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The rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, including in post-conflict reconstruction

Report of the Secretary-General**

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I. Introduction

1. In its resolution 2004/25 of 21 July 2004, the Economic and Social Council requested the United Nations Office on Drugs and Crime (UNODC), subject to the availability of extrabudgetary resources and in coordination with the Department of Peacekeeping Operations of the Secretariat and other relevant entities charged with providing assistance to countries in post-conflict situations, to consider specific practical strategies to assist in promoting the rule of law, especially in countries emerging from conflict, paying particular attention to the most affected countries in Africa and taking an integrated approach to crime prevention and criminal justice reform, with particular emphasis on protecting vulnerable groups.

2. In the same resolution, the Economic and Social Council encouraged UNODC to continue to provide technical assistance and advisory services to Member States, upon request, in support of criminal justice reform and to incorporate elements concerning the rule of law into such assistance, wherever possible, including in the framework of peacekeeping and post-conflict reconstruction, in coordination with the Department of Peacekeeping Operations and other relevant entities charged with providing assistance to countries in post-conflict situations, drawing on United Nations standards and norms in crime prevention and criminal justice, the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and the Protocols thereto (Assembly resolutions 55/25, annexes II and III, and 55/255, annex) and the United Nations Convention against Corruption (Assembly resolution 58/4, annex). The Council also invited UNODC to develop assessment tools for criminal justice reform, including in the framework of peacekeeping and post-conflict reconstruction.

3. In the same resolution, the Council urged Member States providing development assistance to countries emerging from conflict to increase, where relevant, their bilateral assistance in crime prevention and criminal justice to those countries, invited the global and regional intergovernmental financial and development institutions, including the World Bank and the International Monetary Fund, to strengthen collaboration with the Department of Peacekeeping Operations, UNODC and other providers of technical assistance in the area of the rule of law, and to provide adequate funding for projects in the justice sector. The Council invited the institutes of the United Nations Crime Prevention and Criminal Justice Programme network to include in their work programmes the question of the rule of law, with a view to contributing to a better understanding of the links between the rule of law and development, and to develop appropriate training materials. Finally, the Council urged the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, to incorporate matters related to the rule of law into its programme of work, where relevant.

4. The Secretary-General was requested to report to the Commission on Crime Prevention and Criminal Justice at its fifteenth session on the implementation of Council resolution 2004/25. The Secretary-General therefore sent notes verbales to Governments inviting them to submit information to UNODC on their efforts to implement the resolution. The present report contains an analysis of the replies received from States, as well as a review of the activities of UNODC in the area of rule of law and criminal justice reform. The report concentrates on new initiatives relating to the rule of law, in particular in countries emerging from conflict and

countries with economies in transition, and relating to activities aimed at reforming criminal justice systems in order to bolster the rule of law. The report takes into account the added emphasis recently placed by Member States and the United Nations system as a whole on the rule of law, in particular in the 2005 World Summit Outcome (General Assembly resolution 60/1). It should be noted that the present report should be read in conjunction with two other reports before the Commission at its present session: the report of the Secretary-General on United Nations standards and norms in crime prevention and criminal justice (E/CN.15/2006/13) and the report of the Secretary-General on combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities (E/CN.15/2006/15).

II. Information received from Member States

5. Replies were received from the following States: Bahrain, Belarus, the Czech Republic, El Salvador, Finland, Guatemala, Hungary, Japan, Latvia, Maldives, Morocco, the Netherlands, Norway, Oman, Portugal, Qatar, Romania, Slovenia, South Africa, Spain, Switzerland, the Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Turkey and the United States of America. The replies covered three main areas: (a) efforts at the national level to establish criminal justice systems based on the rule of law and specific initiatives to reform criminal justice systems; (b) bilateral assistance and cooperation, both provided and received; and (c) participation in multilateral initiatives to re-establish the rule of law and to reform criminal justice systems, in particular in societies emerging from conflict and societies in economic transition. Several States also requested further assistance or information on UNODC activities in the area. The report of the Secretary-General on standards and norms referred to above (E/CN.15/2006/13) contains summaries of replies received from Member States on four detailed questionnaires covering the areas of persons in custody, alternatives to imprisonment, juvenile justice and restorative justice. As such, that report contains information on important aspects of the rule of law and criminal justice institutions not covered in the present report.

A. Establishing the rule of law and fair and effective criminal justice systems at the national level

6. The concept of the “rule of law” has been defined as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and that are consistent with international human rights norms and standards. This requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (see S/2004/616). It should be noted, however, that the above explanation is one among many definitions of the rule of law, which a recent analysis has divided into two broad and interrelated categories: (a) those that emphasize the ends that the rule of law is intended to serve within society, and (b) those that highlight the institutional

attributes believed necessary to actuate the rule of law, such as a well-trained judiciary, a non-corrupt police force and published and publicly-known laws.¹ The areas covered by the replies from Member States covered both such aspects, depending on the definition of the rule of law adopted in the State concerned, ranging from those referring solely to legislative measures to those focusing on equality before the law or human rights and the strengthening of criminal justice institutions to achieve those objectives. Whatever the definition adopted, all reporting States emphasized the importance of a State based on the rule of law. Many States reported in detail on the measures taken in their countries to ensure the rule of law and the existence of a fair, humane and effective criminal justice system. Some States also reported on recent reforms undertaken in their legal and criminal justice systems in order to strengthen the rule of law.

