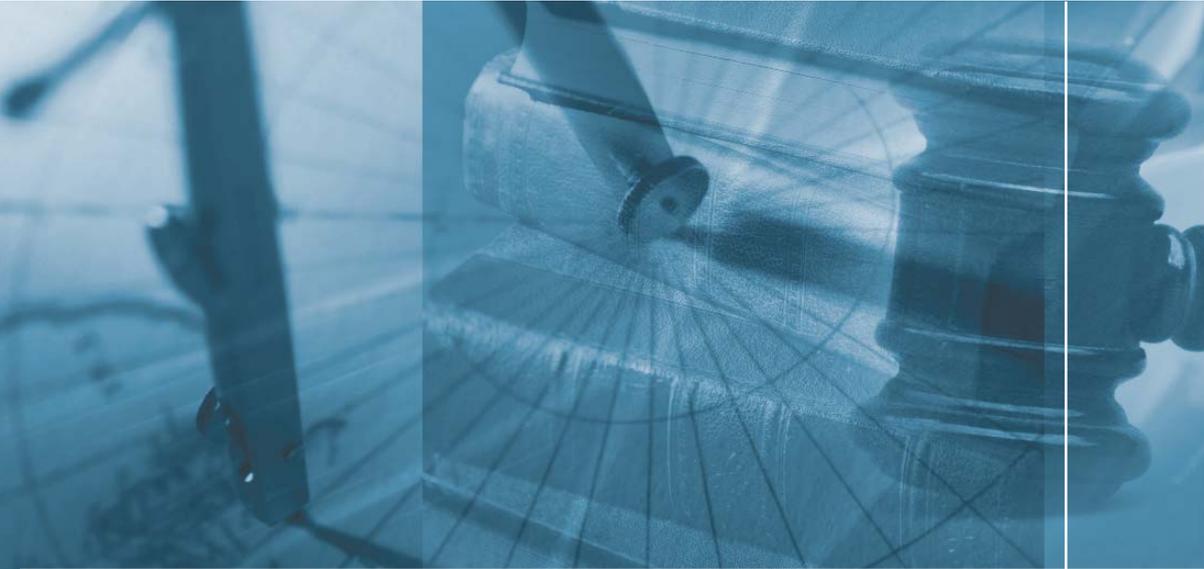




UNITED NATIONS  
*Office on Drugs and Crime*



# **Compendium** of United Nations standards and norms in crime prevention and criminal justice



UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

**Compendium of United Nations  
standards and norms in  
crime prevention and  
criminal justice**



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# Introduction

Since its foundation, the United Nations has been active in the development and promotion of internationally recognized principles in crime prevention and criminal justice. Over the years a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged, covering a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victim protection and violence against women. The United Nations congresses on crime prevention and criminal justice, which have been held on a quinquennial basis since 1955, have proved to be an invaluable source and driving force for this process.

Criminal justice systems differ from one country to the other and their response to antisocial behaviours is not always homogeneous. However, over the years the United Nations standards and norms in crime prevention and criminal justice have provided a collective vision of how criminal justice system should be structured. Despite their “soft-law” nature, the standards and norms have made a significant contribution to promoting more effective and fair criminal justice structures in three dimensions. Firstly, they can be utilized at the national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms. Secondly, they can help countries to develop subregional and regional strategies. Thirdly, globally and internationally, the standards and norms represent “best practices” that can be adapted by States to meet national needs.

The first edition of the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*<sup>1</sup> was published in 1992.

Between the first edition of the *Compendium* and the present one, new standards and norms have been developed and five binding legal instruments have been negotiated and adopted by the international community: the United Nations Convention against Transnational Organized Crime<sup>2</sup> and its three supplementary protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>3</sup> the Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>4</sup> and the Protocol against the Illicit Manufacturing of and

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<sup>1</sup>United Nations publication, Sales No. E.92.IV.1 and corrigendum.

<sup>2</sup>General Assembly resolution 55/25, annex I.

<sup>3</sup>General Assembly resolution 55/25, annex II.

<sup>4</sup>General Assembly resolution 55/25, annex III.

Trafficking in Firearms, Their Parts and Components and Ammunition<sup>5</sup>) and the United Nations Convention against Corruption.<sup>6</sup> The standards and norms in crime prevention and criminal justice, developed over the last 60 years have paved the way to the adoption of those conventions and have provided a starting point for their negotiation. Now the hope is that those legal instruments will reinforce and strengthen the value and significance of the standards and norms, by eliciting the kind of system-wide cooperation that will give full weight to their further application.

The present edition of the *Compendium* has been structured according to a new clustering system articulated as follows: (a) standards and norms related primarily to persons in custody, non-custodial sanctions and juvenile and restorative justice; (b) standards and norms related primarily to legal, institutional and practical arrangements for international cooperation; (c) standards and norms related primarily to crime prevention and victim issues; and (d) standards and norms related primarily to good governance, the independence of the judiciary and the integrity of criminal justice personnel.

Additional international instruments that could assist crime prevention and criminal justice practitioners in their work can be found in *Human Rights: A Compilation of International Instruments*,<sup>7</sup> published by the Office of the United Nations High Commissioner for Human Rights.

It is hoped that this updated version of the *Compendium* will contribute to a wider awareness and dissemination of the United Nations standards and norms in crime prevention and criminal justice and, consequently, will reinforce respect for the rule of law and human rights in the administration of justice.<sup>8</sup>

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<sup>5</sup>General Assembly resolution 55/255, annex.

<sup>6</sup>General Assembly resolution 58/4, annex.

<sup>7</sup>United Nations publication, Sales No. E.02.XIV.4. Additional useful information can be found in the website of the Office of the United Nations High Commissioner for Human Rights at [www.ohchr.org](http://www.ohchr.org)

<sup>8</sup>Additional useful information can be found in the website of the United Nations Office on Drugs and Crime at [www.unodc.org](http://www.unodc.org)

*Part one*

**Persons in custody,  
non-custodial sanctions, juvenile justice  
and restorative justice**



# I. Treatment of prisoners

## 1. Standard Minimum Rules for the Treatment of Prisoners\*

### PRELIMINARY OBSERVATIONS

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to

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*\*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A; amended by the Economic and Social Council in its resolution 2076 (LXII) (addition of section E, entitled “Persons arrested or imprisoned without charge”).*

prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

## PART I RULES OF GENERAL APPLICATION

### *Basic principle*

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

### *Register*

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

### *Separation of categories*

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.

### *Accommodation*

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

### *Personal hygiene*

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

### *Clothing and bedding*

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

### *Food*

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

### *Exercise and sport*

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

### *Medical services*

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, heating, lighting and ventilation of the institution;
- (d) The suitability and cleanliness of the prisoners' clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

### *Discipline and punishment*

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

### *Instruments of restraint*

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

### *Information to and complaints by prisoners*

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison

administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

### *Contact with the outside world*

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

### *Books*

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

### *Religion*

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

#### *Retention of prisoners' property*

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except insofar as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

#### *Notification of death, illness, transfer, etc.*

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

### *Removal of prisoners*

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

### *Institutional personnel*

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their examples and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

### *Inspection*

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

## PART II RULES APPLICABLE TO SPECIAL CATEGORIES

### *A. Prisoners under sentence*

#### *Guiding principles*

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should

aim, in accordance with the declaration made under Preliminary Observation I of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's

rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

### *Treatment*

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical

and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

### *Classification and individualization*

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

### *Privileges*

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of the prisoners in their treatment.

### *Work*

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

#### *Education and recreation*

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

#### *Social relations and after-care*

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as

is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

### ***B. Insane and mentally abnormal prisoners***

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

### ***C. Prisoners under arrest or awaiting trial***

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from

his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

#### *D. Civil prisoners*

94. In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

#### *E. Persons arrested or imprisoned without charge*

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

## **2. Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners\***

### *Procedure 1*

All States whose standards for the protection of all persons subjected to any form of detention or imprisonment fall short of the Standard Minimum Rules for the Treatment of Prisoners shall adopt the Rules.

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\*Economic and Social Council resolution 1984/47, annex.

*Commentary*

The General Assembly, in its resolution 2858 (XXVI) of 20 December 1971, invited the attention of Member States to the Standard Minimum Rules and recommended that they should be effectively implemented in the administration of penal and correctional institutions and that favourable consideration should be given to their incorporation in national legislation. Some States may have standards that are more advanced than the Rules, and the adoption of the Rules is therefore not requested on the part of such States. Where States feel that the Rules need to be harmonized with their legal system and adapted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.

*Procedure 2*

Subject, as necessary, to their adaptation to the existing laws and culture but without deviation from the spirit and purpose of the Rules, the Standard Minimum Rules shall be embodied in national legislation and other regulations.

*Commentary*

This procedure emphasizes that it is necessary to embody the Rules within national legislation and regulations, thus covering also some aspects of procedure 1.

*Procedure 3*

The Standard Minimum Rules shall be made available to all persons concerned, particularly to law enforcement officials and correctional personnel, for purposes of enabling their application and execution in the criminal justice system.

*Commentary*

This procedure stresses that the Rules, as well as national statutes and regulations implementing the Rules, should be made available to all persons concerned with their implementation, in particular law enforcement officials and correctional personnel. The effective implementation of the Rules might also involve the organization of training courses by the central administration in charge of correctional matters. The dissemination of procedures is discussed in procedures 7 to 9.

### *Procedure 4*

The Standard Minimum Rules, as embodied in national legislation and other regulations, shall also be made available and understandable to all prisoners and all persons under detention, on their admission and during their confinement.

#### *Commentary*

To achieve the goal of the Standard Minimum Rules, it is necessary to make the Rules, as well as the implementing national statutes and regulations, available to prisoners and all persons under detention (rule 95), in order to further the awareness that the Rules represent the minimum conditions that are accepted as suitable by the United Nations. Thus, this procedure supplements the provisions contained in procedure 3.

A similar requirement, that the Rules be made available to the persons for whose protection they have been elaborated, has been already established in the four Geneva Conventions of 12 August 1949,<sup>1</sup> of which articles 47 of the first Convention, 48 of the second, 127 of the third and 144 of the fourth state in common:

“The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.”

### *Procedure 5*

States shall inform the Secretary-General of the United Nations every five years of the extent of the implementation and the progress made with regard to the application of the Standard Minimum Rules, and of the factors and difficulties, if any, affecting their implementation, by responding to the Secretary-General's questionnaire. This questionnaire should, following a specified schedule, be selective and limited so specific questions in order to secure an in-depth review and study of the problems selected. Taking into account the reports of Governments as well as other relevant information available within

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<sup>1</sup>United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

the United Nations system, the Secretary-General shall prepare independent periodic reports on progress made with respect to the implementation of the Standard Minimum Rules. In the preparation of those reports the Secretary-General may also enlist the cooperation of specialized agencies and of the relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

### *Commentary*

It will be recalled that the Economic and Social Council, in its resolution 663 C (XXIV) of 31 July 1957, recommended that the Secretary-General be informed every five years of the progress made with regard to the application of the Standard Minimum Rules and authorized the Secretary-General to make arrangements for the publication, as appropriate, of such information and to ask for supplementary information if necessary. Seeking the cooperation of specialized agencies and relevant intergovernmental and non-governmental organizations is a well-established United Nations practice. In the preparation of his independent reports on progress made with respect to the implementation of the Standard Minimum Rules, the Secretary-General will take into account, inter alia, information available in the human rights organs of the United Nations, including the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee functioning under the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Racial Discrimination. The implementation work under the future convention against torture could also be taken into account, as well as any information which might be gathered under the body of principles for the protection of prisoners and detainees currently under preparation in the General Assembly.

### *Procedure 6*

As part of the information mentioned in procedure 5 above, States should provide the Secretary-General with:

(a) Copies or abstracts of all laws, regulations and administrative measures concerning the application of the Standard Minimum Rules to persons under detention and to places and programmes of detention;

(b) Any data and descriptive material on treatment programmes, personnel and the number of persons under any form of detention, and statistics, if available;

(c) Any other relevant information on the implementation of the Rules, as well as information on the possible difficulties in their application.

*Commentary*

This requirement derives from both resolution 663 C (XXIV) of the Economic and Social Council and the recommendations of the United Nations congresses on the prevention of crime and the treatment of offenders. Although the items of information suggested here are not specifically provided for, it seems feasible to collect such information in order to assist Member States in overcoming difficulties through an exchange of experience. Furthermore, the request for such information is analogous to the existing periodic reporting system on human rights originally established by the Economic and Social Council in its resolution 624 B (XXII) of 1 August 1956.

*Procedure 7*

The Secretary-General shall disseminate the Standard Minimum Rules and the present implementing procedures, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of the Rules and the present implementing procedures.

*Commentary*

The need for the widest possible dissemination of the Standard Minimum Rules is self-evident. Close cooperation with all appropriate intergovernmental and non-governmental organizations is important to secure more effective dissemination and implementation of the Rules. Therefore, the Secretariat should maintain close contacts with such organizations and should make relevant information and data available to them. It should also encourage those organizations to disseminate information about the Standard Minimum Rules and the implementing procedures.

*Procedure 8*

The Secretary-General shall disseminate his reports on the implementation of the Rules, including analytical summaries of the periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for the United Nations congresses on the prevention of crime and the treatment of offenders as well as the reports of the congresses, scientific publications and other rele-

vant documentation as from time to time may be deemed necessary to further the implementation of the Standard Minimum Rules.

### *Commentary*

This procedure reflects the present practice of disseminating such reports as part of the documentation for the United Nations bodies concerned, as United Nations publications or as articles in the *Yearbook on Human Rights* and the *International Review of Criminal Policy*, the *Crime Prevention and Criminal Justice Newsletter* and any other relevant publications.

### *Procedure 9*

The Secretary-General shall ensure the widest possible reference to and use of the text of the Standard Minimum Rules by the United Nations in all its relevant programmes, including technical cooperation activities.

### *Commentary*

It should be ensured that all relevant United Nations bodies include or make reference to the Rules and the implementing procedures, thus contributing to wider dissemination and increasing the awareness of specialized agencies, governmental, intergovernmental and non-governmental bodies and the general public of the Rules and of the commitment of the Economic and Social Council and the General Assembly to their implementation.

The extent to which the Rules have any practical effect on correctional administrations depends to a great extent on the measures through which they permeate local legislative and administrative practices. They should be known and understood by a wide range of professionals and non-professionals throughout the world. Therefore there is a great need for more publicity in any form, which could also be attained by frequent references to the Rules, accompanied by public information campaigns.

### *Procedure 10*

As part of its technical cooperation and development programmes the United Nations shall:

(a) Aid Governments, at their request, in setting up and strengthening comprehensive and humane correctional systems;

(b) Make available to Governments requesting them the services of experts and regional and interregional advisers on crime prevention and criminal justice;

(c) Promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Standard Minimum Rules and the present implementing procedures;

(d) Strengthen substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations.

The United Nations regional research and training institutes in crime prevention and criminal justice, in cooperation with national institutions, shall develop curricula and training materials, based on the Standard Minimum Rules and the present implementing procedures, suitable for use in criminal justice educational programmes at all levels, as well as in specialized courses on human rights and other related subjects.

### *Commentary*

The purpose of this procedure is to ensure that the United Nations technical assistance programmes and the training activities of the United Nations regional institutes are used as indirect instruments for the application of the Standard Minimum Rules and the present implementing procedures. Apart from regular training courses for correctional personnel, training manuals and the like, particularly at the policy and decision-making level, provision should be made for expert advice on the questions submitted by Member States, including an expert referral system to interested States. This expert referral system seems particularly necessary in order to implement the Rules according to their spirit and with a view to the socio-economic structure of the countries requesting such assistance.

### *Procedure 11*

The United Nations Committee on Crime Prevention and Control shall:

(a) Keep under review, from time to time, the Standard Minimum Rules, with a view to the elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty;

(b) Follow up the present implementing procedures, including periodic reporting under procedure 5 above.

*Commentary*

As most of the information collected in the course of periodic inquiries as well as during technical assistance missions would be brought to the attention of the Committee on Crime Prevention and Control, ensuring the effectiveness of the Rules in improving correctional practices rests with the Committee, whose recommendations would determine the future course in the application of the Rules, together with the implementing procedures. The Committee should therefore clearly define existing shortcomings in or the reasons for the lack of implementation of the Rules, *inter alia*, through contacts with the judiciary and ministries of justice of the countries concerned, with the view to suggesting appropriate remedies.

*Procedure 12*

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other United Nations human rights bodies, as appropriate, with recommendations relating to reports of ad hoc inquiry commissions, with respect to matters pertaining to the application and implementation of the Standard Minimum Rules.

*Commentary*

As the Committee on Crime Prevention and Control is the relevant body to review the implementation of the Standard Minimum Rules, it should also assist the above-mentioned bodies.

*Procedure 13*

Nothing in the present implementing procedures should be construed as precluding resort to any other means or remedies available under international law or set forth by other United Nations bodies and agencies for the redress of violations of human rights, including the procedure on consistent patterns of gross violations of human rights under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, the communication procedure under the Optional Protocol to the International Covenant on Civil and Political Rights<sup>2</sup> and the communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>3</sup>

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<sup>2</sup>General Assembly resolution 2200 A (XXI), annex.

<sup>3</sup>General Assembly resolution 2106 A (XX), annex.

*Commentary*

Since the Standard Minimum Rules are only partly concerned with specific human rights issues, the present procedures should not exclude any avenue for redress of any violation of such rights, in accordance with existing international or regional standards and norms.

### **3. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment\***

*Scope of the Body of Principles*

These principles apply for the protection of all persons under any form of detention or imprisonment.

*Use of terms*

For the purposes of the Body of Principles:

(a) “Arrest” means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) “Detained person” means any person deprived of personal liberty except as a result of conviction for an offence;

(c) “Imprisoned person” means any person deprived of personal liberty as a result of conviction for an offence;

(d) “Detention” means the condition of detained persons as defined above;

(e) “Imprisonment” means the condition of imprisoned persons as defined above;

(f) The words “a judicial or other authority” mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

*Principle 1*

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

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\*General Assembly resolution 43/173, annex.

### *Principle 2*

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

### *Principle 3*

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

### *Principle 4*

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

### *Principle 5*

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.
2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

### *Principle 6*

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\* No

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\*The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

### *Principle 7*

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

### *Principle 8*

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

### *Principle 9*

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

### *Principle 10*

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

*Principle 11*

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

*Principle 12*

1. There shall be duly recorded:
  - (a) The reasons for the arrest;
  - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
  - (c) The identity of the law enforcement officials concerned;
  - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

*Principle 13*

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

*Principle 14*

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred

to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

### *Principle 15*

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

### *Principle 16*

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of investigation so require.

### *Principle 17*

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

### *Principle 18*

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

### *Principle 19*

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

### *Principle 20*

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

*Principle 21*

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

*Principle 22*

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

*Principle 23*

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

*Principle 24*

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

*Principle 25*

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

*Principle 26*

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

*Principle 27*

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

*Principle 28*

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

*Principle 29*

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

*Principle 30*

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

### *Principle 31*

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

### *Principle 32*

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

### *Principle 33*

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

#### *Principle 34*

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

#### *Principle 35*

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

#### *Principle 36*

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds

and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

*Principle 37*

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

*Principle 38*

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

*Principle 39*

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

*General clause*

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.<sup>1</sup>

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<sup>1</sup>See General Assembly resolution 2200 A (XXI), annex.

#### **4. Basic Principles for the Treatment of Prisoners\***

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights,<sup>1</sup> and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights,<sup>2</sup> and the International Covenant on Civil and Political Rights and the Optional Protocol thereto,<sup>3</sup> as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

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\*General Assembly resolution 45/111, annex.

<sup>1</sup>General Assembly resolution 217 A (III).

<sup>2</sup>Assembly resolution 2200 A (XXI), annex.

<sup>3</sup>Ibid.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

## **5. Kampala Declaration on Prison Conditions in Africa\***

### *Prison conditions*

*Considering* that in many countries in Africa the level of overcrowding in prisons is inhuman, that there is a lack of hygiene, insufficient or poor food, difficult access to medical care, a lack of physical activities or education, as well as an inability to maintain family ties,

*Bearing in mind* that any person who is denied freedom has a right to human dignity,

*Bearing in mind also* that the universal norms on human rights place an absolute prohibition on torture of any description,

*Bearing in mind further* that some groups of prisoners, including juveniles, women, the old and the mentally and physically ill, are especially vulnerable and require particular attention,

*Bearing in mind* that juveniles must be separated from adult prisoners and that they must be treated in a manner appropriate to their age,

*Remembering* the importance of proper treatment for female detainees and the need to recognize their special needs,

*The participants in the International Seminar on Prison Conditions in Africa,<sup>1</sup> held at Kampala from 19 to 21 September 1996, recommend:*

1. That the human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role in this respect;

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\*Economic and Social Council resolution 1997/36, annex.

<sup>1</sup>The seminar was organized jointly by Prison Reform International and the African Commission on Human and Peoples' Rights, in partnership with the Foundation for Human Rights Initiative and the Government of Uganda through the Prisons Department, and with the participation of the International Committee of the Red Cross and International Prison Watch.

2. That prisoners should retain all rights which are not expressly taken away by the fact of their detention;
3. That prisoners should have living conditions which are compatible with human dignity;
4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty;
5. That the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility;
6. That prisoners should be given the opportunity to maintain and develop links with their families and the outside world;
7. That prisoners should be given access to education and skills training in order to make it easier for them to reintegrate into society after their release;
8. That special attention should be paid to vulnerable prisoners and that non-governmental organizations should be supported in their work with these prisoners;
9. That all the norms of the United Nations and the African Charter on Human and Peoples' Rights<sup>2</sup> on the treatment of prisoners should be incorporated into national legislation in order to protect the human rights of prisoners;
10. That the Organization of African Unity and its member States should take steps to ensure that prisoners are detained in the minimum conditions of security necessary for public safety.

### *Remand prisoners*

*Considering* that in most prisons in Africa a great proportion of prisoners are awaiting trial, sometimes for several years,

*Considering also* that for this reason the procedures and policies adopted by the police, the prosecuting authorities and the judiciary can significantly influence prison overcrowding,

*The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:*

1. That the police, the prosecuting authorities and the judiciary should be aware of the problems caused by prison overcrowding and should join the prison administration in seeking solutions to reduce this;

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<sup>2</sup>United Nations, *Treaty Series*, vol. 1520, No. 26363.

2. That judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court;

3. That there should be a system for regular review of the time detainees spend on remand.

### *Prison staff*

*Considering* that any improvement in conditions for prisoners will be dependent on staff having pride in their work and a proper level of competence,

*Bearing in mind* that this will only happen if staff are properly trained,

*The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:*

1. That there should be a proper career structure for prison staff;
2. That all prison personnel should be linked to one government ministry and that there should be a clear line of command between the central prison administration and the staff in prisons;
3. That the State should provide sufficient material and financial resources for staff to carry out their work properly;
4. That in each country there should be an appropriate training programme for prison staff to which the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders should be invited to contribute;
5. That there should be a national or subregional institution to deliver this training programme;
6. That the penitentiary administration should be directly involved in the recruitment of prison staff.

### *Alternative sentencing*

*Noting* that, in an attempt to reduce prison overcrowding, some countries have been trying to find a solution through amnesties or pardons or by building new prisons,

*Considering* that overcrowding causes a variety of problems, including difficulties for overworked staff,

*Taking into account* the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

*Considering* the growing interest in African countries in measures which replace custodial sentences, especially in the light of human rights principles,

*Considering* that community service and other non-custodial measures are innovative alternatives to imprisonment and that there are promising developments in Africa in this regard,

*Considering also* that compensation for damage done is an important element of non-custodial sentences,

*Considering further* that legislation can be introduced to ensure that community service and other non-custodial measures will be imposed as an alternative to imprisonment,

*The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:*

1. That petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree;
2. That, whenever possible, petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system;
3. That the principle of civil reparation or financial recompense should be applied, taking into account the financial capability of the offender or of his or her parents;
4. That the work done by the offender should, if possible, recompense the victim;
5. That community service and other non-custodial measures should, if possible, be preferred to imprisonment;
6. That there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used;
7. That the public should be educated about the objectives of these alternatives and how they work.

### *African Commission on Human and Peoples' Rights*

*Considering* that the African Commission on Human and Peoples' Rights has the mandate to ensure the promotion and the protection of human and peoples' rights in Africa,

*Considering also* that the Commission has shown on many occasions its special concern on the subject of poor prison conditions in Africa and that it has adopted special resolutions and decisions on this question previously,

*The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend that the African Commission on Human and Peoples' Rights:*

1. Should continue to attach priority to the improvement of prison conditions throughout Africa;
2. Should nominate a Special Rapporteur on Prisons in Africa as soon as possible;
3. Should make the member States aware of the recommendations contained in the present Declaration and publicize United Nations and African norms and standards on imprisonment;
4. Should cooperate with non-governmental organizations and other qualified institutions in order to ensure that the recommendations contained in the present Declaration are implemented in all the member States.

### **6. Status of foreign citizens in criminal proceedings\***

*The Economic and Social Council,*

*Guided* by the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly by its resolution 217 A (III) of 10 December 1948,

*Bearing in mind* the relevant international legal instruments in the field of human rights,

*Bearing in mind also* the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 22 August to

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\*Economic and Social Council resolution 1998/22.

3 September 1955<sup>1</sup> and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957, and the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, approved by the Council in its resolution 1984/47 of 25 May 1984 and set out in the annex thereto,

*Recalling* General Assembly resolution 49/159 of 23 December 1994, in which the Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994,<sup>2</sup>

*Conscious* of the need to respect human dignity and the recognized rights of persons undergoing criminal proceedings as set forth in the International Covenants on Human Rights,<sup>3</sup>

*Urges* Member States that have not yet done so to consider adopting the following measures:

(a) Carefully examine whether foreign citizens under criminal prosecution are guaranteed universally recognized rights with regard to criminal prosecution at all stages of proceedings;

(b) Ensure that individuals are not subjected to more severe custodial penalties or inferior prison conditions in a State solely because they are not nationals of that State;

(c) Undertake the necessary arrangements to ensure that any foreign citizen subject to criminal proceedings whose native language is not that of the State conducting the proceedings against him or her and who, for that reason, is unable to understand the nature of such proceedings has access throughout his or her trial to the services of a suitable interpreter in his or her native language, to the extent possible;

(d) Whenever permitted by its internal law or practice, make available to foreign citizens as well as to nationals, provided that they fulfil the relevant legal requirements, alternative penal sentences or administrative penalties provided for under the legislation of the State conducting proceedings;

(e) Intensify efforts to implement applicable international instruments, such as the Vienna Convention on Consular Relations,<sup>4</sup> concerning, inter alia, notification to consular authorities of the detention of their citizens.

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<sup>1</sup>United Nations publication, Sales No. 1956.IV.4, annex I, sect. A

<sup>2</sup>A/49/748, annex, chap. I, sect. A.

<sup>3</sup>General Assembly resolution 2200 A (XXI), annex.

<sup>4</sup>United Nations, *Treaty Series*, vol. 596, No. 8638.

## 7. Arusha Declaration on Good Prison Practice\*

*Aware* of the fact that the management of prisons is a social service and that it is important to keep the public informed about the work of prison services,

*Also aware* of the need to promote transparency and accountability in the management of prisons and of prisoners in Africa,

*Recalling* the Kampala Declaration on Prison Conditions in Africa,<sup>1</sup> which sets out an agenda for penal reform in Africa,

*Taking note* of the Kadoma Declaration on Community Service,<sup>2</sup> which recommends greater use of non-custodial measures for offences committed at the lower end of the criminal scale,

*Taking note also* of the provisions of the African Charter on Human and Peoples' Rights of 1981,<sup>3</sup> the International Covenant on Civil and Political Rights,<sup>4</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>4</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>5</sup> that safeguard the right to life, to a prompt trial and to human dignity,

*Bearing in mind* the Standard Minimum Rules for the Treatment of Prisoners,<sup>6</sup> the Basic Principles for the Treatment of Prisoners,<sup>7</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>8</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>9</sup> and the Code of Conduct for Law Enforcement Officials,<sup>10</sup>

*Bearing in mind also* that prison officers who comply with national and international standards for the protection of prisoners deserve the respect and

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\*Economic and Social Council resolution 1999/27, annex.

<sup>1</sup>Economic Social Council resolution 1997/36, annex.

<sup>2</sup>Resolution 1998/23, annex I.

<sup>3</sup>United Nations, *Treaty Series*, vol. 1520, No. 26363.

<sup>4</sup>General Assembly resolution 2200 A (XXI), annex.

<sup>5</sup>Assembly resolution 39/46, annex.

<sup>6</sup>See *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No.1956.IV.4), annex I, sect. A.

<sup>7</sup>General Assembly resolution 45/111, annex.

<sup>8</sup>General Assembly resolution 40/33, annex.

<sup>9</sup>General Assembly resolution 43/173, annex.

<sup>10</sup>General Assembly resolution 34/169, annex.

the cooperation of the prison administration where they serve and of the community as a whole,

*Noting* that conditions in most African prisons fall short of these minimum national and international standards,

*The participants in the Fourth Conference of the Central, Eastern and Southern African Heads of Correctional Services, meeting in Arusha from 23 to 27 February 1999, agree with the following principles:*

(a) To promote and implement good prison practice, in conformity with the international standards mentioned above, and to adjust domestic laws to those standards, if this has not yet been done;

(b) To improve management practices in individual prisons and in the penitentiary system as a whole in order to increase transparency and efficiency within the prison service;

(c) To enhance the professionalism of prison staff and to improve their working and living conditions;

(d) To respect and protect the rights and dignity of prisoners as well as to ensure compliance with national and international standards;

(e) To provide training programmes to prison staff that incorporate human rights standards in a way that is meaningful and relevant and to improve the skills base of prison officers and, for this purpose, to establish a training board of the Conference of the Central, Eastern and Southern African Heads of Correctional Services;

(f) To establish a criminal justice mechanism comprising all the components of the criminal justice system that would coordinate activities and cooperate in the solution of common problems;

(g) To invite civil society groups into the prisons to work in partnership with the prison services in order to improve the conditions of imprisonment and the working environment of prisons;

(h) To call upon Governments and national and international organizations to give full support to the present declaration.

## II. Juvenile justice

### 8. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)\*

#### PART ONE GENERAL PRINCIPLES

##### 1. *Fundamental perspectives*

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

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\*General Assembly resolution 40/33, annex.

## *Commentary*

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind in the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

### *2. Scope of the Rules and definitions used*

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and

institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.

### *Commentary*

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.<sup>1</sup>

Rule 2.2 defines “juvenile” and “offence” as the components of the notion of the “juvenile offender”, who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

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<sup>1</sup>Resolution 1386 (XIV). See also the Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex); the Declaration of the World Conference to Combat Racism and Racial Discrimination (*Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978* (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners; the Caracas Declaration (resolution 35/171, annex); and rule 9.

### 3. *Extension of the Rules*

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

#### *Commentary*

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

### 4. *Age of criminal responsibility*

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

#### *Commentary*

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility;

that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

### 5. *Aims of juvenile justice*

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

#### *Commentary*

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is “the principle of proportionality”. This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender’s endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice

systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

## 6. *Scope of discretion*

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

### *Commentary*

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

## 7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

### *Commentary*

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights<sup>2</sup> and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.<sup>3</sup>

Rules 14 *seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## 8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### *Commentary*

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

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<sup>2</sup>General Assembly resolution 217 A (III).

<sup>3</sup>See General Assembly resolution 2200 A (XXI), annex.

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2.1.)

### 9. *Saving clause*

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners<sup>4</sup> adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

#### *Commentary*

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards—such as the Universal Declaration of Human Rights,<sup>2</sup> the International Covenant on Economic, Social and Cultural Rights<sup>3</sup> and the International Covenant on Civil and Political Rights,<sup>3</sup> and the Declaration of the Rights of the Child<sup>1</sup> and the draft convention on the rights of the child.<sup>5</sup> It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application.<sup>4</sup> (See also rule 27.)

## PART TWO INVESTIGATION AND PROSECUTION

### 10. *Initial contact*

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

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<sup>4</sup>See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.83.XIV.1).

<sup>5</sup>See Economic and Social Council resolution 1985/42.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

### *Commentary*

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.<sup>6</sup>

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.<sup>3</sup>)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To “avoid harm” is admittedly flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be “harmful” to juveniles; the term “avoid harm” should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile’s attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

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<sup>6</sup>The Standard Minimum Rules for the Treatment of Prisoners and related recommendations were adopted in 1955 (see *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4). In its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, inter alia, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in its resolution 2076 (LXII) of 13 May 1977.

## 11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

### *Commentary*

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making—by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary

measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.<sup>7</sup>) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a “competent authority upon application”. (The “competent authority” may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

## 12. *Specialization within the police*

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

### *Commentary*

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific

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<sup>7</sup>Convention No. 105, adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session. With regard to the text of the Convention, see footnote 4.

principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

### *13. Detention pending trial*

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners<sup>4</sup> adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

#### *Commentary*

The danger to juveniles of “criminal contamination” while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights,<sup>3</sup> especially article 9 and article 10, paragraphs 2 (*b*) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4<sup>8</sup> on juvenile justice standards, specified that the Rules, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

### PART THREE ADJUDICATION AND DISPOSITION

#### 14. *Competent authority to adjudicate*

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

#### *Commentary*

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed

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<sup>8</sup>See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as “due process of law”. In accordance with due process, a “fair and just trial” includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

### *15. Legal counsel, parents and guardians*

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

#### *Commentary*

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners.<sup>4</sup> Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority’s search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile; hence, the possibility of their exclusion must be provided for.

