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**Making standards work: fifty years of standard-setting  
in crime prevention and criminal justice**

## **Making standards work: fifty years of standard-setting in crime prevention and criminal justice\*\***

### **Working paper prepared by the Secretariat**

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## I. Introduction

1. Drawing on the principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), the United Nations has developed standards and norms in crime prevention and criminal justice, ranging from the treatment of prisoners to juvenile and restorative justice. The United Nations congresses on crime prevention and criminal justice have contributed to this process of standard-setting, beginning with the First Congress, held in Geneva in 1955, at which the Standard Minimum Rules for the Treatment of Prisoners<sup>1</sup> were adopted. The Fifth Congress, held in Geneva in 1975, and the Sixth Congress, held in Caracas in 1980, led to the adoption of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex), the Code of Conduct for Law Enforcement Officials (Assembly resolution 34/169, annex), the Caracas Declaration (Assembly resolution 35/171, annex), the safeguards guaranteeing the protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50, annex) and the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Council resolution 1984/47).
2. The Seventh Congress, held in Milan in 1985, adopted the Milan Plan of Action,<sup>2</sup> which was subsequently approved by the General Assembly in its resolution 40/32 of 29 November 1985; recommended the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (Assembly resolution 40/33, annex), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Assembly resolution 40/34, annex); and adopted the Basic Principles on the Independence of the Judiciary<sup>3</sup> and the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners.<sup>4</sup> In 1989, the Economic and Social Council adopted the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (Council resolution 1989/65, annex), the procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (Council resolution 1989/60, annex) and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (resolution 1989/61, annex), all of which were subsequently endorsed by the General Assembly in its resolution 44/162 of 15 December 1989.
3. The Eighth Congress, held in Havana in 1990, recommended the adoption of additional standards and norms (see General Assembly resolutions 45/121 and 45/166), including the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (Assembly resolution 45/112, annex), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Assembly resolution 45/110, annex), the Basic Principles for the Treatment of Prisoners (Assembly resolution 45/111, annex), the Model Treaty on Extradition (Assembly resolutions 45/116, annex, and 52/88, annex), the Model Treaty on Mutual Assistance in Criminal Matters (Assembly resolutions 45/117, annex, and 53/112, annex I), the Model Treaty on the Transfer of Proceedings in Criminal Matters (Assembly resolution 45/118, annex),

the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (Assembly resolution 45/119, annex) and the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.<sup>5</sup>

4. In the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme, endorsed by the General Assembly in its resolution 46/152 of 18 December 1991, Member States noted that the general goals of the programme should be to contribute to, *inter alia*, more efficient and effective administration of justice and the promotion of the highest standards of fairness, humanity, justice and professional conduct (Assembly resolution 46/152, annex, para. 16). Drawing on the recommendations of the Ninth Congress, held in Cairo in 1995, and the Tenth Congress, held in Vienna in 2000, the Commission on Crime Prevention and Criminal Justice continued to contribute to the process of standard-setting, recommending the adoption of the Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention (Economic and Social Council resolution 1995/9, annex), the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 52/86, annex), the Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles (Council resolution 1997/29, annex II), the Guidelines for Action on Children in the Criminal Justice System (Council resolution 1997/30, annex), the International Code of Conduct for Public Officials (Assembly resolution 51/59, annex), the United Nations Declaration on Crime and Public Security (Assembly resolution 51/60, annex), the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (Assembly resolution 51/191, annex), the plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Council resolution 1998/21, annex), the basic principles on the use of restorative justice programmes in criminal matters (Council resolution 2002/12, annex) and the Guidelines for the Prevention of Crime (Council resolution 2002/13, annex).

5. In 1992, a compendium of United Nations standards and norms in crime prevention and criminal justice was published pursuant to Economic and Social Council resolution 1989/69 of 24 May 1989.<sup>6</sup> An updated version of the compendium will be published in the near future.

6. Most of the United Nations standards and norms were adopted by consensus by the General Assembly or the Economic and Social Council<sup>7</sup> and thus embody a common ideal of how the criminal justice system should be structured, how criminal policy strategies should be developed and how crime prevention and criminal justice should be secured. Although the standards and norms do not impose enforceable obligations on Member States, such instruments provide practical guidance to States in their conduct and they enshrine goals, practices and strategies broadly accepted by the international community.

## **II. Use and application of the United Nations standards and norms in crime prevention and criminal justice**

### **A. Influence in the formulation of national policies and domestic legislation**

7. The General Assembly has consistently reaffirmed the importance of the full and effective implementation of United Nations standards and norms on human rights in the administration of justice. The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (Assembly resolution 55/59, annex) and the plans of action for its implementation (Assembly resolution 56/261, annex) contain a number of provisions related to the use and application of United Nations standards and norms in national law and practice (see, in particular, sects. IX, X and XII-XV of the plans of action). The issues addressed in the plans of action outline specific desirable measures that States need to take at the national level in the following areas: crime prevention, protection of witnesses and victims of crime, prison overcrowding and alternatives to incarceration, juvenile justice, special needs of women in the criminal justice system and restorative justice. The United Nations Office on Drugs and Crime (UNODC), in cooperation with other relevant international and regional entities, as appropriate, has provided assistance to States, upon request, through advisory services, needs assessment or capacity-building.