1. Establishing a global framework for the rule of law

7. It has become clear that in a globalizing world, there is a need to establish international standards and to cooperate in addressing transnational threats to peace and security. The expanding body of international law relating to the rule of law encompasses the Charter of the United Nations, the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) and other human rights instruments, as well as a growing body of international criminal law. Several States² recognized this by providing information that they had, or were in the process of, ratifying international instruments such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,³ the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the 13 universal counter-terrorism instruments and the United Nations Convention against Corruption, as well as regional instruments such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁴ and the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.⁵

2. Enshrining the rule of law

8. Many States indicated that the rule of law was contained in constitutional provisions. For instance, in Oman the Constitution provides for the separation of powers, stipulating that the rule of law is the basis of governance in the State and the honour, integrity and fairness of judges is the guarantee for rights and freedoms. The Constitution also provides for the independence of the judiciary and for the protection of individual rights of citizens and foreigners in the courts. In the former Yugoslav Republic of Macedonia, constitutional changes had been introduced to increase the independence of the judiciary through the strengthening of the State Judiciary Council, which is responsible for appointing and dismissing judges. Several States also referred to specific institutions considered as important for ensuring the rule of law in democratic societies. In that respect, both Finland and Slovenia referred to the ombudsman system for the protection of individual rights.

9. Many States reported that one of the fundamental ways to ensure the rule of law was through the principle of legality, which argues for the clear statement of laws in legislation and prohibits their retrospective application. In this regard,

several States reported on recently adopted legislation in conformity with the international instruments against drugs, crime and terrorism (see para. 7 above). El Salvador was currently revising its anti-terrorism legislation; Bahrain had adopted money-laundering legislation; in Maldives, the Narcotics Act was being revised; Morocco reported that it was adopting legislation incorporating the provisions of the new instruments; and Belarus and South Africa indicated that they had revised their legislation in order to address organized criminality after ratifying the international instruments. Guatemala reported that it had received assistance from UNODC in respect of legal drafting and institution-building.

3. Establishing fair and effective criminal justice institutions

10. While establishing the rule of law in constitutions and legislation is essential, it can only be guaranteed through fair and effective criminal justice institutions. It is also the case, as recognized by the Economic and Social Council in its resolution 2005/21 of 22 July 2005, that effective criminal justice systems based on the rule of law are a prerequisite for combating transnational organized crime, trafficking in human beings, terrorism, corruption and other forms of transnational and domestic criminal activity. Two specific factors were highlighted in several responses: firstly, the importance of specialized training and the use of modern investigative measures to ensure effective criminal justice responses within the context of the rule of law; and secondly, the right of suspects to conduct their defence before court and to be able to have access to legal aid if necessary.

11. A number of responses from States highlighted various aspects related to the establishment of fair and effective justice systems. In Oman, symposiums and lectures on certain legal areas (such as labour law) were reported as having been organized for the public to improve access to the law. A well-trained and properly recruited judiciary and the establishment of courts, prosecution services and police stations in all districts and provinces were also referred to as important. The Syrian Arab Republic reported that the Ministry of the Interior sought to ensure the rule of law, prevention of terrorism and suppression of crime. The authorities also took the necessary measures to reform criminal justice institutions, as appropriate. In the area of training, Belarus outlined that it had received assistance in training criminal justice professionals from UNODC in the fight against trafficking in illicit drugs and organized crime.

12. Several States referred to the creation of specialized units within the police or prosecution service to deal with organized crime, corruption or fraud. Romania offered to provide its assistance to other States in setting up such units. In addition, a number of States reported on specific legislative and other measures relating to victim support and witness protection.⁶ In Guatemala, the Office of the Public Prosecutor had received assistance from UNODC in setting up a witness protection programme and in revising legislation in that area. Oman stressed the importance given to restorative justice to supplement the traditional criminal justice system, by taking into account the needs of victims, perpetrators and society as a whole and aiming at reintegration of all involved.

13. Several States also explained that they had provided for a specialized system of juvenile justice or were creating such a system.⁷ The new system in the former

Yugoslav Republic of Macedonia would include provisions relating to mediation and protection of children at risk.

4. Comprehensive criminal justice reforms to strengthen the rule of law

14. Several States reported on their efforts to reform their institutions and criminal justice systems in a comprehensive way, in some cases drawing on assistance from bilateral or multilateral partners. In particular, both Maldives and the former Yugoslav Republic of Macedonia provided detailed information of national strategies adopted to reform their criminal justice system. The Maldives National Criminal Justice Action Plan 2004-2008 was a four-year plan covering a large number of areas of reform, including revising the Penal Code and sentencing guidelines; codifying criminal procedure; separating the police from the military authorities thus creating a civilian police force; emphasizing evidence-based approaches through the use of modern investigative techniques; developing a comprehensive juvenile justice system; re-introducing parole; and improving the prison system.

B. International cooperation and technical assistance in strengthening the rule of law and criminal justice institutions, including in countries emerging from conflict

15. In its resolution 2004/25, the Economic and Social Council urged Member States providing development assistance to countries emerging from conflict to increase, where relevant, their bilateral assistance in crime prevention and criminal justice to those countries. Given this, many of the replies received included information on bilateral and multilateral cooperation and technical assistance in the area of crime prevention and criminal justice, inter alia to countries emerging from conflict. Assistance provided to countries with economies in transition or those engaged in post-conflict rebuilding included the provision of expertise in the areas of civil police, legal drafting, penal reform, the provision of training to the judiciary, prosecution, police and prison staff, and the funding of various projects in these and other areas relating to good governance and human rights. It was recognized by many States that bilateral and multilateral assistance in the areas of crime control and criminal justice were of tremendous value in re-establishing the rule of law in countries emerging from conflict. Several States emphasized the importance of enhancing the role of the United Nations in establishing justice and the rule of law in societies emerging from conflict.

