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Use and application of United Nations standards and norms in crime prevention and criminal justice: instruments for gathering information on United Nations standards and norms in crime prevention and criminal justice

United Nations standards and norms in crime prevention and criminal justice

Report of the Secretary-General**

Contents

[1] E/CN.15/2006/1.

[11] The present report was submitted after the expiration of the deadline owing to the late submission of replies by some Member States.

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I. Introduction

1. In its resolution 2003/30 of 22 July 2003, entitled "United Nations standards and norms in crime prevention and criminal justice", the Economic and Social Council decided to group United Nations standards and norms in crime prevention and criminal justice into the following four categories: (a) standards and norms related primarily to person 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 to good governance, the independence of the judiciary and the integrity of criminal justice personnel, and requested the Secretary-General to convene, subject to the availability of extrabudgetary funds, an intergovernmental expert group meeting to prepare proposals to be considered by the Commission on Crime Prevention and Criminal Justice at its thirteenth session in relation to: (a) the design of information-gathering instruments that are short, simple, complete and understandable in relation to the 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 assistance; 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 peacekeeping and post-conflict situations.

2. 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 (see E/CN.15/2004/9/Add.1). It had before it four draft information-gathering instruments on standards and norms related primarily to persons in custody, non-custodial measures and juvenile and restorative justice, for its consideration and adoption. The revised instruments were submitted in conference room papers to the Commission on Crime Prevention and Criminal Justice at its thirteenth session for its consideration. In resolution 2004/28 of 21 July 2004, the Economic and Social Council took note of the above information-gathering instruments and requested the Secretary-General to forward them 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 information-gathering instruments on the basis of the comments received and to submit the revised instruments to an intersessional meeting of the Commission for approval. The revised instruments were approved at the intersessional meeting of the Commission held on 4 October 2005 and on 10 November 2005 they were submitted to Member States for their comments.

3. The present report, which analyses the replies received from Governments on the use and application of the standards and norms related primarily to persons in custody, non-custodial measures and juvenile and restorative justice, has been prepared pursuant to resolution 2004/28. With regard to the use and application of standards and norms in particular, it is important to note that the standards and norms are also used and applied extensively by the United Nations Office on Drugs and Crime (UNODC), as well as other United Nations entities working in the areas

of crime prevention and criminal justice, as a basis for providing assistance to Member States in a variety of areas. To that effect, the present report should be read in conjunction with the reports of the Secretary-General on combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities and on the rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, including in post-conflict reconstruction (E/CN.15/2006/15 and E/CN.15/2006/3, respectively).

II. Analysis of the replies to the questionnaire on standards and norms related primarily to restorative justice

4. The basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex) were used in drafting the questionnaire on standards and norms related primarily to restorative justice.

5. The following 21 States responded to that questionnaire: Burkina Faso, Costa Rica, Denmark, Ecuador, Estonia, Finland, Germany, Guatemala, Italy, Liechtenstein, Marshall Islands, Mauritius, Morocco, Netherlands, Norway, Portugal, Qatar, Romania, South Africa, Spain and Turkey.

6. Half of the respondents[1] indicated that they had restorative justice processes for both adult and juveniles offenders and their victims, a smaller group[2] indicated that those processes were only available for juvenile offenders and their victims, while one country (Italy) replied that those processes were available only for adult offenders and their victims. The possibility of referring someone to restorative justice processes was still not available in several of the respondent countries.[3]

7. The replies received showed that in cases of both juvenile and adult offenders, offender-victim mediation, family group conferencing and conciliation were the restorative processes commonly available. They also showed that there was not a clear indication for what types of criminal offence the restorative justice processes were available. In a number of States[4] they were available for all criminal offences, in some States[5] they were available for most criminal offences, except serious violent offences, while in others[6] they were available only for minor, non-violent criminal offences.

8. In the case of juvenile and adult offenders, almost all the respondent States indicated that they had guidelines and standards in place that addressed the conditions for referral of cases involving offenders to restorative justice programmes and that, prior to entering into a restorative justice process, the offenders and the victims were required to give their voluntary consent to participate in the process. Procedures to ensure that neither the victims nor offenders were coerced or induced by unfair means to participate in restorative justice processes or to accept restorative outcomes were reported to be in place in a large number of the respondent States.

