



UNITED NATIONS  
*Office on Drugs and Crime*

The Application of the  
United Nations Standards and Norms  
in Crime Prevention and Criminal Justice



Peace Center, Castle Schlaining  
Stadtschlaining, Burgenland, Austria  
10-12 February 2003

Expert Group Meeting

# Foreword

Antonio Maria Costa

Executive Director, *United Nations Office on Drugs and Crime*

Since 1945, the United Nations has been involved in the formulation and promotion of internationally recognized principles in crime prevention and criminal justice. The landmark United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955. The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters and Action to Promote Effective Crime Prevention were finalized in 2002. The body of United Nations standards, norms, guidelines and model treaties that have emerged over the years deal with a wide variety of key issues, ranging from juvenile justice, to the protection of victims of crime, to safeguards guaranteeing protection of the rights of those facing the death penalty.

The United Nations Commission on Crime Prevention and Criminal Justice has long recognized that criminal justice systems vary considerably from one State to the next, and also within individual federal States. While those differences are due to the various legal, political, economic, cultural and social circumstances, the transnational nature of crime has led to further attempts to agree on common definitions and procedures to facilitate international legal co-operation. Together with the international human rights instruments, the United Nations standards and norms represent a collective vision of how a criminal justice system should be structured and how criminal policy should be further developed to respond to emerging needs.

An Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice was held at the Peace Center in Stadtschlaining in Austria, from 10-12 February 2003. Their papers emphasize the value of the standards and norms in the prevention of crime, criminal justice reform, the rule of law, good governance and sustainable development in the world.

The above mentioned meeting benefited from the financial support of the Governments of Austria, Canada and Germany. The publication of this volume is due to the generosity of the Ministry of Justice of Austria and to the Asia Crime Prevention Foundation.

I hope that the reader will find the thoughts contained in this volume inspirational and help advance the dissemination and implementation of the United Nations standards and norms.



United Nations Office on Drugs and Crime  
Vienna International Centre  
PO Box 500, A-1400 Vienna, Austria  
Tel: (+43 1) 26060 4269, Fax: (+43 1) 26060 5589

**Participants of the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, held at the Peace Center, Stadtschlaining, Austria from 10-12 February 2003, prepared the papers contained in this volume.**

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# Opening statement

Eduardo Vetere

Director, Centre for International Crime Prevention

*United Nations Office on Drugs and Crime*

The standards and norms in crime prevention and criminal justice, adopted by the United Nations over the years, are a vast and unique common resource for setting the agenda and operationalizing the work for criminal justice reform throughout the world. That world has changed considerably over the past few decades. It is a world of fast globalization, with new types of conflict where peace-building and peacekeeping have become household words to all of us.

That is why we very much welcome the Peace Center in Stadtschlaining, Burgenland, as the setting for this Expert Group Meeting on the Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice. We thank the Peace Center for its efforts to ensure excellent working conditions and the Burgenland authorities for the generous welcome and warm hospitality we have received. Holding this meeting in the Peace Center makes an extremely opportune and pragmatic connection with the concepts of the protection and promotion of the rights of victims and offenders, not only at times of peace and war but in any situation where human rights may be violated, infringed or disregarded. "Human rights" and "criminal justice" are terms that apply equally well to the problem of application of the United Nations standards and norms, and it is no accident that this meeting is being co-sponsored by the United Nations Office of the High Commissioner for Human Rights, whose representative is here with us today.

The first United Nations instrument in the series of standards and norms, the United Nations Standard Minimum Rules for the Treatment of Prisoners, was adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The latest, the Basic Principles on the Use of Restorative Justice in Criminal Matters, was adopted by the Economic and Social Council in 2002. All the United Nations standards and norms in crime prevention and criminal justice are extremely helpful in assessing reform needs all over the world. They also are relevant to the maintenance of the rule of law, in fighting conventional and organized crime of any nature, in anti-terrorism work, and in the establishment or the rebuilding of the rule of law in those countries torn by civil strife as well as in others that are attempting to reconstruct societies after a war.

The United Nations standards and norms are yardsticks developed largely by consensus: a set of basic principles that can help to upgrade national practices and harmonize legislative provisions and operational procedures across national frontiers. They can also help significantly to promote more effective and fair crime- and justice-related action in three dimensions. First, they can be used at the national level, by fostering in-depth assessments leading to the adoption of much needed and often overdue criminal justice reforms. Secondly, they can be used regionally and subregionally, by providing a framework for the formulation of regional and/or subregional plans of action with concrete strategies to be implemented in phases and subject to periodic evaluations. Thirdly, in the largest sense, globally or internationally, they highlight "best practices" and help States to adapt them to their specific needs so as to increase the prospects of cooperation between States.

Those three dimensions are complementary and, if adequately utilized, should create the synergies necessary for informed, comprehensive mutually reinforcing and effective action based on the widespread consensus that the UN standards and norms represent.



Almost 50 years of distinguished history of development of the standards and norms is a testimony to the long lasting commitment of Member States to strengthening the rule of law by "soft" as well as "hard" legal instruments, that is the United Nations conventions: three on drug and related issues, one against transnational organized crime with three protocols, and the forthcoming one against corruption.

This past history, although distinguished, has not always been plain sailing. As many will recall, the review of the past three years of the work of the Centre for International Crime Prevention by the Office of Internal Oversight Service of the United Nations Secretariat, as well as relevant recommendations of the Committee on Programme Coordination, have called attention to the need to explore new approaches and more effective ways of reviewing the application of our UN standards and norms. The present Expert Group Meeting has been convened in pursuance of the recommendation made by the Commission on Crime Prevention and Criminal Justice, as endorsed by the Economic and Social Council, and has been made possible through the generous contributions of the Governments of Austria, Canada and Germany. I wish to express our gratitude for this funding which is tangible evidence of the commitment and support of those Governments. Thanks to them, expert participants can now discuss how to make standards work at the beginning of the 21st century, and report accordingly to the Crime Commission in May.

The United Nations standards and norms cover a variety of subjects, a whole spectrum of crime prevention and criminal justice aspects. To facilitate their application, they can be systematized, for example by clustering those designed to meet national needs, such as the criminal justice subsystems, and those transcending frontiers, such as the model treaties on the transfer of foreign prisoners, recovery of stolen vehicles, mutual assistance and extradition. Others include areas shared with sister agencies, notably with the United Nations Office of the High Commissioner for Human Rights (e.g., treatment of adult offenders and the protection of victims), the United Nations Advancement of Women Programme (e.g., on violence against women;) UNICEF (e.g., rights of the child and juvenile justice), the Office of Legal Affairs (e.g., terrorism). Such links should significantly facilitate the wider and more effective application of the standards and norms.

It is to be hoped that the recent and current convention negotiations, including the Convention against Transnational Organized Crime and its related Protocols, and the forthcoming Convention against Corruption, will elicit the kind of system-wide cooperation that will give full weight to the further application of the existing standards and norms. They should also help to overcome what is seen as a reluctance in some quarters to live up to the commitment taken when the instruments were approved. That is notably the case with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985 and hailed as a Magna Carta for victims. In spite of the warm reception, the kind of integrated action that would give it a strong forward thrust has unfortunately not been forthcoming even though comprehensive action plans with all the possible partners have been proposed, including an inter-agency task force, the establishment of a Fund for Victims, the formulation of policy guides and the development of training manuals.

More than this, however, all the "soft law" instruments suffer from one common ailment: they are not "implementable" in the strictest legal sense of this word; thus, in addition, their degree of implementation is difficult to assess. That is the crux of the problem and the challenge before this meeting and before the Commission in a few months' time.

The expert paper prepared by Professor Matti Joutsen, who has accepted to serve as a resource person for the United Nations Secretariat, provides an exhaustive review of the many issues that should be addressed. It also contains a set of draft recommendations, some of which have been drawn up on the basis of the papers that you have submitted. I would like to thank Matti Joutsen and all of you for your substantive contributions which point toward the reorientation of the application of United Nations standards and norms within the area of technical

cooperation and criminal justice reform.

It is up to you to advise the Commission and indicate the goals to be set, to map how the review process should proceed and to state what kind of technical cooperation activities could be envisaged. Among you, there are many distinguished experts with a long association with the United Nations Crime Prevention and Criminal Justice Programme. We also have here representatives of governments, intergovernmental and non-governmental organizations, as well as representatives of other United Nations bodies and the United Nations affiliated and regional institutes. I welcome you here and see your participation as evidence of a growing commitment of the United Nations family to bringing the United Nations standards and norms back into the mainstream, to spearhead reform in criminal justice around the world.

It is indeed very heartening to see old and new friends of the Office on Drugs and Crime and of the Office of the High Commissioner for Human Rights gathered in this historic conference setting to discuss one of the prerequisites for the strengthening of the rule of law: the effective, fair and humane application of United Nations standards and norms in crime prevention and criminal justice. I am sure that all of you will find inspiration for viable and practical recommendations for follow-up action by the Commission.



## Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century

Dr. Roland Miklau, Director, Ministry of Justice, Vienna, Austria

Two years ago, the Tenth United Nations Congress met in Vienna. A Declaration on Crime and Justice was elaborated and submitted to the Millennium General Assembly. This "Vienna Declaration" was unanimously endorsed by all the Member States of the United Nations.

The States reaffirmed the goals of the United Nations in the field of crime prevention and criminal justice, "the reduction of criminality, more efficient and effective law enforcement and administration of justice, respect for human rights and fundamental freedoms, and promotion of the highest standards of fairness, humanity and professional conduct." States undertook to use and apply the UN standards and norms in law and in practice. Specifically, they recognized the importance of prison reform, the independence of the judiciary and prosecution authorities and codes of conduct for public officials. They also agreed to provide the necessary education and training to officials and to strengthen institutions entrusted with the administration of criminal justice. They committed themselves to containing the growth and overcrowding of pretrial and detention prison populations. Member States encouraged the development of restorative justice policies and the introduction of action plans in support of victims of crime. They also called for the updating of the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice.

Subsequently, plans of action for the implementation of the Vienna Declaration were developed by the Ninth and Tenth Sessions of the Crime Commission. In January 2002, the General Assembly invited Member States to use the plans of action as a guide in their efforts to formulate legislation, policies and programmes. In addition to very specific national actions suggested in respect of crime prevention, victims of crime, prison overcrowding, juvenile justice, the needs of women, and restorative justice, the States committed to endeavour to publish the Compendium in the languages of their countries.

More recently in July 2002, the Economic and Social Council reaffirmed the importance of the United Nations standards and norms and the need to maintain a balance with the priority issue of combating organized crime. This resolution, which led to the convening of the Expert Group, also invited Member States to make available funds for projects for criminal justice reform, to reduce prison overcrowding and strengthen juvenile justice systems.

Austria is pleased to report that a number of measures have been taken to implement the Vienna Declaration. An amendment to the Criminal Code of 2002 provides for a series of new measures, implementing international obligations in combating transnational organized crime, terrorism and computer-related crime. These amendments have extended the surveillance over telecommunications and required the retention of data for law enforcement purpose.

In relation to juvenile justice, the age of majority has been raised to 18, following an amendment of the General Civil Code in 2000. Therefore the provisions on juvenile delinquents apply for persons aged 14 to 18. The age group between 18 and 20 (so called young adults) benefits from some of the juvenile provisions including the removal of minimum penalties and the institution of parole officers. These provisions take into account the so-called "crisis of adolescence" which makes young adults particularly vulnerable to committing offences.

With respect to the action plan relating to restorative justice, Parliament is presently reviewing shortcomings in the compensation payment and community services, and examining all possibilities where such sanctions might apply.

Austria has continually been inspired by the UN standards and norms in developing its national legislation and practice. In many areas, we believe we can be a model for other countries.

Austria has not only provided funds for the Global Programme against Terrorism but has also agreed to finance a juvenile justice project in Afghanistan.

We hope that this expert group will be a further catalyst to find ways and means of expanding the application of UN standards.

The world has determined what is needed; it is now up to us and Member States to ensure that the actions plans are implemented.

## Expert Group Meeting on the application of the United Nations standards and norms in crime prevention and criminal justice

Welcome speech by Arno Truger, Director of the Peace Center, Castle Schlaining, Stadtschlaining, Burgenland, Austria

On behalf of the Peace Center, Castle Schlaining, I would like to welcome you warmly to the Expert Group Meeting on the Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice in the Conference Hall of our Peace Center.

We are honoured that you have chosen the Peace Center as the venue for this important meeting because we consider your work very important. We appreciate your goals which are very similar to ours.

The founding of the Center was based on the idea of the international validity of basic human values and the necessity of standards and norms that are respected globally. We established the Center close to the then Iron Curtain in order to overcome the various conflicts between East and West, at a time when not many people in the West really cared about what was going on in the East. We based our work on the idea that we are dependent on development in the East and must therefore contribute to the establishment of dialogue, understanding and trust building: important preconditions for the respect of basic standards and norms.

Comparing your endeavours with the main paradigms of our Center, I found three other similarities. The first relates to the actors to be addressed. When we started our work, the limited attention given by the West to developments in the East was focused mainly on State representatives. That was also the reason why the civil society movements that resulted in the abolition of the Iron Curtain were overlooked. Civil society actors have to be addressed in addition to Government actors.

The other paradigm of our work I see reflected in your endeavours is the relationship between various societal developments. Professor Joutsen emphasizes in his paper the importance of the United Nations standards and norms in crime prevention and criminal justice for establishing the basis for good governance and institution building and thus also for economic development especially in post-conflict situations. From the very beginning our Center's work has been based on a multi-faceted approach. Peace-building has to relate to various societal developments in areas such as human rights, governance, economy, security, education, and media which are closely interrelated. Let me give you an example from our first years of existence in the 1980s. We supported a dialogue between the peace movements in the West and the East. While the former would focus on disarmament, the latter would emphasize the importance of democratization and human rights. Moreover, both movements accused one another of being counter-productive. In promoting dialogue between them the Austrian Study Center for Peace and Conflict Resolution (ASPR) emphasized that disarmament and the respect of human rights are two sides of the same coin!

The third similarity between the Center's approach and your endeavours is the attention you pay to the application of standards and norms. When we started our work, there were already some peace centres in existence worldwide. However, most of them focused on research. We are convinced about the effectiveness of mutually reinforcing relationships between research, education and practice. Research needs the link to practice in order to raise meaningful questions and has to use education in order to disseminate its results. Education needs the findings of research and has to be related to practice in order to be meaningful. And, last but not least,

practice relies on the findings of research and needs to be accompanied by educational efforts.

Based on the approach mentioned which links:

- Personal to international developments;
- Governmental and non-governmental actors;
- Various societal developments in areas such as human rights, governance, economy, security, education, and media;

we developed various programmes linking research, education and practice.

It was also because of this approach that we were the first who responded positively to the request of the former UN Secretary-General Boutros Boutros Ghali to establish regional training centres for peacekeeping operations. With the support of the Austrian Government we established the International Programme for Civilian Peacekeeping and Peace-building Training (IPT) in 1993.

When we developed this programme we found out that there were no clear definitions of civilian functions in this field, nor were job descriptions available. After doing some research including field trips and workshops we developed a comprehensive approach that:

- Covers all stages of conflict prevention, crisis management and post-conflict settlement;
- Considered a broad spectrum of functions and tasks required during the different stages of the conflict management cycle, i.e., mission tasks would include advisory; monitoring; fact-finding, investigation and inquiry; training and capacity-building; as well as executive tasks;
- Supports local ownership in the conflict area and is compatible with civil society;
- Relates to many governmental and non-governmental actors in the field, and seeks cooperation with relevant international organizations, in particular the UN.

The preparation for these tasks would include:

- General preparation for mission involvement, regardless of the specific function and mission participants will serve;
- Function specific preparation for a specific not necessarily related to a specific mission such as:
  - Election observation and assistance (e.g., concepts and practice of democracy, elections and election observation in various societies);
  - Empowerment for political participation (e.g., democratic institution building, relationship between State and civil initiatives, promotion of personal political engagement);
  - Human rights protection and promotion (e.g., definition and concept of human rights, cultural differences, fact finding, promotion, monitoring, and technical assistance);
  - Humanitarian assistance (e.g., dilemmas and political implications, delivering emergency help, food aid, water and sanitation, health care);
  - Information dissemination (e.g., acquisition and distribution of information in crisis regions, communication among the actors in the field, dealing with political instrumentalization of the media);

- Post-conflict reconstruction (e.g., reconstruction, repatriation, rehabilitation, dealing with trauma and shock, rebuilding civil society);
- Conflict management (e.g., facilitation, mediation, negotiation, arbitration);
- Mission-specific preparation;
- In-mission training;
- Debriefing; and
- Accompanied research.

Since 1993 we have organized 27 basic courses and 26 specialization courses with a total of more than 600 participants. Right now the 28th basic course is taking place in House International. You might meet the participants during lunch or dinner in the Hotel.

From the very beginning we have tried to contribute to the standardization of training and recruitment and to link our activities to the needs of the UN. Unfortunately this was not easy. There were no job descriptions for mission staff or mission requirements available which could have given hints regarding the training goals and contents. In order to contribute to the exchange of lessons learned and the standardization of training and recruitment we organized a variety of activities:

- In 1995 we organized an international workshop on these issues involving UN organizations and the OSCE;
- In the same year we hosted the International Colloquium on Post-Conflict Reconstruction Strategies, organized by the UN Reconstruction Unit, Vienna;
- We conducted a study on the training for peacekeeping organizations for the UN University in Tokyo together with two Irish Universities, covering the part on the preparations for civilian missions activities; and
- We published a Schläining Working Paper on *The Role, Preparation and Performance of Civilian Police in United Nations Peacekeeping Operations*, written by Duncan Chappell and John Evans under the auspices of the International Centre for Criminal Law Reform and Criminal Justice Policy, the United Nations Interregional Crime and Justice Research Institute, the Centre for International Crime Prevention and the Department of Justice of Canada in 1999.

Unfortunately, the results of our efforts to contribute to the standardization of training and recruitment for UN missions were limited. At present, the Peacekeeping Department of the UN is even more focusing on supportive functions, following the recommendations of the Brahimi Report. Substantive civilian functions and the preparations for them remain with various UN departments and organizations and their civilian activities within missions are not well coordinated. For training institutions, such as ours, no advice regarding training goals and recruitment possibilities is at hand. However, cooperation on a regular basis takes place with UN Volunteers who interview our participants at the end of the programme in order to recruit them for missions.

We are also cooperating with the OSCE as to support participating States and the OSCE in preparing qualified mission personnel. This personnel should be at the disposal of the OSCE to provide assistance, in accordance with OSCE norms, in the areas of conflict prevention, crisis management and post-conflict rehabilitation. In connection with the training standards, which were developed in the framework of the REACT concept of the OSCE after the Istanbul Summit in 1999, we developed a basic course for the OSCE and offer it together with specialization



courses which are very similar to the IPT program. Since 2000 we have organized five basic courses and four specialization courses with a total of 150 participants. This programme takes place under the patronage of the OSCE. The OSCE also supports the programme by taking care of the course costs for the mission personnel they send and by providing lecturers. The OSCE also managed to develop a staffing matrix and a recruitment system for civilian experts in the framework of the REACT concept in a very short period of time.

Finally, I would like to inform you about our most recent project, which is particularly linked to rule of law training. It is a project we carry out on behalf of the European Union.

The European Council meetings at Feira in June 2000 and Göteborg in June 2001 have identified and stressed the importance of training for civilian aspects of crisis management as a priority area with a view to enhancing the capacity of the European Union in order to respond effectively to international crises. The existence of well trained civilian experts ready to be deployed at short notice will be key to the European Union's ability to undertake the full range of conflict prevention and crisis management tasks. The EU considered the creation of trained reserves as essential in order to provide civilian personnel for peace missions and field activities of the United Nations, the OSCE, the Council of Europe and other international organizations, as well as for EU-led missions. The European Union has therefore committed itself to developing appropriate "common standards and modules for training" in the different priority areas identified as part of civilian crisis management, i.e.: Civilian Police, Rule of Law, Civilian Administration and Civil Protection.

In October 2001, the European Commission took the initiative to launch a pilot project to establish an informal EU-wide network of national bodies responsible for training of civilian personnel, with our Center acting as project coordinator. The Project focuses on the areas of rule of law and civilian administration and aims at promoting EU training cooperation, identifying joint approaches to civilian training, develop training modules and organizing common EU training through pilot courses. The modules developed might in the future form the agreed basis for common civilian training modules in the EU and lead to the establishment of common training standards.

During a first phase of the Project, proposals were developed for common training modules and training cooperation, including EU pilot courses. These proposals were presented to EU Member States at a meeting hosted by the Spanish presidency in Madrid last year, where they found large support. The proposals were drafted by a Core Group of interested national training institutions and focal points of the EU, composed of training experts and representatives from Austria, Denmark, Finland, Germany, Italy, The Netherlands, Spain, and Sweden.

The project covers a number of areas of operation that are closely interrelated with the spheres of civilian administration and the rule of law as specifically defined, and that are included within the array of functions currently carried out by civilian personnel in the field. In order to ensure complementarity and full interoperability, the training modules take into consideration the training standards and training materials developed by the UN, the OSCE, the Council of Europe and other relevant international organizations.

Course outlines/modules were developed for the Core Course, for the pre-mission training/induction briefing, as well as for the following function-specific courses:

- In the broader area of Rule of Law: Course on the Rule of Law, Course on Human Rights, Course on Democratization and Good Governance;
- Course on Civilian Administration;
- Three additional specialization courses were developed for functions which refer both to the areas of civilian administration and to the rule of law: Conflict Management; Press and Public Information, Mission Administration and Support.

Based on the recommendations of the Madrid Training Conference, a second implementing phase of the project is currently being launched which includes:

- The creation of an informal EU Group on Training composed of the project partners (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, The Netherlands, Spain, Sweden and the United Kingdom), with the task of discussing civilian training issues, and coordinating and evaluating the pilot courses;
- The organization of 14 EU pilot training courses for EU experts (including the participation of non-EU trainees) by training providers in nine EU Member States (January-July 2003) on the basis of the course outlines/modules developed by the Core Group during the first project phase. Courses on Rule of Law will take place in Finland, Germany and Sweden; and
- The holding of a major training conference of all EU training focal points under Italian Presidency in autumn 2003 with the aim of discussing the result of the project; the conference will include major partner organizations (UN, OSCE, Council of Europe) and non-EU training providers.

Ladies and gentlemen, because of our approach and through the activities of the ASPR that I have described to you, we are aware of the importance of your effort to contribute to the wider application of the United Nations standards and norms in crime prevention and criminal justice. We wish you a very successful meeting and a pleasant stay in Schlaining.



# The application of United Nations standards and norms in crime prevention and criminal justice. Background paper

Professor Matti Joutsen, former Director, European Institute for Crime Prevention and Control; Ministry of Justice of Finland

## 1. Introduction

1. The body of United Nations standards, norms, guidelines, model treaties and conventions that have emerged over the years is a central feature of the United Nations Crime Prevention and Criminal Justice Programme. The instruments deal with a wide variety of key issues in crime prevention and criminal justice, ranging from juvenile justice, to the treatment of prisoners, to safeguards guaranteeing protection of the rights of those facing the death penalty. (1) The most recent standards and norms, finalized in 2002, deal respectively with elements of responsible crime prevention and restorative justice. (2)

2. The structure and operation of the criminal justice systems vary considerably from one State to the next, and also within individual States. The differences are due to the different cultural, economic, legal, political and social circumstances in which each system has evolved over the years. Over the course of the last century, three principal factors have, in effect, changed the direction of this evolution, from increasing divergence to closer convergence of criminal justice systems. First, the increasingly transnational nature of some forms of crime (in particular, organized crime) has led to attempts to agree on common definitions of crime and on procedural measures, in order to facilitate international legal cooperation. Secondly, policy-makers and practitioners around the world have recognized the value of studying how common crime problems are dealt with elsewhere. This process may lead to a distillation of what is known as "desirable practice" or "best practice" in crime prevention and criminal justice.

3. Thirdly, the respect that is now accorded to human rights has resulted in the adoption of certain minimum legal safeguards and of certain mechanisms in those criminal justice systems where they had been absent or inconsistently recognized. Respect for human rights has also been recognized as promoting effective crime prevention and control, nationally and internationally. (3)

4. Most of the United Nations standards and norms have been adopted by consensus by the General Assembly or the Economic and Social Council. They therefore embody what can be deemed an expression of a common ideal, a vision of how the criminal justice system should be structured, how criminal policy should be developed, and how crime prevention and criminal justice should be secured. Moreover, many of the standards and norms provide a universally accepted interpretation of provisions of the Universal Declaration of Human Rights. Indeed, in 1994, the Economic and Social Council specifically noted that the standards and norms in crime prevention and criminal justice constitute internationally accepted principles outlining desirable practices in that field. (4)

5. The formulation and adoption of such global standards and norms are major accomplishments. They are a distillation of expert advice and intergovernmental recommendations. However, standards and norms that remain sterile ideas on paper have no true significance. The General Assembly and ECOSOC have repeatedly emphasized the importance of application of the standards and norms. (5) For example, the various reports of the Secretary-General and reports of the sessions of the United Nations Commission on Crime Prevention and Criminal Justice contain several examples of how these standards and norms

have subsequently been used in various countries in the formulation of national policies and domestic legislation in the field of crime prevention and control, and in the development of bilateral and multilateral cooperation. (6) The very fact that the General Assembly and ECOSOC have felt the need to repeat their call so frequently shows that application has met with difficulties.

6. In 2001, the Office of Internal Oversight Services suggested that "the CICIP should, upon completion of the first cycle of reporting on the use and application of standards and norms at the eleventh session of the Commission, propose to the Commission at its twelfth session a revised mechanism for reporting on their use and application that would minimize the reporting burden." (7)

7. In order to prepare this matter, ECOSOC decided, on the submission of the Commission, to request the Secretary-General to "convene a meeting of experts, subject to the availability of extrabudgetary funds, to evaluate the results achieved and the progress made in the application of existing United Nations standards and norms in crime prevention and criminal justice, to review the present system of reporting, to assess the advantages to be expected in using a cross-sectoral approach and to make concrete proposals to be considered by the Commission on Crime Prevention and Criminal Justice at its twelfth session." (8) The present paper is a contribution to this process.

8. The paper is structured as follows:

- An analysis of the concepts of implementation and application (section 2);
- Evaluation of the progress achieved (section 3);
- Assessment of modalities for collecting and reporting (section 4);
- Discussion at the Commission on the application of standards and norms (section 5);
- The "cluster approach" to assessing application (section 6);
- Operationalization of standards and norms in the implementation of technical cooperation projects (section 7);and
- Conclusions (section 8).

## **2. Implementation and application of United Nations standards and norms in crime prevention and criminal justice (9)**

### **2.1. The concepts of implementation and application**

9. Both crime and the manner in which society sees and responds to crime are constantly evolving. For this reason too, the criminal justice system is undergoing unending change. Implementation and application of the United Nations standards and norms in crime prevention and criminal justice, as is the case with standards in general, can be seen as a never-ending process. The need for further work on implementation and application of the different standards and norms may vary from one State to the next, and also within a State, but no State should be complacent enough to regard itself as being in full compliance with all of the standards and norms. While it is true that the work of the United Nations in the rule of law and in increasing the efficacy and efficiency of criminal justice systems has in particular taken into account the needs of developing countries and countries in transition, the more developed countries may also benefit. The administration of criminal justice should be seen within a broader political, economic and social development context.

10. Moreover, many of the provisions in standards and norms that have been adopted in the field of crime prevention and criminal justice require what is known as "progressive realization", as opposed to full implementation immediately upon adoption. (10) That means that they need to be made operative in successive stages. Clearly, implementation and application require continuous review by the authorities of all Member States of the United Nations.

11. A variety of mechanisms (which are reviewed below) can be used to promote implementation and application: (11)

- Reporting;
- Assessing the application of standards and norms;
- Encouraging the appropriate UN bodies to use the crime prevention and criminal justice standards and norms;
- Providing advisory services and other technical cooperation on request; and
- Other mechanisms.

## **2.2. Reporting**

12. In order to ensure that States party to international instruments act in compliance with their obligations, the instruments often require that the State parties report on what steps they have taken to implement their obligations. The instruments may also provide for a procedure by which a body (such as a Conference of the States parties) can review the reports and decide on the possible need for further action. Typical examples are the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (12) and the Convention on the Rights of the Child. (13) The most notable example within the United Nations Crime Prevention and Criminal Justice Programme is the Conference of Parties that is to be set up by the State parties to the United Nations Convention against Transnational Organized Crime, once the Convention enters into force.

13. Even more highly developed reporting mechanism are used within the framework of some regional organizations. For example, two mechanisms have been developed within the framework of the Organization for Security and Cooperation in Europe. According to the so-called Vienna mechanism, if other participating States request information about an urgent human rights matter, a Member State must respond in writing within 10 days. According to the so-called Moscow mechanism, a State may request a mission of three experts to investigate and attempt to resolve a human rights problem. This could be followed by increasingly intrusive actions, including the sending of a rapporteur immediately if a request for this is presented by 10 participating States.

14. As compared for example to international agreements, standards and norms are part of "soft law." The dominant view in international law is that the adoption of such standards and norms does not impose enforceable obligations on States or on other addressees. (14) Consequently, there are also no obligations to report on adherence to the instruments. Nonetheless, the instruments by which standards and norms have been adopted by the General Assembly, the Economic and Social Council and other bodies often recommend that States report, on a voluntary basis, to the Secretary-General on application.

15. Such requests by the Secretary-General to Member States for the preparation and submission of reports can seek to fulfill several objectives. (15) First, as part of the process of preparing a report, in particular, in the case of a first report on application, a State would ideally carry out a comprehensive review of the relevant national legislation, procedures and practice, which would serve to identify the areas in which work is needed to bring the State into compliance with the standard or norm. Second, by repeating such a review at regular intervals the State can see what changes may have occurred over time. Third, and in connection with the second

objective, preparation of a report can provide a basis for evaluating progress in application. In particular, it may be possible to identify specific benchmarks or goals against which performance in a given area can be assessed. Fourth, the process may enable the State to better understand what problems and shortcomings have been encountered in application.