16. The United States reported that it had provided support, inter alia, to civilian police, justice and corrections programmes in Afghanistan, Haiti, Iraq, Kosovo and Liberia. The United States indicated that it would continue to develop and strengthen the capabilities of States and regional organizations to address justice, police and corrections development issues in areas emerging from conflict.

17. The Netherlands indicated that it was a leading player in the provision of development cooperation, allocating 0.8 per cent of its gross national product to that end. The Netherlands reported that it had established long-term relationships with 36 partner States in three focus regions. That cooperation focused on activities to promote good governance and strengthen the executive, legislative and judicial

branches of government, including in the area of fighting organized crime and corruption.

18. Norway reported that 180 million kroner (Nkr) in development aid (approximately \$26 million) had been devoted to activities in the area of legal and judicial development. An estimated 50 per cent of that amount was allocated to countries emerging from conflict. In addition, the amount of Nkr 323 million (approximately \$48 million) had been spent on peacebuilding activities in such countries.

19. Finland provided details on its assistance to countries emerging from conflict but emphasized that such support had also been provided in the area of rule of law to neighbouring States, developing countries and countries with economies in transition in Africa and Latin America. The prison service and judiciary in Finland were involved in providing expert input for the establishment of rule of law institutions. Such assistance was being provided on a bilateral level and through multilateral assistance provided by regional organizations and United Nations peacekeeping operations. Finland had seconded 9 legal experts and 40 police officers to 5 such operations. Assistance to strengthen the rule of law was also provided through support to international and national non-governmental organizations.

20. Portugal reported that since 2000 it had provided extensive assistance to Timor-Leste, through training and advisory services. Activities carried out in 2004 and 2005 covered legislative reform, training of magistrates and technical meetings. Portugal had also organized, in cooperation with UNODC, a study tour in Portugal for all Portuguese-speaking countries on transnational organized crime, terrorism and corruption.

21. South Africa reported that it had provided bilateral and multilateral assistance to a number of countries in Africa, in particular to the countries most affected by conflict. Multilateral activities included working with regional and subregional institutions in the areas of peace, security, stability and post-conflict reconstruction in countries such as Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Somalia and the Sudan. The South African Department of Justice and Constitutional Development had assisted countries in various areas such as training of judges, magistrates and prosecutors and establishing transitional institutions. Efforts were also being made to strengthen cooperation against transnational organized crime through developing more effective criminal justice systems and upholding the rule of law. Bilateral meetings had been held to increase cooperation on corruption and economic crime with, inter alia, Burundi, Nigeria and the Sudan. South Africa had also participated in multilateral initiatives such as training of the African Union's civilian police contingent in the Democratic Republic of the Congo and participating in the demobilization and reintegration process in Mozambique.

22. Switzerland provided detailed information on the support provided to a number of countries in the areas of the rule of law and justice, directly or through multilateral agencies. Countries where assistance had been provided included Bolivia, Peru, Rwanda, South Africa, Ukraine and Viet Nam. Projects covered areas such as community justice, access to justice, children's rights and children in conflict with the law, governance and judicial reform, pre-trial detention and human rights. Switzerland had also provided funding to a number of UNODC juvenile

justice projects (see paras. 40 and 61 below) as well as to projects by other United Nations entities, most notably the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP) working in these and related areas.

23. Bahrain reported that its Ministry of the Interior had participated in two meetings of the countries neighbouring Iraq and had agreed to train 4,000 Iraqi police officers. Spain reported that it had a number of bilateral cooperation agreements and had participated in multilateral activities, in particular, its Ministry of the Interior had participated in support to training of police and police cooperation. Romania had established bilateral cooperation with countries in the Balkans to combat organized crime. Turkey had provided assistance to countries emerging from conflict, within its available resources. For example, Turkey had supported efforts for judicial reconstruction in Afghanistan. Latvia had signed an agreement with the European Union for Latvian participation in police missions in Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia. Hungary had participated in a number of regional initiatives, such as the Regional Crime Prevention Academy and had initiated a project to improve assistance to victims. El Salvador was leading two regional projects in Central America on cooperation to control youth gangs and on a fund for the rehabilitation of young people. Japan provided information about a seminar on criminal justice reform for senior officials from China and five Central Asian countries organized in February 2005 by the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

24. While many measures had already been implemented, the former Yugoslav Republic of Macedonia indicated that specific assistance was still needed to build the capacity of the prosecution system in special investigative techniques and in combating organized crime, money-laundering, terrorism and cybercrime and in inter-institutional coordination and international cooperation. El Salvador also expressed the need to receive assistance in the area of cybercrime.

III. United Nations Office on Drugs and Crime technical assistance in the rule of law and reform of criminal justice institutions

25. UNODC provides technical assistance and advisory services to strengthen the rule of law. This encompasses legal advisory services and technical assistance in the ratification and implementation of the three international drug control conventions, the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the United Nations Convention against Corruption and the 13 international instruments against terrorism. Assistance to strengthen the rule of law is also provided through the Global Programme against Money-Laundering, the Global Programme against Corruption, the Legal Advisory Programme and the Global Programme against Trafficking in Human Beings. However, the present report concentrates on new initiatives relating to the rule of law, in particular in countries emerging from conflict and those with economies in transition and to activities aimed at reforming criminal justice systems.

26. Since 2005, building on its long-standing and current mandates⁸ in the areas of criminal justice reform, in particular to assist States in their use and application of

the United Nations standards and norms in crime prevention and criminal justice, as well as the needs of many Member States, UNDOC has made a significant effort to develop a comprehensive programme for strengthening the rule of law and the reform of criminal justice institutions. This strategy has been implemented through the strengthening of the Criminal Justice Reform Unit with resources from the regular budget. In 2006, these resources were complemented by an additional sum specifically for work in the area of the rule of law in countries emerging from conflict, received as a result of proposals for additional resources made as a follow up to the 2005 World Summit Outcome (see A/60/7/Add.13 and Corrs. 1 and 2 and A/60/537). In 2005, assistance was also received from the Governments of Austria and Canada. Additional support is required to continue and expand this programme of work.

