2. **COM(2006)367 final**, Communication from the Commission, Towards an EU Strategy on the Rights of the Child, **2006 (12 p.)**
3. **2009/C 295/01**, Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, **2009 (3 p.)**
4. **2010/C 115/01** Stockholm Programme, “An open and secure Europe serving and protecting citizens”, **2010 (38 p.)**
5. **COM(2011)60 final**, An EU Agenda for the Rights of the Child, **2011 (18 p.)**

UNITED NATIONS :

1. **A/RES/40/33**, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), **1985 (9 p.)**
2. **A/RES/45/112**, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), **1990 (5 p.)**
3. **A/RES/45/113**, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), **1990 (7 p.)**
4. **ECOSOC/RES/1997/30**, Administration of juvenile justice, **1997 (8 p.)**
5. **ECOSOC/RES/2002/12**, Basic principles on the use of restorative justice programmes in criminal matters, **2002 (4 p.)**