8. With the support of the United Nations Crime Prevention and Criminal Justice Programme network of institutes and interested Governments, the Secretariat has widely disseminated the United Nations standards and norms, facilitated their translation into the languages of many countries and developed an array of manuals, handbooks and tool kits being published in order to promote their implementation by practitioners.<sup>8</sup> Many Governments have incorporated various standards and norms into their national criminal justice systems and are continuing to do so through legislative, judicial and institutional reform. Some have done so using their own resources and others have relied on technical assistance provided by the United Nations or other relevant international organizations.<sup>9</sup>

9. The United Nations standards and norms are being utilized for pursuing domestic criminal justice reforms, for instance, using United Nations manuals that explain how global instruments may be applied in criminal justice reform efforts (for example, the *Human Rights and Pre-trial Detention: a Handbook of International Standards relating to Pre-trial Detention*<sup>10</sup> and the *Handbook on Justice for Victims*<sup>11</sup>), and by monitoring the impact of selected standards and norms. As noted by Dirk van Zyl Smit, United Nations criminal justice standards may impact on national law by being used to interpret more general rules that do have binding international force.<sup>12</sup>

10. While no precise assessment can be made of the extent to which United Nations standards and norms have been applied in individual Member States, various reports by the Secretary-General and information submitted by Member States indicate that those standards and norms have had an impact on national policies and domestic legislation. This can be seen in the work of governmental and

non-governmental organizations, for example, on juvenile justice, victims of crime and abuse of power<sup>13</sup> and the treatment of prisoners.<sup>14</sup>

11. While it is difficult to identify which United Nations standards and norms have been the most influential throughout the years, it is argued that the Standard Minimum Rules for the Treatment of Prisoners may well be the most heavily cited at the national and international levels.<sup>15</sup>

12. Some of the more recent sets of United Nations standards and norms, or further amplification of existing ones, have embodied desirable practice in the area of crime prevention and criminal justice, thus increasing their potential impact. For example, the Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice have proven their usefulness as a new international instrument to promote the achievement of their aims. There is sufficient evidence of this worldwide, in addition to the replies received to that effect from Governments and various organizations. It may be due to the policy-oriented and practical nature of the instrument (E/CN.15/2001/9, para. 38).

## **B. Impact at the international level**

### **1. Influence in the multilateral treaty-making process**

13. As the development of instruments on international criminal law has gained momentum over the years, principles contained in existing United Nations standards and norms have been gradually integrated into legally binding instruments, as with the adoption by the General Assembly of the International Covenant on Civil and Political Rights (Assembly resolution 2200 A (XXI), annex). In article 10 of the Covenant, dealing with humane and dignified treatment of all persons, there are specific provisions which contribute to that aim: the requirement of segregation of men and women, juveniles and adults, and non-convicted persons from convicted persons. Those provisions were entered into the Covenant directly Standard Minimum Rules for the Treatment of Prisoners.

14. Explicit reference to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was made in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex).

15. Several principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power have been incorporated into the rules governing the international criminal tribunals (see, for example, article 68 of the Rome Statute of the International Criminal Court).<sup>16</sup>

16. The United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) is another example of the impact of global crime prevention and criminal justice standards on the multilateral treaty-making process. Article 25, paragraph 1, of the Convention, which obliges States parties to take appropriate measures within their means to provide assistance and protection to victims of trafficking, particularly in cases of retaliation and intimidation, draws on paragraph 6 (d) of the Declaration of Basic Principles for Victims of Crime and Abuse of Power, concerning protection against intimidation

and retaliation. Article 25, paragraph 3, of the Convention draws on paragraph 6 (b) of the Declaration, stipulating that States parties shall enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. The influence of the Declaration is also apparent in the overall approach of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II), in particular in its articles 6-8.

17. The principles enshrined in the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters have facilitated international consensus in developing binding provisions on those issues in the Organized Crime Convention (arts. 16 and 18) and the United Nations Convention against Corruption (Assembly resolution 58/4, annex) (arts. 44 and 46).

18. Article 8 of the United Nations Convention against Corruption requires States parties to apply, within their own institutional and legal systems, codes of standards of conduct for the correct, honourable and proper performance of public functions, taking note for this purpose of the International Code of Conduct for Public Officials (para. 3).