9. Almost all the respondents reported as regards the restorative justice programmes for juveniles and adults that offenders and victims had the right to consult with legal counsel concerning the restorative justice process; that offenders and victims had the right to translation/interpretation concerning the restorative

justice process; that the parties were fully informed of their rights, the nature of the process and the possible consequences of their decision prior to agreeing to participate in a restorative justice process; that offenders and victims were able to withdraw their consent at any time during the restorative justice process; that there were procedures in place to ensure that restorative justice processes, when not conducted in public, were confidential; that restorative justice agreements were normally arrived at voluntarily and contained only reasonable and proportionate obligations; and that the results of those agreements were normally judicially supervised or incorporated into judicial decisions or judgments. In all the countries that reported having restorative justice available for juvenile offenders and their victims, minors had the right to the assistance of a guardian or parent prior to entering into a restorative justice process.

10. In the case of juvenile offenders, almost all States reported that there were guidelines in place to monitor the content of restorative justice agreements and that there were also guidelines in place on how to proceed when parties to a conflict did not fulfil their obligations as specified in a restorative justice agreement. As regards adult offenders, guidelines to monitor the content of restorative justice agreements were in place in around half of the States[7] and guidelines on how to proceed when parties to a conflict did not fulfil their obligations existed in the majority of States.[8]

11. From the replies received, it appeared that, for cases involving juvenile offenders, an apology from the offender to the victim, reparations, restitution from the offender to the victim or the victim's family, community service, drug/substance abuse treatment and education programme, were the types of restorative justice outcome or agreement available in around half of the States. An apology from the offender to the victim, reparations, restitution from the offender to the victim or the victim's family, community service, fines, work experience, drug/substance abuse treatment and counselling/social skills development were all reported to be restorative justice outcomes or agreements that were sometimes available. The majority of respondent States stated that, in cases of juvenile offenders, probation, a term of incarceration and a conditional or suspended sentence were rarely or never available as restorative justice outcomes or agreements.

12. For adult offenders, the replies provided by Member States showed that an apology from the offender to the victim, reparations, restitution from the offender to the victim or the victim's family, community service and fines were the types of restorative justice outcome or agreement that were either always or sometimes available in the restorative justice processes of around half of the countries. It appears also that drug and substance abuse treatment and education programmes were never available in the majority of the respondent States. In connection with counselling and social skills development, probation, a term of incarceration and a conditional or suspended sentence, there seemed to be a dichotomy among respondents, because the above outcomes and agreements were available sometimes in around half of the States and never in the remaining half.[9]

13. Regarding the extent of restorative justice processes currently used for juvenile offenders, the majority of States replied that they were used sometimes, while Norway and Spain replied that that happened in a small percentage of cases. In cases involving adult offenders, the majority of States indicated that restorative justice programmes were used sometimes;[10] Ecuador, Italy, the Netherlands and South Africa replied that they were applied in a small percentage of cases; and the

Marshall Islands responded that that happened very frequently. Almost all the respondents predicted that within the next 10 years the number of restorative justice processes in their countries would grow, in cases concerning both juvenile and adult offenders.

14. The questionnaire contained a series of questions related to facilitators. In that regard, the majority of States replied that: (a) they had standards and guidelines in place with respect to the qualification, training and assessment of facilitators; (b) there were procedures in place to assess the extent to which facilitators performed their duties in an impartial manner; (c) facilitators, where appropriate, were offered the opportunity to participate in training in order to develop their understanding of local cultures before taking up facilitation duties; (d) they had a national strategy 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; (e) there was regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative justice processes and outcomes, and to explore ways in which restorative justice approaches might be incorporated into criminal justice practices; and (f) they had a formal research and evaluation strategy to support the development of restorative justice processes.

15. Almost half of the States that had restorative processes indicated that a specific assessment of the use and efficacy of early release had been made.[11] As regards the modalities according to which that assessment had been conducted and whether there was a published report, citation or Internet address to obtain information on the assessment, Costa Rica indicated that it kept statistics of recidivism after release, the Marshall Islands indicated that there were published reports of assessments and South Africa replied that the above was part of a national research project that entailed a survey and structured interviews.

16. A large majority of States indicated that the basic principles on the use of restorative justice programmes in criminal matters had not been translated into the official language(s) of their country and that parties to the restorative justice process and key criminal law policymakers had not been made aware of the existence of the above basic principles in their working languages. Concerning the questions on whether copies of the basic principles had been made available to parties to the restorative justice process and key criminal law policymakers, whether the basic principles were used in staff training and whether they were incorporated into domestic law, the analysis of the replies showed a balance between the States that replied in the affirmative and those replying in the negative.