27. In expanding the work of UNODC in the area of criminal justice reform and rule of law, the focus is three-fold:

- (a) Development of relevant tools and manuals;
- (b) Initiation of technical assistance projects, including conducting assessment missions and support at the field level;
- (c) Development of partnerships with relevant United Nations entities and international and non-governmental organizations.

28. A key focus of the work has been on vulnerable groups within the criminal justice system, in particular women and children. A further focus has been placed on countries in conflict and emerging from conflict and countries with economies in transition. In addition, the aim has been to establish working relations with other entities with complementary mandates, building on UNODC's specific expertise and comparative advantages in the areas of criminal justice and the rule of law. A significant effort has also been placed on building the capacity of the UNODC field office network in these different areas through the provision of advice, technical tools and on-site training during assessment missions.

29. Technical assistance through the development of tools and projects is carried out in four main areas, each of which is covered by a number of standards and norms: (a) comprehensive criminal justice reforms; (b) penal reform, with a focus on alternatives to imprisonment; (c) children in conflict with the law, and (d) support to victims of crime and violence, in particular women and children.

A. Providing Member States with technical tools and manuals

30. The demand for technical and operational tools in the area of criminal justice reform based on international best practices is considerable. Indeed, while a large body of standards and norms has been developed over the years, practical guidance is often required for their implementation. In 2005, in accordance with Economic and Social Council resolution 2005/21, a number of tools and training manuals on criminal justice reform, based on international standards and best practices, were initiated by UNODC and relevant partners. The development of a series of handbooks on criminal justice is under way, building on both internal and external expertise. The tools will be of direct use for Member States and other international organizations and will be used as a basis for providing assistance and training to

individual Member States. Details of the set of assessment tools and the series of handbooks are provided in paragraphs 31-42 below.

1. Criminal justice reform

(a) *Criminal justice assessment toolkit*

31. With the increased focus on criminal justice and rule of law in the United Nations system, both UNODC and other United Nations entities involved in this area are conducting an increasing number of assessment missions with a specific focus on criminal justice institutions. With this current trend continuing both within and outside the United Nations system, the number and depth of such assessment missions is likely to increase. There is, however, no United Nations guide to conducting criminal justice assessments and often the focus and outcome of the process depends on the skills and experience of the individuals conducting the work. A detailed assessment toolkit, based on the United Nations standards and norms in crime prevention and criminal justice and on practical experience in conducting such assessments, would therefore be of great value to UNODC and other United Nations entities, and would constitute an important contribution by UNODC to the work of the United Nations system as a whole in this area. In accordance with Economic and Social Council resolution 2004/25, UNODC has developed a first set of draft tools as outlined below, which will focus on the development of appropriate technical assistance interventions as the main outcome of such assessments.

32. The following draft tools for criminal justice assessment have been developed:

(a) Policing

- Assessment tool 1: Oversight and integrity of the police
- Assessment tool 2: Station level service delivery and community policing
- Assessment tool 3: Crime investigation, including matters related to criminal evidence
- Assessment tool 4: Crime intelligence

(b) Courts and the judiciary

- Assessment tool 5: Prosecution services
- Assessment tool 6: Management and operation of courts
- Assessment tool 7: Judiciary, including the independence and integrity of judges and magistrates

(c) Custodial and non-custodial measures

- Assessment tool 8: Pre-trial detention
- Assessment tool 9: Prison management
- Assessment tool 10: Alternatives to imprisonment, including remission, probation and parole
- Assessment tool 12: Rehabilitation and post-release options

(d) Legal and human rights aspects

Assessment tool 13: Criminal law

Assessment tool 14: Criminal procedure, including the rights of defendants and matters related to the admissibility of criminal evidence

Assessment tool 15: Protection of witnesses and victims

33. These draft tools have been developed through a cooperative approach within UNODC and with other United Nations entities, including through the United Nations Rule of Law Focal Point Network (see para. 67 below). A meeting to consider, among other matters, the criminal justice assessment tools, took place in New York on 12 December 2005 and included the Department of Peacekeeping Operations, UNDP, the Office of the United Nations High Commissioner for Human Rights and UNODC. During this meeting, all entities agreed on the usefulness of the tools and the importance of finalizing them as soon as possible. The various tools will be reviewed by expert group meetings in each broad category and will be tested in the field by UNODC and other entities. The assessment tools on courts and the judiciary will also be reviewed at the next meeting of the Judicial Group on Strengthening Judicial Integrity, to be held during the fourth quarter of 2006. It is also envisaged to continue developing such tools in other areas, depending on requirements and available resources.

34. As can be seen below, several handbooks are either under development or completed in selected areas of criminal justice reform in which no United Nations tools were available until now.

(b) Handbook on police oversight

35. In the immediate aftermath of social unrest, political transition or war, police are often ill-prepared to face the dual challenges of improving security in the country and providing adequate levels of service to all citizens. While significant interventions in the field of retraining police officers, with a particular focus on human rights principles, are often made, a longer-term effort is required to establish a framework for oversight and accountability for policing, as well as to develop the necessary institutions to carry out this task.⁹ UNODC is developing a handbook for police officers, members and managers of police institutions and other relevant government officials on the available options and experience in the broad area of police oversight, including civilian oversight of the police, complaint mechanisms, internal investigations and police conduct and integrity. The handbook will be available in the third quarter of 2006.