19. The United Nations Declaration against Corruption and Bribery in International Commercial Transactions has played a pioneering role for the enactment of laws and regulations against bribery in international transactions, paving the way, *inter alia*, for the conclusion of the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>17</sup>

## **2. Influence on the work of other United Nations bodies**

20. The impact of United Nations standards and norms in crime prevention and criminal justice can also be noted in the work and programmes of other United Nations bodies. For example, the Human Rights Committee draws on existing standards and norms when reviewing country reports, as well as individual complaints. Some of the standards and norms were taken into account in drafting the Convention on the Rights of the Child (General Assembly resolution 44/25, annex), while the Committee on the Rights of the Child, established under article 43 of the Convention, uses existing international standards and norms in juvenile justice in fulfilling its mandates. Various special rapporteurs of the Commission on Human Rights and its Subcommission on the Promotion and Protection of Human Rights use the standards and norms in their studies and reports, for instance, on the independence of the judiciary, torture, extralegal and summary executions, victims of human rights abuses and trafficking in persons, especially women and children.

## **3. Regional developments**

21. The impact of standards and norms at the regional level is highlighted through the development of new standards and norms. For example, the Standard Minimum Rules for the Treatment of Prisoners have provided the basis for the development of the European Prison Rules,<sup>18</sup> which in turn have been used by the European Court of Human Rights in its jurisprudence.

#### **4. Influence at the international level**

22. The influence of standards and norms at the international level may be strong and yet need not always be visible. For example, the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters can be used as an appropriate guidelines framework for the conclusion of multilateral and bilateral agreements or arrangements aiming at enhancing the effectiveness of extradition and mutual legal assistance mechanisms and giving practical effect to the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (arts. 6 and 7 respectively),<sup>19</sup> the Organized Crime Convention (arts. 16 and 18) and the United Nations Convention against Corruption (arts. 44 and 46). The same also applies with regard to the International Code of Conduct for Public Officials, which can provide the basis for the formulation and application of national codes or standards of conduct for public officials as one of the basic preventive measures against corruption, thus giving effect to article 8 of the United Nations Convention against Corruption.

23. Standards and norms continue to reflect values and objectives, irrespective of their relationship to a specific treaty. As highlighted in the report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616, para. 10):

“These standards also set the normative boundaries of United Nations engagement, such that, for example, United Nations tribunals can never allow for capital punishment, United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights, and, where we are mandated to undertake executive or judicial functions, United Nations-operated facilities must scrupulously comply with international standards for human rights in the administration of justice.”

### **III. Mechanisms for wider application**

#### **A. Reporting and assessment mechanisms**

24. When it approved the Standard Minimum Rules for the Treatment of Prisoners in its resolution 663 (XXIV) of 31 July 1957, the Economic and Social Council recommended that the Secretary-General be informed every five years of the progress made with regard to their application. Thus, a specific reporting process was established, requiring Member States to inform the Secretary-General every five years of the extent of application of the Standard Minimum Rules and the difficulties encountered in their application.<sup>20</sup>

25. With the proliferation of standards and norms, concerns began to be expressed on the utility of the reporting regime, focusing mainly on the low rate of response, the perceived poor quality of some of the information provided and the absence of effective implementation procedures. Thus, the Meeting of Experts for the Evaluation of Implementation of United Nations Norms and Guidelines in Crime Prevention and Criminal Justice was held in Vienna from 14 to 16 October 1991 to evaluate the application of standards and norms and to rationalize the reporting cycles.

26. Drawing on the conclusions and recommendations at that Meeting (see E/CN.15/1992/4/Add.4), the Commission on Crime Prevention and Criminal Justice recommended to the Economic and Social Council the adoption of resolution 1993/34 of 27 July 1993. In section III of the resolution, the Council requested the Secretary-General to commence a process of information-gathering to be undertaken by means of surveys and contributions from other sources, paying attention to the United Nations standards, norms and guidelines, enabling Member States to have sufficient time to provide replies, for consideration by the Commission. The first reporting cycle (1996-2002) was completed by the Commission at its eleventh session, in 2002. The reports submitted in that context, containing a summary of replies provided by Member States, United Nations entities, intergovernmental organizations, non-governmental organizations and institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, have reflected a number of initiatives and accomplishments. They could not provide a precise account of the impact produced, however.

27. During the eleventh session of the Commission, the thematic discussion focused on reform of the criminal justice system: achieving effectiveness and equity. Pursuant to section I of Economic and Social Council resolution 2002/15 of 24 July 2002, the Secretary-General convened the Meeting of Experts on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice in Stadtschlaining, Austria, from 10 to 12 February 2003. The Meeting evaluated the results achieved and the progress made in the application of existing standards and norms, reviewed the present system of reporting, evaluated the different options available for continuing the gathering of information, assessed the advantages to be expected in using a cross-sectoral approach and made concrete recommendations (see E/CN.15/2003/10/Add.1).

28. At the twelfth session of the Commission, it was proposed that an integrated approach be pursued by aligning all relevant human rights instruments with those dealing with criminal justice matters. Emphasis was placed on ensuring access to justice, the rights of the accused during the various stages of criminal proceedings and compensation to victims for the damage they might have suffered. It was also suggested that the United Nations should place greater emphasis on the interrelationship between human rights and effectiveness in the criminal justice process, for example by setting out more explicitly the fundamental rights of prisoners, focusing also on the gender perspective or on the provision of education and training to convicted juvenile offenders, as well as social services for children in need of care and protection.