## 16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

### *Commentary*

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

## 17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

### *Commentary*

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress,<sup>8</sup> rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress<sup>8</sup> which aims at avoiding incarceration in the case of

juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.<sup>3</sup>

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights<sup>3</sup> and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>9</sup> as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>10</sup> and the draft convention on the rights of the child.<sup>5</sup>

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## 18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

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<sup>9</sup>General Assembly resolution 3452 (XXX), annex.

<sup>10</sup>General Assembly resolution 39/46, annex.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

### *Commentary*

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is “the natural and fundamental group unit of society”.<sup>3</sup> Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

## *19. Least possible use of institutionalization*

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

### *Commentary*

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity (“last resort”) and in time (“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress:<sup>8</sup> a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to “open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

## 20. *Avoidance of unnecessary delay*

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

### *Commentary*

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

## 21. *Records*

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

### *Commentary*

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) “Other duly authorized persons” would generally include, among others, researchers.

## 22. *Need for professionalism and training*

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### *Commentary*

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.<sup>8</sup>

PART FOUR  
NON-INSTITUTIONAL TREATMENT

23. *Effective implementation of disposition*

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

*Commentary*

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. *Provision of needed assistance*

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

*Commentary*

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. *Mobilization of volunteers and other community services*

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

*Commentary*

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the cooperation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.<sup>3</sup>

PART FIVE  
INSTITUTIONAL TREATMENT

26. *Objectives of institutional treatment*

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance—social, educational, vocational, psychological, medical and physical—that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less

care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and interdepartmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

### *Commentary*

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4.<sup>8</sup> The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress<sup>8</sup> calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration,<sup>11</sup> and against the background of the Declaration on the Elimination of Discrimination against Women<sup>12</sup> and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>13</sup>

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<sup>11</sup>See General Assembly resolution 35/171, annex, para. 1.6.

<sup>12</sup>General Assembly resolution 2263 (XXII).

<sup>13</sup>General Assembly resolution 34/180, annex.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and interdepartmental cooperation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

*27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations*

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

*Commentary*

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a worldwide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

## 28. *Frequent and early recourse to conditional release*

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

### *Commentary*

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1 or with some other authority. In view of this, it is adequate to refer here to the “appropriate” rather than to the “competent” authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to “good behaviour” of the offender, attendance in community programmes, residence in halfway houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

## 29. *Semi-institutional arrangements*

29.1 Efforts shall be made to provide semi-institutional arrangements, such as halfway houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

### *Commentary*

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

PART SIX  
RESEARCH, PLANNING, POLICY FORMULATION  
AND EVALUATION

*30. Research as a basis for planning, policy formulation  
and evaluation*

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

*Commentary*

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the lifestyles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of

existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

## **9. United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)\***

### **I. FUNDAMENTAL PRINCIPLES**

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active

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\*General Assembly resolution 45/112, annex.

role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

## II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>2</sup> the International Covenant on Civil and Political Rights,<sup>2</sup> the Declaration of the Rights of the Child<sup>3</sup> and the Convention on the Rights of the Child,<sup>4</sup> and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>5</sup> as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

## III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary cooperation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, childcare, health

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<sup>1</sup>Resolution 217 A (III).

<sup>2</sup>Resolution 2200 A (XXI), annex.

<sup>3</sup>Resolution 1386 (XIV).

<sup>4</sup>Resolution 44/25, annex.

<sup>5</sup>Resolution 40/33, annex.

education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

#### IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

##### A. *Family*

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

### ***B. Education***

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in cooperation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to “dropouts”.

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

### *C. Community*

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

#### ***D. Mass media***

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

#### **V. SOCIAL POLICY**

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for

the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

## VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

## VII. RESEARCH, POLICY DEVELOPMENT AND COORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an interdisciplinary basis, interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

## **10. United Nations Rules for the Protection of Juveniles Deprived of their Liberty\***

### **I. FUNDAMENTAL PERSPECTIVES**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

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\*General Assembly resolution 45/113, annex.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).<sup>1</sup> Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.
8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

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<sup>1</sup>Resolution 40/33, annex.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to

international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

### III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

#### IV. THE MANAGEMENT OF JUVENILE FACILITIES

##### *A. Records*

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

##### *B. Admission, registration, movement and transfer*

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

### *C. Classification and placement*

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type

of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

#### *D. Physical environment and accommodation*

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except insofar as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

### ***E. Education, vocational training and work***

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

### ***F. Recreation***

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

### ***G. Religion***

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

### ***H. Medical care***

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

### *I. Notification of illness, injury and death*

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of

death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

### ***J. Contacts with the wider community***

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

### ***K. Limitations of physical restraint and the use of force***

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

### ***L. Disciplinary procedures***

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

### ***M. Inspection and complaints***

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions

of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

#### ***N. Return to the community***

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

## V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are

able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

## **11. Guidelines for Action on Children in the Criminal Justice System\***

1. Pursuant to Economic and Social Council resolution 1996/13 of 23 July 1996, the present Guidelines for Action on Children in the Criminal Justice System were developed at the expert group meeting on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice, held at Vienna from 23 to 25 February 1997 with the financial support of the Government of Austria. In developing the Guidelines for Action, the experts took into account the views expressed and the information submitted by Governments.

2. Twenty-nine experts from eleven States in different regions, representatives of the Centre for Human Rights of the Secretariat, the United Nations Children's Fund and the Committee on the Rights of the Child, as well as observers for non-governmental organizations concerned with juvenile justice, participated in the meeting.

3. The Guidelines for Action are addressed to the Secretary-General and relevant United Nations agencies and programmes, States parties to the Convention on the Rights of the Child,<sup>1</sup> as regards its implementation, as well as Member States as regards the use and application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>2</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)<sup>3</sup> and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,<sup>4</sup> hereinafter together referred to as "United Nations standards and norms in juvenile justice".

### **I. AIMS, OBJECTIVES AND BASIC CONSIDERATIONS**

4. The aims of the Guidelines for Action are to provide a framework to achieve the following objectives:

(a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the

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\*Economic and Social Council resolution 1997/30, annex.

<sup>1</sup>General Assembly resolution 44/25, annex.

<sup>2</sup>General Assembly resolution 40/33, annex.

<sup>3</sup>General Assembly resolution 45/112, annex.

<sup>4</sup>General Assembly resolution 45/113, annex.

United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>5</sup>

(b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention and related instruments.

5. In order to ensure effective use of the Guidelines for Action, improved cooperation between Governments, relevant entities of the United Nations system, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society is essential.

6. The Guidelines for Action should be based on the principle that the responsibility for implementing the Convention clearly rests with the States parties thereto.

7. The basis for the use of the Guidelines for Action should be the recommendations of the Committee on the Rights of the Child.

8. In the use of the Guidelines for Action at both the international and national levels, consideration should be given to the following:

(a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender sensitivity, upholding the best interests of the child, the right to life, survival and development and respect for the views of the child;

(b) A rights-based orientation;

(c) A holistic approach to implementation through maximization of resources and efforts;

(d) The integration of services on an interdisciplinary basis;

(e) The participation of children and concerned sectors of society;

(f) The empowerment of partners through a developmental process;

(g) Sustainability without continuing dependency on external bodies;

(h) Equitable application and accessibility to those in greatest need;

(i) Accountability and transparency of operations;

(j) Proactive responses based on effective preventive and remedial measures.

9. Adequate resources (human, organizational, technological, financial and information) should be allocated and utilized efficiently at all levels

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<sup>5</sup>General Assembly resolution 40/34, annex.

(international, regional, national, provincial and local) and in collaboration with relevant partners, including Governments, United Nations entities, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society, as well as other partners.

## II. PLANS FOR THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD, THE PURSUIT OF ITS GOALS AND THE USE AND APPLICATION OF INTERNATIONAL STANDARDS AND NORMS IN JUVENILE JUSTICE

### *A. Measures of general application*

10. The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.

11. Measures relating to policy, decision-making, leadership and reform should be taken, with the goal of ensuring that:

(a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth and fully respects their age, stage of development and their right to participate meaningfully in and contribute to society;

(b) The relevant contents of the above-mentioned instruments are made widely known to children in language accessible to children. In addition, if necessary, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, at least from his or her first contact with the criminal justice system, and is reminded of his or her obligation to obey the law;

(c) Understanding on the part of the public and the media of the spirit, aims and principles of justice centred on the child is promoted in accordance with the United Nations standards and norms in juvenile justice.

### *B. Specific targets*

12. States should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.

13. Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law and, specifically in this context, those set forth in articles 3, 37 and 40 of the Convention.

14. Particular attention should be given to the following points:

(a) There should be a comprehensive child-centred juvenile justice process;

(b) Independent expert or other types of panels should review existing and proposed juvenile justice laws and their impact on children;

(c) No child who is under the legal age of criminal responsibility should be subject to criminal charges;

(d) States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Wherever necessary, national legislative and other measures should be considered to accord all the rights of and protection for the child, where the child is brought before a court other than a juvenile court, in accordance with articles 3, 37 and 40 of the Convention.

15. A review of existing procedures should be undertaken and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. Appropriate steps should be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, in particular processes involving victims. In the various measures to be adopted, the family should be involved, to the extent that it operates in favour of the good of the child offender. States should ensure that alternative measures comply with the Convention and the United Nations standards and norms in juvenile justice, as well as other existing standards and norms in crime prevention and criminal justice, such as the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),<sup>6</sup> with special regard to ensuring respect for due-process rules in applying such measures and for the principle of minimum intervention.

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<sup>6</sup>General Assembly resolution 45/110, annex.

16. Priority should be given to setting up agencies and programmes to provide legal and other assistance, such as interpretation services to children, if necessary, free of charge, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

17. Appropriate action should be ensured to alleviate the problem of children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children.

18. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

19. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and article 37 (d) of the Convention also apply to any public or private setting from which the child cannot leave at will, by order of any judicial, administrative or other public authority.

20. In order to maintain a link between the detained child and his or her family and community and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.

21. An independent body to monitor and report regularly on conditions in custodial facilities should be established, if necessary. Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. States should permit children to communicate freely and confidentially with the monitoring bodies.

22. States should consider positively requests from concerned humanitarian, human rights and other organizations for access to custodial facilities, where appropriate.

23. In relation to children in the criminal justice system, due account should be taken of concerns raised by intergovernmental and non-governmental organizations and other interested parties, in particular systemic issues, including

inappropriate admissions and lengthy delays that have an impact on children deprived of their liberty.

24. All persons who have contact with or being responsible for children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials, judges and magistrates, prosecutors, lawyers and administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice.

25. In the light of existing international standards, States should establish mechanisms to ensure a prompt, thorough and impartial investigation into allegations against officials of deliberate violation of the fundamental rights and freedoms of children. States should equally ensure that those found responsible are duly sanctioned.

### *C. Measures to be taken at the international level*

26. Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

27. There is an urgent need for close cooperation between all bodies in this field, in particular, the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. In addition, the World Bank and other international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, are invited to support the provision of advisory services and technical assistance in the field of juvenile justice. Cooperation should therefore be strengthened, in particular with regard to research, dissemination of information, training, the implementation and monitoring of the Convention and the use and application of existing standards, as well as with regard to the provision of technical advice and assistance programmes, for example, by making use of existing international networks on juvenile justice.

28. The effective implementation of the Convention on the Rights of the Child, as well as the use and application of international standards through technical cooperation and advisory service programmes, should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of children in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

- (a) Assistance in legal reform;
- (b) The strengthening of national capacities and infrastructures;
- (c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice;
- (d) The preparation of training manuals;
- (e) The preparation of information and education material to inform children about their rights in juvenile justice;
- (f) Assistance with the development of information and management systems.

29. Close cooperation should be maintained between the Crime Prevention and Criminal Justice Division and the Department of Peacekeeping Operations of the Secretariat in view of the relevance of the protection of the rights of children in peacekeeping operations, including the problems of children and youth as victims and perpetrators of crime in peacebuilding and post-conflict or other emerging situations.

#### ***D. Mechanisms for the implementation of technical advice and assistance projects***

30. In accordance with articles 43, 44 and 45 of the Convention, the Committee on the Rights of the Child reviews the reports of States parties on the implementation of the Convention. According to article 44 of the Convention, these reports should indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Convention.

31. States parties to the Convention are invited to provide in their initial and periodic reports comprehensive information, data and indicators on the

implementation of the provisions of the Convention and on the use and application of the United Nations standards and norms in juvenile justice.<sup>7</sup>

32. As a result of the process of examining the progress made by States parties in fulfilling their obligations under the Convention, the Committee on the Rights of the Child may make suggestions and general recommendations to the States parties to ensure full compliance with the Convention (in accordance with article 45 (*d*) of the Convention). In order to foster the effective implementation of the Convention and to encourage international cooperation in the area of juvenile justice, the Committee transmits, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States parties that contain a request, or indicate a need, for advisory services and technical assistance, together with observations and suggestions of the Committee, if any, on those requests or indications (in accordance with article 45 (*b*) of the Convention).

33. Accordingly, should a State party report and the review process by the Committee reveal any necessity to initiate reform in the area of juvenile justice, including through assistance by the United Nations technical advice and assistance programmes or those of the specialized agencies, the State party may request such assistance, including assistance from the Crime Prevention and Criminal Justice Division, the Centre for Human Rights and the United Nations Children's Fund.

34. In order to provide adequate assistance in response to those requests, a coordination panel on technical advice and assistance in juvenile justice should be established, to be convened at least annually by the Secretary-General. The panel will consist of representatives of the Crime Prevention and Criminal Justice Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations entities, as well as other interested intergovernmental, regional and non-governmental organizations, including international networks on juvenile justice and academic institutions involved in the provision of technical advice and assistance, in accordance with paragraph 39 below.

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<sup>7</sup>See the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (*b*), of the Convention, adopted by the Committee at its 343rd meeting (thirteenth session), on 11 October 1996 (CRC/C/58); for a summary of the discussion on the topic (the administration of juvenile justice) of the special thematic day of the Committee on the Rights of the Child, see the report of the Committee on its tenth session (Geneva, 30 October-17 November 1995) (CRC/C/46), pp. 33-39.

35. Prior to the first meeting of the coordination panel, a strategy should be elaborated for addressing the issue of how to activate further international cooperation in the field of juvenile justice. The coordination panel should also facilitate the identification of common problems, the compilation of examples of good practice and the analysis of shared experiences and needs, which in turn would lead to a more strategic approach to needs assessment and to effective proposals for action. Such a compilation would allow for concerted advisory services and technical assistance in juvenile justice, including an early agreement with the Government requesting such assistance, as well as with all other partners having the capacity and the competence to implement the various segments of a country project, thus ensuring the most effective and problem-oriented action. This compilation should be developed continuously in close cooperation with all parties involved. It will take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice, to reduce the use of remand homes and pre-trial detention, to improve the treatment of children deprived of their liberty and to create effective reintegration and recovery programmes.

36. Emphasis should be placed on formulating comprehensive prevention plans, as called for in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).<sup>3</sup> Projects should focus on strategies to socialize and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work. These projects should pay particular attention to children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children. In particular, the placement of these children in institutions should be proscribed as much as possible. Measures of social protection should be developed in order to limit the risks of criminalization for these children.

37. The strategy will also set out a coordinated process for the delivery of international advisory services and technical assistance to States parties to the Convention, on the basis of joint missions to be undertaken, whenever appropriate, by staff of the different organizations and agencies involved, with a view to devising longer-term technical assistance projects.

38. Important actors in the delivery of advisory services and technical assistance programmes at the country level are the United Nations resident coordinators, with significant roles to be played by the field offices of the Office of the United Nations High Commissioner for Human Rights/Centre for Human

Rights, the United Nations Children's Fund and the United Nations Development Programme. The vital nature of the integration of juvenile justice technical cooperation in country planning and programming, including through the United Nations country strategy note, is emphasized.

39. Resources must be mobilized for both the coordinating mechanism of the coordination panel and regional and country projects formulated to improve observance of the Convention. Resources for those purposes (see paragraphs 34 to 38 above) will come either from regular budgets or from extrabudgetary resources. Most of the resources for specific projects will have to be mobilized from external sources.

40. The coordination panel may wish to encourage, and in fact be the vehicle for, a coordinated approach to resource mobilization in this area. Such resource mobilization should be on the basis of a common strategy as contained in a programme document drawn up in support of a global programme in this area. All interested United Nations bodies and agencies as well as non-governmental organizations that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in such a process.

### ***E. Further considerations for the implementation of country projects***

41. One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed. For example, excessive use of juvenile detention will be dealt with adequately only by applying a comprehensive approach, which involves both organizational and managerial structures at all levels of investigation, prosecution and the judiciary, as well as the penitentiary system. This requires communication, *inter alia*, with and among police, prosecutors, judges and magistrates, authorities of local communities, administration authorities and with the relevant authorities of detention centres. In addition, it requires the will and ability to cooperate closely with each other.

42. To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement and the social welfare and education sectors.

### III. PLANS CONCERNED WITH CHILD VICTIMS AND WITNESSES

43. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>5</sup> States should undertake to ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. If applicable, measures should be taken to prevent the settling of penal matters through compensation outside the justice system, when doing so is not in the best interests of the child.

44. Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should consider establishing, if they have not yet done so, specialized offices and units to deal with cases involving offences against children. States should establish, as appropriate, a code of practice for the proper management of cases involving child victims.

45. Child victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.

46. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are disabled or ill. Emphasis should be placed upon family- and community-based rehabilitation rather than institutionalization.

47. Judicial and administrative mechanisms should be established and strengthened where necessary to enable child victims to obtain redress through formal or informal procedures that are prompt, fair and accessible. Child victims and/or their legal representatives should be informed accordingly.

48. Access should be allowed to fair and adequate compensation for all child victims of violations of human rights, specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. The legal representation needed to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary, should be available.

49. Child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided as far as possible between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings. The identification of the child victim in the media should be prohibited, where necessary, to protect the privacy of the child. Where prohibition is contrary to the fundamental legal principles of Member States, such identification should be discouraged.

50. States should consider, if necessary, amendments to their penal procedural codes to allow for, *inter alia*, videotaping of testimony by the child and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.

51. The responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

(a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;

(b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;

(c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;

(d) Taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, where necessary, ensuring their safety from intimidation and retaliation.

52. Children displaced illegally or wrongfully retained across borders are, as a general principle, to be returned to the country of origin. Due attention should be paid to their safety and they should be treated humanely and should receive necessary assistance, pending their return. They should be returned promptly to ensure compliance with the Convention on the Rights of the Child.<sup>1</sup> Where the Hague Convention on the Civil Aspects of International Child Abduction of

1980,<sup>8</sup> the Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993<sup>9</sup> or the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of the Child of 1996,<sup>9</sup> approved by the Hague Conference on Private International Law, is applicable, the provisions of the convention in question with regard to the return of the child should be promptly applied. Upon the return of the child, the country of origin should treat the child with respect, in accordance with international principles of human rights, and offer adequate family-based rehabilitation measures.

53. The United Nations Crime Prevention and Criminal Justice Programme, including the institutes comprising the Programme network, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization, the World Bank and interested non-governmental organizations should assist Member States, at their request, from within the overall appropriations of their regular budgets or from extra-budgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

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<sup>8</sup>United Nations, *Treaty Series*, vol. 1343, No. 22514.

<sup>9</sup>See Permanent Bureau of the Hague Conference on Private International Law, The Hague, 1996, *Collection of Conventions (1951-1996)*.

### **III. Alternatives to imprisonment and restorative justice**

#### **12. United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)\***

##### **I. GENERAL PRINCIPLES**

###### *1. Fundamental aims*

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

###### *2. The scope of non-custodial measures*

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of

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\*General Assembly resolution 45/110, annex.

the administration of criminal justice. For the purposes of the Rules, these persons are referred to as “offenders”, irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

### *3. Legal safeguards*

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

#### 4. *Saving clause*

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,<sup>1</sup> the

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<sup>1</sup>*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>2</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>3</sup> or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

## II. PRE-TRIAL STAGE

### 5. *Pre-trial dispositions*

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

### 6. *Avoidance of pre-trial detention*

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 6.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

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<sup>2</sup>Resolution 40/33, annex.

<sup>3</sup>Resolution 43/173, annex.

### III. TRIAL AND SENTENCING STAGE

#### 7. *Social inquiry reports*

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

#### 8. *Sentencing dispositions*

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

#### IV. POST-SENTENCING STAGE

##### 9. *Post-sentencing dispositions*

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and halfway houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

#### V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

##### 10. *Supervision*

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

### *11. Duration*

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

### *12. Conditions*

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

### *13. Treatment process*

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Caseload assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

#### *14. Discipline and breach of conditions*

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

## VI. STAFF

### *15. Recruitment*

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

### *16. Staff training*

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

## VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

### *17. Public participation*

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

### *18. Public understanding and cooperation*

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposiums and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

### *19. Volunteers*

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

## VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

### 20. *Research and planning*

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policymakers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

### 21. *Policy formulation and programme development*

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

### 22. *Linkages with relevant agencies and activities*

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

### 23. *International cooperation*

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical

assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.<sup>4</sup>

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<sup>4</sup>Resolution 45/119, annex.

### **13. Kadoma Declaration on Community Service and recommendations of the seminar entitled “Criminal justice: the challenge of prison overcrowding”, held in San José from 3 to 7 February 1997\***

#### **Kadoma Declaration on Community Service**

*Recalling* the Kampala Declaration on Prison Conditions in Africa, adopted at the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

*Noting* the growing interest in many countries in measures that replace custodial sentences and the promising developments across the world in this regard,

*Noting with appreciation* that the importance of the Kampala Declaration was recognized by the Economic and Social Council in its resolution 1997/36 of 21 July 1997 on international cooperation for the improvement of prison conditions, to which the Declaration was annexed,

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\*Economic and Social Council resolution 1998/23, annexes I and II, respectively.

*Bearing in mind* the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>1</sup> and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>2</sup>

*Considering* that, in many countries in Africa, the level of overcrowding is inhuman,

*Recalling* that the African Charter on Human and Peoples Rights<sup>3</sup> reaffirms the dignity inherent in a human being and the prohibition of degrading punishment and treatment,

*Welcoming* the success of the Zimbabwe community service scheme and its adoption by the Government of Zimbabwe following a three-year trial period,

*Noting with appreciation* that other African countries, including French-speaking and Portuguese-speaking countries, are interested in introducing community service as a penal sanction in their criminal justice systems,

*The participants at the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, make the following Declaration:*

1. The use of prison should be strictly limited to being a measure of last resort. Prisons represent a waste of scarce resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.

2. The overcrowding in our prisons requires positive action through, inter alia, the introduction of community service.

3. Community service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred, whenever possible, to a sentence of imprisonment.

4. Community service should be effectively implemented and supervised and should involve a programme of work in which the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his or her own time.

5. Governments, donors and civil society organizations are invited to support research, pilot schemes and other initiatives in this important area.

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<sup>1</sup>General Assembly resolution 45/110, annex.

<sup>2</sup>General Assembly resolution 40/33, annex.

<sup>3</sup>United Nations, *Treaty Series*, vol. 1520, No. 26363.

6. Countries that already have community service should take into account lessons learned from elsewhere and review their own schemes accordingly.

7. There should be promotion of community support through sensitization campaigns targeting public opinion and the development of statistical databases to measure the effectiveness of community service.

8. We encourage those countries that have not yet done so to develop non-custodial sentencing alternatives and to this end we commit ourselves to cooperating with and coordinating our action through other national committees on community service and/or interested groups, in order to better promote the scheme.

9. We adopt the Plan of Action attached hereto.

## **Appendix**

### **Plan of action for the Kadoma Declaration on Community Service**

*Further to the Kadoma Declaration on Community Service, adopted by the participants at the Kadoma Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, the participants adopt the following Plan of Action:*

#### 1. Network

Establish a network of national committees on community service and other interested groups to provide mutual support and encouragement through:

- The provision of resource persons to assist at seminars in the subregion and elsewhere;
- The sharing of documentation (legislation, guidelines, administrative forms) and ideas;
- Coordination and support of new projects;
- Cooperation and assistance in administering the scheme;
- Assistance in staff training;
- Exchange visits.

#### 2. Community service directory

Compile a community service directory. To this end, a home page will be established on the Internet informing interested persons of developments in this area and a book will be produced that includes:

- The contact points and addresses of all national committees on community service and those contacts engaged in community service schemes;

- A list of experts and resource persons;
- Contacts in interested countries;
- Interested groups and organizations around the world;
- Donor contacts and government contacts.

The book will be distributed in different languages, including French and English.

### 3. Newsletter

Issue a newsletter:

- To be produced by each national committee on community service at regular intervals and circulated to the network;
- To include initiatives undertaken, problems encountered, solutions found, reports on workshops, a calendar of events, requests for support (for example, resource persons), statistics and other information;
- To be disseminated through the Internet or the mail, or both.

### 4. Research and data-gathering

Set up mechanisms for research and data-gathering whereby:

- Research findings and data gathered will be shared through the newsletter or via the Internet;
- Research projects will be identified (for example, on cost-benefit analyses) and funding application supported by the network;
- Joint research projects on the benefits, problems and effectiveness of community service where the scheme is applied will be undertaken regionally and internationally.

## **Recommendations of the seminar entitled “Criminal justice: the challenge of prison overcrowding”, held in San José from 3 to 7 February 1997**

1. The Secretary-General should take measures to ensure that assistance is offered to States requesting it, either by drawing on existing resources or by creating a special budget heading, with a view to improving the physical conditions of prisons.

2. The Secretary-General should take measures to ensure that the relevant entities are furnished with the necessary resources to provide training for the administrative and operational personnel of the prisons of Member States requesting such training, priority being accorded to the most overcrowded prisons.

3. Measures should be taken to ensure that international and regional financial institutions, such as the World Bank and the Inter-American Development Bank, adopt initiatives aimed at reducing prison overcrowding, including the provision of assistance for programmes of prison construction and the renovation of infrastructure.

4. The World Health Organization and regional bodies should be requested to incorporate, in their programmes of assistance, initiatives aimed at improving prison hospital facilities and the medical and hospital services offered to prisoners in States requesting such assistance.

5. Member States should urge the Secretary-General to promote and adopt, jointly with requesting Member States, measures to privatize individual prisons in such a way that they provide for security, the well-being and social reintegration of prisoners, profitable industrial use of prison labour and employment opportunities for prisoners after their release.

6. Member States should seek to establish in prisons human rights committees and work panels as alternative conflict-resolution mechanisms.

7. Member States should explore the possibility of adopting strategies to involve private enterprise in prison social rehabilitation programmes by creating enterprises and micro-enterprises to encourage investment in the vocational training of prisoners, employment creation within prisons and the reintegration of former prisoners into the labour force, thereby ensuring full application of the principles of social reintegration and rehabilitation of former prisoners within the productive mainstream of countries.

8. Member States should take measures to ensure the marketing of prison production through promotional and marketing programmes and to progressively set up workshops in prisons.

#### **14. Basic principles on the use of restorative justice programmes in criminal matters\***

##### **Preamble**

*Recalling* that there has been, worldwide, a significant growth of restorative justice initiatives,

*Recognizing* that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people,

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\*Economic and Social Council resolution 2002/12, annex.

*Emphasizing* that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities,

*Stressing* that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs,

*Aware* that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime,

*Noting* that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances,

*Recognizing* that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders,

## I. USE OF TERMS

1. “Restorative justice programme” means any programme that uses restorative processes and seeks to achieve restorative outcomes.

2. “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 processes may include mediation, conciliation, conferencing and sentencing circles.

3. “Restorative outcome” means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

4. “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.

5. “Facilitator” means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

## II. USE OF RESTORATIVE JUSTICE PROGRAMMES

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.

7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.

8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.

10. The safety of the parties shall be considered in referring any case to, and in conducting, a restorative process.

11. Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community.

## III. OPERATION OF RESTORATIVE JUSTICE PROGRAMMES

12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia:

(a) The conditions for the referral of cases to restorative justice programmes;

(b) The handling of cases following a restorative process;

- (c) The qualifications, training and assessment of facilitators;
- (d) The administration of restorative justice programmes;
- (e) Standards of competence and rules of conduct governing the operation of restorative justice programmes.

13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:

(a) 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;

(b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

(c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

#### IV. CONTINUING DEVELOPMENT OF RESTORATIVE JUSTICE PROGRAMMES

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

#### V. SAVING CLAUSE

23. Nothing in these basic principles shall affect any rights of an offender or a victim which are established in national law or applicable international law.

## **IV. Torture and other cruel, inhuman or degrading treatment or punishment**

### **15. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\***

#### *Article 1*

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.<sup>1</sup>

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

#### *Article 2*

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

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\*General Assembly resolution 3452 (XXX), annex.

<sup>1</sup>First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A.

*Article 3*

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

*Article 4*

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

*Article 5*

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

*Article 6*

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

*Article 7*

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

### *Article 8*

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

### *Article 9*

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

### *Article 10*

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

### *Article 11*

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

### *Article 12*

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

## **16. Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment\***

### *Principle 1*

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

### *Principle 2*

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.<sup>1</sup>

### *Principle 3*

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

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\*General Assembly resolution 37/194, annex.

<sup>1</sup>See the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex), article 1 of which states:

“1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

“2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”

Article 7 of the Declaration states:

“Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.”

#### *Principle 4*

It is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;<sup>2</sup>

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

#### *Principle 5*

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and it presents no hazard to his physical or mental health.

#### *Principle 6*

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

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<sup>2</sup>Particularly the Universal Declaration of Human Rights (resolution 217 A (III)), the International Covenants on Human Rights (resolution 2200 A (XXI), annex), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex) and the Standard Minimum Rules for the Treatment of Prisoners (*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A).

## **17. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\***

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “torture or other ill-treatment”) include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.<sup>1</sup> The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats

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\*General Assembly resolution 55/89, annex.

<sup>1</sup>Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.

of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.<sup>1</sup>

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

- (i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time

and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

- (ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;
- (v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

## V. Capital punishment

### 18. Capital punishment\*

*The General Assembly,*

*Recalling* its resolution 2393 (XXIII) of 26 November 1968 concerning the application of the most careful legal procedures and the greatest possible safeguards for the accused in capital cases as well as the attitude of Member States to possible further restriction of the use of capital punishment or to its total abolition,

*Taking note* of the section of the report of the Economic and Social Council<sup>1</sup> concerning the consideration by the Council of the report on capital punishment<sup>2</sup> submitted by the Secretary-General in implementation of the aforementioned resolution,

*Taking note* of the Economic and Social Council resolution 1574 (L) of 20 May 1971,

*Expressing* the desirability of continuing and extending the consideration of the question of capital punishment by the United Nations,

1. *Notes with satisfaction* the measures already taken by a number of States in order to ensure careful legal procedures and safeguards for the accused in capital cases in countries where the death penalty still exists;

2. *Considers* that further efforts should be made to ensure such procedures and safeguards in capital cases everywhere;

3. *Affirms* that, in order fully to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries;

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\*General Assembly resolution 2857 (XXVI).

<sup>1</sup>*Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 3 (A/8403), chap. XVIII, sect. C.*

<sup>2</sup>E/4947 and Corr.1.

4. *Invites* Member States which have not yet done so to inform the Secretary-General of their legal procedures and safeguards as well as of their attitude to possible further restriction of the use of the death penalty or its total abolition, by providing the information requested in paragraphs 1 (c) and 2 of General Assembly resolution 2393 (XXIII);

5. *Requests* the Secretary-General to circulate as soon as possible to Member States all the replies already received from Member States to the queries contained in paragraphs 1 (c) and 2 of resolution 2393 (XXXIII) and those to be received after the adoption of the present resolution, and to submit a supplementary report to the Economic and Social Council at its fifty-second session;

6. *Further requests* the Secretary-General, on the basis of material furnished in accordance with paragraph 4 above by Governments of Member States where capital punishment still exists, to prepare a separate report regarding practices and statutory rules which may govern the right of a person sentenced to capital punishment to petition for pardon, commutation or reprieve, and to submit that report to the General Assembly.

### **19. Safeguards guaranteeing protection of the rights of those facing the death penalty\***

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

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\*Economic and Social Council resolution 1984/50, annex.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights,<sup>1</sup> including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

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<sup>1</sup>General Assembly resolution 2200 A (XXI), annex.

## **20. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty\***

*The Economic and Social Council,*

*Recalling* its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing the death penalty,

*Recalling also* resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>1</sup>

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\*Economic and Social Council resolution 1989/64.

<sup>1</sup>See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

*Recalling further* section X of its resolution 1986/10 of 21 May 1986, in which it requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

*Taking note of* the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,<sup>2</sup>

*Noting with satisfaction* that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

*Noting with appreciation* the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,<sup>3</sup>

*Alarmed* at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

*Aware* that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

*Convinced* that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

*Acknowledging* the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. *Recommends* that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

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<sup>2</sup>E/AC.57/1988/9 and Corr.1 and 2.

<sup>3</sup>E/AC.57/1988/CRP.7.

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. *Invites* Member States to cooperate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. *Also invites* Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. *Further invites* Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Council resolution 1984/50;

5. *Urges* Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. *Recommends* that the report of the Secretary-General on the question of capital punishment, to be submitted to the Council in 1990, to pursuance of its resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. *Requests* the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter, prepared pursuant to Council resolution 1986/10, section X, and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

## **21. Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions\***

### **Prevention**

1. Governments shall prohibit by law all extralegal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extralegal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extralegal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extralegal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their

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\*Economic and Social Council resolution 1989/65, annex.

custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extralegal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extralegal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

### **Investigation**

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the

matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extralegal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the

investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

### **Legal proceedings**

18. Governments shall ensure that persons identified by the investigation as having participated in extralegal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extralegal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extralegal, arbitrary or summary executions.