16. Depending on the manner in which the national report is prepared, the process may also open up government policies to wider scrutiny in society, and encourage the involvement of various sectors of society in the formulation, application and review of the relevant policies.

17. From the point of view of the government, it is also worth noting that the process may enable the State to demonstrate that it has in fact taken action in order to apply the standard or norm.

### **2.3. Assessing the application of standards and norms**

18. Since there is no enforceable obligation on States to report on application of standards and norms, the instruments by which these standards and norms have been adopted have also generally not sought to establish any type of regime under which a body can monitor application. In this, "monitoring" is understood as a process through which the body can require a State to answer questions on application, in particular on any alleged failure to apply provisions, and decide on possible further action. (16)

19. Nonetheless, the reports provided by States, and additional or alternative sources of data on application of standards and norms, may be useful to the United Nations in a number of ways. The material provided in the reports may help in better understanding what factors or difficulties States encounter in application, which in turn may help the United Nations in making better informed decisions on technical assistance activities and on other methods of application. The reports and data may also identify ways in which the existing standards and norms should be developed or supplemented, perhaps also on the basis of a regional approach. From the point of view of the Member States, the information provided may provide further encouragement to apply the standards and norms, and indicate ways in which the standards and norms can be applied.

20. With these benefits in mind, the Secretary-General has sought to analyse the reports of Member States on application. Questionnaires have been prepared to facilitate the process of reporting, and to obtain greater uniformity in the types of information provided by the States. The analysis has been done not only by the Secretary-General, but also for example by consultants and members of the scientific community. (17) The results have been submitted to the Commission for discussion.

### **2.4. Encouraging the appropriate UN bodies to use the standards and norms on crime prevention and criminal justice**

21. A third way to promote application of the standards and norms is to encourage key bodies of the United Nations to integrate application of standards and norms in criminal justice and crime prevention into their own work. Considerable effort has been made to minimize overlap within the United Nations system, but nonetheless for example the work carried out by the International Drug Control Programme, the Centre for Human Rights (in particular the Office of the United Nations High Commissioner for Human Rights), the Department for Policy Coordination and Sustainable Development, the United Nations Children's Fund, and the Division for the Advancement of Women unavoidably impacts also on crime prevention and criminal justice.

22. For this reason, standards and norms on crime prevention and criminal justice may well provide other United Nations bodies with material for their work. This material can be used as yardsticks for assessing development in, for example, drug control, the protection of human rights, social development, the protection of children, or the status of women, or it can flesh out certain details on how human rights, social development, the protection of children, or the status of women should be enhanced.

23. In a similar manner, other relevant bodies of the United Nations may be able to strengthen the impact of standards and norms in criminal justice. For example through the work of the Centre for Human Rights, the Standard Minimum Rules for the Treatment of Prisoners is evolving from soft law into more obligatory rules.

24. At the same time as cooperation among United Nations bodies is encouraged, the need arises to avoid duplication of activities within the United Nations. There have been repeated calls for improved coordination between the Centre for International Crime Prevention of the Secretariat and other relevant United Nations entities in activities related to the application of standards and norms. (18)

## **2.5. Providing advisory services and other technical cooperation on request**

25. Although reporting systems, assessments of the application of standards and norms, and encouragement to other United Nations bodies to use the standards and norms can all contribute to wider application, they are all indirect approaches. A considerably more direct approach is to work with individual Member States in the identification of problem areas and possible solutions. Since the setting up and strengthening of crime prevention and criminal justice programmes falls primarily within the sovereignty of each Member State, assistance to governments in this area always takes place at their request.

26. Advisory services and other technical cooperation can be provided in several ways, including the provision of the services of experts, the organization of national and regional seminars and other meetings, the organization of other training, and the preparation of informational or educational materials. The cooperation can be directed at the legislative or policy-making level. It is, however, more commonly directed at the administrative and management level, in order to reach those who are responsible for applying the United Nations standards and norms on a day-to-day basis, thus contributing to the upgrading of their efficiency and capabilities.

27. The United Nations crime prevention and criminal justice programme utilizes the full-time services of two interregional advisers for crime prevention and criminal justice, as well as the regional advisor assigned to the Economic and Social Commission for Asia and the Pacific (ESCAP). The institutes in the United Nations crime prevention and criminal justice programme network have also provided considerable expertise to the States within their respective mandates. In addition, the field offices of the United Nations High Commissioner for Human Rights, UNICEF and UNDP, as well as the United Nations resident coordinators, provide expert assistance in order to ensure that crime prevention concerns are included in the programmes and projects carried out by those entities, and that they take into account the economic, social, cultural and political circumstances of the States concerned.

28. As for seminars and other meetings, the United Nations Centre for International Crime Prevention and the institutes in the programme network have been particularly active. Each year, they both organize and participate in many national, regional and interregional seminars and other meetings at the professional and non-professional levels, providing information on the contents of United Nations standards and norms and on how these can be applied in practice.

29. The CICP and the institutes also seek to promote the application of United Nations standards and norms, for example by advising governments on the development of training programmes for key law enforcement and criminal justice personnel as well as the relevant professional groups.

30. The services and the training provided by experts can be supplemented through the development of handbooks and manuals for the various professions in the criminal justice system. Such handbooks and manuals seek to set out in detail how the United Nations standards and



norms can be applied in different circumstances, and provide information on desirable practices. A considerable number of such handbooks and manuals have been produced over the years:

- The United Nations Criminal Justice Standards for Peacekeeping Police (the so-called Blue Book), prepared by the CICIP in cooperation with the International Centre for Criminal Law Reform and Criminal Justice Policy (available in Arabic, English, French and Spanish; a Portuguese translation has been prepared on the basis of a contribution of the Government of Portugal, and a combined English-Croatian version has been prepared);
- The Guide for policy makers on implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Handbook on justice for victims on the use and application of the Declaration; (19)
- Strategies for Confronting Domestic Violence: A Resource Manual; ST/CSDHA (available in English; in French on the basis of a contribution of the Government of Canada; in Russian on the basis of a contribution of the Government of the Russian Federation and the European Institute for Crime Prevention and Control, affiliated with the United Nations; and in Spanish on the basis of a contribution of UNDP in Mexico);
- Making Standards Work, issued jointly by the CICIP and Penal Reform International;
- The Basic Training Manual for Correctional Workers, prepared and published in 1994 by the International Scientific and Professional Advisory Council; and
- Basic Education in Prisons, prepared in collaboration with the Institute for Education of the United Nations Educational, Scientific and Cultural Organization.

31. In addition, the Global Programme against Corruption is developing a manual on anti-corruption policy and a kit against corruption, and the CICIP is finalizing a manual on United Nations standards and norms in juvenile justice, as well as a special manual on assistance for victims of trafficking in persons, to be prepared in cooperation with ISPAC. Reference can also be made to the Forum on Crime and Society, which is published by the Centre for International Crime Prevention, and which contains further particulars related to the application of standards and norms.

## **2.6. Other application mechanisms**

32. In addition to reporting, assessing the application of standards and norms, encouraging other United Nations bodies to use the standards and norms, and providing expertise and technical cooperation, a number of other mechanisms can and have been used to promote application. Examples are the dissemination of the texts of the standards and norms, dissemination of reports on application, and the development of more detailed standards and norms.

33. The United Nations has sought to disseminate the texts of the various standards and norms, at least in the working languages of the United Nations. In addition to brochures containing the texts of various standards and norms, the United Nations has prepared a compendium of the texts of all of the United Nations standards and norms. (20) The Compendium has been made available not only in the working languages of the United Nations, but also in Portuguese on the basis of a contribution of the Government of Portugal, and in Hindi on the basis of a contribution of the Government of India. Regrettably, budgetary constraints have permitted the publication of only a few hundred copies in most of these languages, and the heavy demand for the Compendium, especially in peacekeeping missions, has resulted in chronic shortages. A partial solution to this difficulty is that the texts of the standards and norms have been made available via the World Wide Web database facility of the United Nations Crime and Justice Information Network. (21)

34. The importance of this basic dissemination of the texts, getting them into the hands of the policy-makers and legislators responsible for creating the framework for national action, of the practitioners who are responsible for the day-to-day work in crime prevention and criminal justice, and of the individuals who are affected by them, for example as victims or suspects of an offence, should be emphasized. The United Nations standards and norms will not be applied if they are not known. While it can be assumed that those directly involved in the work of the United Nations in various capacities are at least aware of the existence of the standards and norms, for example recent experience in post-conflict situations suggests that even personnel engaged in United Nations peacekeeping activities are unfamiliar with the existence, let alone the content, of the relevant United Nations standards and norms

35. The United Nations has disseminated not only the texts of the standards and norms, but also other relevant material, such as reports on application (including analytical summaries of the periodic surveys), the reports of the United Nations Commission on Crime Prevention and Criminal Justice, reports prepared for the various United Nations Crime Prevention and Criminal Justice Congresses as well as the reports of these Congresses, and scientific publications and other documentation related to the application of the standards and norms.

36. In some cases, application of a standard or norm has been promoted by the development of a subsequent standard. For example, the Standard Minimum Rules for the Treatment of Prisoners have been supplemented by the "Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners". (22) Similarly, application of the "Victim Declaration" has been supplemented by Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (23) Victims of Crime and Abuse of Power (24) and Protection of the Human Rights of Victims of Crime and Abuse of Power. (25)

37. In order to promote the application of one particular standard, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Netherlands has established a database and clearing-house for the provision of information and policy guidance to governmental agencies, non-governmental organizations and practitioners on victim-related issues. (26)

### **3. Evaluation of the progress made in the application of United Nations standards and norms.**

38. The extensive work of the United Nations and individual Member States in pursuit of the application of the United Nations standards and norms has left its mark. This can be seen on both the international and the domestic level.

39. On the international level, the clearest example of the fruits of the work on application is when certain principles and provisions contained in the standards and norms are integrated into legally binding instruments. For example, several principles enunciated in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (27) have been incorporated into the laws and rules of the international criminal tribunals, (28) into the United Nations Convention against Transnational Organized Crime, and into the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

40. The impact of the standards and norms can also be noted in the work of other United Nations bodies. For example, the Human Rights Committee (29) established under the International Covenant on Civil and Political Rights has mandated various special rapporteurs to deal with particular standards and norms (for example, on the independence of the judiciary), and considers the standards and norms when reviewing reports. On another issue, not only did the drafting of the Convention on the Rights of the Child (30) draw on some standards and norms, the Committee established under the Convention actively deals with various juvenile justice standards. Various special rapporteurs to the Commission on Human Rights and the Subcommission on Promotion and Protection of Human Rights (formerly Subcommission on

the Prevention of Discrimination and Protection of Minorities) have cited the standards and norms in their report.

41. A third way in which the impact of the standards and norms can be seen on the international level is in the further development of standards and norms. For example the Standard Minimum Rules for the Treatment of Prisoners have provided the basis for the development of the European Prison Rules, which in turn have been used by the European Court of Human Rights in its jurisprudence. (33)

42. The impact of standards and norms on the international level may be strong and yet need not always be visible. For example, the incorporation of a standard into an international legal instrument does not extinguish the influence of this standard or norm, although it may be left in the shadow of the new instrument. Indeed, as emphasized by the Commission on Crime Prevention and Criminal Justice, "the existing United Nations standards must therefore be considered in their own merits, independently of the development of future international instruments on criminal justice". (34) Therefore, the standards continue to be expressions of a common ideal, and in this way continue to inform the thinking of individuals and States. As noted by one observer, "Some rules in some standards do approach the status of customary international law, but that is not the only way in which they may have impact. United Nations criminal justice standards may impact on national law by being used to interpret more general rules that do have binding international force". (35)

43. To turn to the application of standards and norms on the domestic level, the primary source of information is the reports provided by the Member States themselves. In reporting on application, Member States at times make specific reference to how these instruments have influenced national legislation, policy and practice.

44. No precise assessment can be made of the extent to which the United Nations standards and norms have been applied in individual Member States. This is due to several factors. The most important such factors are the absence of an obligation to report, the heterogeneity of the criminal justice systems of different States, the possibility of different interpretations of the same text, and the difficulty in determining if a change in national law, policy or practice was due to the influence of a United Nations standard and norm, or of other factors.

45. The absence of an obligation on Member States to report to the Secretary-General on application has already been noted. The number of responses from Member States to *notes verbales* from the Secretary-General for information usually ranges from 40 to 70, with some requests eliciting over 100 responses. Some of these responses have been rather succinct, essentially noting that the operation of the criminal justice system in the Member State is in accord with the standard or norm in question. Other responses have been detailed in explicating what changes have been made. All in all, however, the responses do not give more than anecdotal indications of the impact of the standards and norms. Moreover, it is possible that primarily countries that have been successful in applying the standards and norms would tend to report. Thus, the reports may give an unwarrantedly positive picture of the ease with which these standards and norms can be applied.

46. The second factor hampering assessment of the application of United Nations standards and norms is the heterogeneity of criminal justice systems. The standards and norms have been drafted to a large extent to reflect desirable practice in countries around the world. As a result, the assumption is that many criminal justice systems around the world are in line with the standard or norm already at the time of adoption. There would thus be different needs for application in different States.

47. This does not mean that for example the more developed countries would inevitably be in compliance with the standards and norms. No State should rest in the complacent belief that its criminal justice system has reached the height of development, and can no longer benefit from comparisons with United Nations standards and norms, and with other criminal justice systems.

48. Developing countries and countries in transition can benefit from an analysis of the structure and operation of their criminal justice systems, in the light of the standards and norms. The same is true of countries in a post-conflict situation. Indeed, the experience in for example Bosnia and East Timor have underlined the importance of responding to organized crime and corruption and in general of establishing the rule of law. Efforts to restore a functioning economy, create a free and fair political system, and strengthen the development of civil society may well founder if the rule of law has not been established, and the public has no confidence in the police and the courts.

49. A third factor hampering assessment of the impact of the standards and norms is the possibility that the same instrument can be interpreted or applied in different ways. For example para. 27 of the oldest instrument, the Standard Minimum Rules for the Treatment of Prisoners, states that, "Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well ordered community life." Concepts such as "firmness", "necessary for safe custody" and "necessary for well ordered community life" can well be understood differently in different societies and cultures.

50. Finally, it may well be difficult to determine if a change was due to the impact of the standard or norm or of some other factor. A change in law, policy or practice may well have been carried out despite the existence of a United Nations standard and norm, or the standard and norm may be used only as an additional argument in support of a change that has already been advocated.

51. One more point should be noted in this regard. Changing existing laws or entrenched policy and practice is a difficult process. Over the past few decades, a vast number of projects, domestic and international, have been launched to reform crime prevention and criminal justice. Despite the number of successful projects, there appears to be a strong undercurrent of frustration over the slowness of the process, over the difficulties in getting projects carried out, and especially over the lack of impact, a sense of frustration that is shared by donors and recipients alike, in connection with projects all across the region. (36)

52. The problems encountered tend to be the same in project after project. For example, often no initial needs assessment is carried out, and as a result the project is of doubtful utility or has a low priority. Alternatively, an extended needs assessment is carried out, but funds are unavailable for further activities; there may be a lack of coordination among different projects in the same field; or one or both of the partners may not be able to fulfill their commitments due, perhaps, to bureaucratic inertia or lack of political or financial support.

53. The above-mentioned difficulties notwithstanding, the various reports by the Secretary-General, and the information submitted by Member States, provide a strong indication that the United Nations standards and norms have had an impact. This impact can be seen on the local level, through the work of governmental authorities and non-governmental organizations in the application of standards and norms dealing, for example, with juvenile justice, victims of crime and abuse of power, and the treatment of prisoners.

54. In their responses to the Secretary-General, several Member States have cited examples of how the standards and norms have had an impact on the national level. (37) Further examples of impact of the standards and norms on legislation, court practice and policy can be found in the literature. One recent article, for example, cites court cases from the United Kingdom, Canada, South Africa and the United States, and examples of influence on policy in Australia, Hong Kong, Malawi, South Africa and Uganda. (38) Indeed, the very fact that the legal literature contains extensive analyses of the impact of standards and norms on domestic law is in itself telling, since it shows that the standards and norms are becoming part of the national discourse on law and policy. (39)

55. Because of the differences in the ways in which the United Nations standards and norms

may have an impact, it is difficult to say which have been most influential. The Standard Minimum Rules for the Treatment of Prisoners, as the oldest and arguably the most detailed standard and norm, may well be one of the most heavily cited on both the national and international level. (40)

56. The impact may also depend on the nature of the standards and norms. Some of the more recent instruments, or further amplifications of existing standards and norms, have embodied desirable practice in crime prevention and criminal justice. Providing detailed information on such desirable practice may facilitate application by the practitioner. Reference has already been made to the Guide for Policy Makers on Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Handbook on Justice for Victims on the Use and Application of the Declaration, as well as to the Strategies for Confronting Domestic Violence: A Resource Manual. Another example is the Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice which the Secretary-General notes, "have proven their usefulness as a new international instrument to promote the achievement of those aims. There is sufficient evidence of this worldwide, in addition to the replies received to that effect from Governments and various organizations. It may be due to the policy-oriented and practical nature of the instrument." (41)

57. If assessed through the perspective of the United Nations itself, a growing area of direct application of the standards and norms is within the context of ongoing peacekeeping missions and in post-conflict reconstruction. This work essentially began when the Centre for International Crime Prevention (at the time, the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna) published the relevant standards in the United Nations Criminal Justice Standards for Peacekeeping Police (the so-called Blue Book). The purpose is to offer orientation and a normative framework in establishing, reestablishing or strengthening the rule of law. The book, addressed to criminal justice officials, communicates that framework in a simple, action-oriented way.

58. The instrument proved to be very successful in the field. However, in a broader perspective, the field operations involving the re-establishment or maintenance of the rule of law have encountered various challenges. Most succinctly they have been recently summarized by one official from the United Nations Mission in Bosnia and Herzegovina (UNMBIH) with a mandate to assist in reforming and restructuring the local police, assess the functioning of the existing judicial system and to monitor and audit the performance of police and others involved in the maintenance of law and order. He wrote: "In hindsight, we should have put the establishment of the rule of law first, for everything depends on it: a functioning economy, a free and fair political system, the development of civil society, public confidence in police and courts. We would do well to reflect on this as we formulate our plans for Afghanistan (...)." (42)

59. This view should be imparted across the spectrum of issues with which United Nations peacekeeping operations are confronted globally. As of September 2002, there were 44,359 military observers, civilian police and troops from 90 countries, who, in one way or another, were mandated to maintain law and order in 28 countries around the world. (43) Each of those individuals participates in the operations with a slightly different perception of what the rule of law is in practice, and an even greater difference in perception of what the United Nations standards and norms in crime prevention and criminal justice contain (if, indeed, he or she is even aware of their existence). The United Nations Secretariat, and the Office on Drugs and Crime (ODC) in particular, confront a challenge in addressing this problem in a practical, effective and system-wide fashion.

60. Some inroads in that direction have already been made. In August 2002 an interagency Task Force of the Executive Committee on Peace and Security (ECPS) in the United Nations Secretariat prepared a "Compilation of Available UN Expertise/Resources in Core and Related Rule of Law Areas" which lists the past and potential contributions of all the key actors, including

CICP (ODC) . (44) However, this is only the beginning of a long road that the ODC must travel in order to operationalize the United Nations standards and norms in crime prevention and criminal justice. In this process, not only the selection and simplification of standards and norms must be considered, but also their communication to a vast and diversified criminal justice audience, and, finally, evaluation of their effectiveness in the observance of the rule of law. The ODC has that capacity, which it documented, inter alia, in cooperation with the Austrian Study Center for Peace and Conflict Resolution (Peace Center in Stadtschlaining). (45) The task of advancing this kind of work is a serious one and requires a very thorough consideration at the expert group meeting, by the Secretariat, and by the Commission on Crime Prevention and Criminal Justice.

#### **4. Assessment of modalities for collecting and reporting on the application of United Nations standards and norms**

61. Already in adopting the first United Nations standard in the field of crime prevention and criminal justice, the Standard Minimum Rules for the Treatment of Prisoners, ECOSOC recommended "that the Secretary-General be informed every five years of the progress made with regard to their application". (46) Procedure 5 of the "Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners" (47) deals specifically with reporting. It calls on the Member States to inform the Secretary-General every five years of the extent of implementation and the progress made with regard to the application of the Standard Minimum Rules, and of the factors and difficulties, if any, affecting their implementation. This questionnaire should follow a specified schedule, be selective and limited to specific questions in order to secure an in-depth review and study of the problems selected. The Secretary-General should take into account the reports of governments as well as other relevant information available within the United Nations system to prepare independent periodic reports on progress. In the preparation of these reports the Secretary-General may also enlist the cooperation of specialized agencies and of the relevant intergovernmental and non-governmental organizations. The reports are to be submitted to the Committee on Crime Prevention and Control (currently, the Commission on Crime Prevention and Criminal Justice) for consideration and further action, as appropriate. Subsequent standards and norms similarly tended to request that the Secretary-General be informed on application. (48)

62. With the proliferation of standards and norms, in particular during the 1980s, concern began to be expressed about the utility of the reporting regime. Some States noted, for example, the poor response rate to several *notes verbales* from the Secretary-General, the perceived poor quality of some of the responses, and the absence of any effective verification procedures.(49) These States were concerned that many of the responses were of little value in the work of the United Nations, and yet preparing, responding to and analysing the results of the many questionnaires required extensive staff time both in the Member States and at the United Nations.

63. If indeed the perception of the poor quality of some of the responses is correct, there may be several reasons for this. Different respondents may use different definitions, which may not have been what the drafters of the questionnaire in question had intended. The recording procedures and the structure of statistics differ from one State to the next, thus quantitative data may be misleading. Various technical, administrative and even political problems may hamper the preparation of a suitable response. Finally, practitioners in all countries, developed and developing alike, recognize that the absence of reliable and valid performance indicators make the measurement of the factual degree of application of criminal justice reform quite difficult.

64. These concerns led to the convening of a meeting of experts in Vienna on 14-16 October 1991 to evaluate application, and to seek to consolidate and rationalize the evaluation and reporting cycles. This meeting agreed on the "primary importance of implementing United Nations norms and guidelines in the field of crime prevention" but noted among the major impediments

to effective application the constraints on resources, and the fact that the cultural, social and political realities could reflect on the way in which the instruments or resolutions were applied.(50)

65. The meeting of experts also produced recommendations relating to ;

- Measures to improve information dissemination and education;
- Research and technical cooperation;
- Proposed measures to make monitoring more comprehensive;
- To increase the accuracy and reliability of monitoring information; and
- To make the monitoring process a springboard for action; and
- Proposed steps to be taken by the principal actors in the application and monitoring of United Nations standards.

66. The meeting of experts took place parallel to the work on the restructuring of the United Nations Crime Prevention and Criminal Justice Programme. In connection with this work, and following on the recommendations of the meeting, ECOSOC requested that the Secretary-General commence without delay a process of information-gathering to be undertaken by means of surveys, such as reporting systems, and contributions from other sources. The draft questionnaires prepared by the Secretary-General on selected standards and norms were to be reviewed by the Commission and sent to Member States for reply. (51)

67. This model was followed, and between 1996 and 2002 a full cycle was completed, with reports on application of all of the standards and norms. In his first report on the results, the Secretary-General noted that the response rate to the questionnaires had been, in general, remarkably high, with a total of 92 States replying to one or more of the questionnaires. (52) Subsequently, however, there has been a drop in the number of responding States. The annex to the most recent report of the Secretary-General, in 2001, (53) notes the number of responses to 11 *notes verbales* sent out to Member States. The highest number (sixty three) was on the questionnaire regarding capital punishment, which is a quinquennial report specifically mandated by the Economic and Social Council. (54) Most of the other requests elicited only between 30 and 50 responses, with three requests - admittedly sent with a request for a very short period to respond, which moreover coincided with the end-of-the-year holidays in many States - eliciting, respectively, only 5, 10 and 16 responses.

68. It is not clear to what extent this drop in the number of responses is due to problems experienced in the Member States in preparing the response, or to decreasing interest or motivation to respond. It is certainly relevant to note that a large number of survey instruments were sent out towards the end of the cycle, and the Member States may have simply been overburdened by these requests. What is clear is that, with the conclusion of the first cycle, the Commission on Crime Prevention and Criminal Justice should take stock of the experience gained, and decide on possible follow-up measures.

69. In 1998, the report of the Secretary-General contained some proposals for further streamlining of the reporting mechanism that is to be based on a model profile for individual countries. (55) The proposed mechanism is to have four basic purposes: to avoid requesting information from Member States that had already been provided, to bring all the available information together into an informative whole, to simplify the updating of information, and to provide the basis for a more in-depth analysis of relevant issues. The mechanism is to utilize not only the information made available by the Member States on the application of standards and norms, but also on crime trends and the operation of criminal justice systems. Additional information submitted to the Secretariat and other relevant information could be included. The resulting profile of each country would be made available over the World Wide Web, and scientific institutes would be encouraged to be involved in the information gathering and analysis. Once

the basic data had been gathered, further information-gathering exercises could focus on specific issues. Along with new questionnaires, governments would receive the earlier response of the government to the umbrella questionnaire and the earlier agreed-upon country profile. At the same time, Member States would be requested to report on any changes regarding the country profile.

70. As noted in E/CN.15/1998/8, para. 18, "The same machinery as set out above would be followed, i.e., the data would be analysed and incorporated in the country profile: there would be communication with the Member State on the correctness of the country profile; the country profile would be posted on the World Wide Web; involvement of the international scientific community would be encouraged; analysis of the technical assistance needs assessment would take place; and a report would be submitted to the Commission. By following this procedure, duplication of questionnaires and responses would be avoided and in-depth information could be received and analysed over time."

71. Perhaps because the Secretary-General had noted in his report (56) that "this would require allocation of additional resources for that purpose", the proposal has so far not been implemented. It does, however, raise a number of questions worth addressing.

72. One such question is how to encourage State to respond to *notes verbales* requesting information on application. There is no legal obligation for States to report, nor does it seem likely that such an obligation could be introduced. The reporting regime will undoubtedly continue to rest on a voluntary basis. For that reason, at the same time as the Secretary-General should be asked to repeat, as appropriate, requests to Member States for responses, attention should be paid to how to increase the motivation of States to respond.

73. To that end, the process of responding should be made as simple as possible. Already during the cycle carried out between 1996 and 2002, the Secretary-General has sought to make the various questionnaires as "user-friendly" as possible. Many questions could be answered simply by ticking the appropriate box in the questionnaire, and other questions could be answered relatively briefly (for example, by supplying specific quantitative data). The number of questions requiring an extensive answer in writing has been kept to the minimum. This approach should also be used in subsequent surveys.

74. Member States should be reminded that their responses can be useful in several ways. Their experiences with the application of United Nations standards and norms can provide the basis for the development of desirable practices in the prevention and control of different forms of crime, thus contributing to the level and impact of technical cooperation in other countries. Should a Member State have experienced difficulties in the application of standards and norms, it would be helpful to other States in a similar position to know how these difficulties may have been overcome. If, on the other hand, these difficulties persist, then the identification of these difficulties may help the State in formulating a request for technical assistance.

75. A second question is what information Member States should be requested to provide, and in particular, how requests to furnish already available information could be avoided. Past questionnaires of the Secretary-General have sought to shed as full a light as possible on application of the various standards and norms. Some of the survey instruments have in effect taken almost all of the provisions of the standard or norm in question, and asked Member States to indicate if each and every provision has been applied.

76. Now that a full cycle has been completed, different options for continuing the gathering of information through surveys should be considered. One option would be to continue to use the existing survey instruments. States that have already responded to the surveys would be provided a copy of their response to the first cycle, and asked only to update their response, should this be called for. States that have not responded would be requested to do so. A second option, which would seem preferable, would be to focus on those issues which, in the light of the



first cycle, would appear to be most likely to help in identifying desirable practice or in identifying needs for technical assistance.

77. If indeed this second option is preferred, the overall United Nations crime prevention and criminal justice programme priorities could be used. (This option is dealt with in more detail below, in section 6.) The present priorities are enunciated most clearly in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, (57) and in the Plans of Action for the Implementation of the Vienna Declaration. (58) Aside from issues relating to special forms of crime (such as transnational organized crime and the subject matters of the protocols to the United Nations Convention against Transnational Organized Crime, corruption, terrorism, money-laundering, and computer-related crime), the issues noted in the Vienna Declaration that have a bearing specifically on standards and norms deal, respectively, with crime prevention; witnesses and victims of crime; prison overcrowding and alternatives to incarceration; juvenile justice; the special needs of women as criminal justice practitioners, victims, prisoners and offenders; and restorative justice. The brief paragraph 22 of the Vienna Declaration and chapter XIV of the Plans of Action deal with action on standards and norms.

78. A third question is how the utility and accuracy of the information provided by Member States be ensured. To that end, Member States might wish to identify a contact person to whom the Secretary-General may turn if additional information is sought. With the permission of the Member State, the information provided might also be made available (whether or not in the form of the country profile originally proposed by the Secretary-General) on the World Wide Web.

## **5. Discussion at the Commission on the application of the standards and norms**

79. Consideration of the application of United Nations standards and norms is a standing item on the agenda of the Commission. (59) A "staggered" approach was adopted in order to avoid overburdening Member States with the task of responding to a number of requests for reports, and to avoid overburdening the Secretary-General and the Commission itself with the analysis of these reports and consideration of possible follow-up measures. A set of instruments was selected in accordance with the established priorities. The cycle involved the development of the survey instruments during one year, the analysis of the responses from Member States and the submission of comprehensive reports to the Commission in the third year, with the development of survey instruments for another set of instruments in the second year, and the reporting of their results in the fourth year.