29. Drawing on the proposals of the Meeting of Experts, the Commission at its twelfth session recommended to the Economic and Social Council the adoption of resolution 2003/30 of 22 July 2003, in which the Council recognized the need to reform and streamline the process of information-gathering, with the final objective of making the process more efficient and cost-effective. In order to better identify the specific needs of Member States and provide an analytical framework with a view to improving technical cooperation, the Council also decided to group the standards and norms in the following categories: (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. In view of the voluntary reporting regime, emphasis was placed on increasing the motivation of States to respond, through the simplification of the reporting process.

30. In accordance with Economic and Social Council resolution 2003/30, the Secretary-General convened an Intergovernmental Expert Group Meeting on United Nations Standards and Norms in Crime Prevention and Criminal Justice in Vienna from 23 to 25 March 2004 to prepare proposals to be considered by the Commission at its thirteenth session in relation to: (a) the design of information-gathering instruments that are short, simple, complete and understandable in relation to select groups of standards and norms and that are aimed at identifying and addressing specific problems in Member States requesting assistance and at providing an analytical framework with a view to improving technical cooperation; and (b) new ways and means for maximizing the effectiveness of technical assistance to Member States in specific areas of crime prevention and criminal justice, including in the context of the reconstruction of criminal justice institutions in peacekeeping and post-conflict situations, in particular as regards capacity-building and the promotion of the rule of law.

31. In its resolution 2003/30, the Council requested the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its fifteenth session on progress made in the first targeted collection of information on the group of standards and norms referred to in the resolution (see para. 29 above), including how that collection of information related to requests by Member States for technical assistance.

32. The report of the Intergovernmental Expert Group Meeting on United Nations Standards and Norms in Crime Prevention and Criminal Justice, held in Vienna from 23 to 25 March 2004 (E/CN.15/2004/9/Add.1) was submitted to the Commission at its thirteenth session. Four draft information-gathering instruments on standards and norms—primarily related to alternatives to imprisonment, to persons in custody, to juvenile justice and to restorative justice—were prepared by the European Institute for Crime Prevention and Control, affiliated with the United Nations, and revised by the Intergovernmental Expert Group Meeting and were made available to the Commission at its thirteenth session as conference room papers.

33. In its resolution 2004/28 of 21 July 2004, the Economic and Social Council took note of the four information-gathering instruments; requested the Secretary-General to forward the instruments to Member States, intergovernmental and non-governmental organizations and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other United Nations entities for their comments; and also requested the Secretary-General to review the instruments on the basis of the comments received and, following that review, to present the revised instruments to an intersessional meeting of the Commission for approval.

**B. Dissemination of materials and awareness-raising**

34. Deliberations at various sessions of the Commission have established that effective application of United Nations standards and norms in crime prevention and criminal justice can be achieved only through their wide dissemination and promotion at the international, regional and national levels. Getting the relevant texts into the hands of the policymakers and legislators responsible for creating the framework for national action, the practitioners who are responsible for the day-to-day work in crime prevention and criminal justice, as well as the individuals affected by them, for example, victims or alleged offenders, is therefore intended to raise awareness, coordinate activities and cooperate with other United Nations entities and intergovernmental and non-governmental organizations, with a view to broadening the dissemination of the existing standards and norms.

35. The use and application of standards and norms can be further improved through advisory services, expert group meetings, training seminars, the preparation of training materials, the updating of existing manuals and the development of best practice tool kits. The extended use of new technologies in the dissemination of such material and related documentation could support such a process.

**C. Technical assistance, in particular in connection with peacekeeping operations and post-conflict situations**

36. In its resolution 46/152, the General Assembly decided that the United Nations Crime Prevention and Criminal Justice Programme should be devoted to providing States with practical assistance, such as data collection, information and experience sharing, and training, in order to achieve the goals of preventing crime within and among States and improving the response to crime. According to the programme of action contained in the annex to that resolution, the United Nations Crime Prevention and Criminal Justice Programme should bring together the work of, inter alia, the Commission, the regional institutes for the prevention of crime and the treatment of offenders and the congresses 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 general goals of the Programme should be to contribute to: (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 organized 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; and (f) the promotion of the highest standards of fairness, humanity, justice and professional conduct.

37. In line with the above, the United Nations has consistently promoted standards and norms in the field of human rights and the administration of justice and on crime prevention and criminal justice, regarding them as parameters for assessing country needs in the provision of advisory services and as a framework for the formulation and execution of its technical assistance projects, in close cooperation with Governments, various intergovernmental and non-governmental organizations

and relevant experts. It has also maintained close coordination with the United Nations Interregional Crime and Justice Research Institute and other institutes of the Programme network, as well as with other interested entities, in order to enhance joint action and avoid duplication of work.