17. The questionnaire was also intended to identify the difficulties encountered by States in the application of standards and norms related to restorative justice. In that connection, lack of knowledge about the existence of those instruments, of relevant legislative, regulatory and administrative provisions, of training and expertise and of awareness and understanding of restorative justice as a sentencing option among the judiciary and the reluctance by prosecutors to refer to restorative justice programmes were identified as the main difficulties encountered in the application of standards and norms related to restorative justice.

III. Analysis of the replies to the questionnaire on standards and norms related primarily to alternatives to imprisonment

18. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/10, annex), which provide basic principles to promote the use of non-custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment, were used in drafting the questionnaire on standards and norms related primarily to alternatives to imprisonment.

19. At the time of the preparation of the present report, the following 26 States had responded to that questionnaire: Azerbaijan, Bulgaria, Burkina Faso, Costa Rica, Denmark, Ecuador, Estonia, Finland, Germany, Guatemala, Jordan, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Morocco, Netherlands, Norway, Portugal, Qatar, Romania, Serbia and Montenegro, South Africa, Syrian Arab Republic and Turkey.

20. Ten respondents[12] reported having adopted most of the following measures to introduce alternatives to imprisonment: decriminalization or de-penalization of offences previously punishable with imprisonment, introducing or expanding the option of fines for serious offences, introducing the option of conditional sentences or probation for serious offences, introducing alternative sanctions (such as community service or electronic monitoring) to be applied instead of imprisonment, reducing the use of imprisonment for fine defaulters, reducing the use of imprisonment for young offenders, allowing for compensation to the victim to be accepted as a criterion for non-prosecution or waiving of punishment, allowing for successful mediation to be accepted as a criterion for non-prosecution or waiving of punishment, allowing for participation in a treatment programme to be accepted as a criterion for non-prosecution or waiving of punishment, expanding the power of the courts to waive the punishment also for more serious offences, expanding the power of the prosecutors to waive prosecution also for more serious offences and introducing drug courts to deal exclusively with drug offenders. Eight respondents[13] reported having adopted between three and five of the measures referred to above. Finland reported that there were several published research reports[14] on the efficacy of alternatives to imprisonment. Germany reported that information regarding the efficacy of alternatives to imprisonment could be found in the Federal Government's *First Periodical Report on Crime and Crime Control in Germany*.[15] The Netherlands reported that research was conducted annually on the efficacy of various alternatives to imprisonment.[16]

21. Most respondents reported that they had made use of a few of the following measures with a view to shortening the length of prison terms: lowering the minimum imprisonment sentence for certain offences, lowering the maximum punishments for certain offences, restricting the use of life imprisonment, restricting the use of preventive detention, training the judiciary on sentencing practices to apply shorter terms of imprisonment, introducing more lenient sentencing latitudes for young offenders, introducing more lenient sentencing latitudes for mentally deficient offenders, expanding provisions defining mitigating circumstances, reviewing and lowering sentencing latitudes for repeat offenders, including the introduction of more restricted criteria defining repeat offenders, allowing for compensation to the victim to be considered as a ground for imposing a shorter

prison term, allowing for successful mediation to be considered a ground for imposing a shorter prison term and allowing for participation in a (drug, alcohol, etc.) treatment programme to be considered a ground for imposing a shorter prison term. Only Costa Rica and Turkey reported having used all the measures referred to above, while Estonia, Finland and the Marshall Islands had used most of them.

22. Most States reported that they had set lower limits for eligibility for parole or early release and some made rehabilitation a condition of parole. A few reported that they had introduced electronic monitoring, house arrest or similar measures as a condition of parole, some had introduced half-way houses for prisoners as a condition of parole, while others reported having set lower limits for specific categories of prisoners, such as juveniles. One State reported that it had amended its criminal code in order to facilitate early release for specific categories of offenders. Under that programme, offenders were required to consent to undergo treatment for alcohol or drug abuse or to attend an education programme, on condition that such treatment or education would continue after release.

23. Most respondents reported that they had rules intended to decrease pre-trial detention through all or some of the following measures: restricting the use of pre-trial detention to specific types of offence; restricting the use of pre-trial detention to specific categories of offenders; and stipulating a maximum period for the use of pre-trial detention. Most respondents did not carry out any assessment on the use and efficacy of the rules intended to decrease the use of pre-trial detention. One respondent reported that it had introduced electronic surveillance as a measure to decrease the use of pre-trial detention and that a study had been carried out by its Probation and Prison Protection Service on the influence of electronic surveillance in the reduction of pre-trial detention. Another stated that in addition to restricting the use of pre-trial detention to specific types of offence and offender, it had used the suspension of execution of arrest warrants, in appropriate cases, as another measure to decrease the use of pre-trial detention. All respondents reported that courts subtracted the time spent in pre-trial detention in sentencing prisoners upon conviction.