80. Even with the decision to have United Nations standards and norms as a standing item at each session of the Commission, and even with the staggered reporting procedure, the work required in analysing and discussing the responses of Member States is considerable. The Secretariat may have insufficient resources to analyse the responses. Moreover, time constraints and other pressing issues have detracted from the ability of the Commission to give adequate attention, at its regular sessions, to the application of standards and norms.

81. One result of the insufficient resources of the Secretariat is that it has rarely been in a position to supplement the responses received from Member States with other information. As was noted in the foregoing, Procedure 5 of the "Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners" (60) notes, inter alia, that in preparing the periodic reports, the Secretary-General should take into account the reports of governments as well as other relevant information available within the United Nations, and may also enlist the cooperation of specialized agencies and of the relevant intergovernmental and non-governmental organizations.

82. The reports on the various sessions of the Commission indicate something of a dichotomy

in the consideration of the reports on application. When individual issues (such as juvenile justice, or the victims of crime and abuse of power, or the treatment of prisoners) are discussed, several Member States contribute to the debate, often citing directly or indirectly ways in which the applicable standards and norms have been applied. When, however, the standing agenda item of standards and norms is discussed, the few contributions to the debate tend to repeat the same themes: the importance of these standards and norms, the usefulness of the Compendium, and the need for technical assistance in applying the standards and norms.

83. In 1996, ECOSOC requested that the Secretary-General prepare a report incorporating comments sought from governments on the desirability of establishing an intersessional working group in order to examine the reports on the application in more detail and to recommend to the Commission possible further action to assist Member States in translating those instruments into practice. (61) Such an intersessional working group would permit more extensive consideration of the responses and of possible follow-up action. The report of the Secretary-General the following year (62) noted that thirteen Member States had replied, with ten indicating their support for the establishment of such an intersessional working group. The report also identified the following as relevant questions for the working group: specific activities undertaken or envisaged for the promotion of the United Nations standards and norms; the nature and extent of the complementary and integrated action undertaken; and the status of global application of the relevant United Nations instruments and policy guidelines.

84. Although no action has yet been taken on this proposal to establish an intersessional working group on standards and norms, other decisions were taken in order to streamline considerations by the Commission. (63) For example in 1998, the Economic and Social Council requested that the Secretary-General prepare updated reports where at least 30 additional States had replied in respect of a standard and norm on which a report had already been submitted. (64) This policy was followed already at the ninth (2000) session of the Commission, where the Secretary-General did not submit reports on the results of the surveys of three instruments, since a sufficient number of replies from Member States to the surveys had not been received in time. (65) Furthermore, in accordance with the decisions of the Commission on strategic management, the bureau of the Commission decides which reports are to be submitted orally instead of in writing. (66)

85. As noted, the first complete cycle of consideration of application of the various standards and norms ended in 2002. The report of the Secretary-General to the eleventh (2002) session on standards and norms suggested weighing the cost-benefit value of the resources, time and energy expended in the exercises against the output, and considering "whether the current system has exceeded its utility ... Discontinuation of the current information-gathering system would make it possible to devote time and resources to promoting interfaces between the body of Standards and Norms, non-binding instruments, and the new binding instruments (conventions and protocols) ... Interfacing and mutual reinforcement between the body of non-binding and binding instruments in the field of crime prevention and criminal justice and in other relevant fields of United Nations competence and activity (for example, human rights, children's rights, women's rights, refugees and labour) are essential to enhance the impact of the United Nations." (67)

## **6. Starting the next cycle: the "cluster approach" to assessing the application of United Nations standards and norms**

86. Towards the end of the first cycle of surveys on application of the United Nations standards and norms, the Secretary-General gave consideration to how the work might be continued. The drawbacks of continuing to study application of each individual instrument were noted. Furthermore, many themes can be seen to run through the body of standards and norms. For example, several instruments deal with the same basic subject (such as capital punishment, or juvenile justice). The report of the Secretary-General to the tenth session of the Commission

identified as such cross-cutting issues the following: substantive criminological issues (for example, fair treatment, gender mainstreaming, human rights, children's rights, bribery and corruption and public security); specific areas of concern (for example, women, victims and juvenile justice); criminal justice processes (for example, sanctioning, law enforcement and prevention); sector issues (for example, the courts and prison administration); and the conduct of professionals (for example, prosecutors, lawyers, police and the judiciary). (68)

87. The report of the Secretary-General argued that this "clustered approach" would foster "the upgrading and strengthening of professional performance and of the capacity for effective crime prevention, while at the same time safeguarding human rights and promoting the application of instruments and precepts as universal benchmarks below which Governments should not fall."

88. This proposal of the Secretary-General met with a positive reaction by many members of the Commission. Particular reference was made to the value of the proposals of the Secretary-General to consolidate, streamline and better rationalize reporting obligations. (69)

89. In considering how the proposal of the Secretary-General can be taken forward, in particular in order to maximize the combined efforts of different United Nations bodies dealing with issues that are related to crime prevention and criminal justice (in particular human rights, the rights of the child, and the advancement of the position of women), reference should be made to the main programme priorities of the United Nations. These have recently been set out as priorities in the United Nations Millennium Declaration. (70) They are: the alleviation of poverty, gender equality, sustainable development, good governance, and the global rule of law. Crime prevention and criminal justice issues that were specifically mentioned in the Millennium Declaration were international terrorism, the world drug problem, transnational crime, violence against women, the sale of children, child prostitution and child pornography.

90. The Vienna Declaration, and the Plans of Action for implementation of the Vienna Declaration, have established what essentially amount to the current priorities of the United Nations Crime Prevention and Criminal Justice Programme. The priorities that can be taken from these documents are crime prevention; witnesses and victims of crime; prison overcrowding and alternatives to incarceration; juvenile justice; the special needs of women as criminal justice practitioners, victims, prisoners and offenders; and restorative justice. (Transnational organized crime, trafficking in persons, the smuggling of migrants, and trafficking in firearms are dealt with in the United Nations Convention against Transnational Organized Crime and its protocols, for which a separate implementation regime exists. Corruption is dealt with in the draft United Nations Convention against Corruption, for which a separate implementation regime will be set up.) (71)

91. When taken together, these provide in effect the basis for drawing a "road map" for the subsequent cycle of assessment of the application of United Nations proposals can be drafted. Four clusters of standards and norms can be identified, as noted in the annex. The first consists of the provisions that are related to gender equality, that should be pursued in close cooperation with the Division for the Advancement of Women. In line with the Vienna Declaration, the focus would be on the special needs of women as criminal justice practitioners, victims, prisoners and offenders. The second cluster consists of provisions of standards and norms related to good governance and the integrity of criminal justice personnel. The third cluster, provisions related to the rule of law and to human rights in the administration of justice, should be pursued in close cooperation with the Centre for Human Rights.

92. The allocation of standards and norms to the different clusters cannot be straightforward. Elements of one and the same instrument may be linked to different clusters. Furthermore, the clusters outlined above do not cover all elements of all of the United Nations standards and norms, nor should they necessarily do so. Given the extensive material contained in the standards and norms, some prioritization is clearly called for. Nonetheless, it may be noted that a fourth

cluster can be identified for further consideration, those provisions of standards and norms that deal with legal, institutional and practical arrangements for international cooperation.

## **7. Operationalization of standards and norms in the application of technical cooperation projects in developing countries, countries with transition economies and post-conflict countries**

93. While general assessments of the application of standards and norms worldwide have a value in themselves, discussions within the United Nations Crime Prevention and Criminal Justice Programme can and should have a sharper focus. One constant theme is that of enhancing the ability of the programme to provide technical assistance to Member States on request.

94. The experience in many developing countries, countries with economies in transition and post-conflict countries has underlined the fundamental importance of changes in domestic criminal justice legislation and administration to the development of society in general. In particular, various funding agencies have identified corruption and deficiencies in the rule of law as factors in the failure of a number of projects. (72)

95. Application of the United Nations standards and norms can provide a useful tool for enhancing human rights, the performance of the criminal justice system and the protection of the community. Not only can they indicate areas where more work needs to be done, they can also provide a basis for the development of measurable criteria of the fairness and effectiveness of the operation of national criminal justice systems from an international perspective. Since the United Nations standards and norms deal essentially with qualitative and not quantitative issues, many of the criteria will refer, for example, to the existence of certain legal mechanisms, or to whether or not certain procedures are followed. To take as an example the oldest instrument, the Standard Minimum Rules for the Treatment of Prisoners, information would be collected (as has indeed already been done in previous survey instruments) on whether or not a bound registration book with numbered pages is kept in every place where persons are imprisoned (rule 7), and whether or not men and women are detained in separate institutions (rule 8).

96. The basic response to such questions would be a "yes" or "no". In many cases, adequate reflection of the status of application would require a more nuanced response. For example, the fact that legislation has been enacted on a certain issue does not necessarily mean that the legislation is applied in practice. For example, instead of simply asking, in connection with the Basic Principles on the Role of Lawyers, whether or not all persons have the right to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings, the survey instrument might ask how many practising lawyers there are in the country per 100,000 in population, how many defendants in criminal cases are represented by a lawyer, and how much funding has been allocated for legal services to the poor. (73)

97. The criteria can also be quantitative, and serve in effect as a statistical benchmark. A recent report of the Secretary-General (74) cited as interesting examples of statistical benchmarking a 1998 publication that included comparative indices on law enforcement resources, gender balance among criminal justice practitioners, effectiveness of police recording, productivity of police and prosecutors, evaluation by citizens of police performance and their experiences of police corruption, (75) and the 1999 World Report on Crime and Justice, which presents a vast amount of similar data from the five United Nations surveys of crime trends and operation of criminal justice systems, supplemented, inter alia, by the International Crime Victim Survey and the United Nations International Study on Firearms Regulation. (76)

98. To take an example of possible statistical benchmarking from the first cluster noted above, which deals with gender equality, statistical data could be collected on the rates of female police, prosecutors, judges and correctional personnel per 100,000 in population. (77) Statistical data

could also be collected on the rate of assaults and sexual assaults against women, based not only on official statistics but also, where available, on victim surveys.

99. Several examples can be cited the second cluster, which deals with good governance and the integrity of criminal justice personnel. One example would deal with the rate of corruption among public officials. Here again, recorded data and victim survey data (where available) can be used. Another example would be the number of recorded cases in which a law enforcement official had used a firearm, and the proportion of recorded violent deaths which had been connected with police activity. A third example, which assumes the availability of victim survey data, would be based on various evaluations that the survey respondents have of the performance of the police. Such evaluations are standard elements of victim surveys.

100. Although this benchmarking approach takes an international perspective, it should be emphasized that the issue of application of United Nations standards and norms should not be seen as one of the convergence of national criminal justice systems toward one standard model of criminal justice. Instead, there will continue to be diversity. The same function called for by a provision in a standard or norm may be operationalized in different ways. For example, paragraph 8(b) of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power calls upon Member States to facilitate the responsiveness of judicial and administrative processes to the needs of victims by allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected. That can be done for example by granting the victim the status of a full party to the proceedings, by allowing the victim to present civil claims in connection with criminal procedure, or by allowing the victim to prepare a so-called victim impact statement.

101. There is no perfectly functioning criminal justice system, nor is there a unique end-point for the development of criminal justice. Any numerical indicators can serve only as summaries of a detailed qualitative analysis of progress in the various areas, if such analysis could ever be undertaken.

## **8. Conclusions**

102. The United Nations standards and norms in crime prevention and criminal justice continue to be relevant in the development of crime prevention and criminal justice locally, nationally and internationally. They embody a useful and exemplary set of instruments in international law that contribute to basic human values. They are important to developed and developing countries alike. Their relevance in establishing the basis for good governance and institution-building and thus also for economic development especially in post-conflict situations, has now been recognized. They should be promoted, protected and pursued by the governments, intergovernmental, non-governmental organizations and the peoples of the world.

103. Now that a full cycle of assessments of the application of the United Nations standards and norms has been completed, the focus should move to how these assessments can strengthen the work of the United Nations in general, in line with overall priorities established by the Economic and Social Council and the General Assembly. Particular attention should be paid to using these assessments to strengthen technical cooperation activities of the United Nations.

## **ANNEX: Drafting the "road map" for the next cycle of survey questionnaires: elements and clusters**

### **Cross-cutting issues identified by the Secretary-General (E/CN.15/2001/9, para. 16):**

- Substantive criminological issues (for example, fair treatment, gender mainstreaming, human rights, the rights of children, bribery and corruption and public security);
- Specific areas of concern (for example, women, victims and juvenile justice);
- Criminal justice processes (for example, sanctioning, law enforcement and prevention);
- Sector issues (for example, the courts and prison administration); and
- The conduct of professionals (for example, prosecutors, lawyers, police and the judiciary).

### **Cluster 1**

- Provisions of Standards and Norms that are related to gender equality (particularly relevant cross-cutting issues: gender mainstreaming; women, prosecutors, lawyers, police and the judiciary, prevention);
- Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice;
- Paragraph 8(a) of the Standard Minimum Rules for the Treatment of Prisoners; and
- Paragraphs 3 and 17 of the Basic Principles of Justice for Victims of Crime and Abuse of Power.

### **Cluster 2**

- Provisions of Standards and Norms related to good governance and the integrity of criminal justice personnel (particularly relevant cross-cutting issues: fair treatment, law enforcement and the police, lawyers, prosecutors, courts and the judiciary, bribery and corruption, public security, prevention);
- Standards and norms primarily related to professional conduct;
- Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169);
- Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials (Economic and Social Council resolution 1989/61);
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Guidelines on the Role of Prosecutors;
- United Nations Declaration against Corruption and Bribery in International Transactions (General Assembly resolution 51/59, Annex);
- The International Code of Conduct for Public Officials (General Assembly resolution 51/191, Annex);
- Basic Principles on the Role of Lawyers;
- Basic Principles on the Independence of the Judiciary;
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (Economic and Social Council resolution 1989/60);
- Standards and norms primarily related to crime prevention;
- Guidelines for the prevention of urban crime (Economic and Social Council resolution 1995/9);
- United Nations Declaration on Crime and Public Security (General Assembly resolution 51/60, Annex);
- Action to promote effective crime prevention: Standards and Norms (Economic and Social Council resolution 2002/13);
- Prevention and control of organized crime (Annex. Guidelines);
- Terrorist criminal activities (Annex. Measures against international terrorism).

### Cluster 3

- Provisions of standards and norms related to the rule of law and to human rights in the administration of justice (particularly relevant cross-cutting issues: human rights, courts, sanctioning, prison administration, the rights of children, victims, juvenile justice);
- Standards and norms primarily related to capital punishment;
- Effective prevention and investigation of extra-legal, arbitrary and summary executions (Economic and Social Council resolution 1989/65) (Annex. Principles);
- Capital punishment (General Assembly resolution 2857 (XXVI));
- Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council Resolution 1984/50);
- Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1989/64);
- Capital punishment (Economic and Social Council resolution 1990/29);
- Standards and norms primarily related to remand and convicted persons;
- World social situation (Economic and Social Council Resolution 663 (XXIV) ( Annex. Standard Minimum Rules for the Treatment of Prisoners);
- Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47);
- Basic Principles for the Treatment of Prisoners (General Assembly Resolution 45/111);
- Kampala Declaration on Prison Conditions in Africa (Economic and Social Council resolution 97/36);
- Standards and norms primarily related to victim issues;
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34);
- Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Economic and Social Council resolution 1989/57);
- Victims of crime and abuse of power (Economic and Social Council resolution 1990/22);
- Protection of the human rights of victims of crime and abuse of power (Economic and Social Council resolution 1990/22);
- Standards and norms primarily related to restorative justice and non-custodial sanctions;
- Basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12);
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110) ;
- Standards and Norms primarily related to juvenile issues;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (Economic and Social Council resolution 1989/66);
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113);
- Guidelines for Action on Children in the Criminal Justice System(Economic and Social Council resolution 97/30).

### Cluster 4

- Provisions of Standards and norms that deal with legal, institutional and practical arrangements for international cooperation (particularly relevant cross-cutting issues: law enforcement, courts);
- Model Treaty on Extradition (General Assembly resolution 45/116);
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117);

- Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly Resolution 45/118);
- Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the treatment of foreign prisoners (Annex I. Model agreement on the Transfer of Foreign Prisoners; Annex II. Recommendations on the treatment of foreign prisoners);
- Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the Form of Movable Property;
- Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119); and
- Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles (Economic and Social Council resolution 97/29).

## END NOTES

- (1) See the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations publication, Sales no. 92.IV.1 and corr.1.
- ((2) Basic principles on the use of restorative justice programmes in criminal matters, and Action to promote effective crime prevention (ECOSOC resolution 2002/12 of 24 July 2002).
- (3) E/CN.15/1997/14, para 41.
- (4) See, for example, General Assembly resolution 50/181 of 22 December 1995, and ECOSOC resolutions 1992/22, section VII, of 30 July 1992, 1993/34, section III, of 27 July 1993, 1994/18 of 25 July 1994, 1995/13 of 24 July 1995.
- (5) ECOSOC resolution 1994/18.
- (6) Various reports of the Secretary-General cite examples provided by Member States of how the standards and norms have influenced domestic law, policy and practice. See, for example, E/CN.15/1996/16, E/CN.15/1997/14, E/CN.15/1997/13, E/CN.15/1998/8, E/CN.15/1999/7, E/CN.15/2001/9 and E/CN.15/2002/3.
- (7) E/AC.51/2001/5, para. 13.
- (8) E/CN.15/2002/3, para. 69 and E/CN.15/2002/14.
- (9) In international law, a clear difference can be drawn between the implementation and application of an instrument. "Implementation" in the present context refers to the transposition of the instrument into domestic law or policy. "Application", in turn, refers to the use of the provisions of the instrument - once transposed into domestic law or policy - in individual cases.
- This conceptual difference has not always been maintained in the discussions within the United Nations framework. Moreover, United Nations documents have often referred tautologically to the "use and application" of standards and norms.
- In this report, "application" will be used as a general term of reference, and thus also incorporates the element of implementation. "Implementation" will be referred to separately only when the element of transposition into domestic law or policy is at issue.
- (10) An example of a provision that should be fully implemented upon adoption is para. 2



of the Safeguards guaranteeing protection of the rights of those facing the death penalty (1984/50), according to which capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission.

(11) See, for example, Roger Clark (1994), *The United Nations Crime Prevention and Criminal Justice Program. Formulation of Standards and Efforts at Their Implementation*, University of Pennsylvania Press 1994, p. 260 and ff.

(12) GA Res. 39/46. It may be noted that the General Assembly has taken action to institute a series of prison inspections to monitor compliance with the Convention.

(13) According to article 45(d) of the Convention on the Rights of the Child, the Committee on the Rights of the Child may, as a result of the process of examining the progress made by States parties in fulfilling their obligations under the Convention, make suggestions and general recommendations to the State party to ensure full compliance with the Convention. In addition, at the end of its consideration of each country report, the Committee may issue concluding observations that often include a recommendation to seek technical assistance in juvenile justice from various United Nations bodies.

(14) There are, however, some minor exceptions to the absence of enforceable obligations. For example, even "soft law" instruments may contain obligations directed against a secretariat that is responsible for various administrative tasks.

Slawomir Redo argues that standards and norms have a role in crystallizing emerging international law and may in part serve as a focal point for future legal developments in each Member State. Slawomir Redo, *United Nations Criminal Justice Norms and Standards and Customary International Law*, *Torunski Rocznik Praw Czlowieka i Pokoju* 1994-1995, p. 41.

(15) See Committee on Economic, Social and Cultural Rights, General Comment no. 1, 1989, discussed in Clark, pp. 262-269.

(16) The practice of the United Nations Commission on Crime Prevention and Criminal Justice suggests that different States, and different participants, may understand the concept of monitoring in different ways. Monitoring could be understood to refer in general to the collection and analysis of information on application, without any State being under an obligation to contribute to this process. However, and as noted, the term is used here to refer to a process where not only can States be placed under an obligation to account for their actions (or failures to act), but in addition some international body can discuss application within a State and decide on further action.

The main objections to referring to the "monitoring" of standards and norms is that States are not under an obligation to apply them, much less to report on application. It has also been argued by some States that use of the word "monitoring" of standards and norms implies that full application of all of these standards and norms is desirable. The view of these States is that, on the contrary, at least some of the standards and norms are not relevant to the specific circumstances in all States. (Indeed, some have even objected to the use of the concept of "application" in this connection, since in their view the use of this concept again implies that some obligation to apply the standards and norms exists.)

For these reasons, the Commission has avoided using the concept of "monitoring" in this connection.

(17) A recent example is Heidrun Keissl, *United Nations Standards and Norms in the Area of Juvenile Justice in Theory and Practice*, Max Planck Institute for Foreign and Internal Criminal Law, <http://www.iuscrim.mpg.de/verlag/Forschaktuell/Kiessl.pdf>

(18) See, for example, ECOSOC resolution 1995/13 of 25 July 1995 and General Assembly resolution 50/146 of 21 December 1995.

- (19) E/CN.15/1998/CRP.4 and E/CN.15/1998/CRP.4/Add.1, respectively.
- (20) See note 1.
- (21) [http://www.odccp.org/crime\\_cicp\\_standards.html](http://www.odccp.org/crime_cicp_standards.html)
- (22) ECOSOC resolution 1984/47.
- (23) ECOSOC resolution 1989/57.
- (24) ECOSOC resolution 1990/22.
- (25) ECOSOC resolution 1990/22.
- (26) E/CN.15/1998/8, para 29, and E/CN.15/1999/7, para. 24.
- (27) GA resolution 40/34.
- (28) See for example the Rome Statute of the International Criminal Court, 17 July 1998, especially article 68.
- (29) See especially articles 24 and 25 of the Convention.
- (30) This is most apparent with articles 6, 7 and 8 of the Protocol, but the impact of the "Victim Declaration" can be seen to underlie also the overall approach of the Protocol.
- (31) GA res. 2200A (XXI).
- (32) GA res. 44/25.
- (33) James Farsedakis provides examples of how the United Nations standards and norms have influenced the training of judges in Europe. James Farsedakis, paper prepared for the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003.
- (34) E/2002/30;E/CN.15/2002/14, Commission on Crime Prevention and Criminal Justice, Report on the eleventh session (16-25 April 2002), para. 53.
- (35) Dirk van Zyl Smit, The impact of United Nations crime prevention and criminal justice standards on domestic legislation and criminal justice operations, paper prepared for the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003, p. 1.
- (36) For example Garth has commented on the optimism that reform activists retained despite the disappointing results of the first "law and development movement" during the 1960s and the 1970s. He noted, as factors that had contributed to these disappointing results, the lack of political will for reform, the power of entrenched interests, corruption, and insufficient participation of non-governmental organizations in reform. Bryant Garth, Rethinking the Processes and Criteria for Success, in Rudolph V. Van Puymbroeck (ed.), *Comprehensive Legal and Judicial Development. Toward an Agenda for a Just and Equitable Society in the 21st Century*. The World Bank, Washington, D.C. 2001.

In the same volume, Julio Faundez stresses the slowness but fundamental nature of the process of legal reform. He also illustrates the problems raised by attempting to transplant legal solutions from one country to another. Julio Faundez, Legal Reform in Developing and Transition Countries, in Rudolph V. Van Puymbroeck (ed.), *Comprehensive Legal and Judicial Development. Toward an Agenda for a Just and Equitable Society in the 21st Century*. The World Bank, Washington, D.C. 2001.

Pedro David notes the inherent resistance of the judicial system to change. Pedro

David, Technical Cooperation in Strengthening the Rule of Law in Latin America, paper prepared for the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003.

(37) One of many examples can be found in E/CN.15/1996/16, paras 65 ff. National examples are also provided in the papers prepared for the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003. See, for example, the papers by Pedro David, on Latin America (esp. section 23), Hajrija Sijercic-Colic, on Bosnia-Herzegovina, and Kittipong Kittayarak and Jutharat Ua-amnoey, on Thailand.

(38) Van Zyl Smit, *op.cit.*, p. 3-6.

(39) *Ibid.*, p. 5.

(40) This does not mean that further work is not need on application of this basic standard. See, in particular, Nicolas Roggo, *The Standard Minimum Rules for the Treatment of Prisoners: the experience of the International Committee of the Red Cross in monitoring the treatment of inmates*, and N. Masamba Sita, *Prisons in Africa: Statistics, Health Situation, Main Problems, Good Practices*, papers prepared for the Expert Group Meeting on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 10-12 February 2003.

(41) E/CN.15/2001/9, para. 38.

(42) Paddy Ashdown, *What I learned in Bosnia*, New York Times, 28 October 2002.

(43) UN Peace Operations 2002. Year in Review, United Nations Department of Public Information, December 2002, p. 14.

(44) Final Report. ECPS Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations, 15 August 2002 (mimeographed).

(45) Duncan Chappell and John Evans (ed.), *The Role, Preparations and Performance of Civilian Police in United Nations Peacekeeping Operations*, prepared under the auspices of The International Centre for Criminal Law Reform and Criminal Policy, The United Nations Interregional Crime and Justice Research Institute, The Centre for International Crime Prevention, The Austrian Study Center for Peace and Conflict resolution, Department of Justice of Canada, Schlaining Working Papers 1/99.

(46) ECOSOC resolution 663 C (XXIV) para. 2.

(47) ECOSOC resolution 1984/47.

(48) Usually no specific cycle for reporting is specified. However, quinquennial reports on capital punishment and application of the safeguards guaranteeing protection of the rights of those facing the death penalty are prepared in accordance with ECOSOC resolution 1745 (LIV) of 16 May 1973 and resolution 1995/57 of 28 July 1995 and Commission on Human Rights resolution 1999/61.

(49) E/CN.15/1992/4/Add.4, para. 14.

(50) E/CN.15/1992/4/Add.4, para. 6.

(51) ECOSOC resolution 1993/34 of 27 July 1993, section III, para. 7(c). Further mandates are contained in ECOSOC resolutions 1997/32, of 21 July 1997, 1998/21, of 28 July 1998, General Assembly resolutions 40/34, of 29 November 1985, 52/86, of 12 December 1997, and ECOSOC resolutions 1996/12 and 1996/14, of 23 July 1996, 1997/31 and 1997/33, of 21 July 1997, 1999/25, of 28 July 1999, and 2000/14 and 2000/15, of 27 July 2000.

(52) E/CN.15/1996/16, para. 26.

(53) E/CN.15/2001/9.

(54) ECOSOC resolution 1745 (LIV) of 16 May 1973.

(55) E/CN.15/1998/8, paras. 16-18.

(56) *Ibid.*, para. 33.

(57) General Assembly resolution 55/59.

(58) The Vienna Declaration was drafted at the Tenth United Nations Congress on Crime Prevention and Criminal Justice (Vienna 2000). Preparations for the Eleventh United Nations Congress, to be held in 2005, also foresee the drafting of a corresponding Declaration.

(59) ECOSOC resolution 1992/22, part VII, para. 3.

(60) ECOSOC resolution 1984/47.

(61) ECOSOC resolution 1996/16.

(62) E/CN.15/1997/14, para 24.

(63) It may be noted, however, that a coordination panel has been set up on technical advice and assistance in juvenile justice, to be convened at least once a year (ECOSOC 1997/30). A proposal has been made to set up a similar panel on victim-related issues (ECOSOC 1998/21 of 28 July 1998, E/CN.15/1999/7, para 23).

(64) ECOSOC 1998/21.

(65) E/CN.15/2001/9.

(66) Commission decisions and ECOSOC 1998/21.

(67) E/CN.15/2001/9, para 99.

(68) E/CN.15/2001/9, para. 16.

(69) E/CN.15/2002/3, para 29.

(70) GA resolution 55/2.

(71) While it is true that these Conventions incorporate elements that are based on various standards and norms, it can well be argued that assessment of the application of the [original] standards and norms should not be confined only to the transnational organized crime context. All of the standards and norms have been drafted to apply to a broad range of offences.

(72) See, for example, Thomas Wolf and Emine Jürgen, *Improving Governance and Fighting Corruption in the Baltic and CIS Countries: The Role of the IMF*, International Monetary Fund working paper, January 2000.

(73) In the work of the European Bank on Reconstruction and Development, a distinction is made between the extensiveness and the effectiveness of application. In this connection, "extensiveness" refers to the scope of application, while "effectiveness", in turn, refers to the action of accompanying institutions in order to enforce and administer application. Each of the institutions contributing to extensiveness and effectiveness can be rated from 1 (absence of transition) to 4 (most comprehensive, accountable and de-regulated approach in the conditions of market performance).

(74) E/CN.15/1999/7, para. 4.

(75) Kristiina Kangaspunta, Matti Joutsen and Natalia Ollus (eds.), *Crime and Criminal Justice Systems in Europe and North America 1990-1994*, publication no. 32 of the European Institute for Crime Prevention and Control, affiliated with the United Nations.

(76) Graeme Newman (ed.), *Global Report on Crime and Justice*, Oxford University Press, 1999.

(77) It can be noted that simple parity between men and women in the number of criminal justice personnel need not be defined as a policy goal. Consideration should also be given to the status of women within, for example, the police, and to the overall status of criminal justice personnel within society.

# United Nations standards and norms, and their impact on criminal justice policy and practice

Dr. Jay S. Albanese, Chief, The International Center, National Institute of Justice, Washington D.C.

## Introduction

Beginning with the Standard Minimum Rules for the Treatment of Prisoners in 1955, the United Nations has adopted a large number of standards and norms designed to improve the administration of justice worldwide. Standards have been adopted in the areas of international cooperation, treatment of offenders, the judiciary, law enforcement, juvenile justice, victim protection, capital punishment, cruel and unusual punishment, and human rights. More than 100 countries have relied upon the standards and norms to form the foundation for changes in current practice, law, and policy.

Their implementation over the years has not been uniform, however, as countries sometimes have afforded them different priorities in the face of competing social and economic issues, legal traditions, and financial constraints.