20. The families and dependents of victims of extralegal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

## **22. Safeguards guaranteeing protection of the rights of those facing the death penalty\***

*The Economic and Social Council,*

*Recalling* General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 and Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1990/51 of 24 July 1990 and 1995/57 of 28 July 1995,

*Recalling also* article 6 of the International Covenant on Civil and Political Rights,<sup>1</sup>

*Recalling further* the safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to its resolution 1984/50 of 25 May 1984, and its resolution 1989/64 of 24 May 1989 on the implementation of the safeguards,

*Taking note* of the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,<sup>2</sup>

*Recalling* the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, set forth in the annex to its resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, and taking note of the recommendations of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions concerning the death penalty contained in his report to the Commission on Human Rights at its fifty-second session,<sup>3</sup>

*Taking note* of Security Council resolution 827 (1993) of 25 May 1993, in which the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and to adopt the statute of the International Tribunal annexed to the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) of 22 February 1993,<sup>4</sup> and taking note also of Security

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\*Economic and Social Council resolution 1996/15.

<sup>1</sup>See General Assembly resolution 2200 A (XXI), annex.

<sup>2</sup>E/CN.15/1996/19.

<sup>3</sup>E/CN.4/1996/4 and Corr.1.

<sup>4</sup>See *Official Records of the Security Council, Forty-eighth Year, Supplement for April, May and June 1993*, document S/25704 and Add.1.

Council resolution 955 (1994) of 8 November 1994, in which the Security Council decided to establish the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and to adopt the statute of the International Tribunal for Rwanda annexed to that resolution,

1. *Notes* that, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,<sup>2</sup> an increasing number of countries abolished the death penalty and others followed a policy reducing the number of capital offences and declared that they had not sentenced any offender to that penalty, while still others retained it and a few reintroduced it;

2. *Calls upon* Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, which state that capital punishment may be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

3. *Encourages* Member States in which the death penalty has not been abolished to ensure that each defendant facing a possible death sentence is given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights,<sup>1</sup> and bearing in mind the Basic Principles on the Independence of the Judiciary,<sup>5</sup> the Basic Principles on the Role of Lawyers,<sup>6</sup> the Guidelines on the Role of Prosecutors,<sup>7</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>8</sup> and the Standard Minimum Rules for the Treatment of Prisoners;<sup>9</sup>

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<sup>5</sup>*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

<sup>6</sup>*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.1), chap. I, sect. B.3, annex.

<sup>7</sup>*Ibid.*, sect. C. 26.

<sup>8</sup>General Assembly resolution 43/173, annex.

<sup>9</sup>*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I, sect. A.

4. *Also encourages* Member States in which the death penalty has not been abolished to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;

5. *Calls upon* Member States in which the death penalty may be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

6. *Also calls upon* Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;

7. *Urges* Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

### **23. The question of the death penalty\***

*The Commission on Human Rights,*

*Recalling* article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

*Recalling also* General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

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\*Commission on Human Rights resolution 2003/67. (See *Official Records of the Economic and Social Council, 2003, Supplement No. 3 (E/2003/23)*, chap. II, sect. A.)

*Recalling further* the relevant Economic and Social Council resolutions, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

*Recalling* its previous resolutions in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

*Noting* that, in some countries, the death penalty is often imposed after trials which do not conform to international standards of fairness and that persons belonging to national or ethnic, religious and linguistic minorities appear to be disproportionately subject to the death penalty, and condemning cases in which women are subjected to capital punishment on the basis of gender-discriminatory legislation,

*Welcoming* the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the International Criminal Court are authorized to impose,

*Commending* the States that have recently become parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights and welcoming the recent signature of the Second Optional Protocol by some States,

*Welcoming* the abolition of the death penalty which has taken place in some States since the last session of the Commission, and in particular in those States that have abolished the death penalty for all crimes,

*Welcoming also* the fact that many countries which still retain the death penalty in their penal legislation are applying a moratorium on executions,

*Welcoming further* regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

*Referring* to the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

*Deeply concerned* that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child,

*Concerned* that several countries, in imposing the death penalty, do not take into account the safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Recalls* the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3), and welcomes the yearly supplement which is the subject of the report of the Secretary-General (E/CN.4/2003/106 and Add.1) on changes in law and practice concerning the death penalty worldwide, as requested in Commission resolution 2002/77 of 25 April 2002;

2. *Reaffirms* resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence;

3. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

4. *Urges* all States that still maintain the death penalty:

(a) Not to impose it for crimes committed by persons below 18 years of age, and to exclude pregnant women from capital punishment;

(b) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

(c) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;

(d) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

(e) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to

withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;

(f) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;

(g) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;

(h) To exclude mothers with dependent infants from capital punishment;

(i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;

(j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

5. *Calls upon* all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;

6. *Calls upon* States which no longer apply the death penalty but maintain it in their legislation to abolish it;

7. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;

8. *Requests* the Secretary-General to submit again to the Commission, at its sixtieth session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence;

9. *Decides* to continue consideration of the matter at its sixtieth session under the same agenda item.

*Part two*

**Legal, institutional and  
practical arrangements for  
international cooperation**



# I. Model treaties

## 24. Model Treaty on Extradition\*<sup>1</sup>

The \_\_\_\_\_ and the

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*Desirous* of making more effective the cooperation of the two countries in the control of crime by concluding a treaty on extradition,

*Have agreed* as follows:

### Article 1

#### *Obligation to extradite*

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.<sup>2</sup>

### Article 2

#### *Extraditable offences*

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

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\*General Assembly resolution 45/116, as amended by resolution 52/88.

<sup>1</sup>The version of the Model Treaty on Extradition contained in this edition of the *Compendium* is the result of the merging of the model treaty adopted in 1990 by the General Assembly in its resolution 45/116 and the amendments introduced in 1997 in resolution 52/88. The latter have been identified in bold type.

<sup>2</sup>Reference to the imposition of a sentence may not be necessary for all countries.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.<sup>3</sup>

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

### Article 3

#### *Mandatory grounds for refusal*

Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature. **Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purposes of extradition;**<sup>4</sup>

(b) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic

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<sup>3</sup>Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

<sup>4</sup>Countries may wish to exclude certain conduct, e.g., acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence.

origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;<sup>5</sup>

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;<sup>6</sup>

(g) If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.<sup>7</sup>

#### Article 4

##### *Optional grounds for refusal*

Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;<sup>8</sup>

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<sup>5</sup>Some countries may wish to make this an optional ground for refusal under article 4. **Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State.**

<sup>6</sup>See General Assembly resolution 2200 A (XXI), annex.

<sup>7</sup>Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence." (See also footnote 12.)

<sup>8</sup>**Some countries may also wish to consider, within the framework of national legal systems, other means to ensure that those responsible for crimes do not escape punishment on the basis of nationality, such as, inter alia, provisions that would permit surrender for serious offences or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence.**

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. **Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;**<sup>9</sup>

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State.<sup>10</sup> Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

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<sup>9</sup>Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

<sup>10</sup>Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its laws at the time of the commission of the offence.

Article 5  
*Channels of communication and required documents*<sup>11</sup>

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

- (i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;
- (ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;<sup>12</sup>

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested

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<sup>11</sup>Countries may wish to consider including the most advanced techniques for the communication of requests and means which could establish the authenticity of the documents as emanating from the requesting State.

<sup>12</sup>Countries requiring evidence in support of a request for extradition may wish to define the evidentiary requirements necessary to satisfy the test for extradition and in doing so should take into account the need to facilitate effective international cooperation.

and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

Article 6  
*Simplified extradition procedure*<sup>13</sup>

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7  
*Certification and authentication*

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.<sup>14</sup>

Article 8  
*Additional information*

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9  
*Provisional arrest*

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of

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<sup>13</sup>Countries may wish to provide for the waiver of speciality in the case of simplified extradition.

<sup>14</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

#### Article 10

##### *Decision on the request*

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

#### Article 11

##### *Surrender of the person*

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

## Article 12

### *Postponed or conditional surrender*

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

## Article 13

### *Surrender of property*

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

#### Article 14 *Rule of specialty*

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;<sup>15</sup>

(b) Any other offence in respect of which the requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.<sup>16</sup>

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.<sup>17</sup>

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

#### Article 15 *Transit*

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited

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<sup>15</sup>Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts and carrying the same or a lesser penalty as the original offence for which extradition was requested.

<sup>16</sup>Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

<sup>17</sup>Countries may wish to waive the requirement for the provision of some or all of these documents.

shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.<sup>18</sup>

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

#### Article 16

##### *Concurrent requests*

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

#### Article 17

##### *Costs*

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.<sup>19</sup>

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<sup>18</sup>Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g. political, fiscal, military) or to the status of the person (e.g. their own nationals). **However, countries may wish to provide that transit should not be denied on the basis of nationality.**

<sup>19</sup>Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest. **There may also be cases for consultation between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States.**

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## 25. Model Treaty on Mutual Assistance in Criminal Matters\*<sup>1</sup>

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of extending to each other the widest measure of cooperation to combat crime,

*Have agreed* as follows:

### Article 1 *Scope of application*<sup>2</sup>

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing information and evidentiary items;
- (g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

- (a) The arrest or detention of any person with a view to the extradition of that person;

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\*General Assembly resolution 45/117, as amended by resolution 53/112.

<sup>1</sup>The version of the Model Treaty on Mutual Assistance in Criminal Matters contained in this edition of the *Compendium* is the result of the merging of the model treaty adopted in 1990 by the General Assembly in its resolution 45/117 and the amendments introduced in 1998 in resolution 53/112. The latter have been identified in bold type.

<sup>2</sup>Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

- (b) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and **article 18** of the present Treaty;
- (c) The transfer of persons in custody to serve sentences;
- (d) The transfer of proceedings in criminal matters.

### Article 2<sup>3</sup>

#### *Other arrangements*

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

### Article 3

#### *Designation of **central** authorities*

Each Party shall designate and indicate to the other Party a **central** authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.<sup>4</sup>

### Article 4<sup>5</sup>

#### *Refusal of assistance*

1. Assistance may be refused if:<sup>6</sup>

- (a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interest;

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<sup>3</sup>Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

<sup>4</sup>**Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements.**

<sup>5</sup>Article 4 provides an illustrative list of the grounds for refusal.

<sup>6</sup>Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic acid (DNA) tests). **Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure.**

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) The request relates to an offence the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.<sup>7</sup>

5. Reasons shall be given for any refusal or postponement of mutual assistance.

## Article 5 *Contents of requests*

1. Requests for assistance shall include:<sup>8</sup>

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

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<sup>7</sup>States should consult, in accordance with article 21, before assistance is refused or postponed.

<sup>8</sup>This list can be reduced or expanded in bilateral negotiations.

- (b) The purpose of the request and a brief description of the assistance sought;
- (c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
- (d) The name and address of the person to be served, where necessary;
- (e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (f) Specification of any time limit within which compliance with the request is desired;
- (g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.<sup>9</sup>

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

#### Article 6<sup>10</sup> *Execution of requests*

Subject to article 20 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.<sup>11</sup>

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<sup>9</sup>Countries may wish to provide that the request may be made by modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith.

<sup>10</sup>More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

<sup>11</sup>The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders.

Article 7  
*Return of material to the requested State*

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8<sup>12</sup>  
*Limitation on use*

**Unless otherwise agreed**, the requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9  
*Protection of confidentiality*<sup>13</sup>

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

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<sup>12</sup>Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences, **or restrict use of evidence only where the requested State makes an express request to that effect.**

<sup>13</sup>Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

Article 10  
*Service of documents*<sup>14</sup>

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [. . .]<sup>15</sup> days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11<sup>16</sup>  
*Obtaining of evidence*

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.<sup>17</sup>

Article 12  
*Right or obligation to decline to give evidence*

1. A person who is **called upon** to give evidence in the requested or requesting State may decline to give evidence where either:

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<sup>14</sup>More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

<sup>15</sup>Depending on travel distance and related arrangements.

<sup>16</sup>Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

<sup>17</sup>**Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence.**

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non existence of that right or obligation.<sup>18</sup>

### Article 13

#### *Availability of persons in custody to give evidence or to assist in investigations<sup>19</sup>*

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

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<sup>18</sup>Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State.

<sup>19</sup>In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time limit for the presence of the person in custody in the requesting State.

Article 14  
*Availability of other persons to give evidence  
or assist in investigations*<sup>20</sup>

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15<sup>21</sup>  
*Safe conduct*

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

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<sup>20</sup>Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

<sup>21</sup>The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

#### Article 16

##### *Provision of publicly available documents and other records*<sup>22</sup>

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

#### Article 17

##### *Search and seizure*<sup>23</sup>

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

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<sup>22</sup>The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

<sup>23</sup>Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

**Article 18<sup>24</sup>**  
***Proceeds of crime*<sup>25</sup>**

1. In the present **article** “proceeds of crime” means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of the present **article**, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present **article**, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.<sup>26</sup>

6. The Parties shall ensure that the rights of *bona fide* third parties shall be respected in the application of the present **article**.

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<sup>24</sup>The footnotes attached to this article in its original form as the Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime (see General Assembly resolution 45/117) were deleted in accordance with resolution 53/112, annex I, para. 15.

<sup>25</sup>Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provision could be made for the equitable sharing of the proceeds of crime between the contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

<sup>26</sup>The parties might consider widening the scope of the present article by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

**Article 19**  
*Certification and authentication*<sup>27</sup>

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

**Article 20**  
*Costs*<sup>28</sup>

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

**Article 21**  
*Consultation*

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

**Article 22**  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

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<sup>27</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

<sup>28</sup>More detailed provisions may be included. For example, the requested State would meet the ordinary costs of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## **26. Model Treaty on the Transfer of Proceedings in Criminal Matters\***

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

*Believing* that such cooperation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

*Bearing in mind* that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

*Aware* that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

*Convinced*, therefore, that the transfer of proceedings in criminal matters should be promoted,

*Have agreed* as follows:

### *Article 1* *Scope of application*

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

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\*General Assembly resolution 45/118, annex.

*Article 2*  
*Channels of communications*

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

*Article 3*  
*Required documents*

1. The request to take proceedings shall contain or be accompanied by the following information:

- (a) The authority presenting the request;
- (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
- (c) A statement on the results of investigations which substantiate the suspicion of an offence;
- (d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;
- (e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

*Article 4*  
*Certification and authentication*

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.<sup>1</sup>

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<sup>1</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

*Article 5*  
*Decision on the request*

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

*Article 6*  
*Dual criminality*

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

*Article 7*  
*Grounds for refusal*

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:<sup>2</sup>

- (a) The suspected person is not a national of or ordinary resident in the requested State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the requested State as being of a political nature.

*Article 8*  
*The position of the suspected person*

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

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<sup>2</sup>When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

*Article 9*  
*The rights of the victim*

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

*Article 10*  
*Effects of the transfer of proceedings on the  
requesting State (ne bis in idem)*

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

*Article 11*  
*Effects of the transfer of proceedings on the requested State*

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting

State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

*Article 12*  
*Provisional measures*

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

*Article 13*  
*The plurality of criminal proceedings*

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

*Article 14*  
*Costs*

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

*Article 15*  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## **27. Model Agreement on the Transfer of Foreign Prisoners\* and recommendations on the treatment of foreign prisoners\*\***

*The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,*

*Recalling* resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>1</sup> in which States Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

*Recognizing* the difficulties of foreigners detained in prison establishments abroad owing to such factors as differences in language, culture, customs and religion,

*Considering* that the aim of social resettlement of offenders could best be achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

*Convinced* that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

*Taking note* of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. *Adopts* the Model Agreement on the Transfer of Foreign Prisoners contained in annex I to the present resolution;

2. *Approves* the recommendations on the treatment of foreign prisoners contained in annex II below;

3. *Invites* Member States, if they have not yet established treaty relations with other Member States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement on the Transfer of Foreign Prisoners annexed hereto;

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\**Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I.

\*\**Ibid.*, annex II.

<sup>1</sup>*Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

4. *Requests* the Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

***Annex I***  
***Model Agreement on the Transfer of Foreign Prisoners***

PREAMBLE

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further developing mutual cooperation in the field of criminal justice,

*Believing* that such cooperation should further the ends of justice and the social resettlement of sentenced persons,

*Considering* that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,

*Convinced* that this aim can best be achieved by transferring foreign prisoners to their own countries,

*Bearing in mind* that the full respect for human rights, as laid down in universally recognized principles, should be ensured,

*Have agreed* on the following:

I. GENERAL PRINCIPLES

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of cooperation.

2. A transfer of prisoners should be effected on the basis of mutual respect for national sovereignty and jurisdiction.

3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.

4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.

5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.

6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable to sentences of imprisonment as well as to sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

## II. OTHER REQUIREMENTS

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

## III. PROCEDURAL REGULATIONS

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts insofar as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

#### IV. ENFORCEMENT AND PARDON

21. The enforcement of the sentence shall be governed by the law of the administering State.

22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

#### V. FINAL CLAUSES

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in \_\_\_\_\_.

25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

26. Either Contracting Party may denounce this agreement in writing to the \_\_\_\_\_ . Denunciation shall take effect six months following the date on which the notification is received by the \_\_\_\_\_ .

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

***Annex II***  
***Recommendations on the treatment of foreign prisoners***

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.
5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.
8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

## 28. Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released\*

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

*Believing* that such cooperation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

*Bearing in mind* that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

*Aware* that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

*Convinced*, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

*Have agreed* as follows:

### *Article 1* *Scope of application*

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

- (a) Placed on probation without sentence having been pronounced;
- (b) Given a suspended sentence involving deprivation of liberty;
- (c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

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\*General Assembly resolution 45/119, annex.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

*Article 2*  
*Channels of communications*

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

*Article 3*  
*Required documents*

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

*Article 4*  
*Certification and authentication*

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.<sup>1</sup>

*Article 5*  
*Decision on the request*

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

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<sup>1</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

*Article 6*  
*Dual criminality*<sup>2</sup>

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

*Article 7*  
*Grounds for refusal*<sup>3</sup>

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

- (a) The sentenced person is not ordinarily resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the administering State as being of a political nature;
- (e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

*Article 8*  
*The position of the sentenced person*

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

*Article 9*  
*The rights of the victim*

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or

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<sup>2</sup>When negotiating on the basis of the present Model Treaty, States may wish to waive the requirement of dual criminality.

<sup>3</sup>When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

*Article 10*

*The effects of the transfer of supervision on the sentencing State*

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

*Article 11*

*The effects of the transfer of supervision on the administering State*

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

*Article 12*

*Review, pardon and amnesty*

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

*Article 13*

*Information*

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or

enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

*Article 14*

*Costs*

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

*Article 15*

*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

**29. Model treaty for the prevention of crimes that infringe  
on the cultural heritage of peoples in the  
form of movable property\*<sup>1</sup>**

The \_\_\_\_\_ and the \_\_\_\_\_

*Conscious* of the need to cooperate in the field of criminal justice,

*Wishing* to add to the effectiveness of the cooperation between their two countries in combating criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been stolen, the imposition of appropriate and effective administrative and penal sanctions and the provision of a means for restitution,

*Have agreed* as follows:

*Article 1*

*Scope of application and definition<sup>2</sup>*

1. For the purposes of this treaty, movable cultural property<sup>3</sup> shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists and other national figures, and to events of national importance;

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\**Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

<sup>1</sup>An alternative title could be "Model treaty concerning crimes relating to the restitution of movable cultural property".

<sup>2</sup>Suggested alternatives to article 1, paragraph 1, are: (i) "This treaty covers all items of movable cultural property specifically designated as such by a State Party, and subject to export control by that State Party."; or (ii) "This treaty covers those items of movable cultural property specifically agreed to between the States Parties as being subject to export control."

<sup>3</sup>The categories follow closely the list contained in article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970. However, this list may not be exhaustive, and States Parties may wish to add other categories.

- (c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;
- (d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;
- (e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions of all kinds, coins, engraved seals, jewels, weapons and funerary remains of any description;
- (f) Materials of anthropological, historical or ethnological interest;
- (g) Property of artistic interest, such as:
  - (i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - (ii) Original works of statuary art and sculpture in any material;
  - (iii) Original engravings, prints, lithographs and art photographs;
  - (iv) Original artistic assemblages and montages in any material;
- (h) Rare manuscripts and incunabula, old books, documents and publications of special historical, artistic, scientific, literary or other interest, singly or in collections;
- (i) Postage, revenue and similar stamps, either singly or in collections;
- (j) Archives, including phonographic, photographic and cinematographic archives;
- (k) Articles of furniture, furnishings and musical instruments of more than 100 years of age.

2. This treaty applies to movable cultural property stolen in or illicitly exported from the other State Party after the coming into force of the treaty.<sup>4</sup>

## *Article 2*

### *General principles*

4. Each State Party undertakes:

- (a) To take the necessary measures to prohibit the import and export of movable cultural property (i) which has been stolen in the other State Party or (ii) which has been illicitly exported from the other State Party;

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<sup>4</sup>States Parties may wish to consider providing for a period of limitation after which the right to request recovery of stolen or illicitly exported movable cultural property will be extinguished.

(b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the prohibitions resulting from the implementation of subparagraph (a) above;

(c) To legislate in order to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;

(d) To provide information concerning its stolen movable cultural property to an international database agreed upon between the States Parties;<sup>5</sup>

(e) To take the measures necessary to ensure that the purchaser of stolen movable cultural property which is listed on the international database is not considered to be a purchaser who has acquired such property in good faith;<sup>6</sup>

(f) To introduce a system whereby the export of movable cultural property is authorized by the issue of an export certificate;<sup>7</sup>

(g) To take the measures necessary to ensure that a purchaser of imported movable cultural property which is not accompanied by an export certificate issued by the other State Party and who did not acquire the movable cultural property prior to the entry into force of this treaty shall not be considered to be a person who has acquired the movable cultural property in good faith;<sup>8</sup>

(h) To use all the means at its disposal, including the fostering of public awareness, to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

2. Each State Party undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered by subparagraph (a) above.

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<sup>5</sup>Further developments in this field will provide the international community, particularly potential States Parties, with an opportunity to implement this method of crime prevention. (See *Eighth United Nations Congress . . .*, chap. I, sect. C.6.) The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders may wish to develop initiatives in this direction.

<sup>6</sup>This provision is intended to supplement, and not be in substitution for, the normal rules relating to good faith acquisition.

<sup>7</sup>This procedure is consistent with the validation procedure described in article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

<sup>8</sup>States Parties may wish to consider adding certain types of offences against movable cultural property to the list of extraditable offences covered by an extradition treaty. (See also General Assembly resolution 45/166, annex.)

*Article 3*  
*Sanctions*<sup>8</sup>

Each State Party undertakes to impose sanctions<sup>9</sup> upon:

- (a) Persons or institutions responsible for the illicit import or export of movable cultural property;
- (b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;
- (c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

*Article 4*  
*Procedures*

1. Requests for recovery and return shall be made through diplomatic channels. The requesting State Party shall furnish, at its expense, the documentation and other evidence, including the date of export, necessary to establish its claim for recovery and return.

2. All expenses incidental to the return and delivery of the movable cultural property shall be borne by the requesting State Party,<sup>10</sup> and no person or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation<sup>10</sup> to any person or institution that in good faith acquired or was in legal possession of the property.<sup>11</sup>

3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accordance with the present treaty.

4. The States Parties agree to make available to each other such information as will assist in combating crimes against movable cultural property.<sup>12</sup>

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<sup>9</sup>States Parties may wish to consider establishing minimum penalties for certain offences.

<sup>10</sup>States Parties may wish to consider whether the expenses and/or the expense of providing compensation should be shared between them.

<sup>11</sup>States Parties may wish to consider the position of a blameless possessor who has inherited or otherwise gratuitously acquired a cultural object which had been previously dealt with in bad faith.

<sup>12</sup>Some States Parties may wish to preface article 4, paragraph 3, by the following: "Subject to domestic laws, particularly those concerning access to information and the protection of privacy, . . .".

5. Each State Party shall provide information concerning laws which protect its movable cultural property to an international database agreed upon between the States Parties.<sup>13</sup>

*Article 5*  
*Final provisions*<sup>14</sup>

1. This treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible, through diplomatic channels.

2. This treaty shall come into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months after the date on which such notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this treaty.

\_\_\_\_\_

Done at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

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<sup>13</sup>It should be noted that General Assembly resolution 44/18 of 6 November 1989 and quite a number of resolutions of the General Conference of UNESCO have invited member States to establish, with the assistance of UNESCO, national inventories of cultural property. At the date of the drafting of this treaty, national legislative texts on the protection of cultural movable property from 76 countries have been collected, published and disseminated by UNESCO.

<sup>14</sup>States Parties may wish to consider providing for a process for the resolution of disputes concerning the treaty.

### 30. Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles\*

(The Government of [country name] and the Government of [country name]),<sup>1</sup>

or

(The States Parties to the present Treaty),<sup>2</sup>

Recognizing the growing problem of theft of and illicit trafficking in motor vehicles,

Considering the difficulties faced by innocent owners in securing the return of motor vehicles stolen or embezzled in the territory of one Party that are recovered in the territory of another Party,

Desiring to eliminate such difficulties and to regularize procedures for the expeditious return of such vehicles,

Have agreed as follows:

#### Article 1

For the purposes of the present Treaty:

(a) A “vehicle” shall mean any automobile, truck, bus, motorcycle, motorhome, or trailer;

(b) A vehicle shall be considered “stolen” when possession thereof has been obtained without the consent of the owner or other person legally authorized to use such motor vehicle;

(c) A vehicle shall be considered “embezzled” when:

(i) It is unlawfully converted by the person who had rented it from an enterprise legally authorized for that purpose and in the normal course of business; or

(ii) It is unlawfully converted by a person with whom it has been deposited by official or judicial action;

(d) All references to “days” shall mean calendar days.

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\*Economic and Social Council resolution 1997/29, annex II.

<sup>1</sup>Applicable to bilateral agreements.

<sup>2</sup>Applicable to subregional or regional agreements.

## *Article 2*

Each Party agrees to return, in accordance with the terms of the present Treaty, vehicles that are:

- (a) Registered, titled or otherwise documented in the territory of a Party;
- (b) Stolen or embezzled in the territory of a Party; and
- (c) Found in the territory of a Party.

## *Article 3*

1. Whenever police, customs or other authorities of a Party impound or seize a vehicle that they have reason to believe is registered, titled or otherwise documented in the territory of another Party, the first Party shall, within [thirty] days of such impoundment or seizure, notify, in writing, [the Embassy] of the other Party that its authorities have custody of the motor vehicle.

2. Such notification shall include all available identifying data about the vehicle of the type listed in appendix I, a description of the condition of the motor vehicle, the current location of the vehicle, the identity of the authority with physical custody of the vehicle and [any] information that indicates whether it was being used in connection with the commission of a crime.

## *Article 4*

Authorities of the Party who have impounded or seized a vehicle that they have reason to believe is registered, titled or otherwise documented in the territory of another Party shall promptly take it to a storage area and shall take reasonable steps regarding the safekeeping of the vehicle. Thereafter, the said authorities shall not operate, auction, dismantle or otherwise alter or dispose of the vehicle. However, the present Treaty shall not preclude the said authorities from operating, auctioning, dismantling or otherwise altering or disposing of the vehicle if:

(a) No request for the return of the vehicle is filed within [sixty] days of the notification made pursuant to article 3 above;

(b) A determination is made in accordance with article 7, paragraph 1, below that a request for the return of the vehicle does not meet the requirements of the present Treaty and notification of such determination has been made in accordance with article 7, paragraph 3, below;

(c) The vehicle has not been retrieved within the time period stated in article 7, paragraph 2, below by the person identified in the request for return as the owner or the authorized representative of the owner after the vehicle has been made available as provided in article 7, paragraph 2, below; or

(d) There is no obligation under the present Treaty pursuant to article 8, paragraphs 2 or 3, below to return the vehicle.

### Article 5

1. After receiving a notification made pursuant to article 3 above, a Party may submit a request for the return of the vehicle.

2. The request for return [shall be transmitted under seal of a consular officer of the Requesting Party and] shall follow the form shown in appendix II. A copy of the request shall be transmitted under cover of a note to the [Ministry of Foreign Affairs] of the Requested Party. A request shall be made only after receipt by the consular officer of properly notarized certified copies of the following documents:

- (a) (i) The title of ownership to the vehicle, if the vehicle is subject to titling, but, if a title is not available, a certified statement from the titling authority affirming that the motor vehicle is titled and specifying the person or entity to whom it is titled;
- (ii) The certificate of registration of the vehicle, if the vehicle is subject to registration, but, if the registration document is not available, a certified statement from the registering authority affirming that the vehicle is registered and specifying the person or entity to whom it is registered;
- (iii) The bill of sale or other documentation that establishes ownership of the vehicle, in the event the vehicle is not titled or registered;

(b) The document of transfer, if, subsequent to the theft or embezzlement of the vehicle, the owner at the time of the theft or embezzlement has transferred ownership to a third party;

(c) The theft report, made within a reasonable time to a competent authority in the Requesting Party, and a translation thereof. In the event that the theft report is made after the vehicle is seized or otherwise comes into possession of the Requested Party, the person seeking its return shall furnish a document justifying the reasons for the delay in reporting the theft and may provide any supporting documentation therefor; and

(d) In cases in which the person requesting the return of a vehicle is not the owner, a power of attorney, granted in the presence of a notary public by the owner or his or her legal representative, authorizing that person to recover the vehicle.

3. Except as noted in paragraph 2 (c) above, translations of documents need not be provided. The requirement for translation of a theft report may be waived by authorities of the Requested Party. No further legalization or authentication of documents will be required by the Requested Party.

### *Article 6*

If a Party learns, through means other than a notification made pursuant to article 3 above, that the authorities of another Party may have impounded, seized or otherwise taken possession of a vehicle that may be registered or otherwise documented in the territory of the first Party, that Party:

(a) May, through a note to the [Ministry of Foreign Affairs] of the other Party, seek official confirmation of this and may request the other Party to provide the notification described in article 3, in which case the other Party shall either provide the notification or explain, in writing, why notification is not required; and

(b) May also, in appropriate cases, submit a request for the return of the vehicle as described in article 5 above.

### *Article 7*

1. Except as provided for in article 8 below, the Requested Party shall, within [thirty] days of receiving a request for the return of a stolen or embezzled vehicle, determine whether the request for return meets the requirements of the present Treaty and shall notify [the Embassy] of the Requesting Party of its determination.

2. If the Requested Party determines that the request for the return of a stolen or embezzled vehicle meets the requirements of the present Treaty, the Requested Party shall within [fifteen] days of such determination make the vehicle available to the person identified in the request for return as the owner or the authorized representative of the owner. The vehicle shall remain available for the person identified in the request for return as the owner or the authorized representative of the owner to take delivery for at least [ninety] days. The Requested Party shall take the necessary measures to permit the owner or the authorized representative of the owner to take delivery of the vehicle and return it to the territory of the Requesting Party.

3. If the Requested Party determines that the request for return does not meet the requirements of the present Treaty, it shall provide written notification to [the Embassy] of the Requesting Party.

### *Article 8*

1. If a vehicle whose return is being requested is being held in connection with a criminal investigation or prosecution, its return pursuant to the present Treaty shall be effected when its presence is no longer required for purposes of that investigation or prosecution. The Requested Party shall, however, take all practicable measures to assure that substitute pictorial or other evidence is used wherever possible in such investigation or prosecution so that the vehicle may be returned as soon as possible.

2. If the ownership or custody of a vehicle whose return is requested is the subject of a pending judicial action in the Requested Party, its return pursuant to the present Treaty shall be effected at the conclusion of that judicial action. However, a Party shall have no obligation under the Treaty to return the vehicle if such judicial action results in the award of the vehicle to a person other than the person identified in the request for return as the owner of the vehicle or the authorized representative of the owner.

3. A Party shall have no obligation under the present Treaty to return a vehicle whose return is requested if the vehicle is subject to forfeiture under its laws because it was used in its territory for the commission of a crime. The Requested Party shall not forfeit the vehicle without giving the owner or the authorized representative of the owner reasonable notice and an opportunity to contest such forfeiture in accordance with its laws.

4. A Party shall have no obligation under the present Treaty to return a stolen or embezzled vehicle if no request for return is made within [sixty] days of a notification made pursuant to article 3 above.

5. If the return of a stolen or embezzled vehicle whose return is requested is postponed, pursuant to paragraphs 1 or 2 of the present article, the Requested Party shall so notify [the Embassy] of the Requesting Party in writing within [thirty] days of receiving a request for the return of the vehicle.

### *Article 9*

1. The Requested Party shall not impose any import or export duties, taxes, fines or other monetary penalties or charges on vehicles returned in

accordance with the present Treaty, or on their owners or authorized representatives, as a condition for the return of such vehicles.

2. Actual expenses incurred in the return of the vehicle, including towing, storage, maintenance, and transportation costs, as well as the costs of translation of documents required under the present Treaty, shall be borne by the person or entity seeking its return and shall be paid prior to the return of the vehicle. The Requested Party shall use its best efforts to keep such expenses at reasonable levels.

3. In particular cases, the expenses of return may include the costs of any repairs or reconditioning of a vehicle which may have been necessary to permit the vehicle to be moved to a storage area or to maintain it in the condition in which it was found. The person or entity seeking the return of a vehicle shall not be responsible for the costs of any other work performed on the vehicle while it was in the custody of the authorities of the Requested Party.