24. A number of respondents reported having established successful rehabilitation programmes. Denmark reported that over the last decade it had established a number of treatment programmes in its prison and probation service, especially for offenders addicted to drugs, but that cognitive behavioural treatment programmes were offered in almost all its prisons. In addition, a mentoring project, aimed at rehabilitating young offenders of “non-Danish indigenous origin” had been introduced over the last three years. Under the programme, young offenders from ethnic minorities between 15 to 25 years were put into contact with positive role models by the prison and probation service. The project had been evaluated by a Danish university and found to be a success. Finland reported that it had three types of rehabilitation programme: the cognitive skills programme, meant for sexual offenders in order to reduce the risk of recidivism; for prisoners sentenced for violent offences, two programmes were offered: a longer cognitive self-change programme aimed at prisoners with a difficult history of violent behaviour and a shorter anger management course aimed at enabling prisoners to control feelings of anger and aggression. All Finnish rehabilitation programmes were based on cognitive behaviourist therapy, various group therapy formats and community treatment models. South Africa also reported having successful rehabilitation

programmes that were run in cooperation with government and non-governmental organizations.[17] Turkey reported that it offered treatment and rehabilitation programmes and that jobs were provided for released offenders, as well as financial assistance for those who wish to establish businesses.

25. Concerning difficulties encountered in implementing standards and norms related to restorative justice, one respondent reported that its professionals found it hard to explain to and convince politicians why it was necessary for mediation, as part of the restorative justice process, to be voluntary for both offenders and victims. Likewise, it had also been difficult to engage researchers in restorative justice processes. As a result, the knowledge base in that country lagged behind regional standards. Another respondent reported that the necessity of taking into account certain quality standards for offender-victim mediation was generally recognized and, in a wider sense, had also been confirmed by relevant case law. The problem encountered in the compulsory establishment of standards was the limitation set by obligatory statutory provisions on a variety of options for autonomous conflict resolution between parties.

IV. Analysis of the replies to the questionnaire on standards and norms related primarily to persons in custody

26. The following standards and norms were used in drafting the questionnaire on standards and norms related primarily to persons in custody: Economic and Social Council resolution 663 (XXIV) of 31 July 1957, entitled “World social situation”; Standard Minimum Rules for the Treatment of Prisoners;[18] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/73, annex); procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47, annex); Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex); and the Kampala Declaration on Prison Conditions in Africa (Economic and Social Council resolution 1997/36, annex).

27. At the time of preparation of the present report, the following 26 States had responded to that questionnaire: Bulgaria, Burkina Faso, Costa Rica, Denmark, Ecuador, Estonia, Finland, Germany, Guatemala, Jordan, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Morocco, Netherlands, Norway, Portugal, Qatar, Romania, Serbia and Montenegro, South Africa, Syrian Arab Republic, the former Yugoslav Republic of Macedonia and Turkey.

28. In response to the question on whether their prison population had increased or decreased, most respondents[19] reported an increase. While a few did not give the reasons for the increase, the majority attributed it to a number of factors, ranging from changes in legislation, in crime trends – such as the increase in organized crime and drug-related offences – in sentencing policy by, for example, the application of stiffer sentences, in demography, in socio-economic conditions to the introduction of minimum sentences that restricted the discretion of judges. Several respondents reported a decrease in their prison population[20] based on a number of factors, including the decrease in crime trends, the introduction of alternatives to imprisonment as well as granting amnesties.

29. Concerning the question whether the present prison capacity was fixed in order to allow each prisoner a standard minimum space of accommodation, 12 countries[21] reported a fixed capacity ranging from 2 square meters (m²) to 8-10 m². Seven countries[22] reported that they did not have a fixed prison capacity, but considered a capacity ranging from 7m² to 10 m² to be adequate. All the respondent States except four reported that some of their prison facilities were overcrowded and one reported that almost all its facilities were overcrowded. Most States that reported overcrowding used various measures to alleviate it, such as extending existing prison facilities, building additional facilities, releasing prisoners on conditional release and amnesties.