## Need for clear priorities within ODC

Member States call upon the United Nations Office on Drugs and Crime (ODC) for assistance in many matters relating to crime and justice. The staff resources of ODC are limited, however, and there is a risk that their mandates may become too diffused, focusing on too many issues at once, thereby sapping their ability to foster positive changes around the world. Below are a series of recommendations and principles that offer specific guidance in setting priorities to permit maximum performance from the United Nations in its crime prevention and crime control efforts.

## Five recommendations

### 1. Standards represent consensus, moving away from comprehensive surveys:

The purpose of standards and norms is to set forth generally agreed-upon principles. Because they represent consensus, most countries meet the standards (i.e., they are usually minimum standards). Therefore, surveying ALL countries might waste resources when only a relatively small number of countries have serious problems. Specific problems and nations could be self-reported by the countries themselves (in calls for assistance) and in reports from other countries and non-governmental organizations. The response rate to a number of United Nations surveys has been low, which probably reflects the fact that data are not an important issue in the respondent country, or are unavailable. Surveys, therefore, should be targeted to areas where the need is the greatest for information and technical assistance.

### 2. Existing crime-related priorities of the United Nations are substantial:

They include the Convention Against Transnational Organized Crime, and its protocols against smuggling of immigrants, trafficking of women and children, and the illicit manufacture and trafficking of firearms. There are also existing global programmes in fighting terrorism and corruption. The work on these initiatives alone fills the plates of ODC for the next few years. It

is important that no new initiatives are undertaken that will undermine the success of existing efforts.

### **3. Moving towards a pool of experts:**

Rather than establishing a special rapporteur or other mechanism/unit with the United Nations to monitor the implementation of standards and norms, it is more cost-efficient, and perhaps more effective, to establish pools of experts (based on their substantive expertise and geographic location) who could be called upon for assistance where most needed to perform a needs assessment, evaluation or provide technical assistance. The pools of experts could be organized regionally through the Programme Network Institutes of the United Nations.

### **4. Focus on technical assistance:**

Technical assistance projects of the United Nations have proved very helpful to countries that wish to gain the expertise necessary to develop instruments, laws, policies, and programmes to more effectively prevent and control crime. An international pool of experts (noted in # 3 above) would provide a cost-effective means of providing this assistance in the future to locations of greatest need. Focusing on technical assistance and cooperation is perhaps the best way to breathe life into United Nations standards and norms in a practical way.

### **5. Focus on dissemination:**

In too many regions around the world, the existence of UN standards and norms in fundamental areas of crime prevention and criminal justice is unknown. More explicit effort should be given to dissemination in accessible and continuing ways, including publications, Internet sites, regional meetings and site visits to areas in need.

## **Ten guiding principles on the application of UN standards and norms in crime prevention and criminal justice**

Ten principles are offered here to guide the effort to monitor the implementation and impact of United Nations Standards and Norms on a global level. They are based on the recommendations above, expanding upon them and focusing on the cost-benefit in providing assistance to areas most in need, using mechanisms that are not resource-intensive.

### **Principle 1.**

The application of United Nations standards and norms in crime prevention and criminal justice should continue to be accorded its current level of priority and importance within the United Nations Commission on Crime Prevention and Criminal Justice.

### **Principle 2.**

The UN Crime Commission and the Office of Drugs and Crime (ODC) have a broad range of priority themes to address in addition to standards and norms. Accordingly, the methodology for setting priorities in a given year should take into account the totality of work being undertaken in the Crime Programme and the resources available for development of particular themes, in order to achieve an appropriate balance between work on standards and norms and other priority themes.

### **Principle 3.**

The Crime Commission should undertake periodic review of selected standards and norms and their application to ensure that countries most in need are aware of the standards and that technical assistance and cooperation is made available to them.

**Principle 4.**

Standards and norms should in the future generally focus on a discrete area of crime prevention or criminal justice practice, in order to facilitate the development of measures that provide detailed practical guidance in specific tasks areas to interested States.

**Principle 5.**

Standards and norms should generally be developed in areas other than those in which legal norms or policies in many systems are so diverse that the resulting standards and norms may be extremely general and thereby difficult to apply concretely.

**Principle 6.**

ODC should encourage donor countries making financial contributions for purposes of developing and implementing standards and norms to include funding for meetings of experts for purposes of planning priority areas for development of future standards and norms.

**Principle 7.**

In order to ensure that priorities are responsive to the technical assistance needs of Member States, representatives of developing countries and countries with economies in transition should be invited to the expert meetings to ensure that such planning takes into account their perspectives.

**Principle 8.**

ODC should establish pools of national and regional experts who can, upon request, provide technical assistance and advice on application of particular types of standards and norms. Related sets of standards and norms should be clustered by subject to enable ODC to better define such pools of experts.

**Principle 9.**

ODC should encourage international organizations and non-governmental organizations to incorporate United Nations standards and norms into their technical assistance programmes.

**Principle 10.**

ODC should update the 1992 compendium of United Nations standards and norms in its entirety, and consider efficient and cost-effective means of disseminating it and summaries of it to all concerned.

**Conclusion**

The implementation of United Nations standards and norms in practice ultimately gives them meaning for criminal justice officials, victims, and offenders. This implementation is best achieved through improved dissemination and knowledge of their existence, focusing on established crime prevention and control priorities to maximize the impact of UN resources, continued use of technical assistance and cooperation to countries requiring help, and using an international pool of experts to provide this assistance.





# Criminal policy in the process of reform. Review of juvenile and restorative justice as examples of the application of United Nations and European standards and norms in Germany

Otto Bönke, Ministerial Counsellor, Federal Ministry of Justice, Berlin

## Introduction

Over the last decades quite a large number of international recommendations have been adopted in the field of juvenile criminal law and restorative justice. One of the most important activities of the Council of Europe and the United Nations in the field of criminal policy has been the development of principles, guidelines and standards laying down what is to serve, worldwide or throughout Europe, as a point of orientation for legislators and practitioners in this field.

The significance of the relevant texts does not, however, always correspond to the degree to which they are known in legal practice. For that reason, the German Federal Ministry of Justice has published the documents of the United Nations and of the Council of Europe in a volume entitled "Internationale Menschenrechtsstandards und das Jugendkriminalrecht (International Human Rights Standards and Juvenile Criminal Law)".

These instruments have always had a decisive impact on the common international appreciation of the law in this field. For even if they do not contain any directly applicable law, they have been applied both as a yardstick for interpreting legal provisions that are in force and in defining areas where there is room for discretionary action. Above all, they have received attention in criminal policy discussions and in legislation. The documents follow the example set by the UN Standard Minimum Rules for the Treatment of Prisoners, adopted for legislation in the field of adult imprisonment as long ago as 1955.

## A. Juvenile criminal law

### I. Standards and norms of the United Nations

UN requirements on the treatment of juvenile criminal offenders are to be found above all in the following instruments:

- 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); and
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Reference must also be made to the Model Law on Juvenile Justice of 1998, which gives greater precision to the principles formulated in the other instruments but does not put them in conclusive terms.

### Specific content:

The Beijing Rules were adopted by the General Assembly on 29 November 1985 on

the recommendation of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders. This instrument contains essential basic principles and individual requirements in the administration of juvenile justice, and aims to the essentials relating to formulate the most important issues in juvenile justice. Here we are concerned with minimum principles regarding the treatment of juveniles who have come into conflict with the law, such as, for instance, the procedural guarantees (Rule 7), the avoidance of unnecessary delay (Rule 20) and the principle of individual deterrence. The principle that the primary objective of juvenile justice must be for the juvenile to lead a law-abiding life in the future is just as much the subject of regulation as the principle of proportionality of the reaction of the State to juvenile delinquency. The Beijing Rules further contain special rules for individual stages of the proceedings, and they place particular stress on restricting custodial measures for juveniles to a period of time that is absolutely necessary. A special feature are the so-called commentaries that form part of the instrument and give assistance in interpreting the individual provisions.

The Riyadh Guidelines were adopted by the General Assembly on 14 December 1990 upon the recommendation of the Eighth Congress. They contain standards for the prevention of juvenile delinquency and particularly measures to protect juveniles at social risk, meaning those who have, for example, been abused, abandoned or neglected. To ensure that juveniles are able to live a life free of crime, victimization and conflicts with the law, it is recommended that multidisciplinary measures be taken by various social institutions with the involvement of the family, schools, the press and the juveniles concerned. The Guidelines cover the whole field of "primary prevention" in relation to juveniles, and are faithful to the empirical principle that a sound social policy is the best criminal policy.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty still have no additional concise title and, with their 87 provisions, surpass the instruments already referred to. They formulate rules on every kind of deprivation of liberty for juvenile delinquents and, in particular, flesh out Beijing Rules Nos. 26 to 29. The extensive main section, comprising more than 60 recommendations (Nos. 19 - 80), deals with the common institutions in juvenile prison administration and the questions relevant thereto. They call for fundamental segregation of juvenile and adult imprisonment and for differentiation of juveniles according to sex, age, personality and type of crime. There are special provisions on different aspects of deprivation of liberty, placement, education, religion, medical care, etc. The final chapter concerns the staff of the relevant institutions and contains statements concerning their qualifications and collaboration.

As already stated above, the Beijing Rules have been put in more precise terms in the Model Law. Under five main titles, its provisions start with fundamental references to the notion of a criminal offence and of limiting custodial sanctions; they also deal with the age of criminal responsibility for young people. Courts of law for young people and their procedures are also dealt with (Title III). Under Title IV there is differentiation between educational measures, alternatives to custodial penalties (community service, fine) and custodial sanctions as a reaction to juvenile delinquency. Under Title V the possibilities of intervention specific to young people are treated. Such possibilities are of the most diverse nature and intensity, ranging from educational assistance measures to committal to an institution.

In conclusion, it can be said that the UN instruments contain a dense and often overlapping network of rules for the whole field of juvenile delinquency. Even though they cover all stages of proceedings ranging from prevention through all stages of court proceedings up to and including execution of sentence and the correctional regime, all instruments proceed on the assumption of not being conclusive but rather, as a basis for respective national parliaments, of being amenable to greater precision and development.

## **2. European instruments**

As a result of the Beijing Rules, formulated by the UN in 1985, the Council of Europe adopted, in 1987, its Recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency, where

the emphasis is placed on diversion, mediation and prevention in juvenile criminal law. The Recommendation is regarded as the cornerstone of a European juvenile criminal law policy; it was expanded in Recommendation No. R (92) 16 on the European rules on community sanctions and measures designed to promote replacement of prison sentences with alternative sanctions and to avert the negative consequences of custody. With Recommendation No. R (99) 19 concerning mediation in penal matters and in Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, the value of alternative and non-custodial sanctions at all levels of criminal proceedings is stressed, particularly under juvenile criminal law.

### **3. Juvenile criminal law in the Federal Republic of Germany**

As already shown, an important impetus has come from the minimum principles laid down by the United Nations for Council of Europe policy in the field of juvenile criminal law. Both sources in turn influence German legislation and practice in various ways.

Even though we cannot go into details here of the effects of the international "soft laws" in practice in the Federal Republic of Germany regarding the treatment of juvenile delinquents, it can nevertheless be stated that the following essentials are already having a visible impact:

#### **Reform of juvenile criminal law in Germany**

"Children" below 14 years of age do not have criminal responsibility in Germany, and are dealt with by means of the wide-ranging measures of juvenile welfare and of the family court. The Youth Court Act regulates the way in which the criminal justice system reacts to misconduct by juveniles and young adults, and makes available a wide range of measures and sanctions for this purpose, with priority being given to the notion of social education. Following rule 4.1. of the Beijing Rules that the age of criminal responsibility shall not be too low, a juvenile is defined under the German Youth Court Act as being a person who is at least 14 years old but has not yet reached his or her 18th birthday.

Provisions of juvenile criminal law are also to be applied to young adults (defined as persons who are at least 18 years old but have not yet turned 21), if these young people were, at the time the offence was committed, equivalent to a juvenile in terms of their moral and mental development, or if the offence concerned constitutes juvenile misconduct. It is not the age of the person at the time of conviction that is decisive, but rather the age when the offence was committed. This regulation is not based on efforts to be as lenient as possible, as is sometimes erroneously assumed, but on findings in the field of educational science and developmental psychology, according to which the process of development of social maturity is often not completed precisely when a person turns 18. This critical phase of adolescence, a period of personality and social development, usually lasts into early adulthood. Young people are, to a greater extent than adults, involved in a process of personality development; it thus seems particularly hopeful that appropriate measures will have a positive effect on their attitudes and behaviour. Juvenile criminal law provides a body of rules for this purpose and is more subtly differentiated than the criminal law applicable to adults.

Following No. 18.1 of the Beijing Rules, German juvenile criminal law provides for so-called socio-educational measures and disciplinary measures as formal legal consequences of an offence committed by a young person. These do not have the legal effects of punishment. Socio-educational measures are, in particular, instructions that regulate the lifestyle of the young person and are thus designed to promote and ensure his or her education. The list provided in the statute is not exhaustive. Examples that one could mention are being placed in the care and supervision of a certain person, participation in a social training course, efforts to attain victim offender mediation, participation in driving instruction or the imposition of socio-educational assistance.

Disciplinary measures are imposed where socio-educational measures are inadequate and youth custody is not required. These measures are designed to bring home strongly to young persons that they must take responsibility for their wrongdoing. Disciplinary measures comprise a warning, making good any damage, a personal apology to the injured party, payment of a sum of money to a charitable institution or the imposition of youth detention of up to four weeks. There are plans to add a driving ban to the list for offences relating to road traffic. The requirements for imposition of the individual socio-educational and disciplinary measures are, for the most part, not set down in detail by statute. The decision to select a particular measure depends on its appropriateness in the light of the personal and factual circumstances of the individual case. The objective is to achieve the best possible reaction through socio-educational means in order to prevent future criminal behaviour. Unreasonable demands may not be made in an attempt to achieve this objective.

The principle of subsidiarity is closely linked to the notion of education. Accordingly, measures that constitute less of an interference are given precedence if they are adequate in terms of the socio-educational objective. Imposition of a formal punishment by the youth court must take second place if sufficient voluntary or otherwise non-criminal-law, socio-educational measures have already been taken. Socio-educational measures can also be instituted independently of the criminal proceedings, for example by the parents or the youth court assistance service. Subject to certain conditions, the youth court judge can impose instructions or conditions. If the young person complies with them or if enough other socio-educational measures have already been taken, the judicial proceedings can be dealt with by means of diversion, which is the practice in Germany according to rule 11 of the Beijing Rules.

The only truly criminal sanction under juvenile criminal law is youth custody, (following No. 19.1 of the Beijing Rules), which is indeed a method of last resort and used for the minimum necessary period. The minimum term is six months and the maximum term is five years or, in the case of serious offences, 10 years. Even if this is imposed because of the degree of culpability, socio-educational aspects must be taken into account when the sentence is assessed. This is, in any case, true for the controversial penalty of youth custody on the grounds that custody may be detrimental to the person concerned.

In Germany the provisions governing youth custody are spread over various pieces of legislation. The principles and some organizational provisions are to be found in the Youth Court Act (sections 91, 92, 114, 115). The Prison Act contains, in respect of youth custody, provisions on remuneration for work, trainee grants and direct coercion (sections 43 to 52, sections 94 to 101, sections 176 and 178); the Introductory Act to the Courts Constitution Act has provisions on court review of youth custody measures. Some of the circumstances governing life in, and the structuring of, the custody regime have not yet been the subject of detailed legal regulation. To the extent that such circumstances can be regulated administratively, the Länder have reached an agreement in the form of the Federal Uniform Administrative Regulations on Youth Custody (VVJug), which were essentially modelled on the Prison Act. Nonetheless, Parliament is required to put the rules relating to youth custody on a legal footing that is in perfect accordance with constitutional law. Work on this is currently under way.

In the enforcement of youth custody young people must be kept segregated from adult prisoners, which is also stated in the UN rules (see above). There are special detention centres where youth custody is enforced, while pre-trial detention of juveniles takes place at least in separate prison departments. The Youth Court Act provides for the possibility of ordering juvenile delinquents to do community work or to take part in a social training course. Placement in work camps or "boot camps", however, is not possible under the existing law and is viewed with some reservation. The educational side of youth custody mainly includes measures of schooling and vocational training and takes into account the recommendations of the UN instruments, in particular No. 26.1 of the Beijing Rules. Also of great importance are meaningful leisure activities and sports. In addition, special treatment is offered in some institutions such as anti-aggressiveness training for violent juveniles.

In the view of the majority of experts a further reform of the Youth Court Act is not a matter of urgency because of the many options provided by the existing law. Any reform, and a reform cannot be ruled out in the medium term, should in any case uphold the notion of education and would develop it even further. An expert commission set up by the German Association for Youth Courts and Youth Courts Assistance Services (DVJJ) is currently examining the extent to which there is a need for reform, and recommendations are being drafted accordingly. The recommendations will, inter alia, relate to strengthening the option of diversion and greater involvement of the youth welfare services in criminal proceedings in respect of juveniles. The need for intensive cooperation arises, for instance, in the execution of sanctions and in particular in respect of socio-educational measures. Practical implementation cannot be left to the justice system alone. Where a care order has been made, or an order to participate in a social-training course, recourse must be had to other agencies, especially the youth welfare services, which offer relevant programmes. As the youth welfare services are independent agencies, youth courts cannot give them instructions. Cooperation between the justice system and the youth welfare services is required not only in the implementation of measures. The expertise of those services is also required at an earlier stage of proceedings to help the Youth Court assess appropriate reactions and come to a decision about concrete orders. The Youth Court is the important link between the youth welfare services and the justice system that, both here and in other areas, provides expertise and communication, and determines what measures are to be taken by the court itself and by the DVJJ

Where repressive measures, in particular in the case of violent crime and racially motivated offences, are indeed necessary, the options available under the existing law are basically sufficient to punish crimes promptly and appropriately. They need only be applied. For most juvenile delinquency, however, priority is given not so much to the aspect of punishment, but rather to the prevention of reoffending.

## **B. Restorative justice**

Restorative justice practices have gained greater priority in international organizations during the last years.

### **I. United Nations instruments**

1. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985 already calls upon the use, where appropriate, of informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices to facilitate conciliation and redress for victims;
2. The Minimum Rules for Non-custodial Measures (1990) stress the importance of greater community involvement in the management of criminal justice and the need to promote among offenders a sense of responsibility towards their victims and towards society as a whole;
3. Resolution 1999/26 of 28 July 1999 of the Economic and Social Council of the United Nations on Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice calls upon States, international organizations and other entities to exchange information and experience on mediation and restorative justice; and
4. Resolution 2000/14 of 27 July 2000 of the Economic and Social Council of the United Nations on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters calls upon States to make more use of restorative justice practices and to continue the exchange of information and experience on mediation and restorative justice.

### **2. European instruments**

1. Recommendation No. R(85)11 of the Committee of Ministers of the Council of Europe on

the Position of the Victim in the Framework of Criminal Law and Procedure of 28 June 1985 recommends the Governments of the Member States to examine the possible advantages of mediation and conciliation schemes;

2. Recommendation No. R (87)21 of the Committee of Ministers of the Council of Europe on Assistance to Victims and the Prevention of Victimization of 17 September 1987 recommends Governments of Member States to encourage experiments, whether on a national or a local basis, in mediation between the offender and victim and to evaluate the results with particular reference to how far the interests of the victim are served;

3. Recommendation No. R(92)16 of the Committee of Ministers of the Council of Europe on the European Rules on Community Sanctions and Measures considers that sanctions and measures enforced in the community constitute important ways of combating crime and avoiding the negative effects of imprisonment;

4. The Communication of the Commission to the Council, the European Parliament and the Economic and Social Committee on Crime Victims in the European Union, Reflections on Standards and Actions (COM(1999)349 final, 14 July 1999) states that victim-offender mediation could be an alternative solution to long and discouraging criminal procedures, as well as in the interest of victims, making possible compensation or the recovery of lost property outside the normal criminal procedure;

5. Recommendation No. R(99)19 of the Committee of Ministers of the Council of Europe concerning Mediation in Penal Matters sets out principles for the Member States to consider when developing mediation in penal matters;

6. The Tampere European Council of 15 and 16 October 1999 stated in Conclusion 30 that alternative, extra-judicial procedures should be created by Member States;

7. The Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings states in article 10 that Member States are to seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measure and to ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account. According to article 17 each Member State shall bring into force laws, regulations and administrative provisions to comply with the article 10 of the Framework Decision before March 22 of the year 2006.

### **3. Restorative justice in Germany**

Following international initiatives over the past years, victim-offender mediation has also gained in significance within the criminal justice system of the Federal Republic of Germany. The international endeavours to give greater global currency to the notion of restorative justice have influenced the reform of the German criminal justice system. Various victim surveys have also shown that the need for reparation plays a prominent role for victims and that options for restitution are desired. Further, it is to be expected, inter alia, that endeavours to eliminate the consequences of the crime will have a sustained effect on offenders and encourage them to gain an insight into the wrongfulness of their actions, and that successful mediation will restore peaceful relations under the law. This approach, involving resolution of the conflict caused by the criminal offence through mediation between the offender, the victim and the community, is of such importance because it frequently serves the interests of the victim to a greater extent than a criminal penalty does in the traditional, repressive sense. For that reason, elements of restorative justice have for quite some time already been part and parcel of the German criminal law system.

German criminal law offers several legal bases for victim-offender mediation and for taking into consideration actions of the offender to repair damage caused. Those legal bases were extended under the First Youth Court Law Amendment Act of 1990, the Crime Prevention Act of

1994, and the Act on Anchoring Victim-Offender Mediation in Criminal Procedure of 1999.

In general, in criminal proceedings applicable to all defendants of at least 21 years of age and, under certain circumstances, to defendants between 18 and 20 years, victim-offender mediation can bring about the discontinuation of criminal proceedings pursuant to section 153 of the Code of Criminal Procedure.

Under section 153 the public prosecutor may, with the consent of the court, refrain from prosecution of an offence if the guilt of the perpetrator could be regarded as minor and there is no public interest in the prosecution. In the case of minor offences the consent of the court is not required. Section 153 makes it possible for the public prosecution service, upon successful completion of victim-offender mediation, to discontinue proceedings because there is no further public interest in the prosecution.

Once a bill of indictment has been issued, the court may discontinue proceedings with the consent of the public prosecutor and the accused. Moreover, under section 153a, subsection 1, part 2, numbers 1 and 5, of the Code of Criminal Procedure, the public prosecutor may, with the consent of the court and of the defendant, provisionally refrain from issuing a bill of indictment in relation to a less serious offence and, at the same time, instruct the defendant:

- To carry out a specific task in reparation of the damage caused by his or her act; or
- To make a serious attempt to arrive at a settlement with the victim and repair the damage, if such instruction is apt to satisfy the public interest in the prosecution and the level of guilt does not stand in its way.

As with section 153 of the Code, the consent of the court is not required in relation to minor offences. Where the accused complies with the instruction, the public prosecutor discontinues the proceedings with final effect.

Once a bill of indictment has been issued, the court may, with the consent of the public prosecutor and the accused, discontinue the proceedings once the damage has been made good. Pursuant to section 155a of the Code of Criminal Procedure, the public prosecution service and the courts shall, at all stages of the proceedings, examine the possibilities of using victim-offender mediation and, if appropriate, of taking steps to bring about its intervention.

A legal basis in substantive criminal law for victim-offender mediation has been created by section 46a of the Criminal Code. Section 46a makes it possible for the court to reduce punishment or refrain from punishment in two sets of circumstances:

Section 46a, number 1, covers the eventuality in which the offender repairs fully, or to a large extent, the damage caused or makes a serious attempt to do so as a way of arriving at a settlement with the injured party. Number 2 covers the case where the perpetrator, in a case, where repairing damage caused would require considerable personal effort or sacrifice, compensates the victim fully or to a large extent.

While number 1 focuses on a settlement between the offender and the victim containing a non-material element, number 2 stresses material reparation for damage. The legal consequence in both eventualities is that while the court finds the accused guilty, it may select a lower level of fine of up to 360 daily units has been fixed, may refrain from punishment. Where the conditions set out in section 46a, Criminal Code, are met under section 153b, Code of Criminal Procedure, the public prosecutor may, with the consent of the court, refrain from issuing a bill of indictment; or, once the indictment has been issued, the court may, with the consent of the public prosecutor, discontinue the proceedings prior to commencement of the main hearing. Where the efforts of the defendant to repair the damage caused or to arrive at a settlement with the injured party are not sufficient to permit application of section 46a of the Criminal Code, then section 46, subsection



2, of the Criminal Code stipulates that such efforts shall be taken into account in fixing a more lenient penalty from within the normal applicable range.

Reparation of damage and efforts at a settlement with the injured party can also be included in instructions imposed on the perpetrator for probationary suspension of punishment and when a warning is issued with punishment reserved. Where the court suspends enforcement of a prison sentence on probation it may instruct the convicted offender pursuant to section 56b, subsection 2, number 1, of the Criminal Code, to make good, as far as he or she is able, the damage caused. An instruction to compensate for such damage is also possible when enforcement of the remainder of a sentence is suspended on probation after part of a prison sentence has been served. Where the court issues a warning with punishment reserved, the perpetrator being given a warning and a fine, fixed though not imposed, during a probationary period, the court can instruct the offender pursuant to section 59a, subsection 2, number 1, of the Criminal Code, to take steps to achieve a settlement with the injured party or otherwise to compensate the damage caused by the act. The interest of the victim in reparation for damage caused is also served by the procedure set out in sections 403 ff of the Code of Criminal Procedure, in which the victim may assert a property claim arising from the offence against the accused in criminal proceedings.

Under juvenile criminal law the public prosecutor may refrain from prosecution pursuant to section 45, subsection 2, of the Youth Court Act after implementation of victim-offender mediation if further educational measures are not required for the young person concerned.

Where the public prosecutor considers it necessary to involve the Youth Court judge, though not for charges to be brought, and where the juvenile confesses his crime, the public prosecutor may under section 45, subsection 3, of the Youth Court Law, suggest to the judge that the young person should be instructed to try and arrive at a settlement with the victim, or instruct him to do whatever he can to repair the damage and/or apologise personally to the victim. Where the young person complies with the instructions or conditions, the public prosecutor refrains from prosecution. If charges have already been brought, the youth court judge may discontinue the proceedings pursuant to section 47 of the Youth Court Law once victim-offender mediation has been effected or the damage has been repaired.

If the young person is convicted, the judge can issue an educational order as an instruction under section 10, subsection 1, part 3, number 7, of the Youth Court Law, to try to arrive at a settlement with the victim. In addition, section 15, subsection 1, numbers 1 and 2, of the same law give the judge the option of imposing a disciplinary measure in the form of a condition that the offender must do whatever possible to repair the damage caused and/or to apologise to the victim personally. Where enforcement of a prison sentence for juveniles is suspended on probation, the above-mentioned instructions and conditions may also be imposed on the young person under section 23 of the Youth Court Law. This also applies pursuant to section 29 of the same law if imposition of the youth penalty has already been suspended on probation and pursuant to section 88, subsection 6, if the remainder of a prison sentence for juveniles is suspended on probation.

### **C. Conclusion**

The existing standards and norms in juvenile and restorative justice reflect the international consensus in these areas. The international instruments described comprise minimum standards, guidelines and principles which, as already stated, have had a strong influence in diverse ways on parliament and other relevant authorities in regard to reforms in the areas concerned.

It must be seen that they are soft laws and not legally binding instruments. On the other hand, that they have strongly influenced the views and thinking of decision makers in the Member States cannot be questioned. The review of reforms in the areas concerned shows that it is often difficult to tell if the instruments have had a direct impact on the reforms or if the discussions

in the international organizations have influenced the reform of the criminal justice system.

If not all the standards adopted in the instruments have been implemented yet, it is because application has met with some difficulties. That is partly because the instruments describe a well nigh idealistic state of affairs and also because, in places, they are too detail-oriented. It would thus be advisable to confine oneself more to basic rules and to leave the details to relevant national bodies.

Another difficulty may be seen in the dense network of overlapping provisions that follow one another in chronological sequence but not always in the sense of sequential development. That makes it much more difficult both to retain an overall view and to make use of the instruments concerned.

A third difficulty is that the instruments are mainly available in the working languages of the UN. To promote their application, the German Federal Ministry of Justice has published the existing instruments in the area of juvenile justice in German.

As the application of standards and norms is a long-term process, continuous review and renewal is required, for stocktaking purposes and for revision of the existing instruments. It would therefore be useful to find achievable ways of putting the current essentials found in the Standards and Norms into a more streamlined and updated form. In that way, their intrinsic importance to the reform of criminal law systems would be more immediately apparent to all.

## **ACKNOWLEDGEMENTS**

1. The remarks in chapter A are based on contributions of Horst Schüler-Springorum, Theresia Höyinck, and Frank Neubacher in the publication "Internationale Menschenrechtsstandards und das Jugendkriminalrecht", published by the Federal Ministry of Justice, Berlin 2001.
2. The overview is based on the contribution of Dieter Dölling "Victim-Offender Mediation" in the publication "Prevention of Crime and Treatment of Offenders", published by the Federal Ministry of Justice, Berlin, 2000.



## Technical cooperation in strengthening the rule of law in Latin America: applicability of United Nations standards and norms in crime prevention and criminal justice to facilitate access to justice.

Dr. Pedro David, Judge, Cámara Nacional de Casación Penal de la República Argentina; former United Nations Interregional Adviser in Crime Prevention and Criminal Justice

### Introduction

Economic growth and social inclusion foster the effective functioning of the rule of law. The populations of Latin American countries, afflicted by marginalization and critical poverty, receive unequal treatment under the law. This understanding of the Latin American scenario has been recognized from the earliest instruments adopted by the United Nations in the area of crime prevention and criminal justice. Improving the effectiveness of technical cooperation efforts under the aegis of the United Nations is the cornerstone of all policies aimed at improving social equity under the rule of law.