#### *Article 10*

The mechanisms for the recovery and return of stolen or embezzled vehicles under the present Treaty shall be in addition to those available under the laws of the Requested Party. Nothing in the Treaty shall impair any rights for the recovery of stolen or embezzled vehicles under applicable law.

#### *Article 11*

1. Any differences regarding the interpretation or application of the present Treaty shall be resolved through consultations between the Parties.

2. The present Treaty shall be subject to ratification. It shall enter into force on the date of exchange of instruments of ratification.

3. The present Treaty may be terminated by either Party upon a minimum of [ninety] days' written notification.<sup>3</sup>

DONE at [site], this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in duplicate, in the \_\_\_\_\_ and \_\_\_\_\_ languages, both texts being equally authentic.

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<sup>3</sup>Applicable to bilateral agreements. Other suitable provisions, in accordance with international law and standard practice, would need to be inserted for subregional or regional agreements.

**Appendix I. Identifying information to be provided in a notification made pursuant to article 3 of the present Treaty**

1. Vehicle identification number.
2. Name of manufacturer of vehicle.
3. Vehicle model and year of manufacture, if known.
4. Colour of vehicle.
5. Licence plate number of vehicle and jurisdiction of issuance, if available.
6. City/other jurisdiction tag or sticker number and name of city/other jurisdiction, if available.
7. A description of the condition of the vehicle, including mobility of vehicle, if known, and repairs that appear necessary.
8. The current location of the vehicle.
9. The identity of the authority having physical custody of the vehicle and a contact point, including the name, address and telephone number of the official having recovery information.
10. Any information which indicates whether the vehicle was being used in connection with the commission of a crime.
11. Any indication that the vehicle may be subject to forfeiture under the laws of the notifying State.

**Appendix II. Request for the return of a stolen or embezzled vehicle**

(The Embassy of [country name]) respectfully requests that (the appropriate authority of [country name]) return the vehicle described below to (its owner/the authorized representative of its owner) in accordance with the Treaty for the Return of Stolen or Embezzled Vehicles:

Make:

Model (year):

Type:

Vehicle identification number:

Licence plates:

Registered owner:

(The Embassy of [country name]) certifies that it has examined the following documents, which have been presented by (identity of person submitting documents) as evidence of (his or her ownership of the vehicle/ownership of the vehicle by the person for whom he or she is acting as authorized representative) and found them to be properly certified under the laws of (appropriate jurisdiction):

- (a) (Document description);
- (b) (Document description);
- (c) (Document description);
- (d) (Document description).

Complimentary close

Place and date

Attachments.

### 31. Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property\*<sup>1</sup>

*Agreement between the Government of \_\_\_\_\_ and the Government of \_\_\_\_\_ regarding the sharing of confiscated proceeds of crime or property*

*The Government of \_\_\_\_\_ and the Government of \_\_\_\_\_ (hereinafter referred to as “the Parties”),*

*Recalling* the United Nations Convention against Transnational Organized Crime,<sup>2</sup> in particular its article 12, paragraph 1, and articles 13 and 14,

*Recalling also* the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,<sup>3</sup> in particular article 5, paragraphs 1, 4 and 5,

*Recognizing* that this Agreement should not prejudice the principles set forth in the United Nations Convention against Corruption<sup>4</sup> or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention,

*Reaffirming* that nothing in the provisions of this Agreement should prejudice in any way the provisions and the principles on international cooperation set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized Crime, and that this Agreement is intended to enhance the effectiveness of international cooperation envisioned in those Conventions,

*Considering [reference to a treaty on mutual legal assistance if one exists between the Parties],*

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\*Economic and Social Council resolution 2005/14, annex.

<sup>1</sup>The present model agreement may be useful for the implementation of other relevant instruments developed in multilateral forums to which the parties to the agreement may also be parties, such as the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex) and the 40 recommendations of the Financial Action Task Force against Money Laundering.

<sup>2</sup>General Assembly resolution 55/25, annex I.

<sup>3</sup>United Nations, *Treaty Series*, vol. 1582, No. 27627.

<sup>4</sup>General Assembly resolution 58/4, annex.

*Desiring* to create an appropriate framework for sharing confiscated proceeds of crime or property,

*Have agreed as follows:*

*Article 1*  
*Definitions*

For the purposes of this Agreement:

(a) The terms “proceeds of crime”, “confiscation” and “property” shall be understood as defined in article 2 of the United Nations Convention against Transnational Organized Crime and article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

(b) “Cooperation” shall mean any assistance described in articles 13, 16, 18-20, 26 and 27 of the United Nations Convention against Transnational Organized Crime or article 5, paragraph 4, and articles 6, 7, 9-11 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as cooperation between entities foreseen in article 7 of the United Nations Convention against Transnational Organized Crime, which has been given by one Party and which has contributed to, or facilitated, confiscation of proceeds of crime or property.

*Article 2*  
*Scope of application*

This Agreement is intended solely for the purposes of mutual assistance between the Parties.

*Article 3*  
*Circumstances in which confiscated proceeds of crime  
or property [may] [shall] be shared*

Where a Party is in possession of confiscated proceeds of crime or property and has cooperated with, or received cooperation from, the other Party, it [may] [shall] share such proceeds of crime or property with the other Party, in accordance with this Agreement, without prejudice to the principles enumerated in article 14, paragraphs 1, 2 and 3 (a), of the United Nations Convention against Transnational Organized Crime and article 5, paragraph 5 (b) (i), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.<sup>5</sup>

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<sup>5</sup>It may be necessary to insert a specific provision in the agreement regarding the return of works of art or archaeological objects that have been purchased or exported illegally from their country of origin.

#### Article 4

##### *Requests for sharing confiscated proceeds of crime or property*

1. A request for sharing confiscated proceeds of crime or property shall be made within a time limit to be agreed between the Parties, shall set out the circumstances of the cooperation to which it relates and shall include sufficient details to identify the case, the confiscated proceeds of crime or property and the agency or agencies involved or such other information as may be agreed between the Parties.

##### *Option 1*

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall consider, in consultation with the other Party, whether to share such proceeds of crime or property, as set out in article 3 of this Agreement.]

##### *Option 2*

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall share with the other Party such proceeds of crime or property, as set out in article 3 of this Agreement.]

#### Article 5

##### *Sharing of confiscated proceeds of crime or property*

##### *Option 1*

[1. Where a Party proposes to share confiscated proceeds of crime or property with the other Party, it shall:

(a) Determine, at its discretion and in accordance with its domestic law and policies, the proportion of the confiscated proceeds of crime or property to be shared, which, in its view, corresponds to the extent of the cooperation afforded by the other Party; and

(b) Transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Party holding the confiscated proceeds of crime or property may include any interest and appreciation

that has accrued on the confiscated proceeds of crime or property and may deduct reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

### *Option 2*

[1. In sharing confiscated proceeds of crime or property in accordance with this Agreement:

(a) The proportion of the confiscated proceeds of crime or property to be shared shall be determined by the Parties on a *quantum meruit* basis or on any other reasonable basis agreed upon by the Parties;

(b) The Party holding the confiscated proceeds of crime or property shall transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Parties shall agree on any issues related to interest and appreciation that has accrued on the confiscated proceeds of crime or property and the deduction of reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

3. The Parties agree that it may not be appropriate to share where the value of the confiscated proceeds of crime or property is *de minimis*, subject to previous consultations between them.

## *Article 6*

### *Payment of shared proceeds of crime or property*

1. Unless the Parties agree otherwise, any sum transferred pursuant to article 5, paragraph 1 (b), of this Agreement shall be paid:

(a) In the currency of the Party where the proceeds of crime or property are located; and

(b) By means of an electronic transfer of funds or by cheque.

2. Payment of any such sum shall be made:

(a) In any case in which the Government of \_\_\_\_\_ is receiving payment, to [identify the pertinent office or designated account as specified in the request];

(b) In any case in which the Government of \_\_\_\_\_ is receiving payment, to [identify the pertinent office or designated account as specified in the request]; or

(c) To such other recipient or recipients as the Party receiving payment may from time to time specify by notification for the purposes of this article.

*Article 7*  
*Terms of transfer*

1. In making the transfer, the Parties recognize that all right or title to and interest in the transferred proceeds of crime or property have already been adjudicated and that no further judicial proceedings are necessary to complete the confiscation. The Party transferring the proceeds of crime or property assumes no liability or responsibility for the proceeds of crime or property once they have been transferred and relinquishes all right or title to and interest in the transferred proceeds of crime or property.<sup>6</sup>

2. Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to article 5, paragraph 1 (b), of this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

*Article 8*  
*Channels of communication*

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through [*the central authorities designated pursuant to article [. . .] of the treaty on mutual legal assistance referred to in the preamble to the agreement*] or by the following:

(a) For the Government of \_\_\_\_\_, by the Office of \_\_\_\_\_;

(b) For the Government of \_\_\_\_\_, by the Office of \_\_\_\_\_; or

(c) By such other nominees as the Parties, for their own part, may from time to time specify by notification for the purposes of this article.

*Article 9*  
*Territorial application*

This Agreement shall apply [*if applicable, designate any territories to which the agreement should be extended for each Government*].

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<sup>6</sup>Where the domestic law of a State requires it to sell confiscated proceeds of crime or property and only permits it to share funds, this provision may be unnecessary.

*Article 10*  
*Amendments*

This Agreement may be amended when both Parties have agreed in writing to such amendment.

*Article 11*  
*Consultations*

The Parties shall consult promptly, at the request of either Party, concerning the interpretation, application or implementation of this Agreement, either generally or in relation to a particular case.

*Article 12*  
*Entry into force*

This Agreement shall enter into force upon signature by both Parties or upon notification by the Parties that the necessary internal procedures have been completed.<sup>7</sup>

*Article 13*  
*Termination of the Agreement*

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective [. . .] months after receipt of the notice. The provisions shall, however, continue to apply in relation to confiscated proceeds of crime or property to be shared under this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at [location], this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

For the Government of \_\_\_\_\_:

For the Government of \_\_\_\_\_:

\_\_\_\_\_: \_\_\_\_\_:

*[Signature]* \_\_\_\_\_ *[Signature]* \_\_\_\_\_

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<sup>7</sup>This may be upon signature, ratification, publication in a legal gazette or by other means.

## II. Declarations and plans of action

### 32. Statement of principles and programme of action of the United Nations crime prevention and criminal justice programme\*

*We, Member States of the United Nations,*

*Assembled* in Paris to consider ways and means of promoting international cooperation in crime prevention and criminal justice and of strengthening the United Nations crime prevention and criminal justice programme in order to make it fully effective and responsive to the needs and priorities of Member States,

*Considering* that one of the purposes of the United Nations, as stated in the Charter of the United Nations, is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,

*Convinced* of the urgent need for more efficient international mechanisms to assist States and to facilitate joint strategies in the field of crime prevention and criminal justice, thus consolidating the role of the United Nations as the focal point in that field,

*Noting* the importance of the principles contained in the Milan Plan of Action<sup>1</sup> and the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order,<sup>2</sup> as well as other pertinent instruments formulated by United Nations congresses on the prevention of crime and the treatment of offenders and approved by the General Assembly,

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\*General Assembly resolution 46/152, annex.

<sup>1</sup>See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

<sup>2</sup>*Ibid.*, sect. B.

*Reaffirming* the responsibility assumed by the United Nations in crime prevention and criminal justice,

*Bearing in mind* the goals of the United Nations in the field of crime prevention and criminal justice, specifically the reduction of criminality, more efficient and effective law enforcement and administration of justice, the observance of human rights and the promotion of the highest standards of fairness, humanity and professional conduct,

*Recognizing* that it is essential to elicit active support for, and to provide the means of assistance for the development of, an effective United Nations crime prevention and criminal justice programme and to devise appropriate implementation mechanisms,

*Deeply concerned* about the extent and growth of crime, with its financial, economic and social consequences,

*Alarmed* at the high cost of crime in both human and material terms, as well as in its new national and transnational forms, and aware of the effects of crime both on States and on individual victims,

*Recognizing* that the primary responsibility for crime prevention and criminal justice rests with Member States,

*Emphasizing* the need for strengthened regional and international cooperation to combat crime and recidivism, to effect the improved functioning of criminal justice systems, to promote respect for individual rights and to safeguard the rights of victims of crime and the general security of the public,

*Aware* that there is unanimity about the need to create a new, vigorous United Nations crime prevention and criminal justice programme, as well as agreement on the need to establish an intergovernmental body for policy-making and priority-setting, to strengthen the effectiveness of the Secretariat unit within the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, and to increase technical cooperation to help countries, particularly developing countries, translate United Nations policy-guidelines into practice, including training,

*Determined* to translate our political will into concrete action:

(a) By creating the essential mechanisms for practical collaboration against common problems;

(b) By providing a framework for inter-State cooperation and coordination to respond to the serious new forms and transnational aspects and dimensions of crime;

(c) By establishing information exchanges concerning the implementation and effectiveness of the United Nations norms and standards in crime prevention and criminal justice;

(d) By providing means of assistance, particularly to developing countries, for more effective crime prevention and more human justice;

(e) By establishing an adequate resource base for a truly effective United Nations crime prevention and criminal justice programme;

*Proclaim our strong commitment to the above-mentioned goals and agree on the following:*

## I. STATEMENT OF PRINCIPLES

1. We recognize that the world is experiencing very important changes resulting in a political climate conducive to democracy, to international cooperation, 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 still beset by violence and other forms of serious crime. These phenomena, wherever they occur, constitute a threat to the maintenance of the rule of law.

2. We believe that justice based on the rule of law is the pillar on which civilized society rests. We seek to improve its quality. A humane and efficient criminal justice system can be an instrument of equity, constructive social change and social justice, protecting basic values and peoples' inalienable rights. Every right of the individual should enjoy the protection of the law against violation, a process in which the criminal justice system plays an essential role.

3. We have in mind the fact that the lowering of the world crime rate is related to, among other factors, the improvement of the social conditions of the population. The developed countries and the developing countries are experiencing difficult situations in this respect. Nevertheless, the specific problems encountered by the developing countries justify priority being given to dealing with the situation confronting these countries.

4. We believe that rising crime is impairing the process of development and the general well-being of humanity and is causing general disquiet within our societies. If this situation continues, progress and development will be the ultimate victims of crime.

5. We also believe that the growing internationalization of crime must generate new and commensurate responses. Organized crime is exploiting the relaxation of border controls designed to foster legitimate trade and, hence, development. The incidence and scope of such crimes may increase further in the coming years unless sound preventive measures are taken. It is thus particularly important to anticipate events and to assist Member States in mounting suitable preventive and control strategies.

6. We recognize that many criminal offences have international dimensions. In this context, there is an urgent need for States to address, while respecting the sovereignty of States, problems arising in collecting evidence, extraditing offenders and promoting mutual legal assistance, for example, when such offences are committed across frontiers or when frontiers are used to escape detection or prosecution. Despite differences in legal systems, experience has shown that mutual assistance and cooperation can be effective countermeasures and can help to prevent conflicts of jurisdiction.

7. We also recognize that democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security.

8. We must ensure that any increases in the capacity and capabilities of perpetrators of crime are matched by similar increases in the capacity and capabilities of law enforcement and criminal justice authorities. By pooling our knowledge and developing suitable countermeasures, success in the prevention of crime and the reduction of victimization can be maximized. We recognize in particular the need to improve and strengthen the means of the crime prevention and control authorities in the developing countries, whose critical economic and social situation is further increasing the difficulties in this area.

9. We call on the international community to increase its support of technical cooperation and assistance activities for the benefit of all countries, including developing and smaller countries, and for the purpose of expanding and strengthening the infrastructure needed for effective crime prevention and viable, fair and humane criminal justice systems.

10. We acknowledge the contribution of the United Nations crime prevention and criminal justice programme to the international community. We note that it is a long-recognized fact that inadequate resources have been devoted to the implementation of the programme, which has in the past been

inhibited from achieving its potential. We also note that a strengthening of the resources devoted to the implementation of the programme was called for by the Sixth United Nations Congress for the Prevention of Crime and the Treatment of Offenders,<sup>3</sup> the Seventh United Nations Congress for the Prevention of Crime and the Treatment of Offenders<sup>4</sup> and the Eighth United Nations Congress for the Prevention of Crime and the Treatment of Offenders.<sup>5</sup> We further note that the Committee on Crime Prevention and Control, at its eleventh session, gave priority attention to the conclusions and recommendations of a subcommittee established to provide an overview of the problem of crime and to assess the most efficient means of stimulating practical international action in support of Member States, in pursuance of General Assembly resolution 44/72 of 8 December 1989. The Committee, in its resolution 11/3 of 16 February 1990,<sup>6</sup> unanimously approved a report of the subcommittee on the need for the creation of an effective international crime and justice programme.<sup>7</sup> That report, which was endorsed by the Eighth Congress, was used as an important tool for the establishment of the United Nations crime prevention and criminal justice programme, in line with the provisions of General Assembly resolution 45/108.

11. We accordingly recommend intensified international cooperation in crime prevention and criminal justice, including the creation of an effective United Nations crime prevention and criminal justice programme.

12. We are convinced that there is a need for Governments to define more clearly the role and functions of the United Nations crime prevention and criminal justice programme and the secretariat of the programme and to determine priorities within that programme.

13. We strongly believe that the review of the programme should aim at strengthening its effectiveness, improving its efficiency and establishing an adequate Secretariat support structure.

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<sup>3</sup>See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4).

<sup>4</sup>See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1).

<sup>5</sup>See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2).

<sup>6</sup>See *Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. D.*

<sup>7</sup>E/1990/31/Add.1.

## II. PROGRAMME OF ACTION

### *A. Definition*

14. The United Nations crime prevention and criminal justice programme shall bring together the work of the commission on crime prevention and criminal justice, the United Nations institutes for the prevention of crime and the treatment of offenders, the network of government-appointed national correspondents in the field of crime prevention and criminal justice, the Global Crime and Criminal Justice Information Network and the United Nations congresses on the prevention of crime and the treatment of offenders in providing assistance to Member States in their efforts to reduce the incidence and costs of crime and in developing the proper functioning of their criminal justice systems. The establishment of this programme will be effected in accordance with the procedures defined below and within the framework of the total available resources of the United Nations.

### *B. Goals*

15. The programme shall be designed to assist the international community in meeting its pressing needs in the field of crime prevention and criminal justice and to provide countries with timely and practical assistance in dealing with problems of both national and transnational crime.

16. The general goals of the programme shall be to contribute to the following:

- (a) The prevention of crime within and among States;
- (b) The control of crime both nationally and internationally;
- (c) The strengthening of regional and international cooperation in crime prevention, criminal justice and the combating of transnational crime;
- (d) The integration and consolidation of the efforts of Member States in preventing and combating transnational crime;
- (e) More efficient and effective administration of justice, with due respect for the human rights of all those affected by crime and all those involved in the criminal justice system;
- (f) The promotion of the highest standards of fairness, humanity, justice and professional conduct.

### ***C. Scope of the United Nations crime prevention and criminal justice programme***

17. The programme shall include appropriate forms of cooperation for the purpose of assisting States in dealing with problems of both national and transnational crime. In particular, it may include:

(a) Research and studies at the national, regional and global levels on specific prevention issues and criminal justice measures;

(b) Regular international surveys to assess trends in crime and developments in the operation of criminal justice systems and in crime prevention strategies;

(c) Exchange and dissemination of information among States on crime prevention and criminal justice, particularly with regard to innovative measures and the results achieved in their application;

(d) Training and upgrading of the skills of personnel working in the various areas of crime prevention and criminal justice;

(e) Technical assistance, including advisory services, particularly in respect of the planning, implementation and evaluation of crime prevention and criminal justice programmes, training and the use of modern communication and information techniques; such assistance may be implemented by means of, for example, fellowships, study tours, consultancies, secondments, courses, seminars and demonstration and pilot projects.

18. Within the framework of the programme, the United Nations should directly carry out the above-mentioned forms of cooperation or should act as a coordinating or facilitating agent. Special attention should be paid to the creation of mechanisms to provide flexible and appropriate assistance and to respond to the needs of Member States at their request, without duplicating the activities of other existing mechanisms.

19. For the purpose of those forms of cooperation, Member States should establish and maintain reliable and effective channels of communication among themselves and with the United Nations.

20. The programme may also include, as appropriate, while respecting the sovereignty of States, a review of the effectiveness and application of and, where necessary, further development and promotion of international instruments on crime prevention and criminal justice.

#### ***D. Programme priorities***

21. In developing the programme, areas of priority shall be determined in response to the needs and concerns of Member States, with particular consideration being given to the following:

(a) Empirical evidence, including research findings and other information on the nature and extent of crime and on trends in crime;

(b) The social, financial and other costs of various forms of crimes and/or crime control to the individual, the local, national and international community, and to the development process;

(c) The need of developing or developed countries, which are confronting specific difficulties related to national or international circumstances, to have recourse to experts and other resources necessary for establishing and developing programmes for crime prevention and criminal justice that are appropriate at the national and local levels;

(d) The need for a balance within the programme of work between programme development and practical action;

(e) The protection of human rights in the administration of justice and the prevention and control of crime;

(f) The assessment of areas in which concerted action at the international level and within the framework of the programme would be most effective;

(g) Avoidance of overlapping with the activities of other entities of the United Nations system or of other organizations.

22. The commission on crime prevention and criminal justice shall not be bound by mandates conferred prior to its formation, but shall assess them on their merits by applying the principles mentioned in paragraph 21 above.

#### ***E. Structure and management***

##### ***1. Commission on crime prevention and criminal justice***

23. A commission on crime prevention and criminal justice shall be established as a functional commission of the Economic and Social Council. The commission shall have the power to create ad hoc working groups and to appoint special rapporteurs, as it deems necessary.

##### ***Membership***

24. The commission shall consist of forty Member States of the United Nations, elected by the Economic and Social Council on the basis of the

principle of equitable geographical distribution. Its members shall serve for a term of three years, except that the terms of one half of the first elected members, whose names shall be chosen by lot, shall expire after two years. Each Member State shall make every effort to ensure that its delegation includes experts and senior officials with special training and practical experience in crime prevention and criminal justice, preferably with policy responsibility in the field. Provisions should be made in the regular budget of the United Nations to defray the travel costs of the representatives of the least developed countries that are members of the Commission.<sup>8</sup>

### *Sessions*

25. The commission shall hold annual sessions of not more than ten working days.

### *Functions*

26. The commission shall have the following functions:

(a) To provide policy guidance to the United Nations in the field of crime prevention and criminal justice;

(b) To develop, monitor and review the implementation of the programme on the basis of a system of medium-term planning in accordance with the priority principles provided in paragraph 21 above;

(c) To facilitate and help to coordinate the activities of the United Nations institutes for the prevention of crime and the treatment of offenders;

(d) To mobilize the support of Member States for the programme;

(e) To prepare for the United Nations congresses on the prevention of crime and the treatment of offenders and to consider suggestions regarding possible subjects for the programme of work as submitted by the congresses.

## *2. Committee on Crime Prevention and Control*

27. The Committee on Crime Prevention and Control should be dissolved by the Economic and Social Council upon the establishment by the Council of the commission on crime prevention and criminal justice. There will be a basic need for involving independent experts in the area of crime prevention and control.

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<sup>8</sup>It is recommended that in order to commence the work of the commission as soon as possible, the geographical distribution of the commission should be as follows: African States (12), Asian States (9), Latin American and Caribbean States (8), Western European and other States (7), Eastern European States (4). The size and geographical distribution of the commission may be reviewed two years after the first session of the commission.

28. The commission shall, when necessary, use the services of a limited number of qualified and experienced experts, either as individual consultants or in working groups, in order to assist in the preparations for and follow-up work of the commission. Their advice shall be transmitted to the commission for consideration. The commission shall be encouraged to seek such advice whenever it is needed. One of the major tasks of the experts shall be to assist in the preparations for the United Nations congresses on the prevention of crime and the treatment of offenders.<sup>9</sup>

### *3. United Nations congresses on the prevention of crime and the treatment of offenders*

29. The United Nations congresses on the prevention of crime and the treatment of offenders, as a consultative body of the programme, shall provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the commission on crime prevention and criminal justice on selected matters submitted to it by the commission;

(e) The submission of suggestions, for the consideration of the commission, regarding possible subjects for the programme of work.

30. In order to enhance the effectiveness of the programme and to achieve optimal results, the following arrangements should be implemented:

(a) The congresses should be held every five years, for a period of between five and ten working days;

(b) The commission shall select precisely defined topics for the congresses in order to ensure a focused and productive discussion;

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<sup>9</sup>The secretariat of the programme shall keep a list of such experts. The experts shall be selected by the commission in collaboration with the secretariat, the United Nations institutes for the prevention of crime and the treatment of offenders and non-governmental organizations. The commission, in consultation with Member States, shall develop a mechanism for that purpose. Such experts, who may be either government officials or other individuals, shall be chosen on the basis of equitable geographical distribution. They should be available to the programme in their individual independent capacity for at least three years. Expert group meetings shall take place subject to the conditions set out in paragraph 14.

(c) Quinquennial regional meetings should be held under the guidance of the commission on issues related to the agenda of the commission or of the congresses, or on any other matters, except when a region does not consider it necessary to hold such a meeting. The United Nations institutes for the prevention of crime and the treatment of offenders should be fully involved, as appropriate, in the organization of those meetings. The commission shall give due consideration to the need to finance such meetings, in particular in developing regions, through the regular budget of the United Nations;

(d) Action-oriented research workshops on topics selected by the commission, as part of the programme of a congress, and ancillary meetings associated with the congresses should be encouraged.

#### *4. Organizational structure of the secretariat and of the programme*

31. The secretariat of the programme shall be the permanent body responsible for facilitating the implementation of the programme, the priorities of which shall be established by the commission on crime prevention and criminal justice and for assisting the commission in conducting evaluations of the progress made and analyses of the difficulties encountered. For that purpose, the secretariat shall:

(a) Mobilize existing resources, including institutes, intergovernmental organizations, non-governmental organizations and other competent authorities for the implementation of the programme;

(b) Coordinate research, training and the collection of data on crime and justice, and provide technical assistance and practical information for Member States, particularly through the Global Crime and Criminal Justice Information Network;

(c) Assist the commission in the organization of its work and in the preparations, in accordance with the directions of the commission, for the congresses and any other events relating to the programme;

(d) Ensure that the potential donors of criminal justice assistance are put in touch with countries needing the help in question;

(e) Make the case for assistance in the field of criminal justice to the appropriate funding agencies.

32. It is recommended to the Secretary-General that, in recognition of the high priority that should be accorded to the programme, an upgrading of the Crime Prevention and Criminal Justice Branch of the Centre for Social

Development and Humanitarian Affairs of the Secretariat into a division should be effected as soon as possible, under the conditions set out in paragraph 14 above, bearing in mind the structure of the United Nations Office at Vienna.

33. The Professional staff of the secretariat of the programme shall be called "Crime Prevention and Criminal Justice Officers".

34. The secretariat of the programme shall be directed by a senior official responsible for the overall day-to-day management and supervision of the programme, communicating with the relevant government officials, the specialized agencies and intergovernmental organizations whose activities are relevant to the programme.

#### ***F. Programme support***

##### *1. United Nations institutes for the prevention of crime and the treatment of offenders*

35. The activities of the United Nations institutes for the prevention of crime and the treatment of offenders should be supported by Member States and the United Nations, with particular attention being given to the needs of such institutes located in developing countries. Given the important role of such institutes, their contributions to policy development and implementation, and their resource requirements, especially those of the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders, should be fully integrated into the overall programme.

##### *2. Coordination among the United Nations institutes for the prevention of crime and the treatment of offenders*

36. The institutes should keep one another and the commission on crime prevention and criminal justice informed on a regular basis about their programme of work and its implementation.

37. The commission may request the institutes, subject to the availability of resources, to implement select elements of the programme. The commission may also suggest areas for inter-institute activities.

38. The commission shall seek to mobilize extrabudgetary support for the activities of the institutes.

### 3. *Network of government-appointed national correspondents in the field of crime prevention and criminal justice*

39. Member States should designate one or more national correspondents in the field of crime prevention and criminal justice as focal points for the purpose of maintaining direct communication with the secretariat of the programme and other elements of the programme.

40. The national correspondents shall facilitate contact with the secretariat on matters of legal, scientific and technical cooperation, training, information on national laws and regulations, legal policy, the organization of the criminal justice system, crime prevention measures and penitentiary matters.

### 4. *Global Crime and Criminal Justice Information Network*

41. Member States shall support the United Nations in the development and maintenance of the Global Crime and Criminal Justice Information Network in order to facilitate the collection, analysis, exchange and dissemination, as appropriate, of information and the centralization of inputs from non-governmental organizations and scientific institutions in the field of crime prevention and criminal justice.

42. Member States shall undertake to provide the Secretary-General on a regular basis and upon request with data on the dynamics, structure and extent of crime and on the operation of crime prevention and criminal justice strategies in their respective countries.

### 5. *Intergovernmental and non-governmental organizations*

43. Intergovernmental and non-governmental organizations and the scientific community are a valuable source of professional expertise, advocacy and assistance. Their contributions should be fully utilized in programme development and implementation.

## **G. *Funding of the programme***

44. The programme shall be funded from the regular budget of the United Nations. Funds allocated for technical assistance may be supplemented by direct voluntary contributions from Member States and interested funding agencies. Member States are encouraged to make contributions to the United Nations

Trust Fund for Social Defence, to be renamed the United Nations Crime Prevention and Criminal Justice Fund. They are also encouraged to contribute in kind for the operational activities of the programme, particularly by seconding staff, organizing training courses and seminars, and providing the requisite equipment and services.

### **33. Naples Political Declaration and Global Action Plan against Organized Transnational Crime\***

*We, Heads of State and Government, ministers responsible for criminal justice systems, and other high-level representatives of Governments,*

*Convened* at Naples for the first time in history, on the eve of the fiftieth anniversary of the United Nations, to consider ways and means of strengthening and improving national capabilities and international cooperation against organized transnational crime and of laying the foundations for concerted and effective global action against organized transnational crime and the prevention of its further expansion,

*Deeply concerned* about the dramatic growth of organized crime over the past decade and about its global reach, which constitute a threat to the internal security and stability of sovereign States,

*Alarmed* by the high cost of organized transnational crime in both human and material terms, as well as by its effects on national economies, the global financial system, and the rule of law and fundamental social values,

*Aware* of the needs of many countries, particularly developing countries and countries in transition, seeking to modernize and render more functional their criminal justice systems in order to raise the level of their response to organized transnational crime,

*Convinced* of the urgent need for more effective international mechanisms to assist States and to facilitate the implementation of joint strategies for the prevention of and to combat organized transnational crime, and the further need to strengthen the role of the United Nations as a focal point in that field,

*Reaffirming* the responsibility vested in the United Nations in crime prevention and criminal justice and recognizing the need to strengthen its role in

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\*A/49/748, annex, sect. I.A.

the development of a comprehensive programme of action to prevent and control organized transnational crime,

*Aware* of the differences that still exist among countries in their understanding and evaluation of the phenomenon and, consequently, in their choice of policies to fight against organized crime,

*Proclaim* our political will and strong determination, as well as our unequivocal commitment to ensure full and expeditious implementation of the present Political Declaration and Global Action Plan against Organized Transnational Crime.

## I. POLITICAL DECLARATION

1. We resolve to protect our societies from organized crime in all its forms through strict and effective legislative measures and operational instruments, always consistent with internationally recognized human rights and fundamental freedoms.

2. We are determined to join forces and fight together against the expansion and diversification of organized transnational crime, and we note with grave concern links between organized transnational crime and terrorist crimes. Notwithstanding recent successes, we realize that coordinated strategies and other forms of international cooperation should be further developed.

3. We will direct particular efforts towards defeating the social and economic power of criminal organizations and their ability to infiltrate legitimate economies, to launder their criminal proceeds and to use violence and terror.

4. We affirm that the fight against organized transnational crime should be accorded high priority by States, by all relevant global and regional organizations, with the necessary support of the general public, the media, business, institutions and non-governmental organizations.

5. While acknowledging the global implications of organized crime, we recognize that prevention and control must necessarily vary from State to State and region to region and be based upon improvements in national capabilities, increased knowledge and shared experiences about organized criminal groups.

6. We note with concern that organized transnational crime threatens the social and economic growth of developing countries and countries in transition and their institutions. The international community should assist these countries

in their efforts to enable their criminal justice institutions to adequately prevent and combat organized crime, with due respect for international human rights and fundamental freedoms.

7. We express our satisfaction at the establishment of the Commission on Crime Prevention and Criminal Justice. We strongly recommend that continued priority attention be accorded to strengthening international cooperation against organized transnational crime in the United Nations crime prevention and criminal justice programme, while acknowledging that limited resources place constraints upon implementation of its mandates. We urge the Secretary-General to allocate adequate financial and human resources for the United Nations activities in the fight against organized transnational crime, bearing in mind the scope of its responsibilities.

8. We urge States which have not become parties to the very important United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 to do so without delay. All States are urged to fully implement this and other relevant existing agreements and to develop, when necessary, instruments dealing with the broad range of organized transnational crimes extending beyond drug trafficking.

9. We wish to strengthen and enhance, whenever possible, the capability of States, as well as of the United Nations and other relevant global and regional organizations, to achieve more effective international cooperation against the threats posed by organized transnational crime, particularly in relation to:

- (a) Closer alignment of legislative texts concerning organized crime;
- (b) Strengthening international cooperation at the investigative, prosecutorial and judicial levels in operational matters;
- (c) Establishing modalities and basic principles for international cooperation at the regional and global levels;
- (d) Elaboration of international agreements on organized transnational crime;
- (e) Measures and strategies to prevent and combat money-laundering and to control the use of the proceeds of crime.