30. All States reported that they kept female and male prisoners separate. Most also kept juvenile prisoners separate from adult prisoners. Some respondents kept untried prisoners apart from convicted ones, but others reported that they were unable to do so, owing to lack of space and financial resources.

31. As regards pre-trial detainees, most respondents reported that the maximum time police and/or prosecutors were allowed to hold suspects in custody before transferring them to pre-trial or penal institutions was between 24 and 48 hours, while a few said that suspects could be held from one to six months. All the respondents reported that both pre-trial detainees and post-conviction prisoners were allowed at least one hour per day of exercise outside their cells and that all prisoners spent up to eight hours outside their prison cells doing a variety of activities, such as sports, gardening, employment, handicrafts and studying.

32. Concerning contacts between prisoners and their families, most States reported that, except where restrictions on visits were imposed, for instance as a part of disciplinary punishment, most prisoners were allowed on average four visits per month. All States reported that prisoners were allowed to have contact with the outside world through various means, including telephone calls, letter writing, studying, supervised or unsupervised leave, civil society voluntary service, sports, medical appointments, rehabilitation outside prison and visits by non-family members. A few respondents reported that prisoners were placed in prisons close to their homes in order to facilitate family visits and re-integration into the community upon release.

33. As regards disciplinary punishment in prison facilities, while all respondents reported that it was regulated by law and that prisoners were accorded the due process of law before punishment was imposed, some reported that prisoners in isolation punishment or solitary confinement were not visited daily by a medical officer to monitor their mental and physical health.

34. Concerning complaints procedures, all respondents reported that all categories of prisoners were allowed to lodge complaints, including confidential ones, to prison authorities and other institutions, such as the courts, parliamentary ombudsmen, federal and national parliaments and, where they existed, regional institutions such as the European Parliament and the European Court of Human Rights. While a few respondents reported that there was no legal obligation to respond to complaints promptly under their laws, the majority reported that they kept an open record for inspection.

35. In relation to regular prison inspection by authorities independent of the prison administration in order to ensure compliance with prison laws, regulations and

policies, most States reported that they had regular prison inspections. Some also had a system of monitoring by persons independent of the prison authorities, including members of parliament, parliamentary ombudsmen, magistrates, judges and members of regional institutions.

36. All respondents reported that they offered prisoners programmes or activities to facilitate prisoners' reintegration into society upon release and to enable them to lead a law-abiding life. They included education, vocational training, training programmes in close cooperation with job centres, counselling and social reintegration training, sex offender treatment programmes based on behavioural therapy and a cognitive skills approach, anger management training for violent offenders, substance and alcohol abuse treatment and post-release care programmes. Some respondents reported that between 25 to 50 per cent of their prisoners were pursuing some form of employment and one reported an employment rate of up to 70 per cent.

37. Most States reported that the Standard Minimum Rules for the Treatment of Prisoners had been translated into their working languages. Many said that they had also been incorporated into domestic law and used in staff training and that prison administrations, staff and prisoners were made aware of the Standards.

38. Concerning technical assistance needs, most States reported that non-governmental organizations, religious organizations and universities provided some form of assistance to prisoners, ranging from designing and carrying out treatment and rehabilitation programmes, education and vocational training programmes to counselling and spiritual care.

V. Analysis of the replies to the questionnaire on standards and norms related primarily to juvenile justice

39. The following standards and norms were used to prepare the questionnaire on standards and norms related primarily to juvenile justice: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex); Economic and Social Council resolution 1989/66 of 24 May 1989, entitled "United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)", United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex); and the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex).

40. At the time of the preparation of the present report, the following 26 States had responded to that questionnaire: Azerbaijan, Bulgaria, Burkina Faso, Canada, Costa Rica, Denmark, Ecuador, Estonia, Finland, Germany, Guatemala, Italy, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Morocco, Netherlands, Norway, Portugal, Qatar, South Africa, Spain, the Former Yugoslav Republic of Macedonia and Turkey.

41. Respondents were asked to provide a definition of the terms "child", "juvenile" and "juvenile offender" as applied in their countries. They were also

asked to provide the minimum age below which children were deemed not to have the capacity to infringe penal law. Children who commit offences below that age were generally referred to as children in conflict with the law. The definitions of "child", "juvenile" and "juvenile offender" varied from country to country. For instance, some countries defined as a child any person between 0 and 12 years old, for others a child was anyone between 14 and 17 and for some a child was anyone under 18 years old. The definition of a juvenile also varied: some countries considered as a juvenile someone between 12 and 18, while others set the age limit for a juvenile at 14 to 18. All respondents defined a juvenile offender as a juvenile (in accordance with the age range provided in their legal system) who had committed a criminal offence. Concerning the minimum age of criminal responsibility, two respondents set the minimum age at 7, one set it at 9, four at 12 and the rest at between 13 and 16. In some respondent countries, juvenile offenders of up to 15 years old were only punished with non-custodial measures, while those between 16 and 18 were punished with custodial and non-custodial measures. Where custodial measures were applied to juveniles in the latter group, such juveniles were eligible for early release on account of their age.