38. Providing technical assistance and legal advisory services to Governments includes assisting them in ratifying or acceding to international legal instruments; assistance in the drafting of legislation to enable them to comply with their international treaty obligations; building capacity by training law enforcement personnel, correctional services personnel, prosecutors, social workers or members of the judiciary; and infrastructure- and institution-building.

39. Specific projects include regional training for prosecutors, magistrates and judges in implementing national legislation on drug control and the prevention of organized crime and in regional and international cooperation in drug control and crime prevention issues, especially in extradition and mutual legal assistance in criminal matters; the creation of financial intelligence units; measures to combat corruption; prevention of urban crime; violence against women; trafficking in human beings, especially women and children; juvenile and restorative justice; and penal and penitentiary reform.

40. As a complement to its technical assistance and in collaboration with other entities in the United Nations system, UNODC has developed a number of working tools and model laws, the latest being on extradition, while a similar model law on mutual assistance in criminal matters is currently in preparation (see [http://www.unodc.org/unodc/en/legal\\_advisory\\_tools.html](http://www.unodc.org/unodc/en/legal_advisory_tools.html)). Most of the model laws have commentaries on practical implementation issues.

41. The impact of the United Nations standards and norms becomes even more apparent when it is viewed in the context of the various technical assistance activities and projects carried out by the United Nations. Their practical application can help in maximizing the effectiveness of such projects through, *inter alia*, improving protection of human rights and the performance of national criminal justice systems. Their utilization can indicate areas where more work needs to be done, also providing a basis for the development of measurable criteria by which the fairness and effectiveness of the operation of national criminal justice systems can be assessed from an international perspective.

42. In recent years there has been growing recognition of the importance of putting the rule of law at the centre of the planning and establishment of peacekeeping and peacebuilding missions and in post-conflict reconstruction, through, *inter alia*, the reform of criminal justice systems.<sup>21</sup> There has also been recognition of the fact that, while emergency action may be necessary for the protection of human rights and human security where conflict has eroded or frustrated the domestic rule of law, in the long term, no ad hoc, temporary or external measures can ever replace a functioning national criminal justice system (S/2004/616, para. 34). Thus, policing interventions in post-conflict societies should be viewed as an integral part of the rule-of-law continuum, coupled with parallel interventions in the other components of the criminal justice system such as the judiciary and penal systems. As highlighted in the report of the High-level Panel on Threats, Challenges and Change (A/59/565 and Corr.1, paras. 229-230):

“Along with establishing security, the core task of peacebuilding is to build effective public institutions that, through negotiations with civil society, can establish a consensual framework for governing within the rule of law. Relatively cheap investments in civilian security through police, judicial and rule-of-law reform, local capacity-building for human rights and reconciliation, and local capacity-building for public sector service delivery can greatly benefit long-term peacebuilding. This should be reflected in the policies of the United Nations, international financial institutions and donors, and should be given priority in long-term policy and funding. To address this task, United Nations field representatives (including heads of peacekeeping operations) require dedicated support on the broader aspects of peacebuilding strategy, especially in the area of rule of law.”

43. In view of the above, United Nations standards and norms constitute a solid basis for guidance in the context of ongoing peacekeeping missions and in post-conflict reconstruction, offering both orientation and inspiration, as well as an appropriate framework for establishing, re-establishing and strengthening criminal justice systems. This has to be combined with interventions at the early stages of emergency and reconstruction, so that an appropriate basis is set for the development of innovative initiatives, the involvement of the community and the strengthening of local government structures.
44. In that context, effective strategies for building domestic criminal justice systems should give due attention to laws, processes (both formal and informal) and institutions. Legislation that is in conformity with international human rights law and that responds to the country’s current needs and realities is fundamental. A strong judiciary, independent and adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice, is essential. Equally important are the other institutions of the justice sector, including lawful police services, humane prison services, fair prosecutions and capable associations of criminal defence lawyers. Beyond the realm of criminal law, such strategies must also ensure effective legal mechanisms for redressing civil claims and related disputes, including property disputes, administrative law challenges, nationality and citizenship claims and other key legal issues arising in post-conflict settings. Juvenile justice systems must be put in place to ensure that children in conflict with the law are treated appropriately and in accordance with recognized international standards for juvenile justice. Institutions of the justice sector must be gender-sensitive and women must be included in and empowered by the reform of the sector (S/2004/616, para. 35).
45. Another important aspect linked to peacebuilding operations and post-conflict reconstruction is related to the guidance that United Nations standards and norms can provide in the development of model transitional criminal law codes, as in the case of the United Nations Transitional Authority in Cambodia, or law enforcement codes and standards, as in the case of the *United Nations Criminal Justice Standards for Peace-keeping Police* (the “Blue Book”).<sup>22</sup> In that respect, reference should also be made to the technical commentaries to forensic investigations on victims of crime drawn up on the basis of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex), as well as to the *Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions*<sup>23</sup>

and the *Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres*,<sup>24</sup> both accompanied by a model protocol for autopsies, which have been used in several peacebuilding and peacekeeping operations worldwide.