10. We attach particular importance and the highest priority to the implementation of the present Political Declaration and Global Action Plan against Organized Transnational Crime and, to this effect, we shall strive to improve financial and other assistance for programmes in developing countries and countries in transition and to mobilize funds from overall official development assistance and other official sources for programmes addressed to the fight against

organized crime; and we call upon the Commission on Crime Prevention and Criminal Justice to keep under regular review the activities outlined herein.

## II. GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME

### *A. Problems and dangers posed by organized transnational crime*

11. The international community should adopt a generally agreed concept of organized crime as a basis for more compatible national responses and more effective international cooperation.

12. To effectively combat organized crime, States should take its structural characteristics and modus operandi into account in devising strategies, policies, legislation and other measures. While not constituting a legal or comprehensive definition of the phenomenon, the following qualities are characteristic: group organization to commit crime; hierarchical links or personal relationships which permit leaders to control the group; violence, intimidation and corruption used to earn profits or control territories or markets; laundering of illicit proceeds both in furtherance of criminal activity and to infiltrate the legitimate economy; the potential for expansion into any new activities and beyond national borders; and cooperation with other organized transnational criminal groups.

13. To recognize and intelligently prevent and combat organized transnational criminal activities, the international community should increase its knowledge of criminal organizations and their dynamics. States should collect, analyse and disseminate reliable statistics and information on the phenomenon.

### *B. National legislation dealing with organized transnational crime and guidelines for legislative and other measures*

14. The experience of those States which have confronted organized crime and the intelligence derived from the study and analysis of its structures and criminal activities should be examined by every State for useful guiding principles concerning what substantive, procedural and regulatory legislation and organizational structures are necessary to prevent and combat the phenomenon.

15. Substantive legislation penalizing participation in criminal associations or conspiracies and imposing criminal liability on corporate bodies should be considered by States, when necessary, as a means of strengthening capabilities to combat organized crime domestically and improving cooperation internationally.

16. States should ensure that they possess structures and capabilities throughout their entire criminal justice system adequate to deal with complex organized criminal activities, including safeguards against corruption, intimidation and violence.

17. In order to effectively combat organized crime, States must overcome its code of silence and intimidation. Reliable evidence-gathering techniques, such as electronic surveillance, undercover operations and controlled delivery, should be considered when so contemplated in national law and when administered with full respect for internationally recognized human rights and fundamental freedoms, in particular the right of privacy, and subject to judicial approval or supervision as appropriate. Measures which encourage the cooperation and testimony of members of organized crime should be considered, including adequate protection programmes for witnesses and their families and—within the limits of national law—the concession of treatment recognizing the collaboration provided by them in the prosecutive process.

18. The regulatory measures detailed in section F, below, dealing with money-laundering and the proceeds of crime, and other administrative law mechanisms to reinforce transparency and integrity in business and government, should be considered preventive measures of equal importance with penal law means of combating organized crime.

19. States should endeavour, when warranted, to establish and equip special investigative units with expertise in the structural characteristics and methods of operation of organized criminal groups. States should also endeavour to provide those units with the necessary training and resources to concentrate on intelligence collection and analysis concerning organized transnational crime.

20. States should develop educational programmes to create a culture of morality and legality and should implement measures to raise public awareness regarding the effects of organized crime, enlisting the support of the public, the news media and the private sector for national and international efforts against organized crime.

21. States should give consideration to providing proper restitution or compensation to the victims of organized crime, taking into account the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985.

22. The United Nations and other relevant global and regional organizations should, when necessary, develop practical models of and practical guidelines for substantive and procedural legislation, using as a basis the experience and expertise of States and drawing on contributions from relevant organizations. The United Nations and these organizations should also assist States upon request in reviewing and evaluating their legislation and in planning and undertaking reforms, taking into account existing practices and cultural, legal and social traditions.

***C. International cooperation at the investigative, prosecutorial and judicial levels***

23. The ability of organized transnational crime to shift its activities from country to country and to widen the magnitude of its activities as new opportunities arise requires that States ensure that they have in place the basic components of a functional system of international cooperation.

24. Because the lack of relevant cooperative arrangements critically hinders effective mutual efforts, States should, when warranted, develop and improve bilateral and multilateral assistance. In this context, reliance on and more widespread promotion of “model” treaties and relevant regional instruments should be pursued.

25. States should endeavour to implement fully existing bilateral and multilateral conventions and agreements concerning extradition, to ensure that all provisions are respected and to ensure effective implementation of requests for mutual legal assistance.

26. States should improve the practical application of existing agreements through informal and operational mechanisms, for example, the exchange of manuals explaining national procedures, the designation of “central authorities” for mutual legal assistance or “contact points” to expedite requests, the formation of joint task forces, the identification of “best practice” investigative techniques, and the sharing of advanced investigative technology.

27. States should encourage the development of a basic intelligence-gathering capability, while respecting individual human rights and fundamental freedoms, with arrangements such as liaison officers to facilitate the collection and dissemination of intelligence to other States, as well as other forms of cooperation.

***D. Modalities and guidelines for international cooperation at the regional and international levels***

28. Acknowledging the importance of regional approaches, States should take measures to prevent organized criminal groups operating in a particular region from extending their activities further, and should continue to promote regional strategies.

29. States should strengthen technical cooperation activities designed to assist developing countries and countries in transition, upon request, in enhancing the capability of their law enforcement and judicial systems.

30. States should ensure that bilateral and multilateral technical cooperation activities are appropriately coordinated to avoid overlapping or duplication of efforts.

31. The United Nations should, upon request, provide and facilitate the provision of technical cooperation including the systematic exchange of experiences and expertise, the appropriate training of police and judicial staff, as well as the use of effective countermeasures. The following areas appear to be of particular importance:

(a) Drafting legislation for those countries whose penal systems do not yet encompass the fight against organized crime;

(b) Providing special training courses for police staff, prosecutors, judges and magistrates and all those officials who provide technical expertise to investigative bodies;

(c) Gathering, analysing and exchanging information on criminal organizations and related activities, taking into account the work of other relevant intergovernmental organizations.

***E. Feasibility of international instruments, including conventions, against organized transnational crime***

32. States should consider the further development of international instruments, drawing on the positive experience and results achieved by the elaboration and implementation of existing broad-based bilateral or multilateral agreements. The development of such international instruments would promote closer alignment or compatibility of national legislation with regard to the criminalization of organized transnational crime, the adoption of more effective criminal justice measures and the greater use of mutual assistance and extradition.

33. States should in particular consider the practical aspects of establishing more effective tools and instruments, such as models of technical agreements, manuals for police and judicial cooperation, methods for the regular flow of information and other communications, as well as databases for storing and updating information. Such instruments might be introduced as memorandums of understanding similar to those already concluded by some States in the field of international drug trafficking.

34. With respect to the opportunity of elaborating international instruments, such as a convention or conventions against organized transnational crime, the World Ministerial Conference on Organized Transnational Crime requests the Commission on Crime Prevention and Criminal Justice to initiate the process of requesting the views of Governments on the impact of such a convention or conventions and on the issues that could be covered therein.

#### ***F. Prevention and control of money-laundering and control of the proceeds of crime***

35. States should ensure that the fight against organized transnational crime should be based on strategies aimed at defeating the economic power of criminal organizations, which should involve both criminal law measures, in particular appropriate sanctioning and sentencing, and adequate regulatory mechanisms.

36. States should consider the need to make it a criminal offence to launder the proceeds of criminal activities, in order to address the accumulation by organized criminal groups of large amounts of capital, and the resulting need of those groups to have their profits laundered and invested in legitimate business.

37. States should consider the adoption of preventive measures ensuring a clear identification of the position of company owners and accurate information on acquisitions and transfers, high ethical standards in public administration, the business sector, financial institutions and relevant professions, as well as cooperation between the authorities in charge of regulating financial and economic sectors and those applying penal laws.

38. States should consider adopting legislative measures for the confiscation or seizure of illicit proceeds, asset forfeiture, as required, and the availability of provisional arrangements, such as the freezing or seizing of assets, always with due respect for the interests of bona fide third parties. Subject to the basic principles of their legal systems, States should also consider the possibility of

sharing forfeited assets and—under specific conditions and always through judicial or other legal proceedings—of confiscating or seizing illicit proceeds without a criminal conviction, or confiscating or seizing sums that are higher than those relating to the crime for which judgement has been passed.

39. States should consider the adoption of legislative and regulatory measures that will limit financial secrecy in order to promote effective money-laundering control and international cooperation. These measures should also include obligations for the application of the “know your customer” rule, as well as for the identification and reporting of suspicious financial transactions, while fully protecting representatives of financial institutions from any liability for good-faith reporting of such transactions, except in cases of gross negligence. In addition, States should accord high priority to measures designed to prevent the displacement of money-laundering activity from tightly supervised banks to non-supervised businesses and professions which offer financial services. For this purpose, States should endeavour to undertake research and studies to identify those businesses which may serve as money-launderers and to determine the feasibility of extending reporting and other requirements to possible areas other than banking and financial institutions.

40. The United Nations and other international global and regional organizations and mechanisms, such as the Financial Action Task Force, the International Criminal Police Organization, the Inter-American Drug Control Commission (CICAD) of the Organization of American States, the Council of Europe, the European Union, the Arab Interior Ministers’ Council and the Commonwealth Secretariat, which have played an active role in combating money-laundering, should join their efforts to reinforce common regulatory and enforcement strategies in that area.

41. The United Nations should assist States in needs assessment, treaty development and development of criminal justice infrastructures and human resources by providing technical assistance to countries on request, using the expertise and cooperation of all its institutes and other relevant agencies, including the International Scientific and Professional Advisory Council of the United Nations crime prevention and criminal justice programme, which organized the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach.

### ***G. Follow-up and implementation***

42. States should take necessary measures, in accordance with the Global Action Plan against Organized Transnational Crime, to translate it into practice to the widest possible extent at the national, regional and international levels.

43. The United Nations, through its Commission on Crime Prevention and Criminal Justice and its institutes and other relevant agencies, should assist State efforts against organized crime by needs assessments and regular review of the progress in implementing the Political Declaration and Global Action Plan, in accordance with the priorities of its programme of work, by assisting in the specific actions recommended above, and by technical cooperation.

44. The Commission on Crime Prevention and Criminal Justice should regularly review progress in the implementation of the Global Action Plan against Organized Transnational Crime, in accordance with the priorities of its programme of work.

45. To enable the United Nations crime prevention and criminal justice programme to support intensification of efforts at the national level and increased intergovernmental cooperation, and to carry out its important responsibilities, existing resources are not sufficient. A higher priority should be accorded to the United Nations crime control activities by allocating adequate resources in the medium-term plan for 1992-1997 and in the corresponding biennial budgets, and by States increasing voluntary contributions to the programme, thus strengthening the United Nations crime control structure, increasing its efficiency.

### **34. Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century\***

*We the States Members of the United Nations,*

*Concerned* about the impact on our societies of the commission of serious crimes of a global nature, and convinced of the need for bilateral, regional and international cooperation in crime prevention and criminal justice,

*Concerned in particular* about transnational organized crime and the relationships between its various forms,

*Convinced* that adequate prevention and rehabilitation programmes are fundamental to an effective crime control strategy and that such programmes should take into account social and economic factors that may make people more vulnerable to and likely to engage in criminal behaviour,

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\*General Assembly resolution 55/59, annex.

*Stressing* that a fair, responsible, ethical and efficient criminal justice system is an important factor in the promotion of economic and social development and of human security,

*Aware* of the promise of restorative approaches to justice that aim to reduce crime and promote the healing of victims, offenders and communities,

*Having assembled* at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Vienna from 10 to 17 April 2000 to decide to take more effective concerted action, in a spirit of cooperation, to combat the world crime problem,

*Declare* as follows:

1. We note with appreciation the results of the regional preparatory meetings for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>1</sup>

2. We reaffirm the goals of the United Nations in the field of crime prevention and criminal justice, specifically the reduction of criminality, more efficient and effective law enforcement and administration of justice, respect for human rights and fundamental freedoms, and promotion of the highest standards of fairness, humanity and professional conduct.

3. We emphasize the responsibility of each State to establish and maintain a fair, responsible, ethical and efficient criminal justice system.

4. We recognize the necessity of closer coordination and cooperation among States in combating the world crime problem, bearing in mind that action against it is a common and shared responsibility. In this regard, we acknowledge the need to develop and promote technical cooperation activities to assist States in their efforts to strengthen their domestic criminal justice systems and their capacity for international cooperation.

5. We shall accord high priority to the completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the protocols thereto, taking into account the concerns of all States.

6. We support efforts to assist States in capacity-building, including in obtaining training and technical assistance and in developing legislation,

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<sup>1</sup>See A/CONF.187/RPM.1/1 and Corr.1, A/CONF.187/RPM.2/1, A/CONF.187/RPM.3/1 and A/CONF.187/RPM.4/1.

regulations and expertise, with a view to facilitating the implementation of the Convention and the protocols thereto.

7. Consistent with the goals of the Convention and the protocols thereto, we shall endeavour:

(a) To incorporate a crime prevention component into national and international development strategies;

(b) To intensify bilateral and multilateral cooperation, including technical cooperation, in the areas to be covered by the Convention and the protocols thereto;

(c) To enhance donor cooperation in areas with crime prevention aspects;

(d) To strengthen the capability of the United Nations Centre for International Crime Prevention, as well as the United Nations Crime Prevention and Criminal Justice Programme network, to assist States, at their request, in building capacity in areas to be covered by the Convention and the protocols thereto.

8. We welcome the efforts being made by the United Nations Centre for International Crime Prevention to develop, in cooperation with the United Nations Interregional Crime and Justice Research Institute, a comprehensive global overview of organized crime as a reference tool and to assist Governments in policy and programme development.

9. We reaffirm our continued support for and commitment to the United Nations and to the United Nations Crime Prevention and Criminal Justice Programme, especially the Commission on Crime Prevention and Criminal Justice and the United Nations Centre for International Crime Prevention, the United Nations Interregional Crime and Justice Research Institute and the institutes of the Programme network, and resolve to strengthen the Programme further through sustained funding, as appropriate.

10. We undertake to strengthen international cooperation in order to create a conducive environment for the fight against organized crime, promoting growth and sustainable development and eradicating poverty and unemployment.

11. We commit ourselves to taking into account and addressing, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men.

12. We also commit ourselves to the development of action-oriented policy recommendations based on the special needs of women as criminal justice practitioners, victims, prisoners and offenders.

13. We emphasize that effective action for crime prevention and criminal justice requires the involvement, as partners and actors, of Governments, national, regional, interregional and international institutions, intergovernmental and non-governmental organizations and various segments of civil society, including the mass media and the private sector, as well as the recognition of their respective roles and contributions.

14. We commit ourselves to the development of more effective ways of collaborating with one another with a view to eradicating the scourge of trafficking in persons, especially women and children, and the smuggling of migrants. We shall also consider supporting the global programme against trafficking in persons developed by the United Nations Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute, which is subject to close consultation with States and review by the Commission on Crime Prevention and Criminal Justice, and we establish 2005 as the target year for achieving a significant decrease in the incidence of those crimes worldwide and, where that is not attained, for assessing the actual implementation of the measures advocated.

15. We also commit ourselves to the enhancement of international cooperation and mutual legal assistance to curb illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and we establish 2005 as the target year for achieving a significant decrease in their incidence worldwide.

16. We further commit ourselves to taking enhanced international action against corruption, building on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions,<sup>2</sup> the International Code of Conduct for Public Officials,<sup>3</sup> relevant regional conventions and regional and global forums. We stress the urgent need to develop an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime, and we invite the Commission on Crime Prevention and Criminal Justice to request the Secretary-General to submit to it at its tenth session, in consultation with States, a thorough review and analysis of all relevant international instruments and

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<sup>2</sup>Resolution 51/191, annex.

<sup>3</sup>Resolution 51/59, annex.

recommendations as part of the preparatory work for the development of such an instrument. We shall consider supporting the global programme against corruption developed by the United Nations Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute, which is subject to close consultation with States and review by the Commission on Crime Prevention and Criminal Justice.

17. We reaffirm that combating money-laundering and the criminal economy constitutes a major element of the strategies against organized crime, established as a principle in the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994.<sup>4</sup> We are convinced that the success of this action rests upon setting up broad regimes and coordinating appropriate mechanisms to combat the laundering of the proceeds of crime, including the provision of support to initiatives focusing on States and territories offering offshore financial services that allow the laundering of the proceeds of crime.

18. We decide to develop action-oriented policy recommendations on the prevention and control of computer-related crime, and we invite the Commission on Crime Prevention and Criminal Justice to undertake work in this regard, taking into account the ongoing work in other forums. We also commit ourselves to working towards enhancing our ability to prevent, investigate and prosecute high-technology and computer-related crime.

19. We note that acts of violence and terrorism continue to be of grave concern. In conformity with the Charter of the United Nations and taking into account all the relevant General Assembly resolutions, we shall together, in conjunction with our other efforts to prevent and to combat terrorism, take effective, resolute and speedy measures with respect to preventing and combating criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations. With this in view, we undertake to do our utmost to foster universal adherence to the international instruments concerned with the fight against terrorism.

20. We also note that racial discrimination, xenophobia and related forms of intolerance continue, and we recognize the importance of taking steps to incorporate into international crime prevention strategies and norms measures to prevent and combat crime associated with racism, racial discrimination, xenophobia and related forms of intolerance.

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<sup>4</sup>A/49/748, annex, sect. I.A.

21. We affirm our determination to combat violence stemming from intolerance on the basis of ethnicity, and we resolve to make a strong contribution, in the area of crime prevention and criminal justice, to the planned World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

22. We recognize that the United Nations standards and norms in crime prevention and criminal justice contribute to efforts to deal with crime effectively. We also recognize the importance of prison reform, the independence of the judiciary and the prosecution authorities, and the International Code of Conduct for Public Officials. We shall endeavour, as appropriate, to use and apply the United Nations standards and norms in crime prevention and criminal justice in national law and practice. We undertake to review relevant legislation and administrative procedures, as appropriate, with a view to providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice.

23. We also recognize the value of the model treaties on international cooperation in criminal matters as important tools for the development of international cooperation, and we invite the Commission on Crime Prevention and Criminal Justice to call upon the United Nations Centre for International Crime Prevention to update the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*<sup>5</sup> in order to provide the most up-to-date versions of the model treaties to States seeking to utilize them.

24. We further recognize with great concern that juveniles in difficult circumstances are often at risk of becoming delinquent or easy candidates for recruitment by criminal groups, including groups involved in transnational organized crime, and we commit ourselves to undertaking countermeasures to prevent this growing phenomenon and to including, where necessary, provisions for juvenile justice in national development plans and international development strategies and to including the administration of juvenile justice in our funding policies for development cooperation.

25. We recognize that comprehensive crime prevention strategies at the international, national, regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies. We urge the development of such strategies, aware of the proven success of prevention initiatives in numerous States and confident that crime can be reduced by applying and sharing our collective expertise.

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<sup>5</sup>United Nations publication, Sales No. E.92.IV.1 and corrigendum.

26. We commit ourselves to according priority to containing the growth and overcrowding of pre-trial and detention prison populations, as appropriate, by promoting safe and effective alternatives to incarceration.

27. We decide to introduce, where appropriate, national, regional and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice, and we establish 2002 as a target date for States to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider the establishment of funds for victims, in addition to developing and implementing witness protection policies.

28. We encourage the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.

29. We invite the Commission on Crime Prevention and Criminal Justice to design specific measures for the implementation of and follow-up to the commitments that we have undertaken in the present Declaration.

**35. Plans of action for the implementation of the  
Vienna Declaration on Crime and Justice:  
Meeting the Challenges of the Twenty-first Century\***

**I. ACTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

1. In order to implement and follow up on the commitments undertaken in paragraphs 5, 6, 7 and 10 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century<sup>1</sup> and to facilitate the signature, ratification, entry into force and progressive implementation of the United Nations Convention against Transnational Organized Crime and the protocols thereto,<sup>2</sup> the specific measures below are recommended.

**A. National actions**

2. States that have not signed the Convention and the protocols thereto should do so as soon as possible, and States that have signed those legal instruments

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\*General Assembly resolution 56/261, annex.

<sup>1</sup>Resolution 55/59, annex.

<sup>2</sup>Resolution 55/25, annexes I-III.

should make every effort to ratify them as soon as possible. Each State will set priorities for the effective implementation of the Convention and the protocols thereto and will proceed as appropriate and as expeditiously as possible until all provisions of all of those legal instruments are in full force and operation. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) The development of legislation creating or strengthening sanctions, investigative powers, criminal procedures and other matters;

(b) Capacity-building, including for the purpose of cooperation, through the strengthening of crime prevention and criminal justice systems, and the establishment or expansion of agencies responsible for the prevention, detection and control of transnational organized crime;

(c) The establishment or improvement of training programmes for judges, prosecutors, law enforcement personnel and other individuals or agencies responsible for the prevention, detection and control of transnational organized crime;

(d) The development and sharing of information and analytical expertise on methods and activities and general trends in organized crime and on the identities, whereabouts and activities of specific individuals or groups suspected of involvement in organized crime, to the extent consistent with national laws and international agreements and arrangements;

(e) The general promotion of effective crime control strategies.

3. States will also endeavour, as appropriate:

(a) To support the efforts of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to promote ratification of the Convention and the protocols thereto through regional seminars and provide pre- and post-ratification assistance to signatory States by providing financial contributions, expertise and/or other forms of assistance;

(b) To increase in a sustained manner their overall level of extrabudgetary contributions and strengthen and broaden the donor base of the Centre in order to ensure the availability of adequate material and technical resources for projects in support of the Convention and the protocols thereto, as well as other projects and programmes;

(c) To strengthen international cooperation in order to create a conducive environment for the fight against organized crime, for promoting growth and sustainable development and eradicating poverty and unemployment.

### ***B. International actions***

4. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Organize high-level seminars to increase awareness of the Convention and the protocols thereto on the part of States, intergovernmental and non-governmental organizations and other key groups or individuals;

(b) Assist States in the development of legislation and regulations and provide other expertise or technical cooperation to facilitate the ratification and implementation of the legal instruments, on request;

(c) Assist States in the establishment or intensification of bilateral and multilateral cooperation in the areas covered by the Convention, in particular those involving the use of modern communication technologies, on request;

(d) Carry out the regular collection and analysis of data on transnational organized crime, in consultation with interested States;

(e) Maintain a database to permit a more comprehensive in-depth analysis of patterns and trends and geographical mapping of the strategies and activities carried out by organized criminal groups, and of best practices to combat transnational organized crime, in consultation with interested States;

(f) Maintain a database of relevant national legislation;

(g) Support the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in the development of rules and procedures for the Conference of the Parties to the Convention;

(h) Provide secretariat and general support to the Conference of the Parties to the Convention.

## **II. ACTION AGAINST CORRUPTION**

5. In order to implement and follow up on the commitments undertaken in paragraph 16 of the Vienna Declaration to develop an effective international legal instrument against corruption and to develop and implement other measures and programmes to prevent and combat corruption, the specific measures below are recommended.

### **A. National actions**

6. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Full participation in sessions of the Ad Hoc Committee for the Negotiation of a Convention against Corruption established pursuant to General Assembly resolution 55/61 of 4 December 2000;

(b) Promoting the full and effective participation of developing countries, in particular least developed countries, in the deliberations of the Ad Hoc Committee; this may be done through the provision of extrabudgetary resources to the Centre for International Crime Prevention;

(c) Making efforts to finalize the future United Nations convention against corruption by the end of 2003, taking into consideration existing legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime;

(d) Commencing, when appropriate, the development of domestic legislative, administrative and other measures to facilitate the ratification and effective implementation of the future United Nations convention against corruption, including both domestic measures against corruption and measures to support effective cooperation with other States.

7. States will endeavour, as appropriate, to address domestic corruption with the following measures:

(a) The assessment of domestic types, causes, effects and costs of corruption;

(b) The development of national strategies and action plans against corruption, based on the broad participation of stakeholders from Government and civil society;

(c) The maintenance or establishment of adequate domestic offences, investigative powers and criminal procedures to deal with corruption and related problems;

(d) The strengthening of national governance systems and institutions, in particular criminal justice institutions, to create and/or ensure greater independence from and resistance to corrupt influences;

(e) The maintenance or establishment of institutions and structures to achieve transparency and public accountability in government, business and other key social and economic sectors;

(f) The development of expertise in anti-corruption measures and the education and training of officials about the nature and consequences of corruption and how to combat it effectively.

8. States will endeavour, as appropriate, to address transnational corruption with the following measures:

(a) The signature, ratification and implementation of existing international instruments against corruption, as appropriate;

(b) Proper follow-up to international anti-corruption measures and recommendations at the national level, in conformity with national law;

(c) The development and enhancement of domestic capacity to provide international cooperation in anti-corruption matters, including addressing the question of the repatriation of proceeds of corruption;

(d) Awareness-raising on the part of relevant government departments or ministries such as ministries of justice, the interior, foreign affairs and development cooperation as to the seriousness of the problems posed by transnational corruption and the need to support effective measures against it;

(e) The provision of material, technical or other support to other States in anti-corruption programmes, both directly and through financial support to the global programme against corruption;

(f) The reduction of opportunities for the transfer and concealment of proceeds of corruption, and measures to address the question of returning such proceeds to their countries of origin; actions may include ensuring the implementation of measures against money-laundering, pursuant to the United Nations Convention against Transnational Organized Crime and other international legal instruments, and the development and implementation of new measures.

### ***B. International actions***

9. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Provide substantive expertise and full secretariat services to the Ad Hoc Committee for the Negotiation of a Convention against Corruption in the course of its work;

(b) Ensure, with the assistance of Member States, the full and effective participation of developing countries, in particular least developed countries, in the work of the Ad Hoc Committee, including by covering travel and local expenses;

(c) Provide to States, on request, technical cooperation to facilitate the ratification and implementation of the future United Nations convention against corruption;

(d) Assist States in the establishment or intensification of bilateral and multilateral cooperation in the areas to be covered by the future United Nations convention against corruption;

(e) Maintain a database of existing national assessments of corruption in a standardized format and a kit of best practices against corruption;

(f) Facilitate the sharing of experience and expertise among States;

(g) Revise and update the manual on practical measures against corruption;<sup>3</sup>

(h) Develop technical cooperation projects to prevent and combat corruption in order to assist States, upon request, in implementing such projects under the global programme against corruption.

### III. ACTION AGAINST TRAFFICKING IN PERSONS

10. In order to implement and follow up on the commitments undertaken in paragraph 14 of the Vienna Declaration to take immediate and effective measures to prevent and combat trafficking in persons, especially women and children, and to promote cooperation between States in this respect, the specific measures below are recommended.

#### A. *National actions*

11. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Developing and sharing information and analytical expertise on the nature and extent of domestic and regional trafficking activities and on the identities, means and methods of known traffickers or trafficking organizations, to the extent consistent with national laws and international agreements and arrangements;

(b) Adopting or strengthening, as necessary, effective laws and procedures for the prevention and punishment of trafficking in persons and effective measures for the support and protection of victims of and witnesses to such trafficking;

(c) Considering implementing measures to provide for the protection and physical, psychological and social recovery of victims of trafficking in persons;

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<sup>3</sup>*International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4).

(d) Supporting and cooperating with national and international non-governmental and other organizations and elements of civil society, as appropriate, in matters relating to trafficking in persons;

(e) Reviewing and assessing the effectiveness of domestic measures against trafficking in persons, and considering making that information available for comparison and research into the development of more effective measures against such trafficking;

(f) Developing and disseminating public information about trafficking in persons, to educate potential victims of such trafficking;

(g) Strengthening capacity for international cooperation to develop and implement measures against trafficking in persons;

(h) Considering providing voluntary contributions to support the implementation of the global programme against trafficking in human beings;

(i) Providing increased resources to support the development and implementation of national and regional strategies against trafficking in persons.

### ***B. International actions***

12. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Develop technical cooperation projects to prevent and combat trafficking in persons and to protect the victims of and witnesses to such trafficking, in order to assist States, upon request, in implementing such projects under the global programme against trafficking in human beings;

(b) Maintain a global database containing information about the nature and extent of trafficking in persons and best practices for preventing and controlling it, in cooperation with the United Nations Interregional Crime and Justice Research Institute;

(c) Develop tools to assess the effectiveness of measures against trafficking in persons.

## **IV. ACTION AGAINST THE SMUGGLING OF MIGRANTS**

13. In order to implement and follow up on the commitments undertaken in paragraph 14 of the Vienna Declaration and to take immediate and effective measures to prevent and combat the smuggling of migrants, and to promote cooperation between States in this respect, the specific measures below are recommended.

### **A. National actions**

14. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Developing and sharing information and analytical expertise on the nature and extent of domestic and regional activities relating to the smuggling of migrants and on the identities, means and methods of known smugglers or smuggling organizations, to the extent consistent with national laws and international agreements and arrangements;

(b) Enacting and strengthening, as necessary, effective laws for the prevention and punishment of the smuggling of migrants, and measures for the support and protection of the rights of smuggled migrants and of witnesses in smuggling cases, in conformity with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;<sup>4</sup>

(c) Implementing measures to protect the basic rights of smuggled migrants and, within their means, of witnesses in smuggling cases, to protect them from violence and take appropriate measures in cases where, in the course of being smuggled, the lives, safety or human dignity of migrants are placed in jeopardy;

(d) Supporting and cooperating with national and international non-governmental and other organizations and elements of civil society, as appropriate, in matters relating to the smuggling of migrants;

(e) Reviewing and assessing the effectiveness of domestic measures against the smuggling of migrants, and considering making that information available for comparison and research into the development of more effective measures;

(f) Developing and disseminating public information about the smuggling of migrants, to educate officials, the general public and potential migrants about the true nature of such smuggling, including the involvement of organized criminal groups and the risks posed to smuggled migrants;

(g) Strengthening capacity for international cooperation to develop and implement measures against the smuggling of migrants.

### **B. International actions**

15. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in

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<sup>4</sup>Resolution 55/25, annex III.

accordance with the present resolution, develop technical cooperation projects to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants, in order to assist States, upon request, in implementing such projects.

## V. ACTION AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION

16. In order to implement and follow up on the commitments undertaken in paragraph 15 of the Vienna Declaration and to take such immediate and effective measures as are appropriate to reduce the incidence of the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and related criminal activities, in accordance with the terms of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime,<sup>5</sup> the specific measures below are recommended.

### A. *National actions*

17. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Adopting and strengthening, as necessary, national legislation and procedures, and in particular procedures regarding criminal offences and procedures for the confiscation, seizure, forfeiture and disposal of firearms, their parts and components and ammunition;

(b) Implementing requirements to keep records regarding firearms, the marking of firearms and the deactivation of firearms;

(c) Establishing or maintaining effective systems for the licensing or authorization of the import, export and transit of firearms, their parts and components and ammunition;

(d) Establishing appropriate legal and administrative measures with a view to preventing the loss, theft or diversion of firearms, for the exchange of relevant information relating to firearms and for bilateral, regional and international cooperation, including by means of information exchange and technical assistance;

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<sup>5</sup>Resolution 55/255, annex.

(e) Considering the establishment of an effective regulatory framework for the activities of those engaged in the brokering of transactions involving the import, export or transit of firearms.

### ***B. International actions***

18. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Develop technical cooperation projects to prevent, combat and eradicate the illicit trafficking in firearms, their parts and components and ammunition and related activities, in order to assist requesting States, in particular developing countries and countries with economies in transition, in implementing such projects;

(b) Establish and maintain a global database of existing national and regional firearms regulations and related law enforcement practices, as well as best practices relating to firearms control measures.

## **VI. ACTION AGAINST MONEY-LAUNDERING**

19. In order to implement and follow up on the commitments undertaken in paragraph 17 of the Vienna Declaration and to develop, adopt and implement effective domestic legislation, regulations and administrative measures to prevent, detect and combat, in cooperation with other States, domestic and transnational money-laundering, in accordance with the relevant international instruments, in particular the United Nations Convention against Transnational Organized Crime, and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering, the specific measures below are recommended.

### ***A. National actions***

20. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Adopting comprehensive measures to deal effectively with the problem of money-laundering in all its aspects, with the participation of all relevant ministries, departments and agencies and in consultation with representatives of the financial sector;

(b) Making efforts to ensure that domestic legislation adequately criminalizes activities and methods used to conceal, convert or transfer the proceeds of crime in order to disguise the nature or origin of the proceeds, in accordance with article 6 of the United Nations Convention against Transnational Organized Crime;

(c) Making efforts to ensure that adequate regulatory, inspection and investigative powers exist to detect and identify money-laundering activities;

(d) Making efforts to ensure that adequate investigative and judicial powers exist to permit the identification, tracing, seizure, confiscation and disposal of proceeds of crime;

(e) Making efforts to ensure that adequate legal powers exist and administrative resources are available to permit timely and effective responses to be made to requests from other States in cases involving money-laundering;

(f) Supporting and participating in domestic and international research efforts to monitor and analyse trends in money-laundering and international policy responses;

(g) Consistent with existing multilateral arrangements, developing projects or programmes to assist other States in developing, drafting or upgrading legislation, regulations and administrative procedures against money-laundering, including the Global Programme against Money-Laundering and other activities or projects that support the implementation of the United Nations Convention against Transnational Organized Crime;

(h) Activities or programmes to train officials or share expertise in combating money-laundering, such as training workshops and seminars.