(c) Handbook on restorative justice

36. Drawing on the Basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex) and with an international focus on restorative processes, a handbook on restorative justice has been developed. It offers an overview of key considerations in the implementation of participatory responses to crime based on a restorative justice approach. It focuses on a range of participatory measures, inspired by restorative justice values, that are flexible in their adaptation to criminal justice systems and

that complement them while taking into account varying legal, social and cultural circumstances. The handbook covers definitions of key concepts, a summary of the main types of intervention, legislation, rules and guidelines for practitioners, and programme operation, monitoring and evaluation. It is meant as a guide for policymakers, legislators and practitioners as well as international organizations and non-governmental organizations.

2. Addressing prison overcrowding and providing for alternatives to imprisonment

37. Penal reform has, historically, been the trigger for international action on crime prevention and criminal justice, with the adoption by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955, of the Standard Minimum Rules for the Treatment of Prisoners.¹⁰ However, 50 years later, prison overcrowding, the human rights of prisoners and providing for alternatives to imprisonment often remain a challenge owing to lack of resources, corruption, public opinion and media focus or lack of political will. Building on its mandates in this area, UNODC is developing a set of tools to address a number of issues relating to prison management, treatment of prisoners and alternatives to imprisonment. The assessment tools referred to in paragraph 32 above are also relevant to penal reform.

(a) Handbook on alternatives to imprisonment

38. Based on the United Nations Standard Minimum Rules for Non-custodial Measures (General Assembly resolution 45/110, annex, the Tokyo Rules), a handbook has been developed that provides options for reducing the use of imprisonment at a number of different levels. The handbook draws on best practices from developing and developed countries in all regions and covers policy options in the areas of sentencing, remission, diversion, parole and probation.

(b) Toolkit for policymakers, prison managers and prison staff on responding to HIV/AIDS in prisons

39. The specifics of the work of UNODC in relation to HIV/AIDS in criminal justice pre-trial and correctional facilities can be found in a separate report of the Secretary-General before the Commission at its present session (E/CN.15/2006/15).

3. Juvenile justice

40. The Inter-Agency Coordination Panel on Juvenile Justice (formerly known as the United Nations Coordination Panel on Technical Advice and Assistance in Juvenile Justice), which was chaired by UNODC in 2005 (see para. 61 below), has developed a number of common tools for technical assistance and advisory services. These include the publication entitled *Protecting the rights of children in conflict with the law: programme and advocacy experiences from member organizations of the Inter-Agency Coordination Panel on Juvenile Justice*, a set of juvenile justice indicators (developed by UNICEF and adopted by the Inter-Agency Panel) and a manual for the measurement of juvenile justice indicators (developed by UNICEF and UNODC). A new website¹¹ is available, which includes information and tools from several organizations working in this area. It is also planned to develop legislative guidance for Member States in cooperation with the Committee on the

Rights of the Child as well as guidelines on juvenile justice in post-conflict settings in cooperation with UNICEF and the Department of Peacekeeping Operations.

4. Victims of crime and violence

(a) Handbook for law enforcement officers on effective responses to violence against women

41. Drawing on the mandates stemming from General Assembly resolutions 52/86 of 12 December 1997, entitled “Crime prevention and criminal justice measures to eliminate violence against women” and 58/185 of 22 December 2003, entitled “In-depth study on all forms of violence against women” and on the conclusions from the expert group meeting on good practices in combating and eliminating violence against women, organized in May 2005 in cooperation with the Division for the Advancement of Women of the Secretariat, a handbook for law enforcement officials in developing countries on effective responses to violence against women is being developed in cooperation with the Centre for the Study of Violence at the University of São Paulo, Brazil.

(b) Implementation of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

42. In order to implement Economic and Social Council resolution 2005/20 of 22 July 2005, by which the Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and in which the Council requested UNODC to provide technical assistance, as well as advisory services, to Member States, upon request, to assist them in the use of the Guidelines and to ensure the widest possible dissemination of the Guidelines among Member States, UNODC is planning to develop model legislative provisions and an implementation guide for Member States. It is also planned to disseminate the Guidelines widely.¹²

B. Providing sustainable technical assistance through the field office network of the United Nations Office on Drugs and Crime

1. Assessing needs and designing innovative technical assistance projects

43. The project portfolio covering criminal justice reform issues expanded from 8 to 15 projects between 2004 and 2006. The total project portfolio for rule of law and criminal justice reform projects, including judicial integrity and ongoing projects in Afghanistan, is \$21.5 million. During the reporting period, designing innovative projects was given special emphasis, drawing on the wealth of existing good practices and options for criminal justice reform. For instance, in the area of penal reform, projects developed increasingly cover alternatives to imprisonment and post-release options.

44. In order to design technical assistance projects meeting the specific needs of Member States, several substantive assessment missions were carried out. During the reporting period missions were carried out in Ethiopia and Nigeria on penal reform, Brazil, Jordan and Palestine on juvenile justice and child victims, Afghanistan, the Libyan Arab Jamahiriya and the Southern Caucasus on criminal

justice reform, and Guinea Bissau and Liberia on post-conflict justice and penal reform issues. All these missions led to project formulation in the relevant areas.

45. Further assessment missions are being planned for 2006 and 2007, based on requests from Member States, field offices and the Department of Peacekeeping Operations, including to the Democratic Republic of the Congo and Haiti.

2. Technical assistance projects under implementation

46. While details of the projects are available through the UNODC website¹³ as well as on the ProFi portal for Member States, a short summary by substantive area is provided below. Projects are designed to ensure national ownership and sustainability through a number of complementary activities, including legislative reform, support to policy development, institution- and capacity-building and the provision of training.