46. More recently, UNODC has been involved in reviewing a set of comprehensive draft model codes for post-conflict criminal justice, known as the transitional codes. The package includes a transitional criminal code, a transitional code of criminal procedure, a transitional detention act and a model transitional police directive. All of these draft model instruments were developed by a group of experts brought together by the Rule of Law Program of the United States Institute of Peace and the Irish Centre for Human Rights, in collaboration with the Office of the United Nations High Commissioner for Human Rights, and are concerned with the legal vacuum that forms in the rapidly changing situation after civil war, when peacekeepers are mandated to assume transitional authority over a territory but have no legal instruments to control and prevent crime. As emphasized by the experts, the draft instruments reflect not only the provisions of the International Covenant on Civil and Political Rights, the applicable regional treaties and declarations (plus national model codes and important international and domestic jurisprudence), but also “the various declarations of the United Nations and other bodies that give more substance to the relatively laconic provisions of the [aforementioned] basic instruments”.<sup>25</sup>

#### **IV. The way forward**

47. In considering how to implement the recommendations to consolidate, streamline and better rationalize mechanisms for reporting on the application of United Nations standards and norms, the Commission on Crime Prevention and Criminal Justice has welcomed a “cluster approach”, whereby the reports would be clustered around a number of major issues, thus streamlining the reporting procedure.

48. Furthermore, this new approach can contribute substantially to drawing up a road map for the subsequent reporting cycles in accordance with the main programme priorities of the United Nations, as set out in the Vienna Declaration and its plans of action, which, as already mentioned, contain a number of provisions related to the use and application of United Nations standards and norms in national law and practice, focusing on witnesses and victims of crime, prison overcrowding and alternatives to incarceration, juvenile justice, special needs of women in the criminal justice system and restorative justice.

49. As the international community takes stock of the achievements made in international standard-setting, it is worth noting that, while there has been considerable progress in applying the United Nations standards and norms in crime prevention and criminal justice, much remains to be done. Comprehensive strategic frameworks aimed at promoting their compliance over a specific period of time should be in the forefront of United Nations policies in this area.<sup>26</sup> For example, with regard to juvenile justice and to measures to ensure fair treatment of children in conflict with the law, in particular those deprived of their liberty, it is noted that, although some Governments have made strides in applying international standards to juvenile justice, in many countries the conditions of children in conflict with the

law are below international standards, as the Committee on the Rights of the Child has so often noted in reviewing country reports.

50. Thus, States should make concerted and sustained efforts to apply international standards in all matters concerning children in conflict with the law and only to use custodial measures as a last resort in egregious cases and then only for the shortest appropriate time. In that connection, emphasis should be put on exploring the possibility of developing an action plan for juvenile justice that would set targets for reducing the number of children arrested, detained or imprisoned and also focus on the collection and analysis of national data on children deprived of their liberty, with a view to promoting more effective measures for the prevention of juvenile delinquency, including the wider use of alternative sanctions.<sup>27</sup>

51. In addition, special attention should be given to the need to ensure effective protection of victims of crime, in particular victims of organized crime and terrorism, by, inter alia, the creation and implementation of a legal framework and financial assistance plans or funds to provide support to victims in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>28</sup> the relevant provisions of the Trafficking in Persons Protocol, supplementing the Organized Crime Convention, and the relevant recommendations of the Economic and Social Council and the Security Council.

52. Furthermore, appropriate consideration should be given to current efforts being made to establish effective legal and institutional frameworks for the enhancement of the rule of law and the protection of human rights. The following are examples of promising practices:

(a) In order to ensure wider application of the United Nations standards and norms on crime prevention and criminal justice, it is good practice to publish them in local languages and to publicize them, for instance, through awareness-raising campaigns. It is also good practice to display them visibly in public places, such as police stations, prisons and courts, preferably with explanatory notes on how affected citizens can make use of the rights embodied in them, thereby making them available to a wider public. In addition, it is good practice to have relevant standards made available in workable and easily accessible documents to relevant professional groups concerned with the administration of justice;

(b) Effective application of the standards and norms depends also in large part on the committed and dedicated work of properly trained staff in different areas of the administration of justice, from law enforcement officers, prosecutors, magistrates, judges and correctional officers to social workers. While appropriate training is of vital importance at the recruitment stage, continuing education in order to keep abreast with new developments is also indispensable;<sup>29</sup>

(c) Many States have recognized the value of using non-custodial measures in the administration of justice, taking into consideration maintaining a balance between the need to rehabilitate offenders, the rights of victims and the concern of society for public safety. Thus, it is a good practice to consider offering alternatives to imprisonment for eligible offenders in order to enable them to benefit from a rehabilitation system that would give them opportunities to become useful members of society.<sup>30</sup> Drug treatment courts typically target offenders whose dependency contributes to serious criminal offences such as burglary, property offences, or domestic violence, and, depending on the jurisdiction, drug dealing, who consent to

participate in the programme and are deemed suitable to do so. Increasingly it is recognized that with careful targeting of offenders, treatment and rehabilitation schemes can address the offenders' underlying drug dependency problems, and thereby reduce their related criminal activity. With the successful rehabilitation of these offenders into society, imprisonment costs and other costs incurred in dealing with their criminal activity will be saved, and community well being enhanced. A growing number of countries are turning to this type of approach to try and break the link between drug abuse and crime. With the assistance of various experts in the area, UNODC has developed the Model Drug Court (Treatment and Rehabilitation of Offenders) Bill, 2000 (available at [http://www.unodc.org/unodc/en/legal\\_advisory\\_tools.html](http://www.unodc.org/unodc/en/legal_advisory_tools.html));