### ***B. International actions***

21. The Office for Drug Control and Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution, develop technical cooperation activities to prevent and combat money-laundering and assist requesting States in implementing those activities.

## **VII. ACTION AGAINST TERRORISM**

22. In order to implement and follow up on the commitments undertaken in paragraph 19 of the Vienna Declaration and to take effective, resolute and speedy measures to prevent and combat criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations, the specific measures below are recommended.

### **A. National actions**

23. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Signing and ratifying the international instruments dealing with terrorism;

(b) Conducting research and gathering information about criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations, including the identities, whereabouts and activities of specific individuals or groups involved in such activities, and supporting similar work at the international level, to the extent consistent with national laws and international agreements and arrangements;

(c) Reviewing their relevant domestic laws and procedures with a view to achieving effective domestic measures against terrorism and related crime, an enhanced ability to cooperate in appropriate cases with other States and the effective implementation of relevant international instruments;

(d) Fostering cooperation between anti-terrorism agencies and agencies fighting crime; this may include the establishment of liaison offices or other channels of communication between anti-terrorism agencies and agencies fighting crime in order to enhance information exchange;

(e) Considering voluntary contributions to support the implementation of the terrorism-prevention activities of the Centre for International Crime Prevention.

### **B. International actions**

24. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, in coordination with the Office of Legal Affairs of the Secretariat, as appropriate, and in accordance with the present resolution:

(a) Take steps to raise awareness of the relevant international instruments, encourage States to sign and ratify such instruments and, where feasible, provide assistance in implementing such instruments to States, upon request;

(b) In cooperation with Member States, take measures to raise public awareness of the nature and scope of international terrorism and its relationship to crime, including organized crime, where appropriate;

(c) Continue to maintain existing databases on terrorism;

(d) Offer analytical support to Member States by collecting and disseminating information on the relationship between terrorism and related criminal activities;

(e) If further developments so require, draw up concrete proposals for consideration by Member States to strengthen the capacity of the Centre to develop, within its mandate, and administer the terrorism prevention component of its activities.

## VIII. ACTION ON CRIME PREVENTION

25. In order to implement and follow up on the commitment undertaken in paragraph 25 of the Vienna Declaration to develop comprehensive international, regional, national and local crime prevention strategies, the specific measures below are recommended.

### A. *National actions*

26. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Promotion of close cooperation between the various sectors of society, including justice, health, education, social services and housing, which are necessary to support effective community-based crime prevention;

(b) Close cooperation with and assistance to elements of civil society in the development, adoption and promotion of crime prevention initiatives, taking into account the importance of proceeding on the basis of proven practices wherever possible and of selecting the appropriate balance between various approaches to community-based crime prevention;

(c) Encouragement of assessment of the effectiveness of crime prevention programmes;

(d) Development of practices that seek to prevent crime victims from being victimized once again;

(e) Development and implementation of situational and other crime prevention programmes, bearing in mind the need to avoid any infringement of civil liberties;

(f) Collaboration with other Governments and non-governmental organizations in the development and dissemination of successful and innovative crime prevention initiatives and specialized knowledge and expertise in crime prevention practices, including public awareness and education campaigns about effective crime prevention and the contributions that individuals, families, communities and all levels of government may make to contribute to safer and more peaceful communities;

(g) Consideration of how to contribute to the collective efforts of countries to develop a comprehensive international strategy to advance community-based crime prevention;

(h) Taking steps to incorporate into their national crime prevention strategies measures to prevent and combat crime associated with racism, racial discrimination, xenophobia and related forms of intolerance.

### ***B. International actions***

27. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Develop and promote crime prevention expertise that has been carefully adapted from proven practices to the conditions in the countries where those practices are to be implemented, using seminars, training programmes and other means;

(b) Where requested to do so by the State or States involved, conduct public awareness and education campaigns about effective crime prevention and the respective contributions that individuals, families, communities and all levels of government may make towards safer and more peaceful communities;

(c) Endeavour to contribute to the exchange of information and experience in crime prevention, for the purpose of encouraging new forms of collaboration between countries involving government, the community and non-governmental organizations;

(d) Assess the evolution and globalization of crime and prepare responses to it through innovative and effective crime prevention initiatives that take account of the impact of new technologies on crime and crime prevention;

(e) Continue to coordinate studies on crime in urban areas and measures for its effective prevention, including on the possible cultural and institutional differences in effective crime prevention;

(f) Encourage Member States to incorporate into international crime prevention strategies and norms measures to prevent and combat crime associated with racism, racial discrimination, xenophobia and related forms of intolerance, taking into account measures already taken by Member States;

(g) Develop technical cooperation projects in the area of crime prevention for requesting States and assist in their implementation;

(h) Develop a guide for policymakers and a handbook on proven practices in the area of crime prevention.

## IX. ACTION ON WITNESSES AND VICTIMS OF CRIME

28. In order to implement and follow up on the commitments undertaken in paragraph 27 of the Vienna Declaration to review relevant practices by 2002 where possible, to develop action plans, support services and awareness campaigns for victims, to consider the establishment of funds for victims and to develop and implement witness protection policies, the specific measures below are recommended.

### A. National actions

29. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Conducting national and regional studies on victims of crime in national justice systems;

(b) The use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>6</sup> subject to the domestic legal systems of each State, taking into account the Handbook on Justice for Victims on the use and application of the Declaration<sup>7</sup> and the Guide for Policy Makers on the Implementation of the Declaration.<sup>8</sup>

### B. International actions

30. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) In its projects and programmes, take into account measures for the assistance and support of victims and witnesses, including those who are women, children or victims of trafficking in persons;

(b) Promote the establishment of funds for victims of crime;

(c) Promote proven practices in providing support and services for victims and witnesses using, for example, the International Victimology website;<sup>9</sup>

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<sup>6</sup>Resolution 40/34, annex.

<sup>7</sup>E/CN.15/1998/CRP.4/Add.1.

<sup>8</sup>E/CN.15/1998/CRP.4.

<sup>9</sup>[www.victimology.nl](http://www.victimology.nl).

(d) Translate into the official languages of the United Nations and widely disseminate the Guide for Policy Makers and the Handbook on Justice for Victims, and assist requesting States in using those documents;

(e) Upon request, assist States in the development of new legislation on victims, using, *inter alia*, the international database established by the Government of the Netherlands;

(f) Where necessary, promote demonstration or pilot projects for the development, further development or establishment of victim services and other related operational activities.

## X. ACTION ON PRISON OVERCROWDING AND ALTERNATIVES TO INCARCERATION

31. In order to implement and follow up on the commitments undertaken in paragraph 26 of the Vienna Declaration to promote safe and effective alternatives to incarceration, the specific measures below are recommended.

### A. *National actions*

32. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) The development of specific actions and time-bound targets to address prison overcrowding, recognizing that conditions in overcrowded prisons may affect the human rights of prisoners, including such actions as adopting effective measures to reduce pre-trial detention as far as possible; introducing appropriate alternatives to imprisonment; preferring non-custodial measures to imprisonment where possible; dealing with minor offences using options such as customary practice, mediation between concerned parties or the payment of civil reparations or compensation; and conducting public awareness and education campaigns on alternatives to imprisonment and how they work;

(b) Encouraging international and regional institutions, including financial institutions, to incorporate in their relevant technical cooperation programmes measures to reduce prison overcrowding, in accordance with national laws;

(c) Promoting and implementing good prison practice, taking into account international standards;

(d) Ensuring that national and international actions on prison overcrowding and alternatives to incarceration take into account and address any disparate impact that such actions may have on women and men.

### ***B. International actions***

33. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Encourage international and regional institutions, including financial institutions, to incorporate into their relevant technical cooperation programmes measures to reduce prison overcrowding, in accordance with national laws;

(b) Promote national and international actions on prison overcrowding and alternatives to incarceration that take into account any disparate impact on women and men, as well as any special needs;

(c) Upon request, provide assistance in the form of advisory services, needs assessment, capacity-building, training or other assistance to States to enable them to improve prison conditions.

## **XI. ACTION AGAINST HIGH-TECHNOLOGY AND COMPUTER-RELATED CRIME**

34. In order to implement and follow up on the commitments undertaken in paragraph 18 of the Vienna Declaration to develop action-oriented policy recommendations for the prevention and control of high-technology and computer-related crime, taking into account the ongoing work in other forums and to enhance abilities to detect, prevent, investigate and prosecute such crimes, the specific measures below are recommended.

### ***A. National actions***

35. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Criminalization of the misuse of information technologies, as appropriate and in accordance with national law, including, if necessary, reviewing crimes such as fraud, in order to ensure that they apply to offences in which computer and telecommunication media and networks are used;

(b) The development and implementation of rules and procedures, including on the exercise of jurisdiction, that would ensure that computer- and telecommunication-related crimes can be effectively detected and investigated at the national level and that effective cooperation can be obtained in multinational cases, taking into account national sovereignty, the need for effective law enforcement and the need to maintain effective protections for privacy and other related basic rights;

(c) Ensuring that law enforcement personnel are trained and equipped to be able to respond effectively and expeditiously to requests for assistance in the tracing of communications and other measures necessary for the detection and investigation of transnational high-technology and computer-related crimes;

(d) Engaging in domestic and international discussions on actions against high-technology and computer-related crime and the effects of technological change with industries involved in the development and deployment of computers, telecommunication equipment, network software and hardware and other relevant products and services. These discussions could include key areas such as:

- (i) Issues relating to domestic and international regulation of the technologies and networks;
- (ii) Issues relating to the incorporation of elements into new technologies, which are intended to prevent crime or facilitate the detection, investigation or prosecution of crime;

(e) Making voluntary contributions, both bilaterally and through international and regional organizations, as appropriate, including in cooperation with the private sector, inter alia, in the form of technical expertise to assist other States in developing and implementing effective measures against high-technology and computer-related crime, including the measures referred to in subparagraphs (c) and (d) above.

### ***B. International actions***

36. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Support national and international research activities to identify new forms of computer-related criminality and to assess the effects of such criminality in key areas such as sustainable development, the protection of privacy and electronic commerce, and the measures taken in response;

(b) Disseminate internationally agreed materials such as guidelines, legal and technical manuals, minimum standards, proven practices and model legislation to assist legislators and law enforcement and other authorities in the development, adoption and application of effective measures against high-technology and computer-related crime and offenders both in general and in specific cases;

(c) Promote, support and implement, as appropriate, technical cooperation and assistance projects. Such projects would bring together experts in crime prevention, computer security, criminal legislation and procedures, prosecution, investigative techniques and related matters and States seeking information or assistance in those areas.

## XII. ACTION ON JUVENILE JUSTICE

37. In order to implement and follow up on the commitments undertaken in paragraph 24 of the Vienna Declaration, the specific measures below are recommended.

### A. *National actions*

38. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Giving timely assistance to juveniles in difficult circumstances in order to prevent them from resorting to crime;

(b) Supporting the development of crime prevention practices that are focused on juveniles who are at risk of becoming delinquent or who are easy candidates for recruitment by criminal groups, bearing in mind the rights of such juveniles;

(c) Strengthening juvenile justice systems;

(d) Incorporating an integrated strategy for the prevention of youth crime and for juvenile justice in national development plans;

(e) Promoting the re-education and rehabilitation of juvenile offenders;

(f) Encouraging, and where necessary, supporting the participation of civil society in the implementation of practices for the prevention of juvenile crime.

### B. *International actions*

39. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Upon request, develop technical cooperation projects to prevent youth crime, to strengthen juvenile justice systems and to improve the rehabilitation and treatment of juvenile offenders and assist States in implementing those projects;

(b) Ensure effective cooperation among the relevant United Nations entities and the other organizations mentioned in the Guidelines for Action on Children in the Criminal Justice System.<sup>10</sup>

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<sup>10</sup>Economic and Social Council resolution 1997/30, annex.

### XIII. ACTION ON THE SPECIAL NEEDS OF WOMEN IN THE CRIMINAL JUSTICE SYSTEM

40. In order to implement and follow up on the commitments undertaken in paragraphs 11 and 12 of the Vienna Declaration, and to review crime prevention and criminal justice strategies in order to identify and address any disparate impact of programmes and policies on women and men, the specific measures below are recommended.

#### *A. National actions*

41. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system;

(b) Developing national and international crime prevention and criminal justice strategies that take into account the special needs of women as criminal justice practitioners, victims, witnesses, prisoners and offenders;

(c) Considering sharing with other States, via websites or other media or forums, any proven practices concerning women as criminal justice practitioners, victims, witnesses, prisoners and offenders that take into account the special needs of women.

#### *B. International actions*

42. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Collect and disseminate information and materials on violence against women in all its forms and manifestations, as referred to in the Declaration on the Elimination of Violence against Women,<sup>11</sup> for the purpose of implementing its crime prevention and criminal justice programme, including technical assistance at the request of States;

(b) Work on issues relating to violence against women and to the removal of gender bias in the administration of criminal justice;

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<sup>11</sup>Resolution 48/104.

(c) Cooperate with all other relevant entities of the United Nations system regarding activities on issues relating to violence against women and to the removal of gender bias in the administration of criminal justice, and coordinate work on such issues;

(d) Consolidate and disseminate information on successful intervention models and preventive programmes at the national level;

(e) Continue to improve training concerning criminal justice and crime-prevention aspects of the human rights of women and issues of gender bias and violence against women for relevant United Nations staff members;

(f) Assist Member States, upon request, in utilizing the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.<sup>12</sup>

#### XIV. ACTION ON STANDARDS AND NORMS

43. In order to implement and follow up on the commitments undertaken in paragraph 22 of the Vienna Declaration and to promote the use and application, as appropriate, of the United Nations standards and norms in crime prevention and criminal justice in national law and practice, the specific measures below are recommended.

##### A. National actions

44. Individually and collectively, States will endeavour, as appropriate, to use and apply in national law and practice the United Nations standards and norms in crime prevention and criminal justice and to publish the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*<sup>13</sup> in the languages of their countries.

##### B. International actions

45. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Update the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*;

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<sup>12</sup>Resolution 52/86, annex.

<sup>13</sup>United Nations publication, Sales No. E.92.IV.1 and corrigendum.

(b) Promote the use and application of United Nations standards and norms in crime prevention and criminal justice, inter alia, by providing advisory services and technical cooperation to Member States upon request, including assistance to Member States in criminal justice and law reform, organization of training for law enforcement and criminal justice personnel and support to the administration and management of penal and penitentiary systems, thus contributing to the upgrading of their efficiency and capabilities;

(c) Coordinate activities relating to the use and application of United Nations standards and norms in crime prevention and criminal justice between the Centre for International Crime Prevention and other relevant United Nations entities, taking into account bilateral and regional assistance programmes.

## XV. ACTION ON RESTORATIVE JUSTICE

46. In order to implement and follow up on the commitments undertaken in paragraph 28 of the Vienna Declaration and to encourage the development of restorative justice policies, procedures and programmes, the specific measures below are recommended.

### A. *National actions*

47. Individually and collectively, States will endeavour, as appropriate, to support the following actions:

(a) Taking into account Economic and Social Council resolution 2000/14 of 27 July 2000, entitled “Basic principles on the use of restorative justice programmes in criminal matters”, when considering the desirability and the means of establishing common principles;

(b) Dealing with offences, especially minor offences, according to customary practice in respect of restorative justice, where available and appropriate, provided that this meets human rights requirements and that those involved so agree;

(c) Using amicable means as provided by national law to deal with offences, especially minor offences, for example by using mediation, reparation or agreements whereby the offender compensates the victim;

(d) Promoting a culture favourable to mediation and restorative justice among law enforcement, judicial and social authorities and local communities;

(e) Providing appropriate training for those involved in the development and implementation of restorative justice policies and programmes;

(f) Promoting the re-education and rehabilitation of juvenile offenders by encouraging, where appropriate, the use of mediation, conflict resolution, conciliation and other methods of restorative justice as alternatives to judicial proceedings and custodial-based sanctions;

(g) Developing and implementing restorative justice policies and programmes, taking into account existing international commitments with respect to victims, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

(h) Promoting cooperation between government and civil society, including relevant non-governmental organizations, to implement restorative justice programmes and to ensure public support for the use of restorative justice principles.

### ***B. International actions***

48. The Centre for International Crime Prevention will, in cooperation with other relevant international and regional organizations, as appropriate, and in accordance with the present resolution:

(a) Exchange information on experiences and proven practices in the implementation and evaluation of programmes for restorative justice;

(b) Assist the Commission on Crime Prevention and Criminal Justice in considering the desirability and the means of establishing common principles on the use of restorative justice programmes in criminal matters;

(c) Convene a meeting of experts to examine proposals for further action in relation to restorative justice, including mediation.

## **36. Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice\***

*We, the States Members of the United Nations,*

*Having assembled* at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, to decide to take more effective concerted action, in a spirit of cooperation, to combat crime and seek justice,

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\*General Assembly resolution 60/177, annex.

*Convinced* that the United Nations congresses on crime prevention and criminal justice, which constitute a major intergovernmental forum, have contributed to national policies and practices by facilitating the exchange of views and experience, mobilizing public opinion and recommending policy options at the national, regional and international levels, thus making a significant contribution to progress and the promotion of international cooperation in crime prevention and criminal justice,

*Recalling* the work of the ten previous United Nations congresses,

*Reaffirming* the responsibility vested in the United Nations Crime Prevention and Criminal Justice Programme to work, together with Member States and regional and international organizations, in the fields of crime prevention and criminal justice,

*Greatly concerned* by the expansion and dimensions of transnational organized crime, including illicit drug trafficking, money-laundering, trafficking in persons, smuggling of migrants, illegal arms trafficking and terrorism, and any existing links among them, and by the increasing sophistication and diversification of the activities of organized criminal groups,

*Emphasizing* that enhancing dialogue among civilizations, promoting tolerance, preventing the indiscriminate targeting of different religions and cultures and addressing development issues and unresolved conflicts will contribute to international cooperation, which is among the most important elements to combat terrorism in all its forms and manifestations, and reaffirming that no terrorist act can be justified in any circumstance,

*Reaffirming* that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and that they should adopt such measures in conformity with the Charter of the United Nations and international law, in particular international human rights, refugee and humanitarian law,

*Alarmed* by the rapid growth, geographical extent and effects of new economic and financial crimes, which have emerged as significant threats to national economies and the international financial system,

*Highlighting* the need for an integrated and systemic approach to combating corruption and money-laundering, within existing frameworks and instruments, in particular those under the aegis of the United Nations, since those crimes can be conducive to the perpetration of other criminal activities,

*Noting with appreciation* the work of the regional preparatory meetings for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice,<sup>1</sup>

*Declare* as follows:

1. We proclaim our political will and commitment to achieve the aspirations and objectives as set out in the present Declaration.

2. We reaffirm our continued support for and commitment to the United Nations and to the United Nations Crime Prevention and Criminal Justice Programme, especially the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime, the United Nations Interregional Crime and Justice Research Institute and the institutes of the Programme network, and resolve to strengthen the Programme further through sustained funding, as appropriate.

3. In a spirit of common and shared responsibility, we reaffirm our readiness to seek to improve international cooperation in the fight against crime and terrorism, at the multilateral, regional and bilateral levels, in areas including, among others, extradition and mutual legal assistance. We seek to ensure our national capacity and, where appropriate, the coherence of our international capacity, through the United Nations and other relevant global and regional organizations, to engage in international cooperation, in particular in the prevention, investigation, prosecution and adjudication of transnational organized crime and terrorism and in the discovery of any existing links among them.

4. We welcome the entry into force of the United Nations Convention against Transnational Organized Crime and two of its Protocols.<sup>2</sup> We call upon all States that have not yet done so to seek to ratify or accede to and implement the provisions of that Convention and its Protocols, as well as the provisions of the United Nations Convention against Corruption<sup>3</sup> and the international instruments against terrorism. In implementing the provisions of those instruments, we commit ourselves to full compliance with our obligations under international law, in particular international human rights, refugee and humanitarian law. We support every effort to facilitate the implementation of those instruments.

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<sup>1</sup>A/CONF.203/RPM.1/1, A/CONF.203/RPM.2/1, A/CONF.203/RPM.3/1 and Corr.1 and A/CONF.203/RPM.4/1.

<sup>2</sup>General Assembly resolution 55/25, annexes I-III.

<sup>3</sup>General Assembly resolution 58/4, annex.

5. We call upon donor States and financial institutions to continue to make adequate voluntary contributions on a regular basis for the provision of technical assistance to developing countries and to countries with economies in transition, in order to help build their capacity to prevent and tackle crime in all its forms and apply the United Nations standards and norms in crime prevention and criminal justice and, in particular, to facilitate their becoming parties to and implementing the international instruments against terrorism and the relevant international instruments against crime, such as the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the United Nations Convention against Corruption and the international drug control conventions.

6. We support a more integrated approach within the United Nations in relation to the provision of assistance for building capacity in crime prevention and criminal justice, and in cooperation in criminal matters of a transnational character, as a contribution to the establishment and strengthening of the rule of law.

7. We seek to improve our responses to crime and terrorism nationally and internationally, inter alia, by collecting and sharing information on crime and terrorism and on effective countermeasures, in accordance with national legislation. We welcome the important work done by the United Nations Office on Drugs and Crime and the United Nations Crime Prevention and Criminal Justice Programme network in the area of trends in crime and justice.

8. We are convinced that upholding the rule of law and good governance and proper management of public affairs and public property at the local, national and international levels are prerequisites for creating and sustaining an environment for successfully preventing and combating crime. We are committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards.

9. We recognize the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in contributing to the prevention of and the fight against crime and terrorism. We encourage the adoption of measures to strengthen this role within the rule of law.

10. We recognize that comprehensive and effective crime prevention strategies can significantly reduce crime and victimization. We urge that such strategies address the root causes and risk factors of crime and victimization and that they be further developed and implemented at the local, national and

international levels, taking into account, inter alia, the Guidelines for the Prevention of Crime.<sup>4</sup>

11. We note that countries emerging from conflicts are particularly vulnerable to crime, in particular organized crime and corruption, and therefore recommend that Member States, regional organizations and international entities such as the United Nations Office on Drugs and Crime, in coordination with the Department of Peacekeeping Operations of the Secretariat and other relevant entities, provide more effective responses to these problems, in order to re-establish, strengthen or sustain the rule of law and deliver justice in post-conflict situations.

12. With regard to the increased involvement of organized criminal groups in the theft of and trafficking in cultural property and illicit trafficking in protected species of wild flora and fauna, we recognize the importance of combating these forms of crime and, bearing in mind the relevant international legal instruments, such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>5</sup> the Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>6</sup> and the Convention on Biological Diversity,<sup>7</sup> we call upon Member States to take effective measures to strengthen international cooperation.

13. We note with concern the rise of kidnapping and trafficking in persons, which constitute serious, profitable and inhumane forms of organized crime, often committed with the objective of funding criminal organizations and, in some cases, terrorist activities, and hence recommend that measures be devised to combat these crimes and that attention be given to the creation of practical mechanisms for countering them. We recognize the need to implement measures intended to provide adequate assistance and protection to victims of kidnapping and trafficking in persons and their families.

14. Mindful of General Assembly resolution 59/156 of 20 December 2004 on preventing, combating and punishing trafficking in human organs, we note the serious concerns raised about the illicit removal of and trafficking in human organs and will examine with interest the report of the Secretary-General requested in that resolution.

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<sup>4</sup>Economic and Social Council resolution 2002/13, annex.

<sup>5</sup>United Nations, *Treaty Series*, vol. 823, No. 11806.

<sup>6</sup>*Ibid.*, vol. 993, No. 14537.

<sup>7</sup>*Ibid.*, vol. 1760, No. 30619.

15. We reaffirm the fundamental importance of the implementation of existing instruments and the further development of national measures and international cooperation in relation to criminal matters, such as consideration of strengthening and augmenting measures, in particular against cybercrime, money-laundering and trafficking in cultural property, as well as extradition, mutual legal assistance and the confiscation, recovery and return of proceeds of crime.

16. We note that, in the current period of globalization, information technology and the rapid development of new telecommunication and computer network systems have been accompanied by the abuse of those technologies for criminal purposes. We therefore welcome efforts to enhance and supplement existing cooperation to prevent, investigate and prosecute high-technology and computer-related crime, including through the development of partnerships with the private sector. We recognize the important contribution of the United Nations to regional and other international forums in the fight against cybercrime and invite the Commission on Crime Prevention and Criminal Justice, taking into account that experience, to examine the feasibility of providing further assistance in that area under the aegis of the United Nations in partnership with other similarly focused organizations.

17. We recognize the importance of giving special attention to the need to protect witnesses and victims of crime and terrorism, and we commit ourselves to strengthening, where needed, the legal and financial framework for providing support to such victims, taking into account, inter alia, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>8</sup>

18. We call upon Member States to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system.

19. We note with concern the problem of trafficking in illicit drugs and the serious socio-economic consequences it entails, and therefore call for the strengthening of international cooperation in combating that form of organized crime.

20. We will strengthen international cooperation in order to create an environment that is conducive to the fight against crime, including by promoting growth and sustainable development and eradicating poverty and unemployment by means of effective and balanced development strategies and crime prevention policies.

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<sup>8</sup>General Assembly resolution 40/34, annex.

21. We call upon States that have not yet done so to become parties to and implement the universal instruments against terrorism. In order to enhance the capacity of States to become parties to and implement those instruments and to comply with the relevant Security Council resolutions against terrorism, we express our support for the continuing efforts of the United Nations Office on Drugs and Crime, within its mandate and in coordination with the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate of the Security Council, to assist States in their efforts to ratify and implement those instruments, through the provision of technical assistance upon request. This might include assistance to criminal justice systems to facilitate the effective implementation of those instruments.

22. We express the hope that the ongoing negotiation of the draft comprehensive convention on international terrorism will be concluded as soon as possible. In this context, we recognize that arriving at a possible definition of terrorism is one of the key issues to be resolved. We call upon Member States to consider signing and ratifying the International Convention for the Suppression of Acts of Nuclear Terrorism.<sup>9</sup>

23. We are convinced that the expeditious entry into force and subsequent implementation of the United Nations Convention against Corruption<sup>3</sup> are central to the efforts made at the international level to fight corruption and therefore accord high priority to supporting efforts to that end and call upon all States that have not yet done so to seek to sign, ratify or accede to the Convention.

24. We are also convinced that the proper management of public affairs and public property and the rule of law are essential to the prevention and control of corruption, including, *inter alia*, through effective measures for its investigation and prosecution. Furthermore, we recognize that, in order to curb corruption, it is necessary to promote a culture of integrity and accountability in both the public and the private sector.

25. We are convinced that asset recovery is one of the essential components of the United Nations Convention against Corruption and, for that reason, we emphasize the need to adopt measures to facilitate asset recovery that are consistent with the principles of that Convention.

26. We are conscious of the challenge of investigating and prosecuting complex cases involving economic and financial crimes, including money-laundering. We call upon Member States to strengthen policies, measures and

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<sup>9</sup>General Assembly resolution 59/290, annex.

institutions for national action and international cooperation in the prevention, investigation and prosecution of economic and financial crimes, including money-laundering, and such crimes conducted by means of, or facilitated by, information technologies, in particular in connection with the financing of terrorism and trafficking in illicit drugs.

27. We are conscious of the crucial importance of tackling document and identity fraud in order to curb organized crime and terrorism. We seek to improve international cooperation, including through technical assistance, to combat document and identity fraud, in particular the fraudulent use of travel documents, through improved security measures, and encourage the adoption of appropriate national legislation.

28. We recommend that voluntary contributions and appropriate technical assistance be made available to developing countries, to strengthen their capacity in order to support their efforts to fight effectively economic and financial crimes.

29. As appropriate, we endeavour to use and apply the United Nations standards and norms in our national programmes for crime prevention and criminal justice reform and to undertake, as needed, efforts to ensure their wider dissemination. We endeavour to facilitate appropriate training for law enforcement officials, including prison officials, prosecutors, the judiciary and other relevant professional groups, taking into account those norms and standards and best practices at the international level.

30. We recommend that the Commission on Crime Prevention and Criminal Justice give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners.

31. We note with concern that the physical and social conditions associated with imprisonment may facilitate the spread of HIV/AIDS in pretrial and correctional facilities and thus in society, thereby presenting a critical prison management problem; we call upon States to develop and adopt measures and guidelines, where appropriate and in accordance with national legislation, to ensure that the particular problems of HIV/AIDS are adequately addressed in such facilities.

32. To promote the interests of victims and the rehabilitation of offenders, we recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution, thereby avoiding possible adverse effects of imprisonment, helping to decrease

the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice systems, as appropriate.

33. We affirm our determination to pay particular attention to juvenile justice. We will consider ways to ensure the provision of services to children who are victims of crime and children in conflict with the law, in particular those deprived of their liberty, and to ensure that those services take into account their gender, social circumstances and developmental needs and the relevant United Nations standards and norms, as appropriate.

34. We stress the need to consider measures to prevent the expansion of urban crime, including by improving international cooperation and capacity-building for law enforcement and the judiciary in that area and by promoting the involvement of local authorities and civil society.

35. We express our profound gratitude to the people and the Government of Thailand for their warm and generous hospitality towards the participants and for the excellent facilities provided for the Eleventh Congress.



*Part three*

**Crime prevention and  
victim issues**



# I. Crime prevention

## 37. Guidelines for cooperation and technical assistance in the field of urban crime prevention\*

### A. *Design and implementation of cooperation and assistance activities*

1. Cooperation projects for urban crime prevention should take account of the principles set out below.

#### 1. *Local approach to problems*

2. Urban crime is characterized by a multiplicity of factors and forms. A multi-agency approach and a coordinated response at the local level, in accordance with an integrated crime prevention action plan, will often be helpful. This should involve:

(a) A local diagnostic survey of crime phenomena, their characteristics, factors leading to them, the form they take and their extent;

(b) The identification of all the relevant actors that could take part in compiling the above-mentioned diagnostic survey in crime prevention as well as in the fight against crime, for example public institutions (national or local), local elected officials, the private sector (associations, enterprises), the voluntary sector, community representatives etc.;

(c) The establishment, wherever appropriate, of consultation mechanisms promoting closer liaison, the exchange of information, joint work and the design of a coherent strategy;

(d) The elaboration of possible solutions to these problems in the local context.

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\*Economic and Social Council resolution 1995/9, annex.

## 2. *Integrated crime prevention action plan*

3. The authors of an integrated crime prevention action plan, in order for it to be comprehensive and efficient, should:

(a) Define:

- (i) The nature and types of crime problems to be tackled, such as theft, robbery, burglary, racial attacks, drug-related crimes, juvenile delinquency and illegal possession of firearms, taking into account all the factors that may directly or indirectly cause such problems or contribute to them;
- (ii) The objectives being pursued and the time by which they should be attained;
- (iii) The action envisaged and the respective responsibilities of those involved vis-à-vis the implementation of the plan (for example, whether local or national resources are to be mobilized);

(b) Consider involving a range of actors representing in particular:

- (i) Social workers and education, housing and health workers, in addition to the police, the courts, public prosecutors and probation services etc.;
- (ii) The community: elected officials, associations, volunteers, parents, victims' organizations etc.;
- (iii) The economic sector: enterprises, banks, business, public transport etc.;
- (iv) The media;

(c) Consider the relevance to the crime prevention action plan of such factors as:

- (i) Relationships in the family, between generations or between social groups etc.;
- (ii) Education, religious, moral and civic values, culture etc.;
- (iii) Employment, training, measures for combating unemployment and poverty;
- (iv) Housing and urbanism;
- (v) Health, drug and alcohol abuse;
- (vi) Government and community welfare aid for the least fortunate members of society;
- (vii) Combating the culture of violence and intolerance;

- (d) Consider providing for action at various levels:
- (i) Primary prevention by:
    - a. Promoting situational criminal prevention measures, such as target hardening and opportunity reduction;
    - b. Promoting welfare and health development and progress and by combating all forms of social deprivation;
    - c. Promoting communal values and respect for fundamental human rights;
    - d. Promoting civic responsibility and social mediation procedures;
    - e. Facilitating the adaptation of the working methods of the police and the courts;
  - (ii) Prevention of recidivism by:
    - a. Facilitating the adaptation of methods of police intervention (rapid response, intervention within the local community etc.);
    - b. Facilitating the adaptation of methods of judicial intervention and implementation of alternative remedies:
      - i. Diversification of methods of treatment and of measures taken according to the nature and seriousness of the cases (diversionary schemes, mediation, a special system for minors etc.);
      - ii. Systematic research on the reintegration of offenders involved in urban crime through the implementation of non-custodial measures;
      - iii. Socio-educational support within the framework of the sentence, in prison and as preparation for release from prison;
    - c. Giving an active role to the community in the rehabilitation of offenders;
  - (iii) After the sentence has been served: aid and socio-educational support, family support etc.;
  - (iv) Protection of victims by practical improvements in their treatment by means of the following:
    - a. Raising awareness of rights and how to exercise them effectively;
    - b. Reinforcing rights (in particular the right to compensation);
    - c. Introducing systems of victim assistance.

## ***B. Implementation of the action plan***

### *1. Central authorities*

4. The central authorities, to the extent consistent with their competence, should:

- (a) Provide active support, assistance and encouragement to local actors;
- (b) Coordinate national policy and strategies with local strategies and needs;
- (c) Organize consultation and cooperation mechanisms between the various administrations concerned at the central level.

### *2. Authorities at all levels*

5. Competent authorities at all levels should:

- (a) Be constantly mindful of respect for the fundamental principles of human rights in promoting these activities;
- (b) Encourage and/or implement appropriate training and information to support all professionals involved in crime prevention;
- (c) Compare experiences and organize exchanges of know-how;
- (d) Provide a means of evaluating regularly the effectiveness of the strategy implemented and provide for the possibility of revising it.