(a) Criminal justice reform and rule of law

47. In Afghanistan, a project on reform of the criminal law and criminal justice capacity-building is being implemented. The project aims at strengthening the operational capacity of the Ministry of Justice, through refurbishing of offices, restructuring and reorganization of the Ministry and training of staff, a legal awareness campaign, legal assistance, establishment of multi-purpose centres of justice and an information and Web-based communication system.

48. The implementation of a three-year project to reform the judiciary and the prison system in the Islamic Republic of Iran began in 2005. This project aims at supporting the authorities in their efforts towards the reform of the judiciary, in particular with regard to the administration of and access to justice. The project also aims at improving the situation of detainees and prisoners, in compliance with United Nations standards and norms.

49. A comprehensive criminal justice reform project was designed for the Libyan Arab Jamarihiya including aspects related to juvenile justice, prison reform, the training of judges and legal assistance. A rule of law programme and criminal justice programme has also been developed for Guinea Bissau. In Iraq, following up on an earlier assessment mission, a programme of proposed activities in the area of the rule of law has been developed, with one project, aimed at strengthening the capacity of the judiciary, having received funding.

(b) Judicial integrity

50. In the area of judicial integrity, UNODC has continued implementation of projects in the Islamic Republic of Iran, Lebanon, Mozambique and South Africa and has launched new initiatives in Indonesia, Nigeria and South Africa under the framework of its Global Programme against Corruption. In line with chapter II of the United Nations Convention against Corruption, these projects focus mainly on enhancing the preventive capacities against corruption of the respective States. In 2005 in Nigeria, additional activities in the area of judicial integrity were included as part of a larger project on support to the Economic and Financial Crimes Commission and the Nigerian judiciary.

51. The projects under way in the area of judicial integrity include measures (such as reducing procedural delays, improving case management and providing electronic recording equipment) to enhance access to, timeliness and quality of justice, thereby improving public confidence in the courts. The projects have also focused on improving the efficiency, effectiveness and credibility of public complaint systems related to the operation of courts and the judiciary. Interventions have further included steps to increase coordination between the courts system and other elements of the criminal justice system.

(c) Penal reform and alternatives to imprisonment

52. In 2005, the penal reform projects in Afghanistan continued with their extension to the provinces. A new project has been designed to provide for post-release options for imprisoned women and implementation will begin shortly. Implementation of a project to reform the judiciary and the prison system began in the Islamic Republic of Iran (see para. 48 above).

53. In Brazil, a comprehensive project in Rio de Janeiro entitled “Inter-agency partnership towards safer low-income communities in the city of Rio de Janeiro” will include activities to implement alternative sentencing and rehabilitation programmes for offenders. A project in Senegal providing for alternative conflict resolution at the community level has been ongoing for several years, yielding important lessons including some in the area of restorative justice.

54. Several other projects that included aspects of penal reform (in Ethiopia, Guinea Bissau, Liberia, the Libyan Arab Jamahiriya and Nigeria) have been developed, including a regional programme to enhance the management and promotion of human rights in prisons in Africa. All these projects contain an emphasis on reducing prison overcrowding through the provision of effective alternatives to incarceration.

(d) Juvenile justice

55. In 2005 and 2006, juvenile justice projects were being implemented in Afghanistan, Egypt, Jordan and Lebanon. The first two projects carried out in Lebanon from 1999 to 2003 were independently evaluated in July 2005.¹⁴ The evaluation highlighted the comparative advantage of UNODC in the juvenile justice field. The evaluation also highlighted that throughout the implementation of the projects, the technical assistance was delivered with a heightened respect and sensitivity for national competencies in the law reform process. The UNODC project team considered its role as that of a service provider to the national authorities, offering to create a synergy between international expertise and national partners and players. The results to be obtained were primarily national results, owned by the national partners. Throughout the implementation of the activities, a continuous monitoring system at the programme level had been put in place that was effectively applied in the planning and executing of the activities.

56. In Jordan, the initial comprehensive juvenile justice project was complemented with an additional project aimed at building court capacity and improving treatment of child victims and witnesses of crime. Building on the evaluation of the Lebanon project and lessons learned from projects under implementation, project ideas are being developed for Brazil, Colombia, Haiti, Kenya, the Libyan Arab Jamahiriya,

Myanmar and Palestine. The projects in Egypt and Lebanon have been extended, to the end of 2006 and 2008 respectively, to provide for vocational training and rehabilitation options for children in detention. These extensions were made possible through a broadened donor base, including through a private charitable foundation. The success of the Lebanon project in particular highlights the importance of a sustained engagement to ensure the adequate implementation of efforts in criminal justice reform.

(e) Victims of crime and violence

57. UNODC is implementing several projects in the area of the protection of victims. A global project provides grants to 15 non-governmental organizations carrying out victim support projects in India, Indonesia, Mexico, Pakistan, South Africa, Thailand and Ukraine. The projects have directly supported over 500 victims of serious violent crime, including human trafficking, who have sustained serious injuries or psychological trauma. Over 5,000 community stakeholders, law enforcement officers and other professional staff have benefited from training, consultation and awareness-raising.

58. A project in South Africa that has set up one-stop centres for victims of domestic violence has proved very successful in designing best practice in support of victims of violent crime by providing shelters with a range of services, including paralegal support, counselling and emotional support. The provincial government has assumed responsibility for the centres, ensuring long-term sustainability. An attempt is being made to replicate the project in other cities in the Democratic Republic of the Congo, Lesotho, Mozambique and South Africa,

59. In Mexico, in the state of Nuevo Leon, a special programme is being planned to provide support to victims under a larger umbrella project aimed at the prevention of crime and drug abuse. Provision of pilot training for law enforcement is also planned in a number of countries, based on the handbook on effective responses to violence against women (see para. 41 above).