42. Twelve States[23] reported an increase in offences committed by juveniles over the last decade, while seven States[24] indicated a decrease. Most respondents provided data on the number of juveniles held in closed institutions, as well as the number of adults held in prison for offences committed while they were minors.

43. In addition to setting the age of criminal responsibility, some States, also applied civil/administrative measures and procedures to children who committed criminal offences below the age of criminal responsibility. In those States, the commission of an offence by a child could lead to the application of protective measures such as family counselling, supervision, transfer of guardianship or placement in a child welfare facility. In the respondent States, the lowest age for administrative and other measures ranged from 7 to 18 years. Most respondents provided data on the number of children who had committed criminal acts under the age of criminal responsibility.[25] A number of States reported that a child who committed a criminal act under the age of criminal responsibility was initially referred to the authority responsible for local government. Five States indicated that, in general, police authorities handled the aforementioned matters themselves, while two reported that they were dealt with by specified judicial and prosecutorial authorities.

44. A number of States reported that juvenile offenders were dealt with under different legislation from adult offenders. Most respondents, with the exception of Azerbaijan and Norway, indicated that their national legislation had a specific code of criminal procedure for juveniles, while nine States reported that specific procedural requirements for juveniles in the criminal process were contained in their general legislation. A number of States reported that a separate juvenile court or other adjudicatory body dealt with juvenile cases. Most respondents provided information on the existence of separate and specific sentences for juvenile offenders, while two reported that juveniles were subjected to the same sentences as adults. Bulgaria, Estonia, Finland, Liechtenstein, Norway and Spain stated that juveniles received reduced sentences.

45. A number of States reported that children in conflict with the law were mostly dealt with by separate juvenile courts. Ten States referred children to criminal

courts, while seven referred them to administrative authorities. Most respondents indicated that personnel hearing proceedings against children in separate juvenile and criminal courts were provided with specialist training. A majority of respondents indicated that cases involving a juvenile offender or a child above and below the age of criminal responsibility were heard by non-specialist judges. Canada, Costa Rica, Estonia, Germany, Liechtenstein, Malta, the Marshall Islands the Netherlands and the former Yugoslav Republic of Macedonia reported that specialist juvenile judges heard cases of juvenile offenders above the age of criminal responsibility.

46. As regards the representation of children above and below the age of criminal responsibility, the majority of States reported that a lawyer, parent or guardian present could defend the child's case or provide the child with legal assistance on arrest, before the hearing, during investigation and at the hearing itself. A number of respondents reported that a social worker could also represent the child's case during the above-mentioned procedures. Turkey reported that children below the age of criminal responsibility were not interrogated. A majority of States indicated that a lawyer, parent or guardian, social worker or public defender had be permitted to be present during questioning, following arrest as well as during the hearing or in court in the case of children above and below the age of criminal responsibility.

47. Most respondents reported that children above the age of criminal responsibility could be remanded in closed institutions based on decisions made by a judge following conviction. The minimum age at which children who committed a criminal act could be remanded in a closed institution varied from 10 to 12 years of age. A majority of States reported that children under 18 years of age could not be accommodated with persons aged 18 years and older in closed institutions. A number of States, with the exception of Canada and the Netherlands, reported that convicted and non-convicted juveniles could not be accommodated together in closed institutions. Most respondents reported that girls and boys could not be accommodated together in closed institutions.

48. Eleven respondents reported that a child could not be detained in any type of residential institution while awaiting trial, while nine States indicated that children could be detained in residential institutions because of protection issues, guarantee of authenticity of evidence during investigation and guarantee of appearance in court. Most respondents reported mixed placement of children who were accused of or convicted of a criminal offence and children placed for welfare reasons in residential settings.