(d) Similarly, in the administration of juvenile justice, a number of States make use of measures that take into account the special needs of children in conflict with the law. Such measures are different from those applicable to adult offenders, as they take into consideration the child's age and the desirability of promoting the child's reintegration in assuming a constructive role in society. In its forthcoming publication *Protecting the Rights of Children in Conflict with the Law*, the United Nations Coordination Panel on Technical Advice and Assistance in Juvenile Justice discusses shortcomings in juvenile justice in a number of countries and provides examples of best practices.<sup>31</sup>

## **V. Conclusions and recommendations**

53. Since the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners by the First Congress, in 1955, the United Nations system has been working towards the effective application of United Nations standards and norms in crime prevention and criminal justice. The role of the United Nations in the field is considered crucial, as it is the only universal organization that can provide a global perspective and mobilize the support of intergovernmental and non-governmental organizations. In recognition of their importance for the promotion of the rule of law, United Nations standards and norms have been the subject of a standing item on the agenda of the Commission on Crime Prevention and Criminal Justice since its establishment.

54. As both crime and the manner in which society responds to the threats and challenges posed by it through appropriate responses of the criminal justice system are constantly evolving, it is obvious that further work has to be done to assist Member States in undertaking programmes of criminal justice reform, using, as appropriate, the relevant United Nations standards and norms. Their utilization in the context of technical assistance projects and activities is fundamental in establishing the basis for good governance, institution-building and protection of human rights, in particular for countries with economies in transition or countries emerging from conflict. However, even more developed countries may also take advantage of the availability of those instruments in order to identify gaps and deficiencies in their criminal justice systems and launch appropriate reforms, whenever necessary.

55. In view of the above, and taking into account the recommendations of the regional preparatory meetings, the Eleventh Congress may wish to consider the following recommendations:

- (a) The application of the United Nations standards and norms in crime prevention and criminal justice should continue to be accorded high priority within the United Nations system. In that context, future reviews of their application should focus on identifying difficulties and problems, as well as best practices to overcome them, with a view to sharing such information and enhancing the impact of technical cooperation activities;
- (b) States should consider establishing structures and mechanisms at the national level, such as an appropriate coordinating body, to deal with the promotion of the widest possible application of United Nations standards and norms, including by coordinating the work of national authorities and agencies involved, as well as promoting exchange of information between them. Such mechanisms should have the support of relevant non-governmental and civil society organizations;
- (c) Considering that remand prisoners constitute the majority of the prison population in many countries and that, because of prison overcrowding, many prisoners are housed in inhumane conditions and often subjected to gross violations of human rights and even to torture, inhuman or degrading treatment, States should ensure that human rights law becomes an integral part of their criminal justice systems and that the relevant international human rights instruments are consistently applied, especially when confronting complex forms of criminal activities, such as organized crime or acts of terrorism. In that connection, the attention of the Eleventh Congress is called to the draft charter of fundamental rights of prisoners, based on an initiative launched by administrators from different regions,<sup>32</sup> as well as to the recommendations contained in the report of the Intergovernmental Expert Group Meeting to Develop Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, held in Vienna on 15 and 16 March 2005 (E/CN.15/2005/14/Add.1), in accordance with Economic and Social Council resolution 2004/27 of 21 July 2004;
- (d) Since mandatory sentences restrict the discretion of the courts in considering the circumstances of each offender and in applying alternative sanctions, States that have not yet done so should consider enacting legislation that provides for flexibility in sentencing, as well as for the imposition of non-custodial measures.

#### *Notes*

<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).

<sup>2</sup> *Report of the 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>3</sup> *Ibid.*, sect. D.2.

<sup>4</sup> *Ibid.*, sect. D.1.

<sup>5</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.2), chap. I, sect. B.1, annex.

<sup>6</sup> *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations publication, Sales No. E.92.IV.1 and Corr.1).

<sup>7</sup> See the resolutions adopted by the General Assembly on human rights and administration of justice (3144 (XXVIII), 39/118, 40/146, 42/143, 44/162, 46/120, 48/137, 50/181, 52/124, 54/163, 56/161 and 58/183) and by the Economic and Social Council on United Nations standards and norms in crime prevention and criminal justice (1994/18, 1995/13, 1996/16, 1997/32, 1998/21, 2002/15, 2003/30 and 2004/28).