### The Caracas Declaration

The Caracas Declaration, adopted by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders, can be considered as a pioneer in formally bringing together the issues of improving social conditions and the success of crime prevention and criminal justice system policies.

The Caracas Declaration of the Sixth UN Congress, (Paragraph 1, Page 3. A/Conf/87/14. Rev 1) noted, "Crime prevention and criminal justice should be considered in the context of economic development, political systems, social and cultural values and social change; it is a matter of great importance and priority that programmes for crime prevention and the treatment of offenders should be based on the social, cultural, political and economic circumstances of each country in a climate of freedom and respect for human rights, and that Member States should develop an effective capacity for formulation and planning of criminal policy and that all crime prevention policies should be coordinated with strategies for social, economic, political and cultural development." (op. cit. page 3).

### The global scene

More than 20 years later, with ever-increasing social inequities worldwide, the conceptual framework of the Declaration has become even more relevant. As the United Nations Development Programme (UNDP) has highlighted, (Human Development Report, 1999, page 36-37), the disparity in incomes between the richest and poorest countries has continued to widen. In 1960, the 20 per cent of the world population living in the richest countries had 30 times the income of the 20 per cent living in the poorest. By 1997 the difference was 74 times higher.

Meanwhile the concern for equity has moved centre stage in human development discourses. The concept of equity has been applied more frequently to disparities in income; nevertheless its implications include human and political rights; equity of access to education, health and justice; equality of gender; the reduction of poverty; and democratic participation as an eventual part of sustainable development (UNDP, op. cit., page 14-15). The Latin American scenario confirms that economic growth cannot be sustained without social equity. "Crecimiento con equidad", La Nacion, Buenos Aires, January 26, 2003, section 7, page 3).

The UNDP Human Development Report (1997, Chapter 2) shows the social and economic progress made by emerging economies compared with that of mature economies. The human deprivation of the developing countries is still the focus of concern.

The media and numerous studies have drawn public attention to the astounding disparities in income: close to 1.3 billion people live on less than one dollar a day. Recently, European Union Commissioner, Bonino, (Bonino Emma, "Extender la globalizacion", La Nacion, Buenos Aires, January 26, 2003, section 7, page 3) remarked ironically on this finding, saying that "while millions live on less than one dollar a day, each bovine born between Finland and the south of Italy, has the right to one dollar of subsidies from the European Union". More than 500 million people do not receive enough food. More than 500 million are chronically malnourished. More than 840 million adults are still illiterate; 800 million have no access to health services; and 1.2 billion have no access to safe water.

According to the 1997 figures, two thirds of the world population are not living in even relatively pluralistic or democratic political systems. As many as 40 million refugees and an additional 500 million live in ecologically fragile areas.

In this global context, children and women are suffering the most, according to the UNDP Human Development Report (1997, op. cit. page 27; see also Bassiouni, Cherif, "A Global Perspective on Trafficking" in the volume, "In Modern Bondage: Sex Trafficking in the Americas", IHRLI, DePaul University College of Law, October 2002, page 92-97).

Close to 160 million children suffer from malnutrition and more than 110 million are out of school. Finally, more than 5 million children under the age of five died early, half of them in the post-natal period because of illness and malnutrition (UN A/AG- 256 CRP/ Rev 3, page 10, September 10, 2001).

Life expectancy is another indicator of increasing social inequality among regions. In emerging economies close to one fifth of the world population dies before reaching the age of 40, four times the proportion of developed economies. Infant mortality in poor countries is six times higher than in industrialized nations. (UNDP- HD Report, op. cit. page 28).

As we are all aware, deprivation is not limited to developing countries. More than 100 million in the developed world still live below the poverty line. More than 5 million are homeless and more than 37 million are jobless (op. cit. page 24).

As for increases in the index of criminality, the UNDP Report states that between 1970 and 1980, and regardless of an absence of reliable data for many countries, crime increased by 5 per cent, or by 2.5 times the growth in population; and without any doubt, the poorest inhabitants of the world are most likely to be victims of that increase in crime.

Facing such dire global conditions, the targets fixed by the UN Millennium Declaration are essential for concerted action in the coming decades. The realization of those targets has acquired a new urgency in light of the political instability in Latin America and the challenges posed by organized crime.

### **The regional picture**

Many studies have sought to establish patterns of significant correlations between high indexes of social inequality and increases in criminality. According to the World Bank, in the Caribbean and Latin America (Freeman Richard, Journal of Economic Perspectives, World Bank 1996), almost three quarters of the population live in conditions of critical poverty where the indexes of criminal violence associated with social and economic deprivation are consistent. Violence in the family is one of the most serious problems.

According to the Economic Commission for Latin America and the Caribbean (ECLAC)

(Panorama Social de América Latina, 2000-2001) in the three years from 1997 to 1999, the number of persons living in poverty in Latin America grew from 204 million to 211 million. Of that number, 80 million people were indigent. By 1999 the incidence of poverty had reached 35 per cent of households while the levels of critical poverty were as high as 14 per cent. For every 100 homes in the region, 35 per cent did not have enough income to satisfy basic needs, and 14 per cent did not have income to purchase a basic food basket. In 1999 the rural poor numbered 77 million and the urban poor 134 million. Critical poverty affected 43 million people in urban areas and 46 million in rural areas. It is important to note that urban critical poverty increased 8.5 million in only two years in this period, indicating the tendency towards urbanization of critical poverty.

In 1999, 76 million lived with an income of less than one dollar a day, lower than the level of average income for critical poverty. In 1999, 175 million persons, or 36 per cent of the total population, earned less than 2 dollars a day.

Almost 77 million people in Latin America lived in houses with an average of three to four persons per room. Some 165 million have no access to safe water, 109 million are poor. Unemployment affects 71 per cent of households. Some 39 per cent of poor people live in a home in which the head of the household has fewer than three years of schooling.

Some 83 million children under 15 (56 per cent of all children of that age) live in households where the educational level is low.

In the 15 to 19 age group, more than 18 million are employed; 22 million (one quarter of the age group in the continent) neither study nor work.

### **The drastic impoverishment of a Latin American nation: the Argentina scenario.**

In Argentina, according to statistics provided by the INDEC (National Institute of Census and Statistics), in the surrounding metropolitan areas of the city of Buenos Aires, the so-called *conurbano*, the index of people living under conditions of extreme poverty, reached 59.2 per cent and the index for indigent people went up to 27.9 per cent (see graphic number 2, Clarin, January 5, 2003).

Areas of the inland provinces of Argentina, such as the northeast provinces of Corrientes, Misiones, Formosa and Chaco, have even higher proportions with 71.5 per cent in extreme poverty and 41.9 per cent in indigence (February 1, 2003, La Nacion, Buenos Aires).

Argentina as a whole, according to the Permanent Household Survey (May 2002), now has 19 million poor people (53 per cent of the total population), earning less than USD 200 a month (635.94 Argentine Pesos) and 8.4 million indigent people (24 per cent of the population) earning less than USD 90 per month (266.36 Argentine Pesos).

The figures released by INDEC on 1 February 2003 show that 20,830,000 inhabitants are poor (57.8 per cent) and 9,960,000 (27.5 per cent) are indigent. In comparison with May 2002, when poverty reached the level of 53 per cent of the total population, the number of poor people rose by more than 1,600,000. Between October 2001 and October 2002, 6,960,000 people were added to the poor category and 5,040,000 to the indigent category. "These are absolute records in the worst period of Argentine history." (La Nacion, Buenos Aires, February 1, 2003, front page and page 1. Economía y Negocios). If we add to those figures the fourfold increase in the present level of unemployment over the last decade (now more than 21.5 per cent of the active population), we should expect a marked increase in reported criminality trends. According to statistics prepared by Ministry of Justice, Security and Human Rights of Argentina, Direction of Criminal Policy, the increase in reported criminality increased by 88 per cent in the last decade. The "black" figure for non-reported criminality is around 50 per cent of crimes.

A study by Argentine economist Eduardo Patricio Pompei states that, for the city of Buenos Aires in the period 1990 to 2000, the index of social inequality, measured by the Corrado Gini index, is parallel to the curve in reported criminality (see graphic no. 3 in the annex, Pompei, Eduardo P. "Delincuencia y situación socioeconómica en la Ciudad Autónoma de Buenos Aires").

The drastic rise of critical poverty in Argentina, almost two million in the five months from May to October 2002 and more than 10 million since 1998, can be explained, in part, by the rise in basic food prices after the abandonment of the decade-long pegging of the national currency to the dollar. (Law 23.928). The currency parity is now mostly fixed by the market at approximately 3.50 pesos to the dollar. (Law 25.561, 7 January 2002) (see charts number 1, 2 and 3 in annex).

Many factors can be seen as contributing to the inordinate increase in poverty: inflation without adjustment in salary or pension, the growth of unemployment, institutionalized corruption, banking fraud, lack of access to basic social services, including education, judicial uncertainty and a breakdown in the protection of property rights.

The devaluation was a political decision that has been widely contested in thousands of legal cases still pending in the Argentine courts as the dollars deposited by Argentines in the banks at the parity of one peso to one dollar were converted after the devaluation at the official price of 1.40 peso to a dollar and not to the average market level of approximately 3.50 pesos to a dollar at the time of abandoning the parity.

As much as 70 billion dollars in the banks owned by Argentines depositors were abruptly transformed into pesos creating a precedent of conflict and distrust of the political decisions of the executive and legislative branches of the government regarding property rights guaranteed by the national Constitution of Argentina and the (Badeni, Gregorio, "Las normas de emergencia y el derecho a la propiedad privada", Revista del Colegio de Abogados, N° 56, page 16-19).

The Argentine political and economic turmoil is the most acute in more than a century. It has become a model for academic researchers to observe the impact of political decisions in relation to social inequality, as well as the role of the judiciary in safeguarding constitutional guarantees and individual rights. Both the public and the media have intensely scrutinized the role of international economic institutions and the Washington consensus in their interactions with the Argentine authorities and the economic sectors.

Argentine children and youth have been particularly vulnerable to the effects of the socio-economic upheavals and inequalities. In Argentina, 8,319,000 children live in three million poor households. That implies that 66.6 per cent of all 12.5 millions Argentines under 18 years of age are poor. In some provinces, the proportion of poor minors reaches 80 per cent and in the metropolitan areas of Buenos Aires, the capital, the figures are close to 70 per cent.

In 1998, there were 5.7 million poor minors. From December 2001, when poor children numbered 7,000,000, the poverty of children and youth increased at the rate of 250,000 persons per month, reaching 8,319,000 in June 2002; in other words, 1.3 million in five months.

Until the 1970s when social mobility was accepted as a feature of a largely Argentine middle class society, poverty seemed a less pressing issue to address. (Clarín, June 9, 2002, page 9) Only five per cent of households were considered poor. In the 1980s, the figures increased to 12 per cent; and grew with the hyperinflation of 1989-90. From 1994 onwards, unemployment, salary decreases and economic recession drove poverty levels higher. In 1998, one in four households was poor. By the end of 2001, 30 per cent of households were poor and today 4 in 10 households are poor (see graphics 1,2, and 3 in annex).

Already in 1999, Lee Haeduck in a socio-economic study, "Poverty and income distribution in Argentina", reported that 36.1 per cent of Argentines were in poverty with 3,180,000 unable to afford a basic diet. Another 8.6 per cent of the population was indigent, that is below the poverty line.

## **Social equity and crime prevention**

The close relationship between social equity and crime prevention was explicitly recognized in paragraph 25 of the Vienna Declaration on Crime and Justice, which asserted that comprehensive crime prevention strategies at the international, national regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, education and justice policies.

As an international community, regardless of different conceptualizations of justice in society, we do not follow the principles outlined in the Universal Declaration of Human Rights, and, as the philosopher Rawls theorized: (Rawls, John, "A theory of justice", Harvard University Press, 1999, Cambridge, Mass, USA, page 53): "First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all".

## **Ameliorating poverty through the rule of law**

While the importance of legal institutions to business and investments has received much attention in academic circles, fewer texts have explored how the rule of law works for or against the improvement of poverty. (Anderson, Michael, Access to Justice and Legal Process. Making legal Institutions responsive to poor people in LDCs). "The rule of law provides essential preconditions for a prosperous economy organized on market principles, ensures life and personal security and reduces political risks to investors, cuts down transaction costs and fosters the development of markets in land, labor and capital." The 1997 World Development Report concluded that markets cannot exist without effective property rights and that effective property rights depend upon three conditions:

- Protection from theft, violence and other acts of predation;
- Protection from arbitrary government actions; and
- A reasonably fair and predictable judiciary.

Anderson identifies the following situations in which the absence of the rule of law contributes to poverty: unchecked abuses of political power; unchecked violence by police, prison officers and other public officials having its greatest impact upon the poor, and corruption in its various forms and manifestations requiring the poor to pay a premium for public goods and basic services such as access to water, education, health care, medicines, travel and official information.

It is also important to acknowledge how, in countries where extreme human rights abuses prevail, a culture of fear displaces the proper role of a culture of legality and leads the poor to use scarce resources as a means of self-protection. Such factors are not just impacting upon poverty. They are part of its creation and a fundamental aspect of its existence.

In addition, the poor are more likely to be humiliated and subjected to arbitrary treatment and intimidation by public officials. The poor are also at greater risk of losing their property either by private or public theft. Moreover, development projects are identified and approved by means of undemocratic processes, leaving the poor outside the calculus of benefits.

## **Obstacles to the equitable functioning of legal and judicial systems**

Having spent 40 years deeply concerned by the enormity of the difficulties facing Latin American legal and judicial systems, I am grateful it is now standard practice to link themes of access to justice and judicial partiality, justice delay, legislation and cultural disparities in the discourse of socio-economic inequalities. (David, Pedro: in Crime and Criminal Policy-Papers



in honour of Manuel Lopez rey y Arroyo, Compiled and edited by Pedro R. David, Franco Angeli, Milano, Italy, page 251-53. Also, David, Pedro R., Globalizacion, Prevencion del Delito y Justicia Penal, Zavaloa, Buenos Aires, 1999

### **Access to justice**

Access to the protection of a juridical system is, effectively, not granted to the most underprivileged socio-economic and cultural sectors. Ignorance of the law abounds. Judicial resources are located primarily in urban centres and are limited. Legal terminology is not only different from that often used by ethnic majorities, but incomprehensible to the poor, given their insufficient education and the hermetic terminology involved. Protecting human rights is inextricably linked to a sound legal system. For example, preventing ecological and environmental destruction requires judicial review of environmental projects as well as public assistance to the disadvantaged sectors affected by the project in finding appropriate juridical solutions.

### **Legislation and culture**

Likewise, in many countries, official legislation does not adequately respond to actual social processes. Often its formulation and origin are alien to the cultures of the majority. Furthermore, in several countries with substantial indigenous populations, institutional and legal pluralism requires specific solutions for them beyond the unified response provided by western legal systems. Moreover, the formal juridical system should be complemented and supported by mediation, arbitration, conciliation and community-oriented justice measures, duly able to provide for local solutions to pressing problems, yet always respecting fundamental liberties and human rights.

### **Sectoral partiality**

Insofar as development is sustainable, it requires a juridical system acting as an effective instrument of social justice, promoting a healthy and harmonious relationship between State and society, and protecting the most vulnerable social and economic sectors. Perhaps such juridical impartiality is the most difficult objective to achieve in our present global scenario where States often act as agents of structural inequality.

### **Justice delay**

Another important factor, justice delay, is prevalent even today in Argentina and other countries of the Latin American and Caribbean region and works directly against the rights of most vulnerable social groups (David, Pedro R., in *Justice and Troubled Children around the World, Volume II*, Edited by V. Lorne Stewart, N. York University Press, 1981, Chapter 1, Argentina, pages. 25-26).

The most effective strategy to defeat the rights of the most vulnerable is justice delay due to high litigation costs. Most of such cases involve disputes over property. It is precisely here that the informal structure of the judiciary can be most effectively manipulated in order to help preserve the status quo with respect to land ownership and financial disputes. Even where criminal actions are involved, however, if the accused happens to be a member of the political, social, cultural or economic elite, or can marshal sufficient support among the powerful, the strategy of delay can be effectively applied. The great majority of inmates in Latin American prisons, are scapegoats or "poor devils" as Lopez Rey singled out in his perceptive criminological work (Lopez Rey, Manuel, "Criminologica", Chapter X, page 173-174, Aguilar, 1978, Madrid, Spain).

### **The legal system. A force for the status quo?**

18. We can advance the proposition that, *whereas the economic institution tends to act as a force toward social change, the judicial system often works to preserve the status quo*. An analysis of the role structure of the judiciary and the process of recruiting and appointing judges

at high levels of the legal system is essential here for understanding how the elites of many countries perpetuate themselves in the face of powerful social forces for change.

### **Reforms to be implemented**

Numerous legal, judicial and institutional reforms are recommended in order "to create an environment conducive to the fight against criminality, promoting growth and sustainable development and eradicating poverty and unemployment" (Vienna Declaration on Crime and Justice, paragraph 10).

Among the recommended reforms that I have cited in recent works are: substantive and procedural legal reforms aimed at greater clarity and simplicity of legal prescriptions and procedural norms; full access to justice, removing obstacles to political, social, cultural, economic and gender inequalities; the establishment of a vast array of arbitration, conciliation and compensation mechanisms to avoid lengthy and costly litigation and judicial procedures; intersectoral and sectoral planning for crime prevention and criminal justice in the context of development; education and training, and reforms in legal education; regional and international cooperation in matters of crime prevention and criminal justice including bilateral and subregional agreements. Some are discussed below. (See also: Garapon, Antoine: *La République Pénalisée*. Chapter IV. *Vers une autre Justice Penale?* Hachette, France, 1996).

### **Reengineering of penal law**

Gerardo Laveaga in a recent contribution (Laveaga, Gerardo, "Hacia la Reingeniería del Derecho Penal Mexicano", *Iter criminis*, N° 4, Octubre-Diciembre 2002, pages 11-19) proposes a "rediscovery or a reengineering of penal law consisting of depenalization of minor offences; alternatives to deprivation of liberty; procedures for conciliation and victim compensation; democratization of penal laws and regional harmonization of criminal policies."

### **United Nations standards and norms**

The use and application of United Nations standards and norms in crime prevention and criminal justice, as well as in the area of Human Rights, and their incorporation into law and practice, will be pivotal in several areas:

- Solving problems of penal reform;
- The independence of the judiciary to assure institutional and cultural pluralism in order to make more effective the rule of law in action; and
- The prosecution and prevention of corruption and various modalities of organized transnational criminality.

### **Towards the democratization of penal law.**

As García Ramírez has noted, (García Ramírez Sergio, "Reflexiones sobre Democracia y Justicia Penal", *Volumen de Homenaje al Prof. Barbero Santos*, Salamanca, 2001, page 304) the penal process is the space for testing, beyond generalities and utterances, how democratic and law abiding society is. Law and penal justice are instruments and conditions of democracy, not so much because they include prescriptions for individuals, but mainly because they contain limitations to State power and rights against arbitrary power and force (op. cit., page 300).

García Ramírez adds: "Zero tolerance could be positive if it is also applied to unemployment, poverty, lack of health, ignorance and marginality. Moreover, penal justice is somewhat determined by which judge is applying penal laws". (op. cit., page 307).

## **The United Nations standards and norms: a success story. Juvenile justice reform in Latin America and the Caribbean.**

After the ratification of the Convention of the Rights of the Child, the process of legal reform taken by Member States in Latin America adopted three main modalities: for some countries no impact was noticed; for some, only formal and superfluous adjustments to the Convention; and finally, for many others, a profound process of legal reform took or is taking place right now, both in relation to substantive and procedural matters.

For those countries making substantive reforms, three well known instruments in juvenile justice have been guiding them along with the Convention:

- The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
- The United Nations Rule for Juveniles Deprived of their Liberty; and
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

The application of those three instruments was decided in the knowledge that, even if they did not have the binding force of the Convention, they nevertheless represented agreements of the international community that were highly relevant for the interpretation of the Convention and for the design of juvenile justice policies (Beloff, Mary, "Infancia, Ley y Democracia en América Latina, Temis, Depalma, Buenos Aires, 1999, page 88).

The success of disseminating and implementing juvenile justice norms, standards and instruments in Latin America and the Caribbean was a direct by-product of the political decision of some countries, supported by technical cooperation efforts of the former Crime Prevention and Justice Branch, (Centre for International Crime Prevention) with the support of the United Nations Interregional Crime and Justice Research Institute (UNICRI), the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), and of intergovernmental and non-governmental organizations, and various segments of civil society, including the media and juvenile sectors.

The role of the UN Congresses in the prevention of crime and the treatment of offenders should be given prominent recognition, since they provide a unique global forum in addition to regional preparatory meetings for disseminating and implementing standards and norms in crime prevention and criminal justice.

The reforms, many of which were the result of vigorous social mobilization in favour of the rights of the child (Brazil, 1990; Guatemala, 1996), are working towards juvenile justice for the millions of marginalized and destitute children and youth of Latin America and the Caribbean, giving them access to justice and thus better protection of their fundamental rights.

I wish to add that advisory services in the area of crime prevention and criminal justice, including juvenile justice were continuously provided by the Secretariat under various modalities of technical cooperation for more than a decade to Latin America and the Caribbean countries despite the scarcity of financial resources (David, Pedro R., *Annali della Fondazione: Technical Cooperation Needs and Initiatives*, 1995, page 196).

### **Independence and impartiality of judiciary, prosecution and criminal justice officials.**

For Latin America countries, both dimensions, the democratic nature of the penal process and the independence and fairness of the judiciary, are closely interrelated. Both are necessary preconditions of the rule of law in society and of full access to justice.

In Latin America where, historically, State abuses of power and violent political and economic

groups have limited fundamental rights, the judicial system has grown under enormous institutional pressures. (David, Pedro R., Naciones Unidas, Derechos Humanos y Poder Judicial, page 259; Globalizacion, Prevencion del Delito y Justicia Penal). Thus the guidelines for the independence of the judiciary have been central in guiding strategies and actions towards the reconstruction of the judicial system after a return to democratic governance.

### **Comprehensive legal reforms to help remove obstacles related to the need for plurality of cultures and legal systems to facilitate access to justice.**

In some countries, despite an official unified legal system, there are many different legal cultures and concomitant legal practices. Many constitutions in Latin America have adopted provisions recognizing the rights of indigenous people to territorial jurisdiction and the right to their own norms and procedures (Colombia, 1991, art. 246; para. 1993, art. 139) (See Kalinsky, Beatriz- Justicia, Cultura y Derecho Penal Ad Hoc, Buenos Aires, 2000, page 143-161). There are, however, still penal codes that discriminate against and criminalize conduct that is in conformity with tribal customs (See David, Pedro R., Sociologica Juridica Buenos Aires, 1980, Edit Astrea, Chapter X).

### **Legal reforms harmonizing and implementing national legal systems with international treaties, and standards and norms.**

The impact of global and regional tribunals, in almost all areas of law, requires immediate comprehensive legal reform in national systems. Moreover, domestic legislation reform demands a concerted effort by member countries and the international community to make such reforms effective. Of pressing concern is the ratification and the implementation of the UN Convention against Transnational Organized Crime

### **Technical cooperation in strengthening the rule of law in Latin America**

The Latin America Preparatory Meeting for the Tenth United Nations Congress (A/Conf. 187. RPM 4/1), in discussing Topic I of the Congress, noted that a reliable, well functioning criminal justice system was of utmost importance in ensuring the rule of law and achieving concomitant social progress and economic development. Efforts towards that goal should address closer community involvement in criminal justice proceedings and provide the general public with information on the operation of criminal justice systems and the importance of criminal law as a means to ensure social stability. The meeting considered as important: access to justice, improved transparency and expediency of the criminal justice system, as well as fairness in sanctioning offenders. Implementation of technical cooperation programmes in those aspects was recommended. Technical cooperation remains a top priority while recognizing that financial constraints have forced Governments to reduce technical cooperation initiatives.

A key statement of the meeting expressed the view that domestic laws should, where applicable, incorporate elements from community-based judicial systems and from the traditions and customs of indigenous people recognized by the Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries (27, June 1989).

### **Restorative justice**

Mediation and conciliation in penal matters have been used increasingly in Latin America countries. The approval by ECOSOC of the UN Basic Principles for Restorative Justice in Criminal Matters will greatly help further progress in many countries that have already established alternative models of conflict resolution or are in the process of doing so.

As Ceretti (Ceretti, Adolfo, 1999) has noted, "mediation introduces a new communication logic where there was only confrontation and litigiousness, overcoming the dualism of opposition through a symbolic compensation reparation. Self-dignity and integrity both for the victim and

the offender can thus be recovered. Mediation and measures of restorative justice represent social equity, beyond the cold formalism of the judicial process". Such measures constitute a fertile approach for facilitating access to justice in Latin America.

### **The need for sectoral and intersectoral coordination and planning in crime prevention, criminal justice and development.**

In paragraph 42 of a Secretariat paper for the Sixth UN Congress (1980, *New Perspectives in Crime Prevention, Criminal Justice and Development*) it is noted that, "Perhaps what is needed most in the future is a new type of professional planner, with criminological as well as planning expertise, since crime is always concerned with human behaviour and thus does not recognize sectoral boundaries. In developing an adequate model for sectoral planning, a logical and humane system which does not rely only on the two extremes of crime and punishment should be conceived, aimed at restoring integrative community mechanisms. The sequence of crime and punishment fits only traditional ideas. A rigid articulation of these two elements in the face of the world today can aggravate existing processes of marginalization and alienation, especially among the poor and the disadvantaged". On the transition from nomos-centred logic to socio-centered logic, see also Salah, M.M.M., "Les contradictions du droit mondialisé", P.U.F., Paris, 2002, page 87-88.

More than ever, the social exclusion and marginalization in Latin America regarding the rule of law and access to justice, require careful attention so that imaginative solutions can be found, among which "the itinerant judge" of Argelia, the solution of the "Barangay system" of the Philippines or the Panchayat in India, or the Justice of the Peace in Latin America are examples in the right direction.

### **Regional and International cooperation and the role of the United Nations.**

The Report in the Tenth UN Congress on the Prevention of Crime and the Treatment of the Offenders, in the Summary of the General Discussion at the High Level Segment, (A-Conf. 187/15, paragraph 15-16) emphasized that "shared responsibility and collective action was seen to have several facets". First, each State should guarantee that it is able to play a full role in international cooperation. That required a review of legislation and practice and ensured that cooperation was also effective within the State, for example among domestic law enforcement agencies. Secondly, each State should seek to ensure that it had in place the capacity to provide assistance to other States. Thirdly, States should explore the potential offered by various international instruments and structures for international cooperation. Paragraph 16 mentions technical assistance as a fourth facet of shared responsibility and collective action.

#### **The role of technical cooperation.**

In its paragraph 22, the Vienna Declaration recognizes that the United Nations Standards and Norms in Crime Prevention and Criminal Justice contribute to efforts to deal effectively with crime. It also recognizes the importance of prison reform, the independence of the judiciary and prosecution authorities and the United Nations Code Of Conduct for Law Enforcement Officials. "We shall endeavour," the Declaration continues, "as appropriate, to use and apply the United Nations Standards and norms in crime prevention and criminal justice in national law and practice. We undertake to review relevant legislation and administration procedures, as appropriate, with a view to providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice".

#### **Objectives of technical cooperation activities.**

With reference to previous remarks, technical cooperation activities in the area of

strengthening the rule of law and facilitating access to justice should include, among other aims, the following:

- To promote and reinforce the self-evaluation capability of the judiciary, including prosecution and crime prevention and criminal justice agencies to detect, identify and solve discriminatory practices and inequitable legal norms violating fairness under the law, thus assuring all vulnerable sectors of society the enjoyment of fundamental rights and freedoms;
- To harmonize domestic law and implement national legal structures to conform to international conventions on human rights and crime prevention and criminal justice (Convention Against Transnational Organized Crime). Of special importance is the prevention of illicit trafficking of women and children.
- To improve criminal policy, taking into account an intersectoral approach, by which national and regional coordination will be assured between the crime prevention and criminal justice sectors and other development concerns.
- To improve public confidence in the law, and more specifically the penal law, by strengthening impartiality, fairness and expediency of the substantive and procedural norms, processes and practices.
- To improve the recruitment process of legal and judicial officials assuring the highest levels of impartiality competence and integrity and to comply with the standards and norms on the protection of human rights in the administration of justice;
- To provide access to justice, avoiding unequal treatment to indigenous populations in recognition of their own traditions and culture, taking into account the Indigenous and Tribal Peoples Convention of the International Labour Organization (ILO) number 169 of 1989. In penal law there is a need to review the western-oriented principles of penal responsibility to account for the so-called "culturally conditioned mistakes of law" (art. 15, Peruvian Penal Code of 1991). Moreover, full compliance is required for alternative solutions to deprivation of liberty (art. 10 of ILO Convention 169, see Kalinsky, op. cit. page 157-61);
- To reinforce the technical capabilities of crime prevention and criminal justice agencies providing, as needed, specialists, training and equipment;
- To assist in the development of database for the collection and dissemination of data on the relationship between criminality and development indicators and the effectiveness of crime prevention and criminal justice agencies;
- To offer advisory services for the design and formulation of plans, projects and measures to implement United Nations guidelines, standards, norms and instruments and for the elaboration of multinational, regional and subregional strategies to deal with problems of equitable treatment under the law;
- To design a coordinated and inclusive criminal policy, interrelated with social issues, to link all national relevant agencies with State and local entities and appropriate non-governmental organizations;
- To offer advice on the ways and means of promoting and strengthening regional and subregional cooperation particularly in relation to the harmonization of crime prevention and criminal justice policies in the context of development;

- To cooperate with UN institutes in the field in their activities so as to achieve closer relationship between areas of development concern and criminal policy;
- To provide Member States with advice concerning the design and formulation by UNDP, the World Bank, the Inter-American Bank and other financial agencies of country and regional programmes and projects to strengthen access to justice and the rule of law;
- To advise on measures, programmes and project design and implementation at the national and regional level to apply the "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, The Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules for the Treatment of Prisoners and other UN guidelines, standards and norms, as relevant; and
- To advise on measures and reforms to strengthen or establish judicial review of development projects in order to achieve the targets fixed by the UN Declaration on the objectives of the Millennium (Res. 55/2 GA, 8/9/00).