49. The majority of respondents reported that children above and below the age of criminal responsibility could be admitted to closed institutions for a number of reasons such as for antisocial behaviour, if the child was a runaway or if he or she was living on the streets. The measures above took into account the child's mental health, the request of the police or immigration authorities and the need for accommodation in an emergency situation, the victim's protection, and/or the inability of the parents or guardians to care for the child. Most respondents indicated that children above and below the age of criminal responsibility might leave the institution earlier than the fixed period of time. In such cases, the decision was taken by the court, the relevant authority and the institution in which the children were accommodated.

50. All respondents indicated that children were always placed in the institution for a fixed period of time. If a residential sentence placed a child in a closed institution for a period exceeding his or her eighteenth birthday, most States reported that the child would remain in residential institution until the completion of his or her sentence. Most respondents reported that a child could not be referred to an adult institution before he or she reached 18 years of age. A number of respondents indicated that the child was usually returned to his or her parents or guardians at the end of the detention in the institution.

51. A number of respondents indicated that isolation/solitary confinement as methods of disciplinary measures were permitted in their closed institutions. On the question of rules governing disciplinary measures in closed institutions, 12 States reported that they had primary, while the rest indicated that they had secondary legislation.

52. All respondents reported that children detained in closed institutions were always permitted to have contact with their families or guardians. A number of States indicated that, as a general rule, children could go outside the closed institution with or without supervision and visit educational institutions. The majority of respondents reported that children received education or vocational training as residents in closed institutions or in schools outside the institutions. A number of respondents reported that their ministry of justice was responsible for inspecting and monitoring closed institutions generally once a year. All respondents reported that they had a complaints mechanism for children in closed institutions independent of the person or body receiving the complaints. They also reported that the minimum standards regulating closed institutions were contained in primary and secondary legislation.

53. A number of States, with the exception of Estonia, the Marshall Islands, the Netherlands and South Africa, indicated that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, as well as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, had been translated into their official languages. The majority reported that copies of those documents were available, were used in staff training and had been incorporated into domestic legislation.

54. All respondents reported that non-governmental organizations provided technical assistance for juvenile justice in their countries. Lack of financial resources and of trained staff were difficulties that were encountered in the application of standards and norms related primarily to juvenile justice.

VI. Conclusions

55. Several States reported that they were not aware of opportunities for technical assistance in relation to standards and norms related primarily to restorative justice through United Nations entities. Romania, South Africa and Turkey made reference to their national experience in indicating desirable or best practices, which appeared to be most effective in applying the United Nations standards and norms related to restorative justice. The analysis of the replies provided by States to the questionnaire on standards and norms related primarily to restorative justice showed that, generally, there was little knowledge about the basic principles on the use of

restorative justice programmes in criminal matters and that countries were not aware of the technical assistance opportunities that could be provided through the United Nations in that area. In view of the above, the Commission on Crime Prevention and Criminal Justice may wish to recommend ways and means to promote awareness of the basic principles, as well as of the assistance that UNODC can provide to requesting States in connection with the use of restorative justice programmes in criminal matters.

56. The United Nations Standard Minimum Rules for Non-custodial Measures appear not to be well-known in respondent countries, because only nine of the respondent countries reported that they had been translated in their official or working languages, were made known to key criminal law policymakers and key players in the criminal justice system, including judges, were used in staff training or had been incorporated into domestic law.

57. In response to the question whether there were desirable or best practices that appeared to be most effective in applying United Nations standards and norms related primarily to restorative justice, one respondent noted that secure and predictable funding was of utmost importance to bringing restorative justice forward and to have a system that secured the optimal autonomy of the restorative justice institution or programme from the criminal justice system. The engagement of politicians and the media was also of importance in taking the message to the public. Another respondent reported that its Federal Government had financed a national central office for offender-victim mediation. It promoted expert information on the issue of offender-victim mediation through papers, the Internet and conferences for persons in justice administration, mediators and other experts. Together with professionals in the field and in consideration of international recommendations, it developed and published quality standards, the dissemination and observance of which it promoted. In addition, it conducted courses and seminars to train mediators, in which the standards were also taken into consideration.

58. Concerning the standards and norms related primarily to persons in custody, most respondents reported that the Standard Minimum Rules for the Treatment of Prisoners had been incorporated into their domestic legislation and that most prison authorities and staff had been made aware of them. Most respondent States applied various standards and norms related primarily to persons in custody in their prison administration. The main problem that affected the majority of respondents in applying standards and norms related primarily to persons in custody was prison overcrowding. Developing countries reported an overarching problem of serious financial constraints, which limited the provision of adequate food, health care and treatment and rehabilitation programmes. The majority of respondents reported that they were not aware of opportunities for technical assistance that were offered by the United Nations system. Most respondents did not recommend any desirable or best practices in applying standards and norms related primarily to persons in custody. One State recommended as a best practice in applying standards and norms related primarily to persons in custody the use of the Standard Minimum Rules for the Treatment of Prisoners in the training of prison staff.