## **38. United Nations Declaration on Crime and Public Security\***

*The General Assembly,*

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,<sup>1</sup> the Declaration on Measures to Eliminate International Terrorism<sup>2</sup> and the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,<sup>3</sup>

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\*General Assembly resolution 51/60, annex.

<sup>1</sup>General Assembly resolution 50/6.

<sup>2</sup>General Assembly resolution 49/60, annex.

<sup>3</sup>See General Assembly resolution 49/159.

*Solemnly proclaims* the following United Nations Declaration on Crime and Public Security:

*Article 1*

Member States shall seek to protect the security and well-being of their citizens and all persons within their jurisdiction by taking effective national measures to combat serious transnational crime, including organized crime, illicit drug and arms trafficking, smuggling of other illicit articles, organized trafficking in persons, terrorist crimes and the laundering of proceeds from serious crimes, and shall pledge their mutual cooperation in those efforts.

*Article 2*

Member States shall promote bilateral, regional, multilateral and global law enforcement cooperation and assistance, including, as appropriate, mutual legal assistance arrangements, to facilitate the detection, apprehension and prosecution of those who commit or are otherwise responsible for serious transnational crimes and to ensure that law enforcement and other competent authorities can cooperate effectively on an international basis.

*Article 3*

Member States shall take measures to prevent support for and operations of criminal organizations in their national territories. Member States shall, to the fullest possible extent, provide for effective extradition or prosecution of those who engage in serious transnational crimes in order that they find no safe haven.

*Article 4*

Mutual cooperation and assistance in matters concerning serious transnational crime shall also include, as appropriate, the strengthening of systems for the sharing of information among Member States and the provision of bilateral and multilateral technical assistance to Member States by utilizing training, exchange programmes and law enforcement training academies and criminal justice institutes at the international level.

*Article 5*

Member States that have not yet done so are urged to become parties as soon as possible to the principal existing international treaties relating to

various aspects of the problem of international terrorism. States parties shall effectively implement their provisions in order to fight against terrorist crimes. Member States shall also take measures to implement General Assembly resolution 49/60 of 9 December 1994, on measures to eliminate international terrorism, and the Declaration on Measures to Eliminate International Terrorism contained in the annex to that resolution.

### *Article 6*

Member States that have not yet done so are urged to become parties to the international drug control conventions as soon as possible. States parties shall effectively implement the provisions of the Single Convention on Narcotic Drugs of 1961<sup>4</sup> as amended by the 1972 Protocol,<sup>5</sup> the Convention on Psychotropic Substances of 1971,<sup>6</sup> and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.<sup>7</sup> Member States specifically reaffirm that, on the basis of shared responsibility, they shall take all necessary preventive and enforcement measures to eliminate the illicit production of, trafficking in and distribution and consumption of narcotic drugs and psychotropic substances, including measures to facilitate the fight against those criminals involved in this type of transnational organized crime.

### *Article 7*

Member States shall take measures within their national jurisdiction to improve their ability to detect and interdict the movement across borders of those who engage in serious transnational crime, as well as the instrumentalities of such crime, and shall take effective specific measures to protect their territorial boundaries, such as:

(a) Adopting effective controls on explosives and against illicit trafficking by criminals in certain materials and their components that are specifically designed for use in manufacturing nuclear, biological or chemical weapons and, in order to lessen risks arising from such trafficking, by becoming parties to and fully implementing all relevant international treaties relating to weapons of mass destruction;

(b) Strengthening supervision of passport issuance and enhancement of protection against tampering and counterfeiting;

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<sup>4</sup>United Nations, *Treaty Series*, vol. 520, No. 7515.

<sup>5</sup>*Ibid.*, vol. 976, No. 14152.

<sup>6</sup>*Ibid.*, vol. 1019, No. 14956.

<sup>7</sup>See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

(c) Strengthening enforcement of regulations on illicit transnational trafficking in firearms, with a view to both suppressing the use of firearms in criminal activities and reducing the likelihood of fuelling deadly conflict;

(d) Coordinating measures and exchanging information to combat the organized criminal smuggling of persons across national borders.

#### *Article 8*

To combat further the transnational flow of the proceeds of crime, Member States agree to adopt measures, as appropriate, to combat the concealment or disguise of the true origin of proceeds of serious transnational crime and the intentional conversion or transfer of such proceeds for that purpose. Member States agree to require adequate record-keeping by financial and related institutions and, as appropriate, the reporting of suspicious transactions and to ensure effective laws and procedures to permit the seizure and forfeiture of the proceeds of serious transnational crime. Member States recognize the need to limit the application of bank secrecy laws, if any, with respect to criminal operations and to obtain the cooperation of the financial institutions in detecting these and any other operations that may be used for the purpose of money-laundering.

#### *Article 9*

Member States agree to take steps to strengthen the overall professionalism of their criminal justice, law enforcement and victim assistance systems and relevant regulatory authorities through measures such as training, resource allocation and arrangements for technical assistance with other States and to promote the involvement of all elements of society in combating and preventing serious transnational crime.

#### *Article 10*

Member States agree to combat and prohibit corruption and bribery, which undermine the legal foundations of civil society, by enforcing applicable domestic laws against such activity. For this purpose, Member States also agree to consider developing concerted measures for international cooperation to curb corrupt practices, as well as developing technical expertise to prevent and control corruption.

#### *Article 11*

Actions taken in furtherance of the present Declaration shall fully respect the national sovereignty and territorial jurisdiction of Member States, as well

as the rights and obligations of Member States under existing treaties and international law, and shall be consistent with human rights and fundamental freedoms as recognized by the United Nations.

### **39. Firearm regulation for purposes of crime prevention and public health and safety\***

*The Economic and Social Council,*

*Recalling* resolution 9 of 7 May 1995 adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995,<sup>1</sup>

*Recalling also* section IV.A of its resolution 1995/27 of 24 July 1995 and its resolution 1996/28 of 24 July 1996,

*Mindful* of the need for effective implementation of those resolutions,

*Taking note* of the report of the Secretary-General on measures to regulate firearms,<sup>2</sup>

*Taking note also* of the findings contained in the draft "United Nations international study on firearm regulation",<sup>3</sup> prepared by the Crime Prevention and Criminal Justice Division of the Secretariat,

*Taking note further* of the work of the Inter-American Drug Abuse Control Commission of the Organization of American States on the question of control of the international movement of illicit firearms and explosives, including the proposal for a model regulation for the control of the international movement of firearms,

1. *Urges* Member States that have not already replied to the questionnaire related to the draft "United Nations international study on firearm regulation"<sup>3</sup> to do so by 30 September 1997;

2. *Requests* the Secretary-General to continue the data collection and dissemination of information on firearm regulation, including the revised survey format referred to in the report of the Expert Group Meeting on Gathering

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\*Economic and Social Council resolution 1997/28.

<sup>1</sup>See A/CONF.169/16/Rev.1, chap. I.

<sup>2</sup>E/CN.15/1997/4 and Corr.1.

<sup>3</sup>E/CN.15/1997/CRP.6.

Information on and Analysis of Firearm Regulation, held at Vienna from 10 to 14 February 1997<sup>4</sup> and the ongoing and regular maintenance of a list of contact persons and organizations in each Member State with the responsibility of providing such information and enhancing the existing database on firearm regulation;

3. *Takes note with appreciation* of the proposal of the Secretary-General to convene an ad hoc meeting of representatives of relevant international organizations<sup>5</sup> with a view to better coordinating the data collection that is necessary for a more complete understanding of the issues affecting firearm regulation;

4. *Requests* the Secretary-General to promote, within existing resources, technical cooperation projects that recognize the relevance of firearm regulation in addressing violence against women, in promoting justice for victims of crime and in addressing the problem of children and youth as victims and perpetrators of crime, and in re-establishing or strengthening the rule of law in post-conflict peacekeeping projects;

5. *Encourages* Member States to consider, where they have not yet done so, regulatory approaches to the civilian use of firearms that include the following common elements:

(a) Regulations relating to firearm safety and storage;

(b) Appropriate penalties and/or administrative sanctions for offences involving the misuse or unlawful possession of firearms;

(c) Mitigation of or exemption from criminal responsibility, amnesty or similar programmes that individual Member States determine to be appropriate, so as to encourage citizens to surrender illegal, unsafe or unwanted firearms;

(d) A licensing system, including the licensing of firearm businesses, to ensure that firearms are not distributed to persons convicted of serious crimes or other persons who are prohibited under the laws of the respective Member States from owning or possessing firearms;

(e) A record-keeping system for firearms, including a system for the commercial distribution of firearms and a requirement for appropriate marking of firearms at manufacture and upon import, to assist criminal investigations, discourage theft and ensure that firearms are distributed only to persons who may lawfully own or possess firearms under the laws of the respective Member States;

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<sup>4</sup>E/CN.15/1997/CRP.4.

<sup>5</sup>E/CN.15/1997/20, para. 10.

6. *Requests* the Secretary-General to include in the provisional agendas for the four regional workshops on firearm regulation to be organized in 1997 in accordance with the work plan<sup>6</sup> approved by the Council in its resolution 1996/28, within existing resources or subject to the availability of extrabudgetary funding, the possible development of a United Nations declaration of principles, based on the regulatory approaches suggested above, the collection of comparable information on firearm regulation, the provision of technical assistance, training and information-sharing and the need for implementing bilateral, regional or multilateral agreements or arrangements on combating illicit trafficking in firearms, in order to ensure that all Member States have sufficient capacity in the area of firearm regulation, and requests that interested non-governmental organizations should each be allowed to make a statement at the regional workshops on subjects covered in their agenda but should not be permitted to attend workshop meetings where sensitive law enforcement issues will be discussed;

7. *Also requests* the Secretary-General to seek the views of Member States, the institutes constituting the United Nations Crime Prevention and Criminal Justice Programme network, relevant United Nations entities and inter-governmental and non-governmental organizations on the development of a declaration of principles, based on the regulatory approaches suggested above, and to submit a report containing the views received to the Commission on Crime Prevention and Criminal Justice at its seventh session;

8. *Further requests* the Secretary-General to explore ways and means of developing a programme of continuing education for criminal justice administrators and of public education and awareness-building in relation to the links between firearms in civilian use and the unacceptable levels of violence in cities, communities and families and to disseminate that information in order to encourage Member States to undertake similar programmes;

9. *Encourages* Member States to ensure the tracing of illegal firearms and accurate and prompt responses to requests from other Member States for firearm-tracing;

10. *Invites* the International Criminal Police Organization to review the firearm- and ballistic-tracing capabilities of its member States, with a view to advising the Commission on Crime Prevention and Criminal Justice on the adequacy of those capabilities, and to clarify and compile common firearm terminology and descriptions, preferably in the form of an index, in order to

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<sup>6</sup>Official Records of the Economic and Social Council, 1996, Supplement No. 10 and corrigenda (E/1996/30 and Corr.1-3), para. 73 (g).

enhance the sharing of investigative information on illegal firearms among Member States;

11. *Invites* the United Nations Panel of Governmental Experts on Small Arms, established in pursuance of General Assembly resolution 50/70 B of 12 December 1995, and other relevant specialized intergovernmental organizations to provide the Commission with available information about the results of their work in relation to the proliferation of illegal military small arms in Member States;

12. *Invites* the Customs Cooperation Council, also called the World Customs Organization, to review international customs practices relating to the movement of firearms for civilian purposes and worldwide trends in firearm smuggling, including such matters as import and export licensing, monitoring, standard protocols, including a common import and export certificate, and an advance notification system, with a view to advising the Commission on the effectiveness of controls concerning the international movement of firearms;

13. *Invites* other relevant intergovernmental organizations to re-analyse their data on issues related to firearms, within the scope of the United Nations international study on firearm regulation, with a view to informing the Commission, through the Secretary-General, of possible steps towards improving the collection and analysis of the related interdisciplinary statistics;

14. *Reiterates its request* to the Secretary-General to publish the “United Nations international study on firearm regulation”, as scheduled in the work plan approved in Council resolution 1996/28, and to disseminate the study as widely as possible;

15. *Encourages* Member States to disseminate the report of the Secretary-General on measures to regulate firearms<sup>2</sup> and the “United Nations international study on firearm regulation” in their own countries and to consider the usefulness of the report and the study in evaluating whether to undertake new initiatives in firearm regulation;

16. *Requests* the Secretary-General to prepare a report on the implementation of the present resolution and to submit it to the Commission at its seventh session;

17. *Decides* that the Commission on Crime Prevention and Criminal Justice should consider the item entitled “Measures to regulate firearms” at its seventh session, drawing on the report of the Secretary-General referred to in paragraph 16 above.

## **40. Guidelines for the Prevention of Crime\***

### **I. INTRODUCTION**

1. There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimization, but also promote community safety and contribute to the sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens. It has long-term benefits in terms of reducing the costs associated with the formal criminal justice system, as well as other social costs that result from crime. Crime prevention offers opportunities for a humane and more cost-effective approach to the problems of crime. The present Guidelines outline the necessary elements for effective crime prevention.

### **II. CONCEPTUAL FRAME OF REFERENCE**

2. It is the responsibility of all levels of government to create, maintain and promote a context within which relevant governmental institutions and all segments of civil society, including the corporate sector, can better play their part in preventing crime.

3. For the purposes of the present Guidelines, “crime prevention” comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes. The enforcement of laws, sentences and corrections, while also performing preventive functions, falls outside the scope of the Guidelines, given the comprehensive coverage of the subject in other United Nations instruments.

4. The present Guidelines address crime and its effects on victims and society and take into account the growing internationalization of criminal activities.

5. Community involvement and cooperation/partnerships represent important elements of the concept of crime prevention set out herein. While the term “community” may be defined in different ways, its essence in this context is the involvement of civil society at the local level.

6. Crime prevention encompasses a wide range of approaches, including those which:

(a) Promote the well-being of people and encourage pro-social behaviour through social, economic, health and educational measures, with a particular

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\*Economic and Social Council resolution 2002/13, annex.

emphasis on children and youth, and focus on the risk and protective factors associated with crime and victimization (prevention through social development or social crime prevention);

(b) Change the conditions in neighbourhoods that influence offending, victimization and the insecurity that results from crime by building on the initiatives, expertise and commitment of community members (locally based crime prevention);

(c) Prevent the occurrence of crimes by reducing opportunities, increasing risks of being apprehended and minimizing benefits, including through environmental design, and by providing assistance and information to potential and actual victims (situational crime prevention);

(d) Prevent recidivism by assisting in the social reintegration of offenders and other preventive mechanisms (reintegration programmes).

### III. BASIC PRINCIPLES

#### *Government leadership*

7. All levels of government should play a leadership role in developing effective and humane crime prevention strategies and in creating and maintaining institutional frameworks for their implementation and review.

#### *Socio-economic development and inclusion*

8. Crime prevention considerations should be integrated into all relevant social and economic policies and programmes, including those addressing employment, education, health, housing and urban planning, poverty, social marginalization and exclusion. Particular emphasis should be placed on communities, families, children and youth at risk.

#### *Cooperation/partnerships*

9. Cooperation/partnerships should be an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them. This includes partnerships working across ministries and between authorities, community organizations, non-governmental organizations, the business sector and private citizens.

*Sustainability/accountability*

10. Crime prevention requires adequate resources, including funding for structures and activities, in order to be sustained. There should be clear accountability for funding, implementation and evaluation and for the achievement of planned results.

*Knowledge base*

11. Crime prevention strategies, policies, programmes and actions should be based on a broad, multidisciplinary foundation of knowledge about crime problems, their multiple causes and promising and proven practices.

*Human rights/rule of law/culture of lawfulness*

12. The rule of law and those human rights which are recognized in international instruments to which Member States are parties must be respected in all aspects of crime prevention. A culture of lawfulness should be actively promoted in crime prevention.

*Interdependency*

13. National crime prevention diagnoses and strategies should, where appropriate, take account of links between local criminal problems and international organized crime.

*Differentiation*

14. Crime prevention strategies should, when appropriate, pay due regard to the different needs of men and women and consider the special needs of vulnerable members of society.

IV. ORGANIZATION, METHODS AND APPROACHES

15. Recognizing that all States have unique governmental structures, this section sets out tools and methodologies that Governments and all segments of civil society should consider in developing strategies to prevent crime and reduce victimization. It draws on international good practice.

### *Community involvement*

16. In some of the areas listed below, Governments bear the primary responsibility. However, the active participation of communities and other segments of civil society is an essential part of effective crime prevention. Communities, in particular, should play an important part in identifying crime prevention priorities, in implementation and evaluation, and in helping to identify a sustainable resource base.

#### **A. Organization**

##### *Government structures*

17. Governments should include prevention as a permanent part of their structures and programmes for controlling crime, ensuring that clear responsibilities and goals exist within government for the organization of crime prevention, by, inter alia:

- (a) Establishing centres or focal points with expertise and resources;
- (b) Establishing a crime prevention plan with clear priorities and targets;
- (c) Establishing linkages and coordination between relevant government agencies or departments;
- (d) Fostering partnerships with non-governmental organizations, the business, private and professional sectors and the community;
- (e) Seeking the active participation of the public in crime prevention by informing it of the need for and means of action and its role.

##### *Training and capacity-building*

18. Governments should support the development of crime prevention skills by:

- (a) Providing professional development for senior officials in relevant agencies;
- (b) Encouraging universities, colleges and other relevant educational agencies to offer basic and advanced courses, including in collaboration with practitioners;
- (c) Working with the educational and professional sectors to develop certification and professional qualifications;
- (d) Promoting the capacity of communities to develop and respond to their needs.

### *Supporting partnerships*

19. Governments and all segments of civil society should support the principle of partnership, where appropriate, including:

- (a) Advancing knowledge of the importance of this principle and the components of successful partnerships, including the need for all of the partners to have clear and transparent roles;
- (b) Fostering the formation of partnerships at different levels and across sectors;
- (c) Facilitating the efficient operation of partnerships.

### *Sustainability*

20. Governments and other funding bodies should strive to achieve sustainability of demonstrably effective crime prevention programmes and initiatives through, inter alia:

- (a) Reviewing resource allocation to establish and maintain an appropriate balance between crime prevention and the criminal justice and other systems, to be more effective in preventing crime and victimization;
- (b) Establishing clear accountability for funding, programming and coordinating crime prevention initiatives;
- (c) Encouraging community involvement in sustainability.

## **B. Methods**

### *Knowledge base*

21. As appropriate, Governments and/or civil society should facilitate knowledge-based crime prevention by, inter alia:

- (a) Providing the information necessary for communities to address crime problems;
- (b) Supporting the generation of useful and practically applicable knowledge that is scientifically reliable and valid;
- (c) Supporting the organization and synthesis of knowledge and identifying and addressing gaps in the knowledge base;
- (d) Sharing that knowledge, as appropriate, among, inter alia, researchers, policymakers, educators, practitioners from other relevant sectors and the wider community;
- (e) Applying this knowledge in replicating successful interventions, developing new initiatives and anticipating new crime problems and prevention opportunities;

(f) Establishing data systems to help manage crime prevention more cost-effectively, including by conducting regular surveys of victimization and offending;

(g) Promoting the application of those data in order to reduce repeat victimization, persistent offending and areas with a high level of crime.

### *Planning interventions*

22. Those planning interventions should promote a process that includes:

(a) A systematic analysis of crime problems, their causes, risk factors and consequences, in particular at the local level;

(b) A plan that draws on the most appropriate approach and adapts interventions to the specific local problem and context;

(c) An implementation plan to deliver appropriate interventions that are efficient, effective and sustainable;

(d) Mobilizing entities that are able to tackle causes;

(e) Monitoring and evaluation.

### *Support evaluation*

23. Governments, other funding bodies and those involved in programme development and delivery should:

(a) Undertake short- and longer-term evaluation to test rigorously what works, where and why;

(b) Undertake cost-benefit analyses;

(c) Assess the extent to which action results in a reduction in levels of crime and victimization, in the seriousness of crime and in fear of crime;

(d) Systematically assess the outcomes and unintended consequences, both positive and negative, of action, such as a decrease in crime rates or the stigmatization of individuals and/or communities.

## **C. Approaches**

24. This section expands upon the social development and situational crime prevention approaches. It also outlines approaches that Governments and civil society should endeavour to follow in order to prevent organized crime.

### *Social development*

25. Governments should address the risk factors of crime and victimization by:

(a) Promoting protective factors through comprehensive and non-stigmatizing social and economic development programmes, including health, education, housing and employment;

(b) Promoting activities that redress marginalization and exclusion;

(c) Promoting positive conflict resolution;

(d) Using education and public awareness strategies to foster a culture of lawfulness and tolerance while respecting cultural identities.

### *Situational*

26. Governments and civil society, including, where appropriate, the corporate sector, should support the development of situational crime prevention programmes by, inter alia:

(a) Improved environmental design;

(b) Appropriate methods of surveillance that are sensitive to the right to privacy;

(c) Encouraging the design of consumer goods to make them more resistant to crime;

(d) Target “hardening” without impinging upon the quality of the built environment or limiting free access to public space;

(e) Implementing strategies to prevent repeat victimization.

### *Prevention of organized crime*

27. Governments and civil society should endeavour to analyse and address the links between transnational organized crime and national and local crime problems by, inter alia:

(a) Reducing existing and future opportunities for organized criminal groups to participate in lawful markets with the proceeds of crime, through appropriate legislative, administrative or other measures;

(b) Developing measures to prevent the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(c) Designing crime prevention strategies, where appropriate, to protect socially marginalized groups, especially women and children, who are vulnerable to the action of organized criminal groups, including trafficking in persons and smuggling of migrants.

## V. INTERNATIONAL COOPERATION

### *Standards and norms*

28. In promoting international action in crime prevention, Member States are invited to take into account the main international instruments related to human rights and crime prevention to which they are parties, such as the Convention on the Rights of the Child (General Assembly resolution 44/25, annex), the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), the guidelines for cooperation and technical assistance in the field of urban crime prevention (resolution 1995/9, annex), as well as the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex) and the United Nations Convention against Transnational Organized Crime and the Protocols thereto (General Assembly resolution 55/25, annexes I-III, and resolution 55/255, annex).

### *Technical assistance*

29. Member States and relevant international funding organizations should provide financial and technical assistance, including capacity-building and training, to developing countries and countries with economies in transition, communities and other relevant organizations for the implementation of effective crime prevention and community safety strategies at the regional, national and local levels. In that context, special attention should be given to research and action on crime prevention through social development.

### *Networking*

30. Member States should strengthen or establish international, regional and national crime prevention networks with a view to exchanging proven and promising practices, identifying elements of their transferability and making such knowledge available to communities throughout the world.

### *Links between transnational and local crime*

31. Member States should collaborate to analyse and address the links between transnational organized crime and national and local crime problems.

*Prioritizing crime prevention*

32. The Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat, the United Nations Crime Prevention and Criminal Justice Programme network of institutes and other relevant United Nations entities should include in their priorities crime prevention as set out in these Guidelines, set up a coordination mechanism and establish a roster of experts to undertake needs assessment and to provide technical advice.

*Dissemination*

33. Relevant United Nations bodies and other organizations should cooperate to produce crime prevention information in as many languages as possible, using both print and electronic media.

## II. Victims

### 41. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power\*

#### A. *Victims of crime*

1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

#### *Access to justice and fair treatment*

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or

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\*General Assembly resolution 40/34, annex.

informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

### *Restitution*

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

### *Compensation*

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

### *Assistance*

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

### ***B. Victims of abuse of power***

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

## **42. Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power\***

*The Economic and Social Council,*

*Bearing in mind* that the General Assembly, in its resolution 40/34 of 29 November 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, set forth in the annex to the resolution, which had been approved by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>1</sup>

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\*Economic and Social Council resolution 1989/57.

<sup>1</sup>See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. C.

*Recalling* the request made to Member States to take the necessary steps to give effect to the provisions of the Declaration so as to secure for victims of crime and abuse of power the rights due to them,

*Taking into account* section III of its resolution 1986/10 of 21 May 1986, in which it recommended that continued attention be given to the implementation of the Declaration with a view to developing the cooperation of Governments, intergovernmental and non-governmental organizations and the public in securing justice for victims and in promoting integrated action on behalf of victims at the national, regional and international levels,

*Noting* that the first report of the Secretary-General concerning measures taken to implement the Declaration indicates a number of areas which require further attention,<sup>2</sup>

*Noting with satisfaction* the adoption of the European Convention on the Compensation of Victims of Violent Crimes by the Council of Europe on 24 November 1983 and of the recommendation on assistance to victims and the prevention of victimization by the Council of Europe on 17 September 1987, as well as the creation by some Member States of national funds for the compensation of victims of intentional and non-intentional offences,

*Recognizing* that effective implementation of the provisions of the Declaration in respect of victims of abuse of power is sometimes hampered by problems of jurisdiction and by difficulties in identifying and halting such abuses, owing, inter alia, to the transnational nature of the victimization,

*Noting with appreciation* the significant efforts made since the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to follow up and give effect to the Declaration, including the report prepared by an ad hoc committee of experts at the International Institute of Higher Studies in Criminal Sciences at Syracuse, Italy in May 1986, as revised at a colloquium of leading non-governmental organizations active in crime prevention, criminal justice and the treatment of offenders and victims, held at Milan, Italy, in November and December 1987,

1. *Recommends* that the Secretary-General consider, subject to the provision of extrabudgetary funds and consideration by the Committee on Crime

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<sup>2</sup>E/AC.57/1988/3.

Prevention and Control, the preparation, publication and dissemination of a guide for criminal justice practitioners and others engaged in similar activities, taking into account the work already done on the subject;

2. *Also recommends* that Member States take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, through:

(a) The adoption and implementation of the provisions contained in the Declaration in their national justice systems in accordance with their constitutional process and domestic practice;

(b) The introduction of legislation to simplify access by victims to the justice system in order to obtain compensation and restitution;

(c) The examination of methods of assisting victims, including adequate redress for the actual harm or damage inflicted, identifying limitations and exploring ways by which these may be overcome, to ensure that they meet effectively the needs of victims;

(d) The establishment of measures to protect victims from abuse, calumny or intimidation in the course or as a result of any criminal or other proceedings related to the crime, including effective remedies, should such abuses occur;

3. *Further recommends* that Member States, in collaboration with relevant services, agencies and organizations, endeavour:

(a) To encourage the provision of assistance and support services to victims of crime, with due regard to different social, cultural and legal systems, taking into account the experience of different models and methods of service delivery and the current state of knowledge concerning victimization, including its emotional impact, and the consequent need for service organizations to extend offers of assistance to victims;

(b) To develop suitable training for all who provide services to victims to enable them to develop the skills and understanding needed to help victims cope with the emotional impact of crime and overcome bias, where it may exist, and to provide factual information;

(c) To establish effective channels of communication between all those who are involved with victims, organize courses and meetings and disseminate information to enable them to prevent further victimization as a result of the workings of the system;

(d) To ensure that victims are kept informed of their rights and opportunities with respect to redress from the offender, from third parties or from the

State, as well as of the progress of the relevant criminal proceedings and of any opportunities that may be involved;

(e) Where informal mechanisms for the resolution of disputes exist, or have been newly introduced, to ensure, if possible and with due consideration to established legal principles, that the wishes and sensibilities of victims are fully taken into consideration and that the outcome is at least as beneficial for the victims as would have been the case if the formal system had been used;

(f) To establish a monitoring and research programme to keep the needs of victims and the effectiveness of services provided to them under constant review; such a programme might include the organization of regular meetings and conferences of representatives of relevant sectors of the criminal justice system and other bodies concerned with the needs of victims, in order to examine the extent to which existing law, practice and victim services are responsive to the needs of victims;

(g) To undertake studies to identify the needs of victims in cases of unreported crime and make the appropriate services available to them;

4. *Recommends* that, at the national, regional and international levels, all appropriate steps be taken to develop international cooperation in criminal matters, inter alia, to ensure that those who suffer victimization in another State receive effective help, both immediately following the crime and on their return to their own country of residence or nationality, in protecting their interests and obtaining adequate restitution or compensation and support services, as necessary;

5. *Recognizes* the need to work out in greater detail part B of the Declaration and to develop international means for preventing the abuse of power and for providing redress for victims of such abuse where national channels may be insufficient, and recommends that appropriate steps be taken to this effect;

6. *Requests* the Secretary-General to organize, subject to the availability of extrabudgetary funds, a meeting of experts to formulate specific proposals for the implementation of General Assembly resolution 40/34 and the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power, insofar as those documents apply to the abuse of power, in time for the proposals to be submitted to the Committee on Crime Prevention and Control at its eleventh session and for consideration by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

### **43. Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power\***

#### **I. CAPACITY-BUILDING**

1. The Secretary-General,<sup>1</sup> Member States and intergovernmental and non-governmental organizations active in victim assistance and redress are requested<sup>2</sup> further to incorporate victim assistance modules in technical cooperation projects and to assist interested Member States in applying the Guide for Policy Makers on the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>3</sup> and the Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>4</sup> through training courses, seminars, study tours, fellowships and advisory services, in order to help resolve problems in the implementation of the Declaration.

2. The Secretary-General is requested to develop, in collaboration with relevant intergovernmental and non-governmental organizations, criteria for the selection of technical cooperation projects for the establishment or the further development of victim services.

3. Member States, intergovernmental and non-governmental organizations and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network are invited to assist the Secretary-General in updating, with an appropriate interval, the Guide and the Handbook, giving special attention to practical national experiences, legislative information and case law concerning special victim groups, such as victims and witnesses of organized crime, terrorism, economic and environmental crime or bias or hate crimes and victims of violence against women and children.

4. The Secretary-General, together with intergovernmental and non-governmental organizations and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, is requested to assist interested

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\*Economic and Social Council resolution 1998/21, annex.

<sup>1</sup>In the present plan of action, references to the Secretary-General are understood as signifying primarily the United Nations Office on Drugs and Crime and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network.

<sup>2</sup>When the Secretary-General is requested to carry out activities, they should be performed within existing resources or through extrabudgetary funding.

<sup>3</sup>E/CN.15/1998/CRP.4.

<sup>4</sup>E/CN.15/1998/CRP.4/Add.1.

Member States in the development of reparative and restorative policies for victims of violations of human rights and humanitarian law, as part of national reconstruction and reconciliation, and in the promotion of justice and the rule of law.

## II. INFORMATION-GATHERING, INFORMATION EXCHANGE AND RESEARCH

5. The Secretary-General, in cooperation with interested Member States and non-governmental organizations, is requested to support the international database on practical national and regional experiences in providing technical assistance in this field and on bibliographic and legislative information, including case law relevant to this field.

6. Member States and non-governmental organizations are invited to provide information for the database on projects, new programmes, case law and legislation and other relevant guidelines that have been found to be effective and that could serve as models for such developments elsewhere and to help in identifying experts who could assist Member States, upon request, in implementing such projects, programmes and legislation.

7. Member States and intergovernmental and non-governmental organizations are invited to give consideration to the further development and use of methods of gathering data on victimization, such as standardized victimization surveys, including their extension to cover groups of victims such as victims and witnesses of organized crime, terrorism, economic and environmental crime or bias or hate crimes and victims of violence against women, children and migrants.

8. Member States and intergovernmental and non-governmental organizations are invited to promote the evaluation of the efficacy of different forms of providing assistance to victims, the evaluation of the extent to which the criminal justice process takes into consideration the legitimate needs and concerns of victims and the evaluation of different forms of ensuring compensation and restitution to victims.

## III. PREVENTION OF VICTIMIZATION

9. The Secretary-General, together with cooperating institutes and organizations, is invited to study ways in which to provide technical assistance to Member States, upon request, in responding to cases of large-scale victimization, terrorism and man-made catastrophes that are the result of criminal negligence,

ensuring that the necessary emergency assistance is provided, using, where necessary, interdisciplinary and international crisis response teams to help in dealing with the situation and in responding to the needs and rights of the victims.

10. Member States are encouraged to consider the introduction, where necessary, and the strengthening of the work of ombudsmen and civilian review bodies or other complaint mechanisms and means of preventing and investigating possible abuse of power.

11. Member States and non-governmental organizations are encouraged to conduct public information and education campaigns designed to prevent and curtail victimization and re-victimization. Such campaigns should include both general campaigns directed at broad sectors of the population and special campaigns targeting select groups known to be at high risk of such victimization and re-victimization.

12. Member States, in close cooperation with representatives of the mass media, are encouraged to elaborate and implement effectively guidelines for the media aimed at protecting victims and curtailing re-victimization.

#### IV. ACTION AT THE REGIONAL AND INTERNATIONAL LEVELS

13. The Secretary-General, in cooperation with Member States and the regional commissions, is requested to explore the possibility of developing regional mechanisms for monitoring victimization and providing recourse and/or redress for victims.

14. The Secretary-General, in cooperation with the international professional and academic community, is requested to help Member States in identifying lacunae in international criminal law and humanitarian and human rights law concerning the protection and rights of victims and witnesses, with a view to addressing those lacunae.

#### V. COORDINATION OF RELEVANT INITIATIVES

15. The Secretary-General is requested to assist Member States in strengthening coordination arrangements and procedures to foster joint planning and implementation of victim-related activities.

16. The Secretary-General is requested to ensure concerted action, with an appropriate division of responsibilities, among United Nations entities and other entities concerned with promoting the implementation of the Declaration.

17. The Secretary-General is requested to assist Member States, upon request, in the elaboration of joint strategies and the mobilization of support for providing assistance to victims, including wider citizen participation and the promotion of the principles of restorative justice.

#### **44. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime\***

##### **I. OBJECTIVES**

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.