## Conclusions

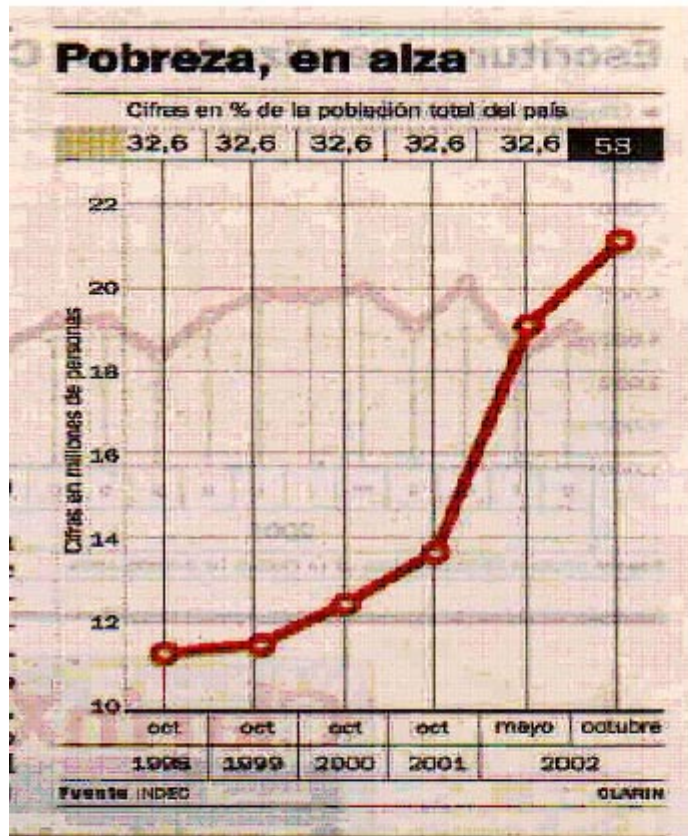
The evidence presented in the present paper substantiates the conclusion that the rule of law is a prerequisite for economic growth and social equity. Instead of being a by-product of the economic structure of societies in transition, the rule of law is a fundamental factor of economic growth and social justice. Technical cooperation efforts should direct more attention to its unique role when providing advice on legal and institutional reforms through the dissemination and application of United Nations standards and norms.

As Aristotle wrote more than 2000 years ago, (Radbruch, Gustavo, "Filosofía del Derecho", Revista de Derecho Privado, Madrid, cuarta edición 1959, page 47), "justice and equity are not different values, but two distinct ways to reach the unified value of law".

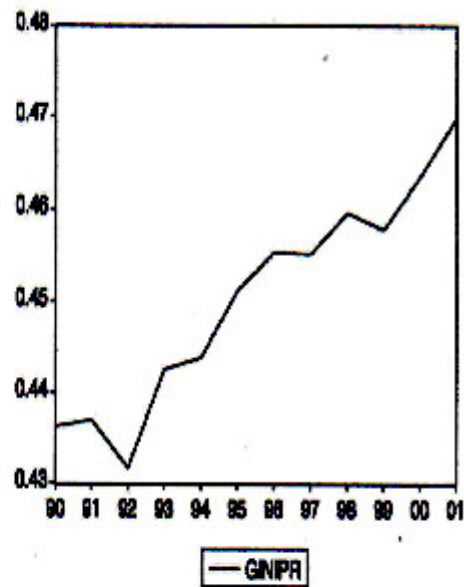
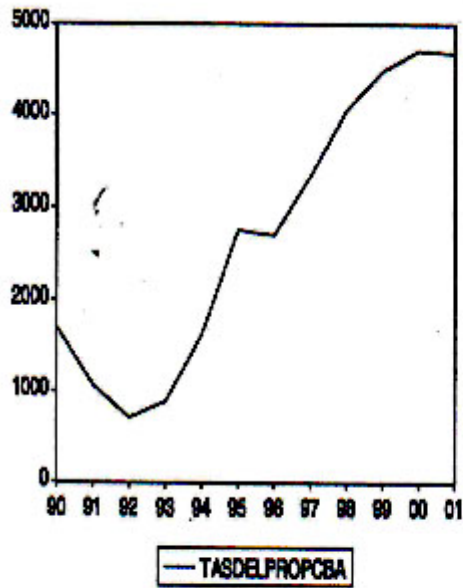
## ANNEX



2.



3.







# Administration of justice in Uganda: the sector-wide approach (SWAP)

Joseph A.A. Etima, Commissioner of Prisons, Uganda

## Introduction

The United Nations Congresses on the prevention of crime and the treatment of offenders have placed special emphasis on the general issues of criminal policy, in addition to dealing with specific aspects of crime prevention and criminal justice. It is broadly understood that crime and delinquency should not be interpreted as merely a problem of illegal behaviour and law enforcement but also as phenomena closely associated with economic and social development.

The intense debate about crime policy in Uganda has taken a new turn with the partial invalidation of the "three strikes" law by the State Supreme Court. Once again, public fury about crime will compete with anxieties about rising taxes and declining public services; once again, policy-makers will be presented with difficult choices that will determine the future of the State, as well as their own political future.

The basic elements of a harm minimization policy are as follows:

- Recognition that citizens are most concerned about violent crime. While other types of crime, such as burglary and drug dealing, produce definite harm, it is the harm produced by violent crimes such as murder, rape, robbery, and assault that is the most extensive, and where the potential for minimizing harm is greatest.
- A number of existing prevention programmes have proved that they can reduce the amount of harm that violent crime produces. Some have done so more effectively than by imprisoning the perpetrators of crimes. That does not mean that perpetrators of crime should not be imprisoned but that properly designed prevention programmes can stop people from becoming criminals at a lower cost per crime than imprisonment and can stop established criminals from committing further crimes. Moreover, when a person is prevented from becoming a criminal, no harm is done to the citizenry; in contrast, imprisonment occurs only after criminals already have caused a considerable amount of harm.
- Alternative punishments can redirect available resources away from non-violent criminals who are least likely to cause the kind of harm that the public is the most concerned about and towards incarceration of the violent or the prevention of acts by the violence-prone. In other words, non-violent criminals can be punished less expensively and more effectively by methods other than incarceration.

Three risks are associated with making general crime control policy the dominant governmental and social policy with respect to violence:

1. Violence tends to be regarded as a problem that can be properly addressed only with the usual tools and processes of the criminal justice system. As current criminal justice processes do not seem to be very successful in combating crime, limiting the campaign against violence to the anti-crime mechanisms available is not a hopeful emphasis.
2. A related problem is that searching for the sources of violence only in the caseload of the criminal courts would be to miss many important criminal encounters that generate violence,

such as robbery and rape; a far greater proportion of violent crime stems from social encounters between acquaintances. Only conflict that produces great injury and come to the attention of the police are regarded as criminal. Most of the processes that generate the risk of violence are not analysed.

3. From a public policy perspective, perhaps the most serious problem that results from confusing violence and crime is the failure of the public to understand that the range of criminal behaviour is much broader than that of violence. Most offences and most offenders are not violent.

Under most criminal justice policies, serious crimes of violence result in prison sentences. Armed robbery, attempted murder and offences of equivalent magnitude are heavily punished even before special efforts to increase penal severity are introduced. This pattern of severe punishment means that there is less room left in the system to get tough with such offences. Instead, crime crackdowns have the most dramatic impact on less serious offences that are close to the margin between incarceration and more lenient penal sanctions.

In view of the relationship between crime, development and a new international economic order, changes in the economic and social structure should be accompanied by appropriate reforms in criminal justice so as to ensure the responsiveness of the penal system to the basic values and goals of society as well as to the aspirations of the international community.

Human development objectives, including the prevention of crime, should be one of the main aims of the establishment of a new international economic order. In this context, policies for crime prevention and criminal justice should take into account the structural causes of injustice, including socio-economic causes, of which criminality is often just a symptom.

Development aimed at fostering economic growth and social progress to ensure peace and social justice by means of a comprehensive, integrated approach, should be planned and properly implemented on the basis of various factors, including fair criminal justice policies.

Integrated or coordinated criminal justice policies should not only reduce the human and social costs of traditional and new forms of criminality, but should also, where appropriate, help provide safeguards to ensure equitable and full public participation in the development process, thereby enhancing the viability of national development plans, programmes and actions.

Criminal justice problems should not be treated as isolated problems to be tackled by simplistic, fragmentary methods but rather as complex and wide ranging activities requiring systematic strategies and differentiated approaches in relation to:

- The socio economic, political and cultural context and circumstances of the society in which they are applied;
- The developmental stage, with special emphasis on the changes taking place and likely to occur and the related requirements; and
- The respective traditions and customs, making maximum and effective use of humane indigenous options.

States should base their national plans on a global, intersectoral and integrated or coordinated approach with short-term, medium-term and long-term objectives. That would permit the evaluation of the effects of the decisions taken, mitigate their possible negative economic and social consequences and decrease the opportunities for committing crimes, while increasing legitimate avenues for the fulfilment of needs.

Penal reform planning should be carried out from a dynamic and systematic perspective, taking into account the interrelationships of activities and functions in the areas of legislation,

law enforcement, the judicial process, the treatment of offenders and juvenile justice, with a view to ensuring greater coherence, consistency, accountability, equity and fairness within the broad framework of national development objectives. A systematic weighting of social costs and benefits would permit, in the case of alternatives to imprisonment, the selection of the option that exacts the least human and material costs while yielding the maximum benefits.

The establishment of one or several planning and coordinating bodies or mechanisms, at both the national and the local levels, with the participation of representatives of the different criminal justice subsystems and other experts as well as the involvement of members of the community, should be promoted on account of its special value in assessing needs and priorities, improving resource allocation and monitoring and evaluating policies and programmes. The following should also be included in the objectives of such planning and coordinating bodies or mechanisms:

- Encouraging local research potential and developing indigenous capabilities in respect of planning for law reform;
- Assessing the social costs of crime and the efforts to control it, and generating awareness of the significance of its economic and social impact;
- Developing means for more accurate collection and analysis of data concerning crime trends and criminal justice, as well as studying the various socio-economic factors that have a bearing on them;
- Keeping under review crime prevention and criminal justice measures and programmes in order to evaluate their effectiveness and to determine whether they require improvement; and
- Maintaining working relations with other agencies dealing with national development planning in order to secure the necessary coordination and mutual feedback.

The criminal justice system, besides being an instrument to effect control and deterrence, should also contribute to maintaining peace and order for equitable social and economic development.

Legal systems should endeavour, through appropriate policies aimed at overcoming socio-economic, ethnic, cultural and political inequalities or disparities wherever they exist, to optimize access to justice for all segments of society, especially the most vulnerable. Appropriate mechanisms for legal aid and the protection of basic human rights, in accordance with the demands of justice, should be established wherever they do not exist. Legal systems should also provide readily available, less costly and more fluid procedures for the peaceful settlement of disputes, litigation or arbitration, so as to ensure prompt and just parajudicial and judicial action for everybody while offering the means for widespread legal assistance for the effective defence of all those in need.

Various forms of community participation should be explored and encouraged in order to create suitable alternatives to purely judicial interventions. These would provide more readily accessible methods of administering justice, such as mediation, arbitration and reconciliation courts. Community participation in all phases of criminal justice processes should, therefore, be further promoted and strengthened, paying full attention to the protection of human rights.

The role of the media and its impact on aspects of criminal justice should be examined and evaluated, since public perceptions of criminal policies and public attitudes are central to the effectiveness and fairness of the legal systems. In this connection, the media should be encouraged to contribute positively to the education of the public on issues of crime and criminal

justice, as an important tool of socialization, together with programmes of civic and legal education.

While protecting human rights and promoting social justice, improvements in the effectiveness of crime prevention and criminal justice policies should be encouraged through the use of community and other alternatives to imprisonment, by avoiding unnecessary delay in the administration of justice, by fostering staff training evaluation and by scientific and technological innovations and action-oriented research, especially when there is a need to maximize limited financial and human resources.

### **Administration of justice in Uganda: the sector-wide approach (SWAP)**

The Justice, Law and Order Sector (J/LOS) Reform Programme of Uganda is a significant innovation for developing countries as the first attempt to adopt a holistic approach to the administration of justice. After years of planning and research, the J/LOS Strategic Investment Plan establishes the firm commitment of the Government to a coordinated sector wide reform policy, and acknowledges the importance of appropriate and sustainable resource levels to achieve personal safety for individuals, security of property and maintenance of the rule of law and due process.

The J/LOS Strategic Investment Plan represents our assessment of the problems and challenges facing the justice system of Uganda. The medium term plans outline the necessary improvements to the system and the financial investment required.

The goal of the J/LOS programme is to enhance the quality of life for the people of Uganda and contribute to the eradication of poverty. That will be achieved through accountable, efficient and equitable justice services and institutions, supported by appropriate legal education and reforms, that are accessible to the people of Uganda, especially the poor and vulnerable.

The purpose of the J/LOS programme is the achievement of an increasingly economically stable and safe environment in Uganda. The State crime prevention services will provide the appropriate level of assurance and protection for private investors and individuals who wish to invest in the country. The programme also increases public confidence in the administration of justice thereby enabling reform in other sectors such as health, education and water to be founded on comprehensive and sustainable infrastructure reform.

The outcome of the Justice Law and Order sectoral reform programme is to be a regulatory and administrative environment characterized by efficiency and accountable judicial systems, thus enabling private sector development, economic growth and equitable access to justice for all.

The Justice Law and Order Sector seeks to ensure personal safety, security, rule of law and due process. In this regard, the sector ensures the security of all Ugandans and those residing in Uganda through prevention of crime and investigation and prosecution of criminal activity. It also ensures adherence to the rule of law through enforcement, promotion of civic education and local community participation and feedback and establishment of mechanisms such as a police force, prison service, law reform commission and courts to carry out these tasks.

Due process, which is a Constitutional imperative, is achieved through provision of formal courts, local courts and centres of arbitration designed to provide access to justice, fair and speedy trials. Due process is also ensured through enacting of laws that uphold the constitutional ideals such as the right to a fair and speedy trial and the presumption of innocence.

The Justice Law and Order Sector is thus composed of the:

- Ministry of Justice and Constitutional Affairs;

- Ministry of Internal Affairs;
- The judiciary;
- The Uganda Prisons Service;
- The Uganda Police Force;
- The Directorate of Public Prosecutions;
- The Judicial Services Commission;
- The Uganda Law Reform Commission;
- Ministry of Gender, Labor and Social Development, Probation Services; and
- Ministry of Local Government, Local Council Courts.

The sector is faced with chronic systemic constraints that hamper improved access to justice and service delivery, effective planning and budgeting and maintenance of law and order, corrupt practices, case backlogs, inefficiencies and lack of effective procedural guidelines, while performance standards in the commercial courts have also had a serious impact on the commercial justice system and, as a consequence, private sector development in Uganda.

The Legal Sector Review has illustrated that the existence of such constraints was having a negative impact on the areas of concern in the sector. That includes lack of awareness or low awareness by litigants, complainants and suspects about civic and constitutional rights and obligations, and internal inefficiencies. It also includes limited information management across the sectoral institutions, limited human resources and management capability and a compromised infrastructure, including lack of adequate transport, basic office equipment and insufficient or unsuitable office/court accommodation, prisons and police facilities. J/LOS is also constrained by antiquated methods and tools of investigation and prosecution, the high cost of justice and lack of proximity to the courts by end-users and significant gender discrimination. Such constraints are compounded by the absence of a clear policy framework and strategic plan for the sector, limited capital and infrastructure investment and decreasing funding levels from the Government. Lack of accountability across the sector, corrupt practices and limited information exchange contribute to serious service delivery problems, e.g., the management of suspects from arrest to discharge or operational legal systems to enforce contracts and enable debt collection.

The present document proposes a policy framework for the J/LOS, that indicates the direction of reform and clarifies the purpose and definitions underpinning the reform process.

### **Constitutional principles**

The Constitution of 1995 articulates the principles upon which the Government of Uganda shall construct the mechanism for governance and improved personal safety, security and access to justice. The national objectives and directive principles of state policy as stated in the Constitution include "...that the State shall guarantee and respect institutions which are charged by the State with the responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively".

In addition, the State resolves to ensure gender balance, guarantee and respect the independence of non-governmental organizations and to ensure the involvement of the people in the development of the nation.

Chapter Four of the Uganda Constitution, 1995 embodies the principles regarding good governance, including human rights and freedoms and due process. It recognizes that the

fundamental rights and freedoms of the individual are inherent rather than granted by the State. All organs of the State shall, thus, seek to respect and uphold the rights and freedoms of all individuals.

The rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

Those rights and freedoms include:

- Equality and freedom from discrimination based on, inter alia, sex, race, colour, ethnic origin or social economic standing;
- Equality of all persons before and under the law, and that no persons shall be deprived of personal liberty except, inter alia, in the execution of a sentence or an order of the court;
- Upon deprivation of personal liberty all persons shall be restricted or detained in a place authorized by the law and informed immediately of the reasons for arrest and the right to a lawyer. In the case of capital offences, the State shall provide legal representation to the indigent at the cost of the State;
- All persons arrested or detained are entitled to apply for bail. There shall be a limitation period for detention for those not convicted of any offence and while incarcerated a person shall not be subjected to inhumane or degrading treatment or punishment;
- Women shall be accorded full and equal dignity of the person with men. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. Law, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited; and
- "In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair and speedy public hearing before an independent and impartial court or tribunal established by law."

Chapter Four also allows that Parliament may enact laws necessary to implement policies and programmes aimed at redressing social, economic or educational or other imbalance in society, and laws that provide for any matter acceptable and demonstrably justified in a free and democratic society.

It is upon these principles, policy objectives and inherent rights and freedoms that the Justice Law and Order Sector seeks to build the reform policy for the Sector.

### **Developing partnerships**

The Justice Law and Order Sector is concerned with the promotion of national and individual socio economic wellbeing, including maintaining security, enforcing rule of law and ensuring due process. The Government of the Republic of Uganda, however, has neither adequate financial capital nor the human resource capacity to fully actualize the sector mission. Consequently, civil society organizations are viewed as valuable stakeholders in the sectoral functions and obligations.

Thus, civil society organizations, particularly those that seek to increase access to justice for vulnerable groups and the protection of human rights and freedoms are viewed as part of the sector reform process. To that end, effective partnerships are sought with civil society organizations that address access to justice for the poor, legal education, gender equality, strengthening of the commercial enabling environment and support to the legal profession.

The J/LOS also addresses crosscutting issues that include the health, education and water and sanitation sectors. The health and well being of those who are incarcerated, and education as part of the rehabilitation process are such examples. The J/LOS thus seeks to increase inter

sectoral linkages to ensure that sector objectives are included in the objectives of other sectors, where relevant.

The J/LOS has also entered into partnership with development partners to plan and implement sectoral reform with the aim of achieving the sector objectives. This embraces both sector basket funding and bilateral relationships. It has been agreed that the J/LOS programme is to develop a Strategic Investment Plan that clearly lays out a medium term approach.

## **Policy and reform framework**

### **Mission statement**

The J/LOS has defined its mission as to enable all people in Uganda to live in a safe and just society.

The J/LOS mission is, in part, derived from the national framework for planning: The Poverty Eradication Action Plan (PEAP). The policy statements contained in the PEAP are, in turn informed by the Poverty Status Report and the Uganda National Household Survey and consultations with the wider civil society of Uganda.

The PEAP is established on four major pillars, namely:

- Creating a framework for economic growth and transformation
- Ensuring Good Governance and Security;
- Directly increasing the ability of the poor to raise their incomes
- Directly increasing the quality of life of the poor

### **Strategic guidelines**

The Justice Law and Order Sector, pursuant to the Poverty Eradication Action Plan, seeks to use the following principles as its strategic guidelines:

1. To contribute to the PEAP aims and work towards the reduction of poverty;
2. To promote knowledge and a respect for governance and human rights principles by :
  - (a) Working towards the ideals laid out in the Uganda Constitution;
  - (b) Working towards implementation of the Human Rights Principles and Conventions to which Government of Uganda is a signatory;
  - (c) Promoting systems of social and financial accountability and transparency across the J/LOS Sector institutions.

### **Sector policy objectives**

- The sector policy objectives to support the Mission statement are:
- Fostering a Human Rights culture across the J/LOS institutions;
- Promoting the Rule of Law;
- Securing access to justice for all people, particularly the poor and other marginalized groups;
- Amending all laws and legislation that are discriminatory;



- Ensuring a significant reduction in the incidence of crime, particularly crime that is defined by the people as "serious crime";
- Promoting principles of crime prevention, as well as enforcement;
- Encouraging grassroots voice and community involvement across all J/LOS institutions; and
- Strengthening structures for commercial justice, particularly at grass-roots level.

The Justice Law and Order Sector has a broad policy in the medium term to maintain law and order and increase access to justice for all persons through infrastructure reform, law reform, improved legal services and civic education.

## **Sector strategic objectives and implementation strategies**

### **Introduction**

The primary objective of any justice system is to uphold and administer the laws of the country in an effective, equitable, timely and transparent manner. The justice system of Uganda is constructed from a distinctive combination of laws, practices and institutions of diverse origin that reflect the historical experience of the country. Enacted statutory and common law principles derived from English law are applied alongside customary and Islamic laws, and there are parallel divisions in the judicial system. Although some progress was made with the integration of the various court systems after Independence, formal duality was reintroduced in 1988 with the granting of judicial powers on customary and minor legislation and bylaws to the Local Council Courts. The powers were further expanded under the Children's Statute of 1996.

### **Situational analysis**

The context within which the justice system in Uganda must be addressed is dominated by two factors: the extent of poverty and the impact of decades of civil unrest. Public confidence in public institutions and in particular the criminal justice system, intended to uphold the law and provide for the safety and security for all citizens, has been all but eroded. Investigations by police are slow and often incomplete, sentences imposed by the courts are perceived as too lenient and too slow, and both are susceptible to, and plagued by, corruption. Where justice does not appear to be meted out the public has, in many instances, taken the law into their own hands in the form of lynching and other violent means. Furthermore, there is a reasonable expectation of ineffective prosecution resulting in few guilty pleas by offenders who prefer to take a chance on the high probability of acquittal. That, combined with lengthy court delays, a high backlog of cases and an ineffectual bail system, results in a disproportionate number of remand prisoners in Uganda prisons. In fact, they comprise the majority of those incarcerated.

The justice system has fared just as badly in the area of commercial justice. Because commercial life in Uganda has been limited for many decades, the commercial justice system of the country is underdeveloped. It therefore fails to deliver adequate services to the private sector. In particular, a critical problem for many businesses in Uganda is that contracts cannot in practice be enforced through the courts. That is because of backlogs, inefficiencies, corruption and lack of commercial awareness in courts.

In order to respond to those limitations the Government gave its support to the formulation of a sector programme to promote greater policy coherence, accountability coordination and efficiency across the justice, law and order institutions. The sector programme has been discussed widely with primary and secondary stakeholders at a range of events including workshops, committee meetings, visits to local Districts and through consultancy studies and support. The main studies covered the individual J/LOS institutions but also reviewed the position with regard to cross-cutting critical sector issues such as criminal trial procedures and juvenile justice. This

collaborative process has thus contributed to the formulation of the proposed J/LOS Strategic Investment Programme.

As part of the "Competitiveness Strategy" of the Government of Uganda, a component of the J/LOS Strategic Investment Plan is already at implementation stage. The Commercial Justice Reform Programme, which began in FY 2000/2001, is costed at USD 6.33 million over a period of four years.

Establishing an equitable justice law and order sector, however, that meets the needs of the people of Uganda, especially the poor and vulnerable, requires considerable investment in human, financial, capital and physical resources. While the sector budget allocations cover existing human resource staffing requirements, they also allow little capacity for the substantial investment that is required for reform and development of the sector.

To that end, the Government of Uganda has embarked on a partnership with donor countries to plan and implement reform across the J/LOS. There follows here an outline of the strategic objectives and key actions that will be undertaken within the J/LOS Strategic Investment Plan to achieve a coordinated medium-term development programme for the sector with a focus on criminal and commercial justice reform.

### **Goal, purpose and log frame for the J/LOS**

The ultimate goal of the J/LOS programme is to enhance the quality of life for the people of Uganda and ensure that poverty is eradicated. The shorter-term goals envisage the improved safety of the person, security of property and access to justice that ensures a strong economic environment to encourage economic development and benefit poor and vulnerable people.

The purpose of the J/LOS programme is to promote the rule of law, increase public confidence in the justice system and enhance the ability of the private sector to make and enforce commercial contracts.

### **Implementation and management of the J/LOS sector programme**

The J/LOS Strategic Investment Plan identifies the overarching policy framework to achieve reform of both commercial and criminal justice.

A National Council for Justice, Law and Order (NCJLO) will be the oversight body for the J/LOS programme. It will provide political support and policy guidance across the sector and ensure coordination, accountability, efficiency and equity of access across the J/LOS institutions. The NCJLO will be responsible for presenting the Annual J/LOS Report to Cabinet and Parliament.

A J/LOS Steering Committee is responsible for guiding implementation of the programme towards achievement of the purpose-level performance indicators of the J/LOS logical framework. The Steering Committee has responsibility for monitoring policy coordination across the sector, and confirms annual priorities, targets and associated budgets for recommendation to the NCJLO. The Steering Committee comprises of officials at the highest levels of the institutions in the Justice/Law and Order Sector and the Ministry of Finance, Planning and Economic Development.

Responsibility for implementation of the J/LOS programme will lie with an overall Technical Committee, comprising representatives from all the institutions in the Justice/Law and Order Sector and the Ministry of Finance, Planning and Economic Development. The Technical Committee delegates specific responsibility for implementing the Commercial Justice Reform Programme to its Commercial Justice and Deregulation subcommittee and implementation of the Criminal Justice Reform Programme to its Criminal Justice subcommittee.

## Criminal and commercial justice subcommittees

The Criminal Justice subcommittee comprises representatives from Government institutions involved in the implementation of the programme, the Ministry of Finance and Economic Planning and Development Partners.

The Commercial Justice and Deregulation subcommittee will comprise representatives from Government institutions involved in the implementation of the programme and the Ministry of Finance and Economic Planning and Development Partners. Representatives from the private sector are also members of the subcommittee as key stakeholders in the commercial justice system.

## **J/LOS programme management**

The Ministry of Justice and Constitutional Affairs (MoJCA) Policy and Planning Unit (PPU) is the resource base for implementation of the J/LOS programme. The MoJCA PPU takes the lead on all matters concerning the sector wide approach through the Sector Secretariat that is located within the PPU. The Secretariat works closely with the Policy and Planning Units in each of the J/LOS Institutions.

The J/LOS sector Secretariat in the MoJCA is the Secretariat for the Criminal Justice Reform Programme and Technical Subcommittee. The Commercial Justice and Deregulation Subcommittee has as its Secretariat both the Justice/Law and Order Sector Secretariat in the Ministry of Justice and Constitutional Affairs and the Deregulation Unit in the Ministry of Finance, Planning and Economic Development.

The Sector Secretariat has the day to day responsibility for promoting and managing the J/LOS programme covering criminal and commercial justice reform. The team has responsibility for providing the Steering, Technical and Donor Liaison Committees with quarterly reports on the progress against the logical framework performance indicators. The Secretariat team takes the lead on behalf of the Government of Uganda in ensuring donor coordination, and liaises closely with the Sector-Wide Approach (SWAP) Donor Group of the Justice/Law and Order Sector. The Secretariat team provides the range of programme and financial management and commercial and criminal justice advisory skills required to successfully deliver the management of the J/LOS programme.

## **National Forum on Justice, Law and Order**

A National Forum on Justice Law and Order will be held annually under the guidance of the National Council for Justice Law and Order (NCJLO). This will bring together primary and secondary stakeholders to debate J/LOS issues and concerns providing an important link between the Government and civil society.

## **Programme evaluation and monitoring**

Evaluation and Monitoring focuses on the performance indicators at the purpose level of the J/LOS programme as well as progress towards the outputs. The Secretariat is responsible for producing key statistical and management information for the J/LOS Monitoring System, including reporting on the purpose level performance indicators.

### **Monitoring tools**

A range of monitoring tools is used to measure progress:

- Public perception and user satisfaction is measured by a Baseline User Survey, carried out at the start of the Programme;

- Random user studies during the implementation process programme will assess impact, public opinions and perceptions and will focus upon problems of access to and delivery of services through the J/LOS institutions, perception of corrupt practices and other matters of public concern;
- Access to Justice Committees will be formed at District level to feed local responses and concerns into the progress reports. This system of monitoring will need to be piloted and a phased programme managed during the life of the programme to ensure appropriate participation and that the role of the committees is understood and sustained; and
- Short quarterly progress reports are prepared by the Secretariat for approval by the Steering Committee. The progress reports are needed to identify issues requiring guidance from the NOW and decisions by the Steering Committee to keep the programme on track against the logical framework and work plans. The SWAP Donor Group of the J/LOS confirms the progress reports and discussions are held about any delays in the programme. The timing of Objectives to Purpose Reviews during the life of the programme are confirmed through the donor liaison meetings.

A review meeting of donors and the Government is usually held annually and it approves the Annual Report from the NCJLO and a Financial Performance Report from the Steering Committee. The Financial Performance Report is designed to meet both the Government and donor regulations. The Minister of Justice and Constitutional Affairs presents the Annual Report to cabinet and parliament.