59. With regard to the standards and norms related primarily to juvenile justice, most respondents reported that they had received technical assistance from United Nations entities and non-governmental organizations. They underscored the difficulties encountered in the application of standards and norms related primarily

to juvenile justice. In that regard, the Commission may wish to provide guidance to Governments on standards and norms related primarily to juvenile justice.

Notes

[1] Costa Rica, Finland, Germany, the Marshall Islands, Morocco, the Netherlands, Norway, Qatar, South Africa and Turkey.

[2] Ecuador, Estonia, Morocco, Portugal and Spain.

[3] Burkina Faso, Denmark, Guatemala, Liechtenstein, Mauritius and Romania. Liechtenstein and Romania indicated, however, that legislation that would introduce restorative justice processes in their countries was likely to be adopted during 2006.

[4] Germany, the Marshall Islands, the Netherlands and Portugal (juveniles); Germany, Italy, the Marshall Islands and the Netherlands (adults).

[5] Finland, Norway and South Africa (for both juveniles and adults).

[6] Costa Rica, Ecuador, Estonia, Spain and Turkey (juveniles); Costa Rica and Turkey (adults).

[7] Finland, the Marshall Islands, Morocco, the Netherlands and Norway.

[8] Finland, Germany, the Marshall Islands, Morocco, the Netherlands, Norway and South Africa.

[9] Incarceration was available sometimes in three countries and never in six of the responding countries.

[10] Costa Rica, Estonia, Finland, Germany, Morocco, Norway and Turkey.

[11] Costa Rica, the Marshall Islands, Morocco, South Africa and Turkey.

[12] Costa Rica, Estonia, Finland, Germany, Guatemala, the Marshall Islands, Morocco, Norway, Portugal and Turkey.

[13] Burkina Faso, Italy, Liechtenstein, Malta, Mauritius, the Netherlands, Qatar and South Africa.

[14] See a recent review of the research literature: Mirka Smolej, *Rikosseuraamusalan tutkimus Suomessa: Katsaus tutkimuksen painopisteisiin ja resursseihin* (The research of criminal sanctions in Finland: a review of the focus and resources of the research activities), National Research Institute of Legal Policy, Research communications No. 66 (Helsinki 2005).

[15] Germany, *First Periodical Report on Crime and Crime Control in Germany* (Berlin, Federal Ministry of the Interior, 2001). See also the study: "Legalbewährung nach strafrechtlichen Sanktionen" (Recidivism after criminal law sanctions), published by the Federal Ministry of Justice, Germany, 2003, to be published shortly in the survey: *Sekundäranalyse empirischer Untersuchungen zu jugendkriminalrechtlichen Maßnahmen* (Secondary analysis of empirical studies on juvenile criminal law measures).

[16] For more information, see the summary in English of the current report at the Research and Documentation Centre of the Ministry of Justice of the Netherlands (available at: www.ministerievanjustitie.nl). The full report is available in Dutch only.

[17] For more information, see the following websites: www.khulisaservices.co.za/index.htm, www.southafrica.info and www.nicro.org.za.

[18] *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).

[19] Bulgaria, Burkina Faso, Denmark, Finland, Germany, Jordan, Italy, Luxembourg, Norway, Serbia and Montenegro, South Africa and the Former Yugoslav Republic of Macedonia.

[20] Costa Rica, Estonia, Guatemala, Liechtenstein, the Marshall Islands, Portugal and Romania.

[21] Bulgaria, Costa Rica, Ecuador, Estonia, Jordan, Italy, Malta, Morocco, Portugal, Qatar, the former Yugoslav Republic of Macedonia and Turkey.

[22] Denmark, Finland, Germany, Guatemala, Luxembourg, the Netherlands and Norway.

[23] Burkina Faso, Costa Rica, Ecuador, Estonia, Denmark, Guatemala, the Marshall Islands, Morocco, the Netherlands, Norway, Spain and the former Yugoslav Republic of Macedonia.

[24] Canada, Finland, Germany, Italy, Liechtenstein, Portugal and South Africa.

[25] Burkina Faso, Denmark, Estonia, Finland, Germany, Italy, Morocco, the Netherlands, Norway, Portugal and South Africa.