C. Developing strategic partnerships in enhancing the rule of law and criminal justice reform

60. Recognizing the importance of avoiding duplication between United Nations entities as well as the relatively limited capacity of UNODC and its role as an honest-broker in these areas, efforts have been made to build effective partnerships with other United Nations entities, regional organizations and non-governmental organizations active in the area of the rule of law and criminal justice reform.

61. During 2005, UNODC chaired the fifth meeting of the Inter-Agency Coordination Panel on Juvenile Justice, established by the Economic and Social Council in its resolution 1997/30 of 21 July 1997. The Panel aims at encouraging cooperation at the global, regional and country levels between international agencies and non-governmental organizations providing technical assistance in the area of children in conflict with the law. At the global level, the Panel has developed a common public website and the tools and manuals referred to in paragraph 40 above. At the country level, UNODC has developed a joint project with UNICEF in Colombia and joint activities have been held in a number of countries with other

agencies and non-governmental organizations. Member States are regularly encouraged to make use of the advisory services and technical assistance of UNODC, UNICEF and the Office of the United Nations High Commissioner for Human Rights by the Committee on the Rights of the Child in its concluding observations on State party reports.¹⁵ The Panel provides a good example of United Nations and civil society cooperation.

62. As a contribution to the Secretary-General's study on violence against children, UNODC organized a visit by the independent expert preparing the study to Vienna and an expert group meeting on criminal justice responses to violence against children, with a focus on best practices and innovative approaches, is planned for April 2006. UNODC is contributing criminal justice data to the study and participated in the Thematic Consultation on Violence against Children in Conflict with the Law, held in Geneva on 4 and 5 April 2005.

63. UNODC, in coordination with the Division for the Advancement of Women, organized an expert group meeting on violence against women focusing on good practices in combating and eliminating violence against women, in Vienna, from 17 to 20 May 2005.¹⁶ In December 2005, UNODC participated in a workshop for United Nations entities in conjunction with the Secretary-General's study on violence against women, aimed at identifying gaps and challenges, as well as strategies for ensuring a more consistent system-wide approach to the issues involved.

64. In October 2005, UNODC's Global Programme against Corruption organized the fourth meeting of the Judicial Integrity Group at the United Nations in Vienna, which was attended by 12 chief justices and senior judges from both common and civil law jurisdictions. The meeting recommended developing a commentary on the Bangalore Principles of Judicial Conduct to enhance their practical use to States. Moreover, in order to increase the effectiveness and impact of its work, the Group concluded that it would be most appropriate and desirable for UNODC to become its secretariat. A permanent secretariat will ensure the further dissemination and promotion of the standards and practical tools developed by the Group, including through technical cooperation projects and programmes. The Group will meet for its fifth meeting in the third quarter of 2006.

65. UNODC provided expertise to a number of regional and international organizations through participation in meetings. In particular, UNODC has actively contributed to the work of the Council of Europe Group of Specialists, which was mandated by the Criminological Scientific Council of the Council of Europe, to revise and update Recommendation No. R (87) 21 on assistance to victims and the prevention of victimization adopted by the Committee of Ministers of the Council of Europe in September 1987.

66. The above all represent examples of successful cooperation at the political and working level to strengthen the rule of law and criminal justice reform, while maintaining each organization's specific mandates and competencies. As seen below, in the case of post-conflict situations, such cooperation and pooling of resources proves even more crucial and inevitable.

IV. Participating in United Nations efforts to rebuild peace and security: enhancing the rule of law and criminal justice institutions

67. The central role that the rule of law plays in development was recognized and emphasized in the report of the United Nations Millennium Project, which stated that “[t]he successful scale-up of investment strategies to achieve the Millennium Development Goals requires a commitment to good governance. This includes upholding the rule of law through administrative and civil services and through legal and judicial institutions.” The report also states that “[t]he rule of law, a prerequisite to sound governance, can affect the way policies are formulated and implemented.”¹⁷ As highlighted by some development scholars “a dramatic shift in the development thinking has occurred in the past few years from a belief in the importance of projects and service delivery to a language of rights and governance”,¹⁸ implying an engagement in a broader process of change. Needless to say, reforming the rule of law and re-establishing justice systems becomes even more essential for post-conflict societies. Strengthening the rule of law in the wake of conflict is not only an investment for the recovery of the country but, by addressing the grave injustices of war and the root causes of conflict, can help in preventing a return to hostilities. The Secretary-General in his report to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) made a number of recommendations, including proposals for enhancing United Nations system arrangements for supporting the rule of law and transitional justice in conflict and post-conflict societies. Drawing on those recommendations, a Rule of Law Focal Point Network with representatives from 11 departments and agencies has been established, in which UNODC plays an active role.

68. In the past year, UNODC has become more actively involved in United Nations system initiatives related to the rule of law and with a specific focus on post-conflict and transitional societies. Over the years, UNODC has provided significant levels of support to countries emerging from conflict and countries with economies in transition through its general programme of technical assistance, but not within the context of a specific post-conflict programme or strategy (see also E/CN.7/2005/10). In accordance with Economic and Social Council resolution 2004/25, a specific effort has now been made to increase cooperation with the Department of Peacekeeping Operations, including involvement in peacebuilding initiatives. This was emphasized during a meeting between the Under-Secretary-General for Peacekeeping Operations and the Executive Director of UNODC, held in New York in late 2005, during which specific peacekeeping operations were discussed where UNODC assistance in developing long-term technical assistance programmes in the area of criminal justice would be welcomed. Most recently, UNODC has provided detailed submissions concerning its capacity to support the newly established Peacebuilding Commission.