## The measures of enactment and implementation of United Nations standards and norms in crime prevention and criminal justice

Ye Feng, Director, International Cooperation Department, Office of the Prosecutor General, China

Since its establishment in 1945, the United Nations has initiated and elaborated a series of standards and norms in crime prevention and criminal justice that has been acknowledged and supported in various forums and to various extents by the international community. The standards and norms have provided researchers in different countries with a wealth of material for studying international standards, norms and policies in crime prevention and criminal justice, and have played an active guiding role in criminal justice and its reform throughout the world. The efforts of the United Nations in initiating and driving the standards and norms has been, and remains, indispensable to the modernization of international criminal justice.

The implementation and execution of the standards and norms help to improve human rights, strengthen crime prevention and criminal justice and maintain social stability in UN Member States. They also assist in furthering communication and cooperation among Member States in the field of criminal justice. To encourage the development and implementation of the UN standards and norms still further, we would propose the following:

### **On the enactment of standards and norms**

#### **Enlist more legal experts to participate in the development and modification of the standards and norms**

At present, the number of legal experts engaged in the process, while not small, cannot compare with that of participants from the diplomatic side. Moreover, legal experts from some Member States play a subsidiary role to diplomats who have no formal legal training. That tends to make the standards and norms less specialised and less scientific than they might be. Crime prevention, as well as being systematic social engineering, is also a specialized scientific subject. The standards and norms should not only reflect the opinions of different social groups and absorb proposals from different social sectors, but also embrace the opinions of legal experts and the judiciaries of various countries. Judges, prosecutors and lawyers, through their daily business and case handling, can more easily acquaint themselves with the causes and processes of crime and devise ways of preventing it. Wide adoption of their opinions will improve the effectiveness and relevance of standards and norms under consideration.

Criminal justice is a more professional area than crime prevention. Involving criminal justice professionals in the elaboration of the standards and norms will bring them more into line with actual judicial practices and increase their viability. It will also improve the capacity of the judiciaries of various countries to properly implement the standards and norms, to conduct further research on their practical implementation and to make their own proposals regarding their elaboration.

#### **Change with the times, and continuously review the standards and norms**

In this age of economic globalization and social change, drug crime, terrorism and money-laundering are becoming transnational. On a daily basis, new types of crime are

constantly emerging, and criminal methods are changing all the time. The United Nations should, as a matter of urgency, study newly arising situations in the area of crime prevention and criminal justice in various countries and the problems that are being encountered. It should summarize new experiences of judicial practice and thereby supplement and modify the standards and norms to adapt them to current needs.

The continuous development of law and philosophical theory, the constant improvement of the human rights situation and the ever-increasing amount of judicial material available make some standards and norms, drawn up a decade or so ago, seem conservative and unable to meet the present-day requirements of some countries. The United Nations should absorb the achievements currently being made in legal and philosophical research, in science and technology and in human rights and justice, and use them to constantly improve the standards and norms and further drive the improvement of criminal justice systems in Member States.

In the past decades, the United Nations has enacted some minimum standards and norms such as the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) Those minimum standards and norms have the value of wide applicability and their adoption and application is beneficial for Member States. In the UN standards and norms, however, there should be not only minimum standards and norms (some of the current ones are not necessarily minimum), but also "intermediate" and "senior" standards, to encourage all Member States to work continuously to improve their criminal justice systems.

**Increase the flexibility of the standards and norms; promote exchange of information and experiences, and endorse a steady convergence of the different criminal justice systems.**

Political, economic, social and cultural conditions differ widely throughout the world. It is thus difficult to enact standards and norms that are suitable for the entire world and also applicable to individual States. Generally, the United Nations, when drawing up standards and norms, "considers the political, economic, social and cultural situation and tradition of each country". The current UN standards and norms have been achieved step by step through communal efforts, repeated discussions, compromises and even struggles among the Member States. They have taken account of and overcome social and cultural differences; they reflect a number of common requirements, and they can be acknowledged and accepted by many countries. What the UN standards and norms neglect, however, is how judicial systems of different traditions and with different systems can be transformed and improved so as to reach the UN objectives.

Proposing standards and norms is not difficult. What is difficult, however, is for countries to actually make improvements to their justice systems. Unless specific and feasible methods and procedures are laid down, it is virtually impossible, however hard one tries, to initiate and achieve such improvements.

The UN should thus increase the flexibility of the standards and norms. It should, in particular, add in directions as to how Member States can learn from each other in order to promote a steady convergence of their different judicial systems. Such measures should make it easier for developing countries to learn from developed countries, and also enable developed countries to gain awareness of and learn from the beneficial aspects of judicial systems in developing countries.

**Implementation of the standards and norms**

- 1. Establish a system to report on and evaluate the implementation of the standards and norms.**

A procedure should be set up whereby Member States periodically report on the implementation of the standards and norms within their own justice systems. Such a procedure would enable the UN to better understand the situation of Member States regarding implementation of the standards and norms and help them address any difficulties that they may encounter. It would also facilitate efforts by the UN to elaborate, modify and supplement the standards and norms. The UN should establish or authorize bodies to analyse and evaluate the reports presented by Member States, or employ experts to undertake such work. Based on that analysis and evaluation, the UN would be able to respond more appropriately to various situations.

The UN should remind all Member States annually of the need to submit their implementation report. As an active encouragement to report, the UN should also draw attention to the advanced experience of some countries and stipulate the importance of wide applicability as a basis for further development of the standards and norms.

The UN should periodically send officials and experts to obtain a first-hand impression of the status of implementation of standards and norms in various countries.

The UN should periodically ask Member States to communicate their experiences in crime prevention and criminal justice on a formal basis, especially their experience in implementing the UN standards and norms. As human society progresses, new judicial experience emerges and old practices die out. Timely communication of judicial experience not only allows countries to learn from each other in the field of crime prevention and criminal justice, but also enriches the achievements of human civilization.

To generate enthusiasm among Member States for implementing the standards and norms, the UN could consider an award for achievements in the field of crime prevention and criminal justice. This prize would consist of a general prize and a special prize, to be awarded to a country, organization or person, either for general attainments in crime prevention and criminal justice, or for a particular achievement.

The UN award in crime prevention and criminal justice could be made annually or once every few years. As the United Nations is the largest and the most authoritative international organization, the award would be exceptionally prestigious. It would stimulate the enthusiasm of Member States and the international community for implementation of the standards and norms, compensate for the limitations in their legal enforcement and enhance their reputation among Member States and the international community.

To drive the implementation of the standards and norms, the UN should provide assistance in the form of advisors to countries where implementation is inadequate or non-existent. An implementation fund could be established to support such countries to help them train their judiciaries and provide other technical support.

## **2. Enhance the compilation and publishing of the standards and norms in crime prevention and criminal justice, and strengthen the research pertaining to them.**

In the past 50 years, a tremendous number of documents have been written and published in the field of crime prevention and criminal justice by, inter alia, the UN General Assembly, Economic and Social Council, Congress on the Prevention of Crime and the Treatment of Offenders and the Commission on Crime Prevention and Criminal Justice.

The documents come in many forms: international conventions, model agreements, decisions, manifestos, guiding principles, standard rules, procedural rules, proposals and so on.



The content is just as varied: there are basic human rights rules regarding criminal justice acknowledged throughout the world; international law or basic norms that stipulate various types of crime, such as war crimes, transnational drug-related crimes, crimes involving corruption and abuse of power, crimes against women and children, juvenile delinquency, terrorism and environmental pollution, to name a few.

There are basic principles and systems in criminal procedure, basic norms for the application and implementation of penalties, systems and principles that aim to advance criminal justice and protect the professionalism and integrity of those who work in it; and there are basic norms and new ideas in criminal policy and reform of social policy.

Although there are innumerable United Nations publications, there have been very few collections of UN standards and norms in crime Prevention and criminal justice or research in that area. A corpus of work on standards and norms should be built up; all documents written and published should be collected and, where relevant, updated. That will make it easier for countries to refer to them and implement them in their legislation and justice systems. It will also make them accessible to people wishing to consult, study or research them. Meanwhile, to make the standards and norms more complete, the UN should make a compendium of all the standards and norms, specifying which have been enacted and published, listing content that is outdated, inappropriate, contradictory and repetitious, and providing an interpretation of the standards and norms.

The UN should actively promote awareness of the standards and norms either by strengthening its own capacity in that regard or mobilizing Member States to do so. The UN could invite leading international universities and research institutes to conduct research on the standards and norms or even sponsor courses in crime prevention and criminal justice leading to degree certification (B.A.; M.A.; post-graduate). Leading international media, including websites, could be invited to make a special feature of the standards and norms; leading international publishing houses could also be requested to publish a series of books on aspects of the standards and norms.

### **3. Make full use of non-governmental organizations**

International non-governmental organizations (NGOs) in the field of law are playing an increasingly important role and have increasingly important status in the field of international judicial cooperation, even assuming responsibility for implementation of the UN standards and norms.

The following work by NGOs all make reference to the UN standards and norms in crime prevention and criminal justice:

#### **The Asia Crime Prevention Foundation**

The Beijing Declaration on Crime Prevention and Criminal Justice, calling for intensified international cooperation against crime, issued by the 8th International Conference of the Foundation in Beijing;

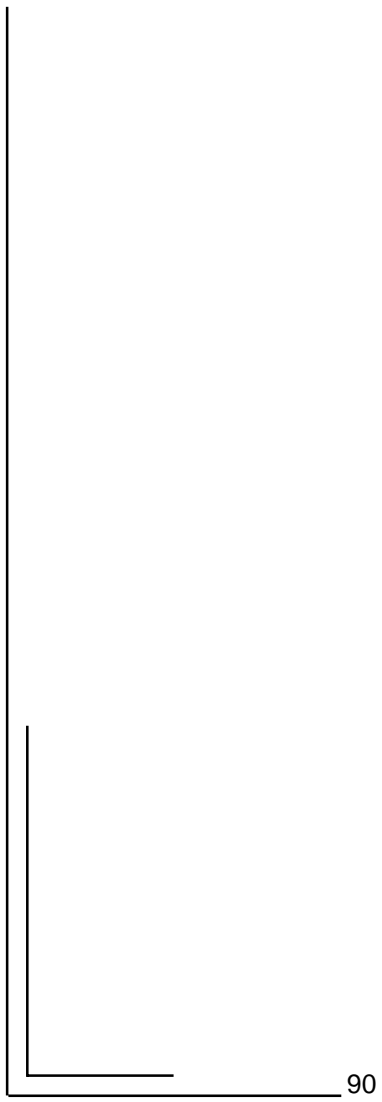
#### **The International Association of Prosecutors (IAP)**

- Standards of Professional Responsibility;
- Combating Use of Internet to Exploit Children (Best Practice Series No.1);
- Model Guidelines for the Effective Prosecution of Crimes against Children (Best Practice Series No.2); and
- Recommendation on Combating Corruption in Public Administration (Best Practice Series No. 3).

Such groups and the individual members of such groups are contributing to the implementation of the standards and norms. The UN should invite NGOs to participate in the elaboration and implementation of the standards and norms, and should provide advice to them on the best ways of implementing them.

## **Conclusion**

Through the associated efforts of all Member States, the UN has elaborated a system of standards and norms in crime prevention and criminal justice, and has made great strides in implementing them. The standard and norms have benefited from 50 years of development. It can be confidently predicted that, in the 21st century, through the joint efforts of judiciary throughout the world, the standards and norms will continue to be developed, with Member States not only deepening their understanding of their aims but also continuing their efforts to make those aims a reality.



# Police and society in the Caribbean: the application of United Nations standards for law enforcement

Professor Anthony Harriott, PhD, Department of Government, University of the West Indies, Jamaica

## Introduction

The United Nations has developed standards and norms that are applicable to numerous aspects of the criminal justice process and to the various State institutions responsible for responding to the crime problem. They include:

- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power, adopted by the UN General Assembly in 1985;
- Basic Principles on the Independence of the Judiciary, adopted in 1985;
- Guidelines on the Role of Prosecutors of 1990; and
- Code of Conduct for Law Enforcement Officials, adopted in 1979.

The present paper discusses the extent to which the Jamaican police service, perhaps the most problematic in the Commonwealth Caribbean, operates in compliance and conformity with the Code of Conduct for Law Enforcement Officials, amplified by the Basic Principles on the Use of Force by Law Enforcement Officials. With police violence being a great concern in Jamaica itself and among international human rights agencies, the focus of the paper is the use of force. No attempt will be made to critically evaluate the Code itself or to engage in a discussion on its universal applicability. The paper operates on the assumption that the basic principles of the Code are applicable, at least in the normal conditions of democratic rule, and are consonant with the democratic aspirations of the Governments and people of the Caribbean.

## The context

The extent to which the behaviour of the Jamaica Constabulary Force (JCF) is in conformity with the Code can be best appreciated by understanding the context in which it operates. It is fairly well established that the nature of the environment or situational conditions in which a police force operates helps to shape the attitudes and behaviour of the institutions and individuals that form part of it. In some instances, however, the prevalence of problematic norm-violating behaviour may have deeper roots, reflecting repressive State policies and perhaps biases, such as ethnic and racial biases, against particular subpopulations.

In the international context, most Commonwealth Caribbean countries enjoy relatively low rates of violent crime. In most countries of the region, homicide rates tend to remain below 8 incidents per 100,000 citizens per annum. Since the mid-1980s, however, the Bahamas, Guyana and Jamaica have experienced high rates of violent crime and the problem has persisted. In 2002, the homicide rate in Jamaica was 43/100,000. Correspondingly, Jamaica also has experienced the highest rates of police violence, including police homicide, both justified and unjustified.

Beyond the numbers, there are qualitative features of the environment that ought to be considered. While there are tough "high crime" communities in other Caribbean States, Jamaica

is the only country where the phenomenon of garrison communities may be found. The garrison community may be characterized as follows:

- Politically homogeneity and one-party dominance, as well as intolerance of any political dissent within its boundaries. Politicized group-organized violence, given its high degree of group cohesiveness, is usually guaranteed by the protection of the community. To mobilize that protection and ensure that they are beyond the reach of the police, criminals who live in garrison areas endeavour to politicize ordinary criminal activity and any conflicts in which they are involved;
- Provision of a safe haven for criminals and organized crime, although the members of these communities may be relatively safe from predatory forms of criminality such as robbery and rape;
- A significant armed capability as a community;
- Its own organizations for policing and disciplining its population; and, importantly,
- A system of benefits to members of the community, awarded simply for being members of the community. Many residents in garrison communities may therefore have an interest in protecting such an organization.

Given such features, the garrisons present grave dangers to public safety and democracy. As a garrison seeks to supplant the existing criminal justice system within its own boundaries, it must constantly engage in delegitimation campaigns that undermine the authority of the State system and/or seek to co-opt State operatives. Thus, the relationship between such communities and the police is one of conflict and accommodation. Another feature of the garrison environment is the use of illegal guns of various types. Of the 1140 murders committed in 2001, some 69 per cent involved the use of a firearm. There were also 1138 shooting incidents, a rate of 43.8 per 100,000 citizens. The garrison is, however, the extreme expression of the problem. Other urban communities that are not considered as garrisons nevertheless tend to exhibit aspects of the garrison phenomenon, making policing very difficult.

Police units and individual officers have responded to a difficult situation in different ways, including using methods that result in the abuse of the rights of citizens and the consequent alienation of the people and, in some cases, of whole communities. A vicious cycle results, whereby police isolation limits the access of officers to information about such communities and perhaps inflates their fear of community members. That, in turn, leads to a broad-brush evaluation of most members as suspects and consequently to uncivil and disrespectful treatment. The following discussion of the extent of compliance with the Principles and Code in Jamaica should thus be viewed in that context.

### **Divergence of standards and practice**

The current Standing Orders of the Jamaica Constabulary Force instructing constables on the rules governing the use of force draw heavily on the UN Basic Principles on the Use of Force by Law Enforcement Officials and openly "endorse" them (see Force Order #2248). The Force Orders (FO) are the outcome of a process of revision of the rules predating Independence (1962) and were elaborated circa 1990. While the rules of the JCF tend to be congruent with the Code, the practices of the JCF are, however, more problematic.

The Code highlights the following, each of which will be discussed in turn:

- Use of firearms as a last resort;
- Use of non-lethal weapons and appropriate ammunition;
- Qualification and training in use of force;

- Stress counselling;
- Effective reporting and review; and
- Ethical issues.

### **Use of firearms as a last resort**

The Standing Orders of the Force endorse the principle of minimum force. They state:

- Members of the Force, in carrying out their duty, shall make every effort to apply alternative measures before resorting to the use of force or firearms;
- In those circumstances where the lawful use of force or firearms is justifiable, members shall use such force or firearms with restraint and in proportion to the legitimate objective to be achieved." (FO # 2248).

In situations of violent confrontation, members of the JCF are instructed to "meet force with no more force than is necessary in protecting the lives of the members and of others." This suggests that the use of lethal violence for protecting property is inappropriate and should be discouraged.

Despite the Standing Orders, the level of police violence, especially lethal violence, is extraordinarily high. In 2000, Jamaican police officers killed 140 persons, a killing rate of 5.4 persons per 100,000 citizens, representing some 16 per cent of all homicides in that year. The figures, however, as alarming as they may seem, reflect an improvement in the situation. Police killings were lower in the 1990s than in the 1980s. The highest level of police killings was in 1984 when 355 persons were killed, a rate of 15.6 persons per 100,000 citizens and some 42 per cent of all homicides in that year (see table 1). The data exclude the small number of killings by the Jamaican military, which does not have a reputation for abusive behaviour.

In Jamaica (and the Commonwealth Caribbean), police violence is primarily directed at criminals and criminal suspects. It is not politically repressive violence, although occasionally the opposition party may treat community invasions as political targeting. As the targets of police violence are usually criminals, critical scrutiny of police killings is somewhat confined to small human rights groups. Usually, therefore, very few police killings are regarded in the legal sense as unjustifiable. For example, for the period 1990-94, only 2 to 3 per cent of all police killings were ruled unjustifiable by the Director of Public Prosecutions with offenders correspondingly being charged with murder. Despite an abundance of statistical evidence suggesting that a fairly high proportion of police killings may be unjustifiable, the pattern remains. In the summer of 2000, the Bureau of Special Investigations of the JCF reviewed 267 police shootings and reported that in 23 per cent of cases no weapons were recovered although the police claimed that the shootings were the outcomes of gunfights with criminal suspects (Police Executive Research Forum (PERF) 2001:30). The small proportion of cases ruled unjustifiable suggests an ability to frustrate the investigative process, a matter that has been well documented in the Reports of the Parliamentary Ombudsman.

### **Non-lethal weapons and appropriate ammunition**

The standard weapon of JCF members is the M16 assault rifle while, as side arms, the old .38 revolver has given way to the Browning 9mm pistol. All are weapons crafted for use in war not policing. Their use is justified in terms of the violent environment and high risk conditions in which policing is carried out in urban Jamaica. Attempts have been made to review the situation and to restrict the use of rifles by non-uniformed police officers. That has been met with great resistance by the members of the Force.

Very little attention is paid to the use of non-lethal weapons. It is only recently that police officers are again being equipped with night sticks, chemical agents that may be used to temporarily incapacitate a violent suspect, and handcuffs. The Force is not equipped with water canons. Usually mass events where there is potential for disorder, as well as riots and demonstrations, are policed exclusively with guns. There is no first line non-lethal weaponry. Such events are policed today in a manner that is, in its basics, no different from the way that they were policed 50 years ago during the colonial era.

### **Qualification and training in the use of force**

All police recruits receive a basic training in the use of firearms and are familiarized with the relevant laws of the country and the Standing Orders of the Force. Despite the inadequate facilities, basic training in the use of firearms is perhaps as good as in any other comparable police force. There are two major difficulties:

- There is no systematic programme of refresher courses of police officers and of ongoing certification in the use of firearms: and
- As noted above, the use of non-lethal weapons/ force is not emphasized.

### **Stress counselling**

The high levels of criminal violence and social conflict in the cities and, indeed, the high level of police violence, have forced the State and police authorities to pay greater attention to stress counselling within the JCF. New recruits must now submit to a psychological evaluation before they are accepted as constables. A facility for psychological counselling is organized by the chaplaincy, involving the use of professionals as well as a staff of peer counsellors. The concern is usually to assist individual officers who are troubled by their experiences. The work is perhaps not sufficiently preventive; it is not directed at officers who may be involved in high stress activities and special units or at those who do not actively seek the services.

### **Effective reporting and review**

An effective system of accountability is vital for reducing police abuses and improving their performance as effective crime control agents. The JCF is required by law to report to the responsible minister of Government, i.e. the executive, not the legislature, and it is obliged to report only on policy matters. Thus, it is operationally autonomous and not legally accountable to any institution with respect to operational matters. Ad hoc commissions of enquiry may, however, be established by the executive to force some operational accountability. In a recent submission to the last such commission, it was recommended that the situation should be rectified (see Harriott 2002) but the proposal was neither openly rejected nor accepted. In effect, with regard to the use of lethal violence, police officers are accountable only to the law, not to their Standing Orders which, as noted earlier, are based on UN Guidelines.

To investigate the unjustifiable use of force by the police, structures have been set up on an internal basis through the Office of Professional Responsibility (OPR) and externally. Low public confidence in the work of the OPR led to strong public pressure for an independent external investigative authority, the Police Public Complaints Authority (PPCA). In a recent evaluation of the work of the PPCA, the Police Executive Research Forum concluded as follows:

"It appears that the PPCA does little to actually impact the quality of service the JCF provides to the public. The Judge has absolute authority and responsibility, by law, to supervise (the investigation of) fatal police shootings, but from a practical perspective, this "supervision" is little more than reading over a case before it is shipped to the DPP. The significance of the authority is best demonstrated by the observation that the (Police) Commissioner's office doesn't

even respond to the complaints the Authority sends. The Authority provides little more than a "perception" of independent oversight." (PERF 2001:30)

Similarly, within the JCF, despite the existence of the OPR, the Bureau of Special Investigations (BSI) was recently formed to investigate police shootings and corruption.

Effective investigation and accountability to the public on this matter remains problematic. Much has been done, in terms of proposals, plans and even the setting up of structures but there have been great difficulties in execution and problem-solving in order to ensure the desired outcomes.

## **Ethical issues**

The JCF, like all police services and public bureaucracies that exercise great power over the populations they are expected to serve, are confronted with important ethical issues, in particular the abuse of power and corruption, especially drug-related corruption.

In recent times there has been a greater effort to confront such problems. At the regional level, the Caribbean Task Force on Crime which reports periodically to the Heads of Government of the CARICOM countries, made several recommendations for controlling corruption within the police forces of the region, including periodic polygraph testing for all officers involved in drug enforcement. The corporate strategy of the JCF gives a commitment to seriously tackle the issue of abuse of power and corruption. The JCF itself has appointed an Ethics Committee or Review Board that includes representatives of the citizenry and periodically reviews such issues. Jamaica has recently passed an anti-corruption bill that criminalizes illicit enrichment. It has been recommended that the anti-corruption law should be applied to the police.

## **Conclusion**

From the foregoing, it should be evident that the rules governing the behaviour of law enforcement officials in Jamaica has been profoundly influenced by the Codes developed by the UN. The difficulty is that the behaviour of law enforcement officers is not sufficiently in conformity with those rules. They have not penetrated the ethos of the police force.

The challenge is thus at the level of implementation and in ensuring the internalization of the values associated with democratic policing and the self-monitoring of the Code and the Standing Orders of the JCF. There are clearly attitudinal obstacles and considerable ambivalence regarding the use of violence by the Jamaican police. That is true within the force, within the elites, including successive political administrations, and within the general population. Such obstacles serve to weaken the institutions that ought to play important roles in holding the police to account, including institutions that are part of the informal system of accountability, such as the media, which is deeply influenced by popular opinion.

In concluding, the following measures may be considered:

- The public ought to be systematically engaged with respect to all issues. Human rights organizations have a good record of doing so and should be strengthened.
- The existing institutions responsible for investigating and controlling police abuses should be strengthened.
- Training and a more rigorous system of accountability may help to transform the ethos within the police force. Most of all, the system of accountability should be strengthened and should include new mechanisms for direct accountability to communities, perhaps linked to a rejuvenated system of local government.



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Table: Police Killings 1978-2000

Data source: Statistics Unit JCF.

Table 1 Police Killings 1978-2000

Year	killings	rate	as % homicides	killed	ratio
2000	140	5.4	16	11	1:13
1998	145	5.7	15	14	1:10
1996	148	5.9	16	10	1:15
1994	100	4.0	13	6	1:16
1992	145	5.9	19	-	-
1990	135	5.6	20	11	1:12
1988	181	7.7	30	6	1:45
1986	179	7.7	29	10	1:26
1984	355	15.6	42	19	1:20
1982	236	10.9	37	10	1:24
1980	234	10.9	21	28	1:10
1978	167	8.0	30	18	1:09

Data source: Statistics Unit JCF.

## New community-based treatment measures and criminal justice reform in Thailand

Dr. Kittipong Kittayarak, Director-General, Department of Probation, Ministry of Justice, Thailand;

Dr. Juthrat Ua-Amnoey, Department of Sociology and Anthropology, Faculty of Political Science, Chulalongkorn University, Thailand

### **A new era for community-based treatment of offenders**

Perhaps the most significant time for anyone interested in seeing a wider application of measures on community-based treatment of offenders in Thailand is now. Not only is there more interest in the community-based treatment concept at the policy-making level but, with the ongoing criminal justice reform in Thailand, there is also a greater possibility of such measures actually being implemented. In the past, the concept of community-based treatment of offenders has been well accepted; bringing it into being has been very difficult. Lack of overall criminal justice policy planning, lack of cooperation and coordination and inadequate funding have been among the major reasons hampering the successful introduction of community-based treatment measures as alternatives to the current practices that are based mostly on retributive, custodial measures.

The forthcoming overhaul of the criminal justice system will directly promote more and wider application of community-based treatment. In accordance with the reform plan, the judiciary, which has long been under the Ministry of Justice, will receive enhanced status and become an independent entity. At the same time, the Ministry of Justice, which used to be a small ministry overseeing only the administrative work of the judiciary, will, by the end of 2003, become the focal point for the administration of justice, quite similar to the Ministry of Justice of Japan. In the new structure, all agencies dealing with justice administration, including those dealing with the treatment of offenders, will be brought together under the same organization. A national committee on justice administration will be created as a platform for policy planning and budget allocation within the justice system. The new development will directly promote the wider application of community-based treatment and other alternatives in order to solve problems inherent to the administration of justice in Thailand.

Apart from the major reform of the criminal justice system mentioned above, there are several other reasons, that, directly or indirectly, contribute to the promotion of community-based treatment measures. To begin with, because of the lack of sound policy planning regarding community-based treatment of offenders, the criminal justice system in Thailand is confronted with a huge backlog of cases and severe overcrowding. It is common to see a criminal case taking more than a year to get through the criminal courts of first instance and several more years before the final decision of the Supreme Court is given. Regarding prison overcrowding, according to the latest statistics revealed in September 2002, there are approximately 250,000 inmates in prisons where the space available was meant to accommodate only 100,000. Considering the manpower of 10,700 correction officers, the ratio of officers to inmates is approximately 1 to 24, which is very far from internationally acceptable rate of 1 to 4 or 5.

The changing policy on drug problems has also opened the way for new community-based treatment of drug abusers who constitute more than half the defendants in criminal cases and half the inmates in correction facilities. The need to take drug rehabilitation more seriously, together with the need to reduce the pressure within the criminal justice system, have prompted

the Government to push for a new law on drug rehabilitation that will place major emphasis on community-based treatment of drug addicts.

Last but not least, the growing interest in the concept of restorative justice is another factor with direct impact on the promotion of community-based treatment of offenders in Thailand. As restorative justice emphasizes the informal method of dealing with crime, particularly with the increasing roles of the victims, offenders and communities, it has in many ways supported the community-based treatment options.

The reasons mentioned above are among the major rationales behind the growing interest in community-based treatment of offenders in Thailand. In that connection, the Government has, on July 10, 2001, issued a cabinet resolution specifying detailed guidelines on how to reduce case backlog and overcrowding. The so-called "July 10 Resolution" has recommended several non-custodial and community-based treatment measures that will serve as a road map for future trends in the development of community-based and non-custodial treatment measures in Thailand.

### **New community-based measures**

As pointed out earlier, the "July 10 Resolution," which outlined measures aimed at reducing the number of cases coming into the justice system, could serve as a good framework for trends in community-based treatment and non-custodial measures. The Resolution has recommended several measures, namely the setting up of community mediation centres to settle certain types of dispute within the community, the use of prosecutorial discretion not to prosecute individuals subject to certain conditions, the initiation of drug diversion programmes, the increasing use of probation for juvenile offenders and the proposed reform of the fine penalty, to name a few. Below are some of the community-based treatment measures that should be highlighted.

### **New drug rehabilitation law**

The Drug Rehabilitation Law was approved by parliament in September 2002 and will soon come into force. The new law has introduced, for the first time in the country, compulsory drug treatment programmes. In the past, drug addicts were arrested and prosecuted with the hope of deterring future drug users. With the rising numbers of drug users, a policy that placed more emphasis on supply reduction side proved incorrect. The strict enforcement of the law against drug addicts has resulted in the overcrowding of prisons. According to recent statistics, drug offenders constitute approximately 65 percent of total inmates. Moreover, punishing drug abusers who themselves are victims of drug and social problems by imprisoning them is not a solution but a cause of more problems. As a result, at present, the Government is attempting to adopt a holistic approach to solving drug problems. More emphasis has been placed on demand reduction strategies, such as prevention and rehabilitation, so as to make the drug policy more balanced.