<sup>8</sup> The list of manuals published by the Secretariat, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other entities and organizations is available on the UNODC website ([http://www.unodc.org/unodc/en/crime\\_cicp\\_standards.html](http://www.unodc.org/unodc/en/crime_cicp_standards.html) and [http://www.unodc.org/unodc/en/legal\\_advisory\\_tools.html](http://www.unodc.org/unodc/en/legal_advisory_tools.html)).

<sup>9</sup> See, for example, *Fair Trials Manual* (London, Amnesty International, 1998); and Egbert Myjer, Barry Hancock and Nicholas Cowdery, eds., *Human Rights Manual for Prosecutors* (International Association of Prosecutors, 2003).

<sup>10</sup> *Human Rights and Pre-trial Detention: a Handbook of International Standards relating to Pre-trial Detention*, Professional Training Series No. 3 (United Nations publication, Sales No. E.94.XIV.6); see also *Human Rights and Law Enforcement: a Manual on Human Rights Training for the Police*, Professional Training Series No. 5 (United Nations publication, Sales No. E.96.XIV.5) and *Human Rights in the Administration of Justice: a Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9 (United Nations publication, Sales No. E.02.XIV.3).

<sup>11</sup> United Nations, Office for Drug Control and Crime Prevention, *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* (New York, 1999); see also United Nations, Office for Drug Control and Crime Prevention, *Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (New York, 1999).

<sup>12</sup> Dirk van Zyl Smit, “The impact of United Nations crime prevention and criminal justice standards on domestic legislation and criminal justice operations”, *Expert Group Meeting: Applications of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003* (United Nations Office on Drugs and Crime, 2003), pp. 133 ff. (also available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_standards.html](http://www.unodc.org/unodc/en/crime_cicp_standards.html)).

<sup>13</sup> See *Victimas, Derechos y Justicia*, No. 3 (Cordoba, Argentina, Oficina de Derechos Humanos y Justicia, 2001).

<sup>14</sup> See Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (London, International Centre for Prison Studies, 2002).

<sup>15</sup> See Matti Joutsen, “The application of United Nations standards and norms in crime prevention and criminal justice”, *Expert Group Meeting ...*, pp. 19 ff.

<sup>16</sup> United Nations, *Treaty Series*, vol. 2187, No. 38544.

<sup>17</sup> *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

<sup>18</sup> Recommendation No. R (87) 3, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987.

<sup>19</sup> United Nations, *Treaty Series*, vol. 1582, No. 27627.

- <sup>20</sup> See the working paper prepared by the Secretariat on the Standard Minimum Rules for the Treatment of Prisoners in the light of the developments in the correctional field (A/CONF.43/3); the working paper prepared by the Secretariat on the treatment of offenders, in custody or in the community, with special reference to the Standard Minimum Rules (A/CONF.56/6); the working paper prepared by the Secretariat on the implementation of the Standard Minimum Rules (A/CONF.87/11 and Add.1); the report of the Secretary-General on the implementation of the Standard Minimum Rules (A/CONF.121/15 and Add.1); and the report of the Secretary-General on the use and application of the Standard Minimum Rules (E/CN.15/1996/16/Add.1).
- <sup>21</sup> See the recommendations of the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.203/RPM.3/1 and Corr.1, para. 48), and the Asian and Pacific Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.203/RPM.1/1, para. 36).
- <sup>22</sup> *United Nations Criminal Justice Standards for Peace-keeping Police* (“Blue Book”) (Vienna, United Nations, 1994).
- <sup>23</sup> United Nations publication, Sales No. E.91.IV.1 and corrigendum.
- <sup>24</sup> United Nations publication, Sales No. E.97.I.21.
- <sup>25</sup> William Schabas and Neil J. Kritz, “The model codes for post-conflict criminal justice”, the Review Conference on Model Codes for Post-Conflict Criminal Justice, Geneva, 16-18 June 2003.
- <sup>26</sup> See the recommendations of the Western Asian Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.4/1, para. 32).
- <sup>27</sup> See the recommendations of the Asian and Pacific Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.1/1, para. 37); the Latin American and Caribbean Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.2/1, para. 63); and the African Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.3/1 and Corr.1, para. 46).
- <sup>28</sup> See the recommendations of the Latin American and Caribbean Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.2/1, para. 64).
- <sup>29</sup> For promising practices in prison administration, see Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (London, International Centre for Prison Studies, 2002).
- <sup>30</sup> See the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); see also art. 3, para. 4, of the 1988 Convention, which permits parties to provide, either as an alternative or in addition to conviction or punishment, that drug offenders undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.
- <sup>31</sup> See also *Kids behind Bars: a Study on Children in Conflict with the Law; towards Investing in Prevention, Stopping Incarceration and Meeting International Standards* (Amsterdam, Defence for Children International, 2003).
- <sup>32</sup> See the recommendations of the Latin American and Caribbean Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.2/1, para. 65); the African Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.3/1 and Corr.1, para. 50); and the Western Asian Regional Preparatory Meeting for the Eleventh Congress (A/CONF.203/RPM.4/1, para. 36).