69. Cooperation has been established at the working level with the Criminal Law and Judicial Advisory Unit of the Department of Peacekeeping Operations. UNODC has provided extensive input to the drafting of a corrections policy and guidance manual by the Department. UNODC participated in an expert workshop to develop a guidance manual for corrections officers and in a workshop on the rule of law in

the context of judicial and legal systems organized by the Department. For its part, the Criminal Law and Judicial Advisory Unit of the Department has provided input to the discussions on juvenile justice in post-conflict settings during the meeting of the Inter-Agency Coordination Panel on Juvenile Justice (see para. 61 above) and is a major partner in the development of the assessment tools (see para. 32 above). The Department presented the UNODC assessment tools and the plans to conduct common assessment missions to the meeting of the Special Committee on Peacekeeping Operations held in November 2005.

70. At the operational level and at the request of the Department of Peacekeeping Operations, UNODC has, or will during the first half of 2006, carried out in-depth assessments in Guinea Bissau (on criminal justice reform, including prison reform), in Liberia (on prison reform), in Haiti (on juvenile justice and HIV/AIDS in prisons) and in the Democratic Republic of the Congo (on the judiciary, juvenile justice and prison reform). These assessments respond to the fact that, while most United Nations peacekeeping operations now possess a rule of law or corrections capacity, their focus is often on the immediate stabilization of peace and security. Such interventions often do not possess the mandate or resources for longer-term reform and capacity-building initiatives, which generally require a sustained and long-term programme of technical assistance, continuing long after the departure of the peacekeeping operation itself. It is important therefore to ensure a link between short-term stabilization efforts and longer-term programmes of technical assistance, focusing on building the capacity of criminal justice systems. It should also be noted that the period from first conducting an assessment through project development, funding and implementation, may be lengthy, often between six months and one year. For these reasons, it is important to conduct UNODC assessment missions once a degree of stability has been achieved or when elections have been held (an approach being followed in the case of the Democratic Republic of the Congo, Guinea Bissau, Haiti and Liberia), identifying key areas for long-term attention in conjunction with the Government and Department of Peacekeeping Operation counterparts and being involved in policy advice at the outset.

V. Conclusion and recommendations

71. Replies from Member States showed that significant efforts were being made both at the national and at the international level to strengthen the rule of law and criminal justice institutions in many States. For UNODC, the focus on rule of law issues and the expanding role of the United Nations system in this regard, constitutes an important opportunity for contributing its comparative expertise in the area of criminal justice to overall United Nations efforts. During the past year, the criminal justice and rule of law programme has continued to expand. Key to its future success will be to focus on its comparative areas of expertise, develop a broader and innovative portfolio of projects from which key lessons can be drawn and to be recognized within the United Nations system as a leader in this area.

72. Given this, the Commission might wish to take note of the efforts made by UNODC to build a rule of law and criminal justice programme and encourage the further development of the programme, including through the provision of adequate levels of regular and extrabudgetary funding. In this regard, the Commission might also wish to pay specific attention to the implementation of criminal justice and

related rule of law aspects of the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (A/CONF.203/18, chap. I, resolution 1) and the outcome of the Round Table for Africa held in Abuja on 5 and 6 September 2005, entitled *Crime and Drugs as Impediments to Security and Development in Africa: a Programme of Action 2006-2010*.

Notes

- ¹ See Rachel Kleinfeld, Carnegie Paper No. 55, "Competing definitions of the rule of law: implications for practitioners", (Washington, D.C., Carnegie Endowment for International Peace, 2005).
- ² Bahrain, El Salvador, Morocco, Slovenia, South Africa and the former Yugoslav Republic of Macedonia.
- ³ United Nations, *Treaty Series*, vol. 1582, No. 27627.
- ⁴ Council of Europe, *European Treaty Series*, No. 141.
- ⁵ Organisation for Economic Cooperation and Development, document DAFFE/IME/BR(97)20.
- ⁶ El Salvador, Guatemala, Maldives, Oman and the former Yugoslav Republic of Macedonia.
- ⁷ Maldives, Slovenia and the former Yugoslav Republic of Macedonia.
- ⁸ These mandates emanate from resolutions of the General Assembly, Economic and Social Council resolutions 2004/25 and 2005/21, the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex) and the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (A/CONF.203/18, chap. I, resolution 1).
- ⁹ See International Peace Academy, "Challenges in police reform: promoting effectiveness and accountability (New York, 2006).
- ¹⁰ *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); see also Council resolution 663 C (XXIV).
- ¹¹ <http://www.juvenilejusticepanel.org>.
- ¹² The implementation of Economic and Social Council resolution 2005/20 will be reported on in detail to the Commission at its sixteenth session.
- ¹³ http://www.unodc.org/unodc/en/criminal_justice.html.
- ¹⁴ United Nations Office on Drugs and Crime, *Independent Evaluation Report (Vienna, 2005)*, available at: http://www.unodc.org/pdf/criminal_justice/Juvenile_Justice_Lebanon.pdf.
- ¹⁵ For details, see <http://www.ohchr.org/english/bodies/crc/index.htm>.
- ¹⁶ The report of the meeting is available at: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/FINALREPORT.goodpractices.pdf>.
- ¹⁷ Millennium Project, *Investing in Development: a Practical Plan to Achieve the Millennium Development Goals* (United Nations publication, Sales No 05.III.B.4) pp. 110 and 115.
- ¹⁸ Leslie Groves and Rachel Hinton, "The complexity of inclusive aid", *Inclusive aid: Changing Power and Relationships in International Development*, Leslie Groves and Rachel Hinton, eds. (London, Earthscan, 2004).