2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.

3. The Guidelines provide a practical framework to achieve the following objectives:

(a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child,<sup>1</sup> by parties to that Convention;

(b) To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

(c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the

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\*Economic and Social Council resolution 2005/20, annex.

<sup>1</sup>General Assembly resolution 44/25, annex.

adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>2</sup>

(d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.

5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.

6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

## II. SPECIAL CONSIDERATIONS

7. The Guidelines were developed:

(a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;

(b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;

(c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;

(d) Reaffirming that every effort must be made to prevent victimization of children, including through implementation of the Guidelines for the Prevention of Crime;<sup>3</sup>

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<sup>2</sup>General Assembly resolution 40/34, annex.

<sup>3</sup>Resolution 2002/13, annex.

(e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;

(f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;

(g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;

(h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;

(i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;

(j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;

(k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

### III. PRINCIPLES

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

(b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race,

ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

(c) *Best interests of the child.* While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:

- (i) *Protection.* Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
- (ii) *Harmonious development.* Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) *Right to participation.* Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

#### IV. DEFINITIONS

9. Throughout these Guidelines, the following definitions apply:

(a) “Child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;

(b) “Professionals” refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers;

(c) “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;

(d) “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.

## V. THE RIGHT TO BE TREATED WITH DIGNITY AND COMPASSION

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child’s private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

## VI. THE RIGHT TO BE PROTECTED FROM DISCRIMINATION

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

## VII. THE RIGHT TO BE INFORMED

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, *inter alia*:

(a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;

(b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which "questioning" will be conducted during the investigation and trial;

(c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;

(d) The specific places and times of hearings and other relevant events;

(e) The availability of protective measures;

(f) The existing mechanisms for review of decisions affecting child victims and witnesses;

(g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

(a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;

(b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

## VIII. THE RIGHT TO BE HEARD AND TO EXPRESS VIEWS AND CONCERNS

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

(a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;

(b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;

(c) Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

## IX. THE RIGHT TO EFFECTIVE ASSISTANCE

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40 to 42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance

should address the child's needs and enable him or her to participate effectively at all stages of the justice process.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

- (a) Child victim and witness specialists to address the child's special needs;
- (b) Support persons, including specialists and appropriate family members to accompany the child during testimony;
- (c) Where appropriate, to appoint guardians to protect the child's legal interests.

## X. THE RIGHT TO PRIVACY

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

## XI. THE RIGHT TO BE PROTECTED FROM HARDSHIP DURING THE JUSTICE PROCESS

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

(a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;

(b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

(c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

(d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.

31. Professionals should also implement measures:

(a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

(b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

## XII. THE RIGHT TO SAFETY

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.

34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

(a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;

(b) Using court-ordered restraining orders supported by a registry system;

(c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;

(d) Placing the accused under house arrest;

(e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

## XIII. THE RIGHT TO REPARATION

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and

legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

#### XIV. THE RIGHT TO SPECIAL PREVENTIVE MEASURES

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

#### XV. IMPLEMENTATION

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

(a) Relevant human rights norms, standards and principles, including the rights of the child;

(b) Principles and ethical duties of their office;

(c) Signs and symptoms that indicate crimes against children;

(d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;

(e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;

(f) Special measures and techniques to assist child victims and witnesses in the justice process;

(g) Cross-cultural and age-related linguistic, religious, social and gender issues;

(h) Appropriate adult-child communication skills;

(i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;

(j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;

(k) Methods to protect and present evidence and to question child witnesses;

(l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.

### III. Violence against women

#### 45. Declaration on the Elimination of Violence against Women\*

*The General Assembly,*

*Recognizing* the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

*Noting* that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Civil and Political Rights,<sup>2</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>2</sup> the Convention on the Elimination of All Forms of Discrimination against Women<sup>3</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>4</sup>

*Recognizing* that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

*Concerned* that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women,<sup>5</sup> in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

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\*General Assembly resolution 48/104.

<sup>1</sup>Resolution 217 A (III).

<sup>2</sup>See resolution 2200 A (XXI), annex.

<sup>3</sup>Resolution 34/180, annex.

<sup>4</sup>Resolution 39/46, annex.

<sup>5</sup>*Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

*Affirming* that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

*Recognizing* that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

*Concerned* that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

*Recalling* the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

*Recalling also* Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

*Welcoming* the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

*Alarmed* that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

*Convinced* that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

*Solemnly proclaims* the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

### *Article 1*

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

### *Article 2*

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

### *Article 3*

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

(a) The right to life;<sup>6</sup>

(b) The right to equality;<sup>7</sup>

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<sup>6</sup>Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 6.

<sup>7</sup>International Covenant on Civil and Political Rights, article 26.

- (c) The right to liberty and security of person;<sup>8</sup>
- (d) The right to equal protection under the law;<sup>7</sup>
- (e) The right to be free from all forms of discrimination;<sup>7</sup>
- (f) The right to the highest standard attainable of physical and mental health;<sup>9</sup>
- (g) The right to just and favourable conditions of work;<sup>10</sup>
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.<sup>11</sup>

#### *Article 4*

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

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<sup>8</sup>Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 9.

<sup>9</sup>International Covenant on Economic, Social and Cultural Rights, article 12.

<sup>10</sup>Universal Declaration of Human Rights, article 23; and International Covenant on Economic, Social and Cultural Rights, articles 6 and 7.

<sup>11</sup>Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

#### *Article 5*

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, *inter alia*:

(a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

(b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;

(c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;

(d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

(e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

(f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;

(g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

(h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

### Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

## **46. Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice\***

1. The multifaceted nature of violence against women suggests that different strategies are required for different manifestations of violence and the various settings in which it occurs. The practical measures, strategies and activities described below can be introduced in the field of crime prevention and criminal justice to deal with the problem of violence against women. Except where otherwise specified, the term “women” encompasses “girl children”.

2. Recalling the definition of violence against women contained in the Declaration on the Elimination of Violence against Women<sup>1</sup> and reiterated in the Platform for Action adopted by the Fourth World Conference on Women,<sup>2</sup> the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice build upon the measures adopted by Governments in the Platform for Action, bearing in mind that some groups of women are especially vulnerable to violence.

3. The Model Strategies and Practical Measures specifically acknowledge the need for an active policy of bringing into the mainstream a gender perspective

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\*General Assembly resolution 52/86, annex.

<sup>1</sup>General Assembly resolution 48/104.

<sup>2</sup>*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution I, annex II.

in all policies and programmes related to violence against women and of achieving gender equality and equal and fair access to justice, as well as establishing the goal of gender balance in areas of decision-making related to the elimination of violence against women. The Model Strategies and Practical Measures should be applied as guidelines in a manner consistent with relevant international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women,<sup>3</sup> the Convention on the Rights of the Child<sup>4</sup> and the International Covenant on Civil and Political Rights,<sup>5</sup> with a view to furthering their fair and effective implementation.

4. The Model Strategies and Practical Measures should be implemented by Member States and other entities, without prejudice to the principle of gender equality before the law, in order to facilitate the efforts by Governments to deal with the various manifestations of violence against women within the criminal justice system.

5. The Model Strategies and Practical Measures are aimed at providing de jure and de facto equality between women and men. The Model Strategies and Practical Measures do not give preferential treatment to women but are aimed at ensuring that any inequalities or forms of discrimination that women face in achieving access to justice, particularly in respect of acts of violence, are redressed.

## I. CRIMINAL LAW

6. Member States are urged:

(a) To periodically review, evaluate and revise their laws, codes and procedures, especially their criminal laws, to ensure their value and effectiveness in eliminating violence against women and to remove provisions that allow for or condone violence against women;

(b) To review, evaluate and revise their criminal and civil laws, within the framework of their national legal systems, in order to ensure that all acts of violence against women are prohibited and, if not, to adopt measures to do so;

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<sup>3</sup>Resolution 34/180, annex.

<sup>4</sup>Resolution 44/25, annex.

<sup>5</sup>See resolution 2200 A (XXI), annex.

(c) To review, evaluate and revise their criminal laws in order to ensure that:

- (i) Persons who are brought before the courts on judicial matters in respect of violent crimes or who are convicted of such crimes can be restricted in their possession and use of firearms and other regulated weapons, within the framework of their national legal systems;
- (ii) Individuals can be prohibited or restrained, within the framework of their national legal systems, from harassing, intimidating or threatening women.

## II. CRIMINAL PROCEDURE

7. Member States are urged to review, evaluate and revise their criminal procedure, as appropriate, in order to ensure that:

(a) The police have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women, including confiscation of weapons;

(b) The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence;

(c) Women subjected to violence have an opportunity to testify in court proceedings equal to that of other witnesses and that measures are available to facilitate such testimony and to protect their privacy;

(d) Rules and principles of defence do not discriminate against women and such defences as honour or provocation do not allow perpetrators of violence against women to escape all criminal responsibility;

(e) Perpetrators who commit acts of violence against women while voluntarily under the influence of alcohol or drugs are not absolved of all criminal or other responsibility;

(f) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law;

(g) Courts, subject to the constitution of their State, have the authority to issue protection and restraining orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders;

(h) Measures can be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation;

(i) Safety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation.

### III. POLICE

8. Member States are urged, within the framework of their national legal systems:

(a) To ensure that the applicable provisions of laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts of violence against women are recognized and responded to accordingly by the criminal justice system;

(b) To develop investigative techniques that do not degrade women subjected to violence and that minimize intrusion into their lives, while maintaining standards for the collection of the best evidence;

(c) To ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim and others related through family, socially or otherwise, and that these procedures also prevent further acts of violence;

(d) To empower the police to respond promptly to incidents of violence against women;

(e) To ensure that the exercise of police powers is undertaken according to the rule of law and codes of conduct and that the police may be held accountable for any infringement thereof;

(f) To encourage women to join police forces, including at the operational level.

### IV. SENTENCING AND CORRECTION

9. Member States are urged, as appropriate:

(a) To review, evaluate and revise sentencing policies and procedures in order to ensure that they meet the goals of:

(i) Holding offenders accountable for their acts related to violence against women;

(ii) Stopping violent behaviour;

- (iii) Taking into account the impact on victims and their family members of sentences imposed on perpetrators who are members of their families;
  - (iv) Promoting sanctions that are comparable to those for other violent crimes;
- (b) To ensure that a woman subjected to violence is notified of any release of the offender from detention or imprisonment where the safety of the victim in such disclosure outweighs invasion of the offender's privacy;
- (c) To take into account in the sentencing process the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements where such practices are permitted by law;
- (d) To make available to the courts through legislation a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence;
- (e) To ensure that the sentencing judge is encouraged to recommend treatment of the offender at the time of sentencing;
- (f) To ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason;
- (g) To develop and evaluate offender treatment programmes for different types of offenders and offender profiles;
- (h) To protect the safety of victims and witnesses before, during and after criminal proceedings.

## V. VICTIM SUPPORT AND ASSISTANCE

10. Member States are urged, as appropriate:

- (a) To make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings;
- (b) To encourage and assist women subjected to violence in lodging and following through on formal complaints;
- (c) To ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State;

(d) To provide for court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair processing of cases;

(e) To establish a registration system for judicial protection and restraining orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force.

## VI. HEALTH AND SOCIAL SERVICES

11. Member States, in cooperation with the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(a) To establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation for women and their children who are at risk of becoming or who have been victims of violence;

(b) To establish, fund and coordinate services such as toll-free information lines, professional multidisciplinary counselling and crisis intervention services and support groups in order to benefit women who are victims of violence and their children;

(c) To design and sponsor programmes to caution against and prevent alcohol and substance abuse, given the frequent presence of alcohol and substance abuse in incidents of violence against women;

(d) To establish better linkages between medical services, both private and emergency, and criminal justice agencies for purposes of reporting, recording and responding to acts of violence against women;

(e) To develop model procedures to help participants in the criminal justice system to deal with women subjected to violence;

(f) To establish, where possible, specialized units with persons from relevant disciplines especially trained to deal with the complexities and victim sensitivities involved in cases of violence against women.

## VII. TRAINING

12. Member States, in cooperation with non-governmental organizations, including organizations seeking women's equality, and in collaboration with relevant professional associations, are urged, as appropriate:

(a) To provide for or to encourage mandatory cross-cultural and gender-sensitivity training modules for police, criminal justice officials, practitioners and professionals involved in the criminal justice system that deal with the unacceptability of violence against women, its impact and consequences and that promote an adequate response to the issue of violence against women;

(b) To ensure adequate training, sensitivity and education of police, criminal justice officials, practitioners and professionals involved in the criminal justice system regarding all relevant human rights instruments;

(c) To encourage professional associations to develop enforceable standards of practice and behaviour, which promote justice and equality for women, for practitioners involved in the criminal justice system.

## VIII. RESEARCH AND EVALUATION

13. Member States and the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, relevant entities of the United Nations system, other relevant international organizations, research institutes and non-governmental organizations, including organizations seeking women's equality, are urged, as appropriate:

(a) To develop crime surveys on the nature and extent of violence against women;

(b) To gather data and information on a gender-disaggregated basis for analysis and use, together with existing data, in needs assessment, decision-making and policymaking in the field of crime prevention and criminal justice, in particular concerning:

- (i) The different forms of violence against women, its causes and consequences;
- (ii) The extent to which economic deprivation and exploitation are linked to violence against women;
- (iii) The relationship between the victim and the offender;
- (iv) The rehabilitative or anti-recidivistic effect of various types of intervention on the individual offender and on the reduction of violence against women;
- (v) The use of firearms, drugs and alcohol, particularly in cases of violence against women in situations of domestic violence;
- (vi) The relationship between victimization or exposure to violence and subsequent violent activity;

(c) To monitor and issue annual reports on the incidence of violence against women, arrest and clearance rates, prosecution and case disposition of the offenders;

(d) To evaluate the efficiency and effectiveness of the criminal justice system in fulfilling the needs of women subjected to violence.

## IX. CRIME PREVENTION MEASURES

14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(a) To develop and implement relevant and effective public awareness, public education and school programmes that prevent violence against women by promoting equality, cooperation, mutual respect and shared responsibilities between women and men;

(b) To develop multidisciplinary and gender-sensitive approaches within public and private entities that participate in the elimination of violence against women, especially through partnerships between law enforcement officials and services specialized in the protection of women victims of violence;

(c) To set up outreach programmes for offenders or persons identified as potential offenders in order to promote the peaceful resolution of conflicts, the management and control of anger and attitude modification about gender roles and relations;

(d) To set up outreach programmes and offer information to women, including victims of violence, about gender roles, the human rights of women and the social, health, legal and economic aspects of violence against women, in order to empower women to protect themselves against all forms of violence;

(e) To develop and disseminate information on the different forms of violence against women and the availability of programmes to deal with that problem, including programmes concerning the peaceful resolution of conflicts, in a manner appropriate to the audience concerned, including in educational institutions at all levels;

(f) To support initiatives of organizations seeking women's equality and of non-governmental organizations to raise public awareness of the issue of violence against women and to contribute to its elimination.

15. Member States and the media, media associations, media self-regulatory bodies, schools and other relevant partners, while respecting the freedom of the

media, are urged, as appropriate, to develop public awareness campaigns and appropriate measures and mechanisms, such as codes of ethics and self-regulatory measures on media violence, aimed at enhancing respect for the rights of women and discouraging both discrimination against women and stereotyping of women.

## X. INTERNATIONAL COOPERATION

16. Member States and United Nations bodies and institutes are urged, as appropriate:

(a) To exchange information concerning successful intervention models and preventive programmes in eliminating violence against women and to compile a directory of those models;

(b) To cooperate and collaborate at the regional and international levels with relevant entities to prevent violence against women and to promote measures to effectively bring perpetrators to justice, through mechanisms of international cooperation and assistance, in accordance with national law;

(c) To contribute to and support the United Nations Development Fund for Women in its activities to eliminate violence against women.

17. Member States are urged:

(a) To limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women to those that are formulated as precisely and as narrowly as possible and that are not incompatible with the object and purpose of the Convention;

(b) To condemn all violations of the human rights of women in situations of armed conflict, to recognize them as being violations of international human rights and humanitarian law and to call for a particularly effective response to violations of that kind, including, in particular, murder, systematic rape, sexual slavery and forced pregnancy;

(c) To work actively towards ratification of or accession to the Convention on the Elimination of All Forms of Discrimination against Women for the States that are still not parties to it, so that universal ratification can be achieved by the year 2000;

(d) To give full consideration to integrating a gender perspective in the drafting of the statute of the international criminal court, particularly in respect of women who are victims of violence;

(e) To cooperate with and assist the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and

consequences in the performance of his or her mandated tasks and duties, to supply all information requested and to respond to the Special Rapporteur's visits and communications.

## XI. FOLLOW-UP ACTIVITIES

18. Member States, United Nations bodies, subject to the availability of extra-budgetary funds, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, other relevant international organizations, research institutes and non-governmental organizations, including organizations seeking women's equality, are urged, as appropriate:

(a) To encourage the translation of the Model Strategies and Practical Measures into local languages and to ensure its wide dissemination for use in training and education programmes;

(b) To utilize the Model Strategies and Practical Measures as a basis, a policy reference and a practical guide for activities aimed at eliminating violence against women;

(c) To assist Governments, at their request, in reviewing, evaluating and revising their criminal justice systems, including their criminal legislation, on the basis of the Model Strategies and Practical Measures;

(d) To support the technical cooperation activities of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network in eliminating violence against women;

(e) To develop coordinated national, regional and subregional plans and programmes to put the Model Strategies and Practical Measures into effect;

(f) To design standard training programmes and manuals for the police and criminal justice officials, based on the Model Strategies and Practical Measures;

(g) To periodically review and monitor, at the national and international levels, progress made in terms of plans, programmes and initiatives to eliminate violence against women in the context of the Model Strategies and Practical Measures.

*Part four*

**Good governance, the independence of  
the judiciary and the integrity  
of criminal justice personnel**



# I. Good governance, the independence of the judiciary and the integrity of criminal justice personnel

## 47. Code of Conduct for Law Enforcement Officials\*

### *Article 1*

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

#### *Commentary:*<sup>1</sup>

(a) The term “law enforcement officials”, includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

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\*General Assembly resolution 34/169, annex.

<sup>1</sup>The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different States or regional intergovernmental organizations which would promote the application of the Code.

## Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

### *Commentary:*

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

## Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

### *Commentary:*

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

#### *Article 4*

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

#### *Commentary:*

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

#### *Article 5*

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

#### *Commentary:*

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: “[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments].”

(b) The Declaration defines torture as follows:

“... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”<sup>2</sup>

(c) The term “cruel, inhuman or degrading treatment or punishment” has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

### *Article 6*

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

#### *Commentary:*

(a) “Medical attention”, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

### *Article 7*

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

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<sup>2</sup>First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A.

*Commentary:*

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

*Article 8*

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

*Commentary:*

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term “appropriate authorities or organs vested with reviewing or remedial power” refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

## **48. Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials\***

### **I. APPLICATION OF THE CODE**

#### ***A. General principles***

1. The principles embodied in the Code shall be reflected in national legislation and practice.
2. In order to achieve the aims and objectives set out in article 1 of the Code and its Commentary, the definition of “law enforcement officials” shall be given the widest possible interpretation.
3. The Code shall be made applicable to all law enforcement officials, regardless of their jurisdiction.
4. Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.

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\*Economic and Social Council resolution 1989/61, annex.

### ***B. Specific issues***

1. *Selection, education and training.* The selection, education and training of law enforcement officials shall be given prime importance. Governments shall also promote education and training through a fruitful exchange of ideas at the regional and interregional levels.
2. *Salary and working conditions.* All law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions.
3. *Discipline and supervision.* Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.
4. *Complaints by members of the public.* Particular provisions shall be made, within the mechanisms mentioned under paragraph 3 above, for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public.

## **II. IMPLEMENTATION OF THE CODE**

### ***A. At the national level***

1. The Code shall be made available to all law enforcement officials and competent authorities in their own language.
2. Governments shall disseminate the Code and all domestic laws giving effect to it so as to ensure that the principles and rights contained therein become known to the public in general.
3. In considering measures to promote the application of the Code, Governments shall organize symposiums on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

### ***B. At the international level***

1. Governments shall inform the Secretary-General at appropriate intervals of at least five years on the extent of the implementation of the Code.
2. The Secretary-General shall prepare periodic reports on progress made with respect to the implementation of the Code, drawing also on observations and on the cooperation of specialized agencies and relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council.

3. As part of the reports mentioned above, Governments shall provide to the Secretary-General copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, any other relevant information on its implementation, as well as information on possible difficulties in its application.

4. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

5. The Secretary-General shall make available the Code and the present guidelines to all States and intergovernmental and non-governmental organizations concerned, in all official languages of the United Nations.

6. The United Nations, as part of its advisory services and technical cooperation and development programmes, shall:

(a) Make available to Governments requesting them the services of experts and regional and interregional advisers to assist in implementing the provisions of the Code;

(b) Promote national and regional training seminars and other meetings on the Code and on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

7. The United Nations regional institutes shall be encouraged to organize seminars and training courses on the Code and to carry out research on the extent to which the Code is implemented in the countries of the region as well as the difficulties encountered.

#### **49. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials\***

*Whereas* the work of law enforcement officials<sup>1</sup> is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

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\**Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

<sup>1</sup>In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

*Whereas* a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

*Whereas* law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights<sup>2</sup> and reaffirmed in the International Covenant on Civil and Political Rights,<sup>3</sup>

*Whereas* the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

*Whereas* article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

*Whereas* the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,<sup>4</sup>

*Whereas* the Seventh Congress, in its resolution 14,<sup>5</sup> inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

*Whereas* the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

*Whereas* it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

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<sup>2</sup>General Assembly resolution 217 A (III).

<sup>3</sup>General Assembly resolution 2200 A (XXI), annex.

<sup>4</sup>A/CONF.121/IPM.3, para. 34.

<sup>5</sup>See *Seventh United Nations Congress . . .*, chap. I, sect. E.

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

### *General provisions*

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
  - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
  - (b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

#### *Special provisions*

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

### *Policing unlawful assemblies*

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

### *Policing persons in custody or detention*

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

### *Qualifications, training and counselling*

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

### *Reporting and review procedures*

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

## **50. Basic Principles on the Independence of the Judiciary\***

*Whereas* in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

*Whereas* the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

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\**Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

*Whereas* the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

*Whereas* frequently there still exists a gap between the vision underlying those principles and the actual situation,

*Whereas* the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

*Whereas* rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

*Whereas* judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

*Whereas* the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

*Whereas* it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

### *Independence of the judiciary*

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

#### *Freedom of expression and association*

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

#### *Qualifications, selection and training*

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of

judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

#### *Conditions of service and tenure*

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

#### *Professional secrecy and immunity*

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

#### *Discipline, suspension and removal*

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

## **51. Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary\***

### *Procedure 1*

1. All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice.

### *Procedure 2*

No judge shall be appointed or elected for purposes, or be required to perform services, that are inconsistent with the Basic Principles. No judge shall accept judicial office on the basis of an appointment or election, or perform services, that are inconsistent with the Basic Principles.

### *Procedure 3*

The Basic Principles shall apply to all judges, including, as appropriate, lay judges, where they exist.

### *Procedure 4*

States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of the respective State. Judges, lawyers, members of the executive, the legislature, and the public in general,

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\*Economic and Social Council resolution 1989/60, annex.

shall be informed in the most appropriate manner of the content and the importance of the Basic Principles so that they may promote their application within the framework of the justice system. In particular, States shall make the text of the Basic Principles available to all members of the judiciary.

#### *Procedure 5*

In implementing principles 8 and 12 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to caseloads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.

#### *Procedure 6*

States shall promote or encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its independence.

#### *Procedure 7*

In accordance with Economic and Social Council resolution 1986/10, section V, Member States shall inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced and difficulties and obstacles encountered in their implementation at the national level and the assistance that might be needed from the international community.

#### *Procedure 8*

The Secretary-General shall prepare independent quinquennial reports to the Committee on Crime Prevention and Control on progress made with respect to the implementation of the Basic Principles, on the basis of the information received from Governments under procedure 7, as well as other information available within the United Nations system, including information on the technical cooperation and training provided by institutes, experts and regional and interregional advisers. In the preparation of those reports the Secretary-General

shall also enlist the cooperation of specialized agencies and the relevant inter-governmental organizations and non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council, and take into account the information provided by such agencies and organizations.

#### *Procedure 9*

The Secretary-General shall disseminate the Basic Principles, the present implementing procedures and the periodic reports on their implementation referred to in procedures 7 and 8, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of those documents.

#### *Procedure 10*

The Secretary-General shall ensure the widest possible reference to and use of the text of the Basic Principles and the present implementing procedures by the United Nations in all its relevant programmes and the inclusion of the Basic Principles as soon as possible in the United Nations publication entitled *Human Rights: a Compilation of International Instruments*, in accordance with Economic and Social Council resolution 1986/10, section V.

#### *Procedure 11*

As a part of its technical cooperation programme, the United Nations, in particular the Department of Technical Cooperation for Development of the Secretariat and the United Nations Development Programme, shall:

(a) Assist Governments, at their request, in setting up and strengthening independent and effective judicial systems;

(b) Make available to Governments requesting them, the service of experts and regional and interregional advisers on judicial matters to assist in implementing the Basic Principles;

(c) Enhance research concerning effective measures for implementing the Basic Principles, with emphasis on new developments in that area;

(d) Promote national and regional seminars, as well as other meetings at the professional and non-professional levels, on the role of the judiciary in society, the necessity for its independence, and the importance of implementing the Basic Principles to further those goals;

(e) Strengthen substantive support for the United Nations regional and interregional research and training institutes for crime prevention and criminal justice, as well as other entities within the United Nations system concerned with implementing the Basic Principles.

#### *Procedure 12*

The United Nations regional and interregional research and training institutes for crime prevention and criminal justice as well as other concerned entities within the United Nations system shall assist in the implementation process. They shall pay special attention to ways and means of enhancing the application of the Basic Principles in their research and training programmes, and to providing technical assistance upon the request of Member States. For this purpose, the United Nations institutes, in cooperation with national institutions and intergovernmental and non-governmental organizations concerned, shall develop curricula and training materials based on the Basic Principles and the present implementing procedures, which are suitable for use in legal education programmes at all levels as well as in specialized courses on human rights and related subjects.

#### *Procedure 13*

The regional commissions, the specialized agencies and other entities within the United Nations system as well as other concerned intergovernmental organizations shall become actively involved in the implementation process. They shall inform the Secretary-General of the efforts made to disseminate the Basic Principles, the measures taken to give effect to them and any obstacles and shortcomings encountered. The Secretary-General shall also take steps to ensure that non-governmental organizations in consultative status with the Economic and Social Council become actively involved in the implementation process and the related reporting procedures.

#### *Procedure 14*

The Committee on Crime Prevention and Control shall assist the General Assembly and the Economic and Social Council in following up the present implementing procedures, including periodic reporting under procedures 7 and 8 above. To this end, the Committee shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for them.

The Committee shall make specific recommendations, as appropriate, to the Assembly and the Council and any other relevant United Nations human rights bodies on further action required for the effective implementation of the Basic Principles.

### *Procedure 15*

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other relevant United Nations human rights bodies, as appropriate, with recommendations relating to reports of ad hoc inquiry commissions or bodies, with respect to matters pertaining to the application and implementation of the Basic Principles.

## **52. Basic Principles on the Role of Lawyers\***

*Whereas* in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

*Whereas* the Universal Declaration of Human Rights<sup>1</sup> enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

*Whereas* the International Covenant on Civil and Political Rights<sup>2</sup> proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

*Whereas* the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

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\**Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

<sup>1</sup>General Assembly resolution 217 A (III).

<sup>2</sup>General Assembly resolution 2200 A (XXI), annex.

*Whereas* the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>3</sup> provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

*Whereas* the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

*Whereas* the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

*Whereas* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>4</sup> recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

*Whereas* adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

*Whereas* professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest.

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

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<sup>3</sup>General Assembly resolution 43/173, annex.

<sup>4</sup>General Assembly resolution 40/34, annex.

*Access to lawyers and legal services*

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

*Special safeguards in criminal justice matters*

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

### *Qualifications and training*

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

### *Duties and responsibilities*

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

#### *Guarantees for the functioning of lawyers*

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

*Freedom of expression and association*

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

*Professional associations of lawyers*

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

*Disciplinary proceedings*

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

### **53. Guidelines on the Role of Prosecutors\***

*Whereas* in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

*Whereas* the Universal Declaration of Human Rights<sup>1</sup> enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

*Whereas* frequently there still exists a gap between the vision underlying those principles and the actual situation,

*Whereas* the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

*Whereas* prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

*Whereas* it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

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\**Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex.

<sup>1</sup>General Assembly resolution 217 A (III).

*Whereas* the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

*Whereas* in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>2</sup> the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

*Whereas* the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary,<sup>3</sup> subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

*Whereas* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>4</sup> recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

*Whereas*, in resolution 7 of the Seventh Congress,<sup>5</sup> the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and

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<sup>2</sup>*Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

<sup>3</sup>*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

<sup>4</sup>General Assembly resolution 40/34, annex.

<sup>5</sup>*Seventh United Nations Congress . . .*, sect. E.

the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

### *Qualifications, selection and training*

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

### *Status and conditions of service*

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

### *Freedom of expression and association*

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

### *Role in criminal proceedings*

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant

circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

(c) Keep matters in the possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

#### *Discretionary functions*

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

#### *Alternatives to prosecution*

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to

alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

#### *Relations with other government agencies or institutions*

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

#### *Disciplinary proceedings*

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

#### *Observance of the Guidelines*

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

## **54. International Code of Conduct for Public Officials\***

### **I. GENERAL PRINCIPLES**

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

### **II. CONFLICT OF INTEREST AND DISQUALIFICATION**

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.
5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.
6. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.
7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

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\*General Assembly resolution 51/59, annex.

### III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

### IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

### V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

### VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

## **55. United Nations Declaration against Corruption and Bribery in International Commercial Transactions\***

*The General Assembly,*

*Convinced* that a stable and transparent environment for international commercial transactions in all countries is essential for the mobilization of

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\*General Assembly resolution 51/191, annex.

investment, finance, technology, skills and other important resources across national borders, in order, inter alia, to promote economic and social development and environmental protection,

*Recognizing* the need to promote social responsibility and appropriate standards of ethics on the part of private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions, inter alia, through observance of the laws and regulations of the countries in which they conduct business, and taking into account the impact of their activities on economic and social development and environmental protection,

*Recognizing also* that effective efforts at all levels to combat and avoid corruption and bribery in all countries are essential elements of an improved international business environment, that they enhance fairness and competitiveness in international commercial transactions and form a critical part of promoting transparent and accountable governance, economic and social development and environmental protection in all countries, and that such efforts are especially pressing in the increasingly competitive globalized international economy,

*Solemnly proclaims* the United Nations Declaration against Corruption and Bribery in International Commercial Transactions as set out below.

Member States, individually and through international and regional organizations, taking actions subject to each State's own constitution and fundamental legal principles and adopted pursuant to national laws and procedures, commit themselves:

1. To take effective and concrete action to combat all forms of corruption, bribery and related illicit practices in international commercial transactions, in particular to pursue effective enforcement of existing laws prohibiting bribery in international commercial transactions, to encourage the adoption of laws for those purposes where they do not exist, and to call upon private and public corporations, including transnational corporations, and individuals within their jurisdiction engaged in international commercial transactions to promote the objectives of the present Declaration;

2. To criminalize such bribery of foreign public officials in an effective and coordinated manner, but without in any way precluding, impeding or delaying international, regional or national actions to further the implementation of the present Declaration;

3. Bribery may include, *inter alia*, the following elements:

(a) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, by any private or public corporation, including a transnational corporation, or individual from a State to any public official or elected representative of another country as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

(b) The soliciting, demanding, accepting or receiving, directly or indirectly, by any public official or elected representative of a State from any private or public corporation, including a transnational corporation, or individual from another country of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

4. To deny, in countries that do not already do so, the tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country and, to that end, to examine their respective modalities for doing so;

5. To develop or maintain accounting standards and practices that improve the transparency of international commercial transactions, and that encourage private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions to avoid and combat corruption, bribery and related illicit practices;

6. To develop or to encourage the development, as appropriate, of business codes, standards or best practices that prohibit corruption, bribery and related illicit practices in international commercial transactions;

7. To examine establishing illicit enrichment by public officials or elected representatives as an offence;

8. To cooperate and afford one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions. Mutual assistance shall include, as far as permitted under national laws or as provided for in bilateral treaties or other applicable arrangements of the affected countries, and taking into account the need for confidentiality as appropriate:

(a) Production of documents and other information, taking of evidence and service of documents relevant to criminal investigations and other legal proceedings;

(b) Notice of the initiation and outcome of criminal proceedings concerning bribery in international commercial transactions to other States that may have jurisdiction over the same offence;

(c) Extradition proceedings where and as appropriate;

9. To take appropriate action to enhance cooperation to facilitate access to documents and records about transactions and about identities of persons engaged in bribery in international commercial transactions;

10. To ensure that bank secrecy provisions do not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions, and that full cooperation is extended to Governments that seek information on such transactions;

11. Actions taken in furtherance of the present Declaration shall respect fully the national sovereignty and territorial jurisdiction of Member States, as well as the rights and obligations of Member States under existing treaties and international law, and shall be consistent with human rights and fundamental freedoms;

12. Member States agree that actions taken by them to establish jurisdiction over acts of bribery of foreign public officials in international commercial transactions shall be consistent with the principles of international law regarding the extraterritorial application of a State's laws.





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