Given that the number of drug addicts is estimated at around 3 million, 300,000 of whom need medical assistance, the Government has put serious efforts into solving the problem, sending out a clear message to every party concerned that drug addicts are not criminals but need treatment. Rehabilitation policy has become one of the three major policies on drug that are now familiar catchphrases for everyone in Thailand: "prevention takes priority over suppression, drug addicts will be treated, and drug producers and traffickers will be severely punished." In order to achieve the goal in rehabilitation, it is important to create a large number of rehabilitation programmes and initiatives for drug addicts, as well as create a favourable community environment to enable them to start a new life after rehabilitation.

In our experience, voluntary programmes for drug rehabilitation alone have not worked efficiently because they do not provide adequate incentives for the participants to complete them. As a result, the new law, which introduces so-called "compulsory treatment" programmes,

was drafted to complement the existing voluntary programmes. The law came into force on September 30, 2002 and the Minister of Justice is to announce the compulsory areas shortly. In accordance with the new law, those arrested on drug taking charges will be given a chance for treatment through the compulsory treatment programmes. If the outcome of the treatment is satisfactory, the prosecutors may then drop the charge. If the persons do not abide by rules and regulations for treatment, they can be prosecuted.

Given the number of drug addicts, the law will create very large diversion programmes for those normally charged for drug abuses. Since the Thai criminal justice system has never experienced any kind of diversion programmes before, the endeavour is most challenging, not only among criminal justice officials but also for those outside the field. The responsibilities for the implementation of the new initiative fall upon the Department of Probation. As the core coordinator of the drug diversion programmes, the Probation Department is now collaborating with many agencies, including public health agencies, local administrations and the military, for example. A national committee headed by the Permanent Secretary for Justice will be set up and will consist of all the relevant Government and non-governmental agencies involved in drug rehabilitation, both within and outside the criminal justice fields. The Director General of the Probation Department will serve as the secretary to this body. Local committees attached to each court jurisdiction will also be established nationwide. They will consist of prosecutors, psychologists, doctors and social workers; probation officers will serve as secretaries to the committees. They will prepare rehabilitation programmes tailored to individuals. Such programmes may be a comprehensive treatment programme that may require the individual to be detained during the period of treatment or be directed to a treatment programme available in the community. The results of the treatment will be reported to the committees in each particular jurisdiction who will prepare a recommendation to the prosecutors. Successful participants will be exempted from criminal prosecution.

Concurrent with the compulsory treatment programme, the Government is also campaigning for addicts to turn out for voluntary treatment programmes. The drug treatment programmes, whether voluntary or compulsory, will be the largest community-based diversion programmes ever applied in the Thai criminal justice system. It is estimated that more than 80,000 persons will be put through the compulsory process during the first year.

### **Other diversion programmes**

Apart from the new drug rehabilitation programme, there are several other diversion programmes recommended by the July 10 Resolution:

#### **The community mediation and conciliation programmes**

The programmes aim at enabling communities to resolve conflicts among themselves, thereby reducing the burdens of having to bring their cases to formal justice processes that are sometimes too costly and not easy to access, especially for the poor. At present, in most instances, the disputes settled have been civil matters; however, ways in which informal methods of conflict resolution should be extended to other minor crimes are also being studied. In Thailand, there is a separation between the "compoundable offence", an offence not criminal in nature, and the "non-compoundable offence", an offence with mala in se. The trend is now to explore ways and means of applying informal mediation and conciliation to mala prohibita, compoundable offences.

#### **Suspension of prosecution**

Unlike prosecutors in many countries, prosecutors in Thailand have rarely used discretion not to prosecute a case for any reason other than lack of sufficient evidence. The recent trend has been to encourage prosecutors to use more discretion to suspend the charge subject to certain conditions. The July 10 Resolution recommends that a law should be drafted on the

use of prosecutorial discretion. It also recommends that before an individual is granted a non-prosecution order, he or she should be required to carry out community service or to submit to any conditions the prosecutor sees fit. In that connection, the Resolution suggests that the Department of Probation should be responsible for preparing community-based programmes for the new initiative.

### **Community-based treatment for juvenile delinquents**

The Resolution of July 10 also recognizes the need to provide more community-based treatment programmes for juvenile delinquents. In the past, juvenile delinquents were sent to the Office of Child Observation and Protection, attached to the Juvenile and Family Courts. With such practices, the number of juvenile delinquents detained in juvenile corrections institutions dramatically increased. Under the restructuring of the Ministry of Justice, the Office of Child Observation and Protection will be promoted to departmental status. Currently, the Department of Probation is working closely with the Office to prepare future treatment programmes in the community for juvenile delinquents.

### **The emergence of the restorative justice concept**

In Thailand, there has been increasing interest in the restorative justice concept during the past several years. In 2002, in particular, the concept was well received at the policy-making level. Currently, the concept of restorative justice is being implemented in several pilot projects. There has been an attempt to apply the idea of "family group conferencing" which is frequently applied in New Zealand to juvenile delinquents. Moreover, there are ongoing projects related to the application of restorative justice in domestic violence. In addition, the Corrections Department has recently initiated a project where the restorative justice process will be applied to inmates prior to parole.

### **Factors affecting the new community-based treatment measures in Thai society**

Looking beyond the recent developments in the Thai criminal justice system, the reform has contributed significant benefits to Thai society, for example, new community-based treatment measures. It cannot be denied that those result from two major factors; the "outside-in" effect and the "inside-out" effect.

The "outside-in" effect has been the influence of transnational structures: the United Nations and the other international organizations. Their influence is seen in the setting of standard minimum rules for non-custodial measures, meeting, training and socialization at every level and for every stakeholder in the criminal justice system over many years. Such knowledge has equipped Government officers to solve problems in the face of increasing globalization.

The 'inside-out' effect has come from the crisis of the overwhelming caseloads together with awareness by officers of their difficult mission in crime prevention and security in Thailand. Such circumstances forced the Government to find solutions and establish a master plan and policy to use alternatives to criminal justice and initiating new holistic measures. Consequently, the will of the Government and the more open political situation in this period have produced an environment for reform and both the Government and the officers have been compelled to put the decisions into action.

### **Conclusion**

Never before have community-based treatment measures received such strong support at the policy-making level. The underlying reasons for the increasing interest in community-based treatment measures among its supporters may, however, vary. For some, community-based treatment measures are not just an alternative to imprisonment but a far better option for the treatment of offenders. For others, they may be only a cheaper alternative or a "way out" of the imminent crisis caused by the problems of prison overcrowding.

No matter what the rationales may be, since probation work with adult offenders was begun in Thailand in 1979 and the Department of Probation was established in 1992, now is the most challenging time for community-based treatment measures in Thailand. Given the vital tasks at hand, it is important for the Department of Probation, which has to shoulder most of the responsibilities for implementing the Government policy outlined in the July 10 Resolution, to revise plans and strategies to meet the rising demand. Through a decade of hard work, the Department of Probation has been successful in establishing the system of probation for adult offenders in Thailand. There are more than 120,000 persons currently under supervision and the success rate has been very satisfactory. With workloads having more than tripled, however, it is also necessary to let it be known that there is no shortcut to success. Viewed as a cheaper alternative, probation services in many countries, including Thailand, are facing the same problems of chronic lack of funding and inadequate personnel and staff. Although community-based options may, in fact, be a cheaper alternative, that does not mean they can survive without adequate funding and support.

Community-based treatment measures in Thailand have come to an important juncture, and so has the Department of Probation. Through adequate nurture and support, we are confident that we will be able to meet the challenge and to prove that community-based treatment measures are not only an alternative but a far better option for the treatment of offenders.



## Drugs, arms, poverty and governability: a Brazilian city in the 21st century

Julita Lemgruber, Director, Center for Studies on Public Security and Citizenship, University of Candido Mendes

Imagine a metropolitan area of 5,384 square kilometres.

Now, think that 23 per cent of the total population of nine million people in that area live in *favelas* or slum areas.

Consider that there are 680 *favelas* in the metropolitan area, mostly dominated by drug traffickers, and divided into two big groups: the Red Command and the Third Command that often fight for control of the different *favelas*.

Furthermore, keep in mind that State social services are rarely present in these areas: there are no hospitals, no schools, no sewage system, no police. These vast territories, practically abandoned by the State, are dominated by drug traffickers, often protected by a corrupt police force. The traffickers impose their will through fear and terror. Every now and then, concealed cemeteries are found on the hills where the *favelas* are located and dozens of skeletons come to light to remind any recalcitrant inhabitants just who rules the communities.

Add to this picture a police force that is not only corrupt but also very violent and responsible for one out of every ten homicides that take place in the State where this city is found. It should also be noted that the homicide rate per 100,000 reaches 100 in some of the most violent metropolitan areas and that in the last 20 years there has been an average of 15 homicides daily.

Where are you? You are in Rio de Janeiro, Brazil. And you should not forget that it is the second largest city in a country considered to be one of the champions of inequality even though its economy rates among the 10 strongest in the world.

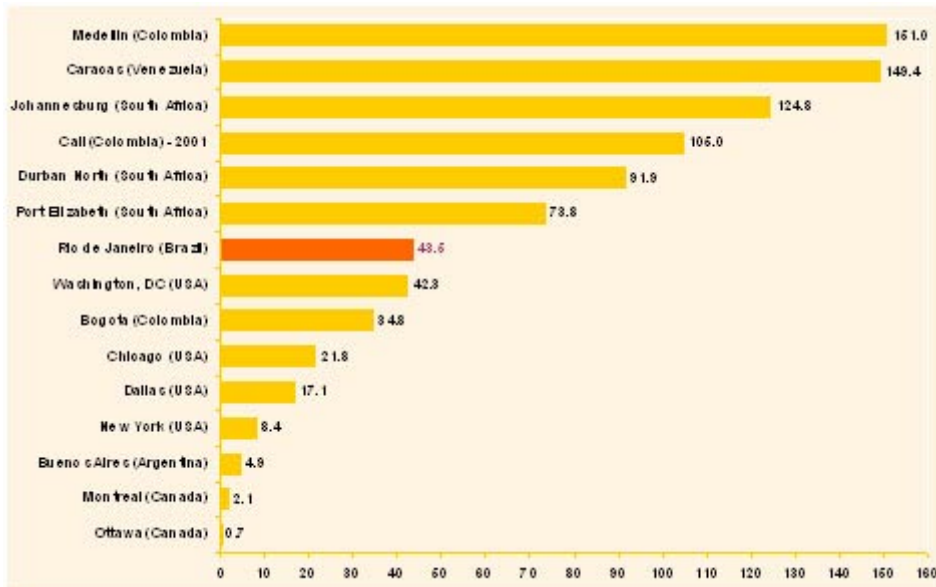
No doubt this is a very brief and maybe superficial description, deliberately biased, because it draws attention to those aspects that concern anyone interested in getting to know the other side of Rio, away from Sugar Loaf, the majestic statue of Christ overlooking the city, its beautiful beaches and the warmth of the cariocas, the inhabitants of Rio.

Now, let us turn to a closer look at facts and numbers, and try to understand what is behind them. As can be seen in Graph 1 (next page), the rate of homicides in Rio, as compared with some other cities in the world, is certainly not among the highest. Please see graph 1 on the next page.

With a rate of 43.5 homicides per 100,000, Rio de Janeiro, although it rates second among Brazilian cities, may be considered a city with a medium level of lethal criminality. Nevertheless, if one examines Map 1 and Table 1, there is a different scenario before us. Map 1, made up by the number of police records, indicates the metropolitan areas where crime is concentrated and where there is a significant relationship between high homicide rates and poor socio-economic conditions. Rates of just 5 to 10 homicides per 100,000 occur in the southern areas of Rio: fashionable Ipanema and other upper middle class areas. It is in the poorer areas that higher rates are found.

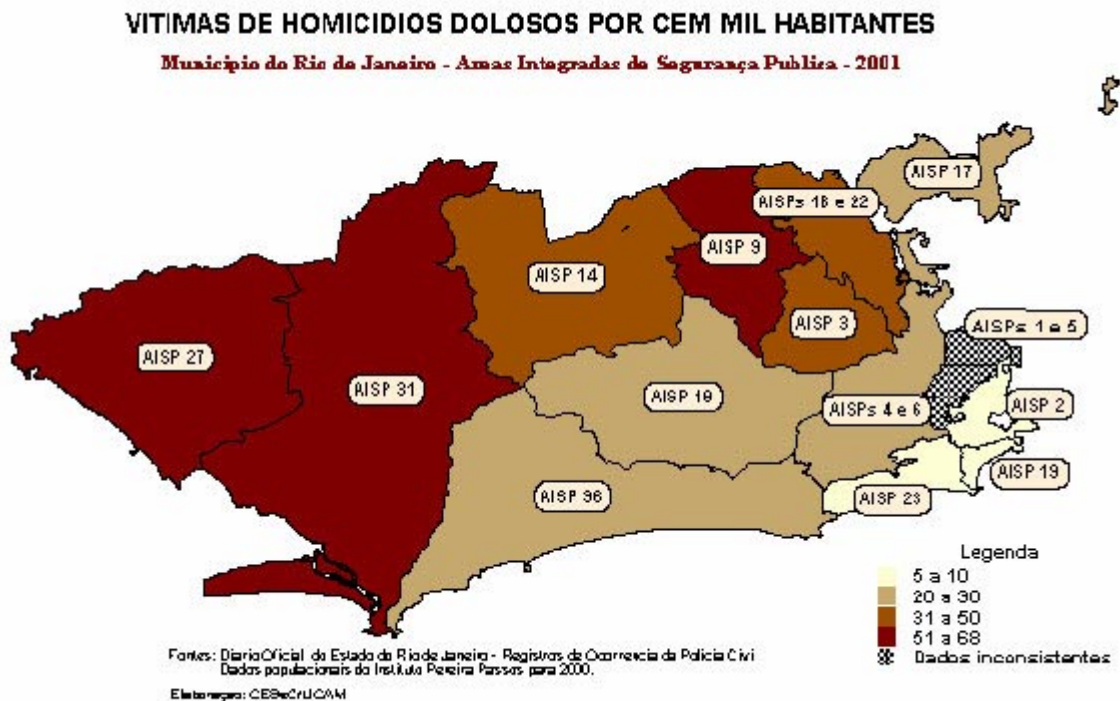


Graph 1. Homicide rates per 100.000 inhabitants: Rio and other cities in the world: 2000



Source: Police Departments Statistics of the various cities, apud Musumeci, 2002.

Map 1. Homicide rates per 100.000 inhabitants. City of Rio de Janeiro: integrated areas of public security (AISP) - 2001



Source: Rio de Janeiro Civil Police, apud Musumeci, 2002

A recent study (Oliveira, 2000) comparing socio-economic indicators of slum areas and the metropolitan area of Rio as a whole, highlights significant differences between the two, showing that these indicators are consistently worse in the more violent areas. As can be seen in table 1, both unemployment and illiteracy rates in the slum areas are more than double those found elsewhere in Rio. Both the number of school years completed and salaries are much lower in the poor areas. Although the relationship between poverty, unemployment and crime is still not completely clear, data coming from police records show that the victims of homicides are concentrated in the low income areas, just as much as the aggressors are. In other words, as it has been pointed out, "general levels of poverty may be insufficient as a direct cause, or as an explanation to differences in homicide rates between cities, states and countries, (but) there is no doubt that within the cities, being poor and living in poor areas implies greater risk to the exposure of lethal violence" (Musumeci, 2002).

Table 1. Socio-economic indicators, slum inhabitants as compared to Rio de Janeiro metropolitan area inhabitants

	Slum	Metro area
Unemployment rate (%)	12,30	5,40
Average income (R\$)	327,07	696,00
Income up to a minimum salary (%)	14,20	9,90
Income of more than 10 min. salaries (%)	0,80	10,70
Illiterates (%)	10,80	4,20
Average number of school years	5,10	7,10
More than 12 years of schooling (%)	0,40	11,10

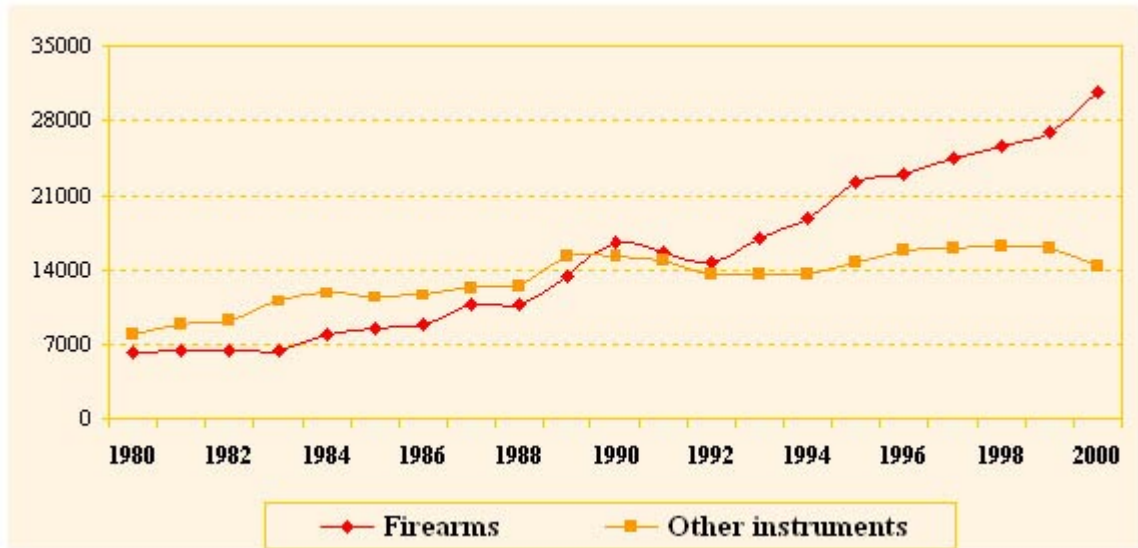
Source: Oliveira, 2000

One of the variables that certainly contribute to stimulating violent crime in Rio and, most specifically, homicides, is the extremely low police clearance rates. Furthermore, violent crimes, as a whole, are consistently under-reported. Previous studies (ISER/CPDOC, 1997) have shown that 80 per cent of the robberies in Rio are not reported to the police because of a complete lack of trust in police work. Although it is very difficult to have reliable data in this area, not only because there are no regular victim surveys and the level of computerized data in the criminal justice system is low, a few studies have tried to determine clearance rates for homicides in Rio. Soares (1996), for example, indicated that 82 per cent of the homicides committed in Rio are not cleared by the police.

Furthermore, homicides are basically related to firearms, both in Rio and in the country as a whole, and the numbers have been steadily growing. In 1980, deaths by firearms represented 43.9 per cent of the total number of homicides in the country (see graph 2) and in 1990 this percentage had gone up to 52 per cent. From then on available data show a constant increase and, by the year 2000, 68 per cent of all intentional deaths were produced by firearms. There has roughly been a one per cent increase every year for the past 20 years in deaths caused by firearms.

In the case of Rio, the city rates third among Brazilian cities, as far as the number of deaths caused by firearms. Different studies (Soares, G., 2000; ISER, 2002 and Musumeci, 2002) have reviewed the impact of firearms in the rates of violent crime in Brazil and in Rio and it is evident that the combination of illegal drug trafficking and easy access to firearms has been explosive. See graph 2 on next page.

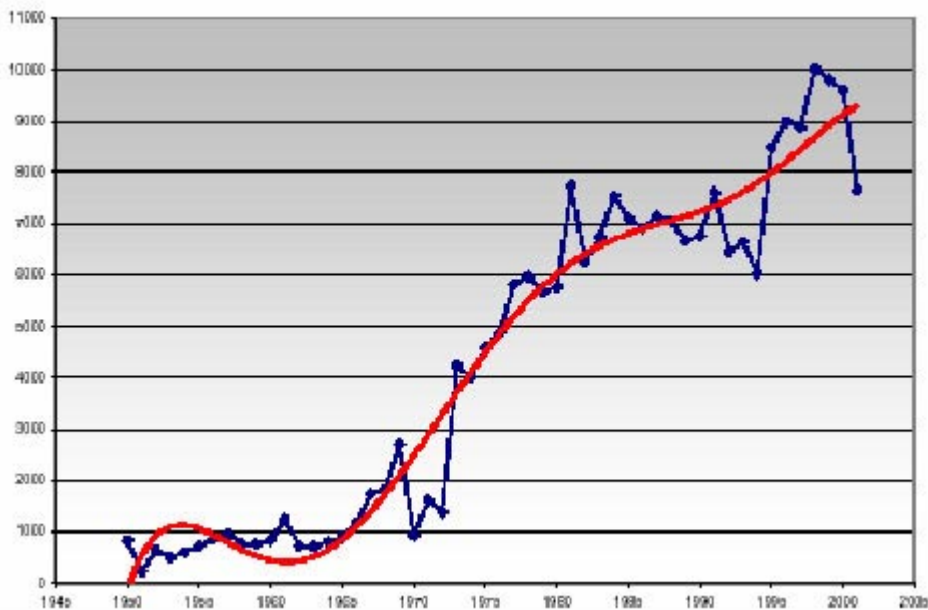
Graph 2. Deaths by firearms as a percentage of the total number of homicides.



Source: Sistema de Informação sobre Mortalidade - DATASUS

Graph 3 shows police seizure of firearms in the state of Rio de Janeiro from 1950 to 2000. Between 1992 and 2000 the numbers rise more rapidly and, coincidentally, so do the number of homicides by firearms. Surprisingly, studies (ISER, 2002) have indicated that the majority of firearms taken out of circulation by the police are made in Brazil (83 per cent). It should also be pointed out that the control of sales, ownership and use of firearms in the country has been consistently less strict than that of illegal drugs, even though the numbers in the graph below show a constant rise in the seizure of firearms by the police.

Graph 3. Police apprehension of firearms (1950-2001)



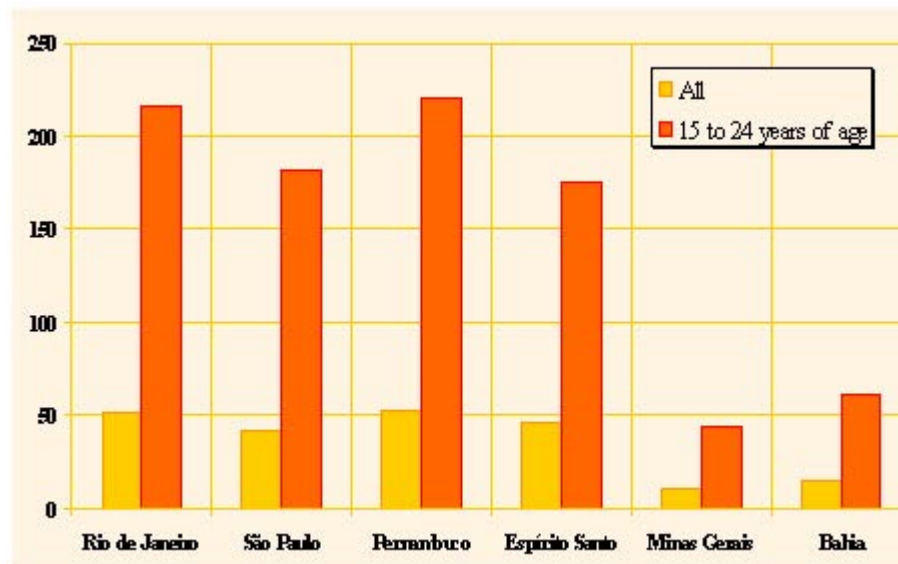
Source: Divisão de Fiscalização de Armas e Explosivos - DFAE / PCERJ

Graph 4. Homicide series: youngsters, 15 to 24 years, Brazil



Demographers have pointed out that Brazil has experienced, mostly in its metropolitan areas, a phenomenon that one could easily compare to actual genocide. The stock of young males aged 15 to 24 in the population is dramatically shrinking and the situation can only be compared to a country at war. From 1980 to 2000 (Graph 4, above) the number of homicides for young males, aged 15 to 24, grew by 435 per cent. In the year 2000, in the state of Rio de Janeiro, 2,816 adolescents were killed. Graph 5 shows the enormous differences between the rates of homicides per 100,000 for all ages and for the 15 to 24 age bracket.

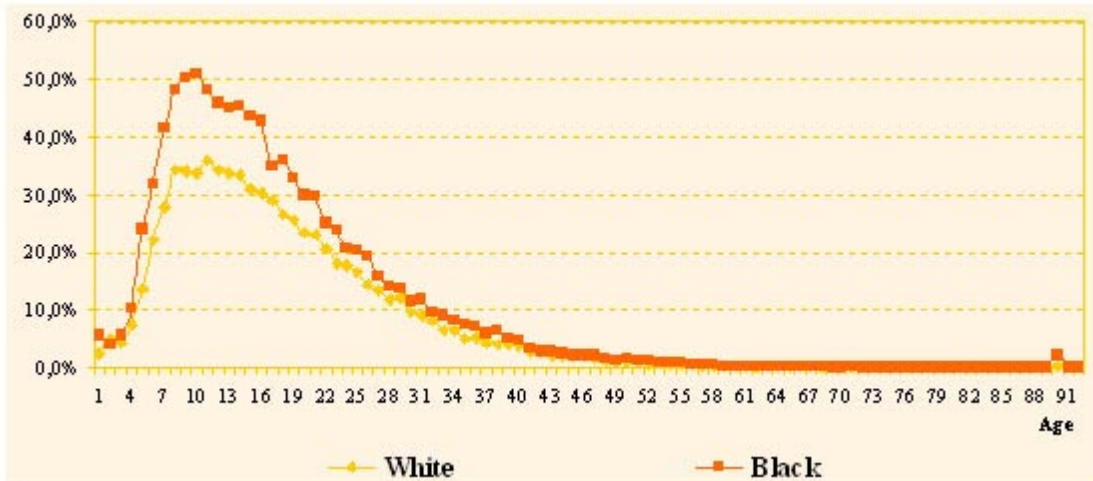
Graph 5. Homicide rates per 100,000 inhabitants in different Brazilian states



Source: Waiselfisz (2002)

Another striking difference one notes when examining homicide rates in Brazil has to do with the skin colour variable. (Graph 6). Homicide rates for blacks are higher for all ages; nevertheless from 14 to 19 years, the difference between blacks and whites grows steadily. While that difference is only 2.8 per cent for 13 years old it climbs to 10.3 per cent at the age of 14 growing up to 17.2 per cent at the age of 19. After that, the difference continues to narrow, reaching 6 per cent after age 26 and less than 1 per cent after age 48. (Soares, G., 2002).

Graph 6. Homicides in relation to all deaths by colour and age. Brazil, 1997 to 2000



Source: Sistema de Informação sobre Mortalidade - DATASUS

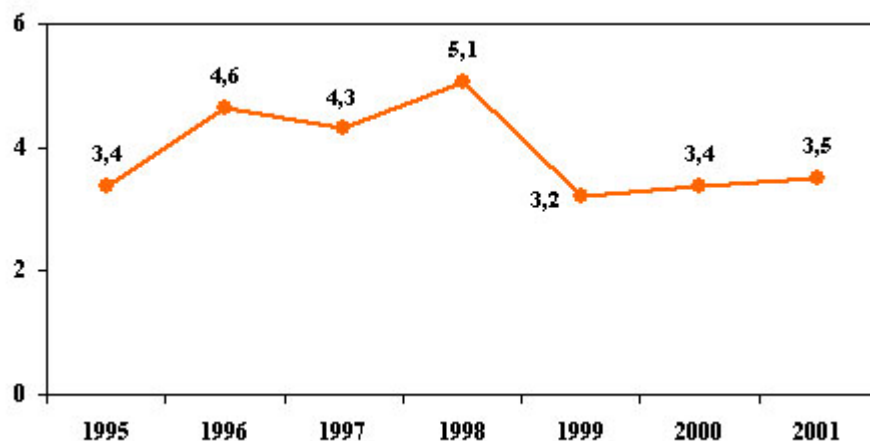
The grim scenario just described is worsened by the lack of consistent and permanent policies in the area of public security. Rio de Janeiro state has been characterized, in the last 20 years, by significant changes in public security policies every four years when a new governor takes office. The recurrent changes have been named "seesaw" public security policies, alternating periods when there is an obvious concern for human rights with others when the police practically receives a licence to kill. As a matter of fact, in the mid-1990s the Secretary of Public Security publicly told policemen that they should shoot first and ask questions later when confronting criminals. The ups and downs in the number of people killed by the police in the state of Rio is a clear indicator of what happens in response to changing policies.

The number of people killed by the military police has been extremely high in Rio de Janeiro (see Graph 7) with hundreds of victims per year. Deaths started to increase in 1995 and dropped off sharply in 1999, returning to the initial levels of some 450 per year in 2001. Latest approximate data indicate that in the year 2002 the police may have killed around 900 people in the state of Rio de Janeiro: a dramatic rise which is still to be sufficiently explained.

Furthermore, a study by Cano (1997) found out that practically 50 per cent of the corpses of police victims in Rio, studied by the Forensics Department in the civil police force, had four or more entry wounds and were basically shot in the head or in the back, as a clear indicator of the intention to kill and not merely to stop the opponent.

A general belief that respect for human rights is not compatible with police efficiency has plagued Brazilian police forces. Police have been historically known as serving the State and not the citizens, a notion which was certainly deepened during the years of military dictatorship.

Graph 7. People killed by the Military Police in the Brazilian state of Rio de Janeiro, per 100.000 inhabitants - 1995/2001



Source: Police Ombudsman's offices in the state of Rio de Janeiro

Now, let us continue getting to know the city. The city that the tourists, the famous, the beautiful and the rich never see. Let us begin by visiting a police lock-up. Take Polinter Centro (see photograph 1), the central police station lock-up, which is considered a *concentradora*, which means "concentrator": a place where prisoners are brought from different police lock-ups, scattered through the city, and are kept before being transferred to the prison system. Some 65 to 70 prisoners are kept in cells measuring three by four metres (12 square metres). Of course, there is no room for all of them, even if they decide to spend 24 hours a day standing up. With a lot of imagination and a sense of survival they have created three tier cells: there are those who live on the ground; those who live on the "second" and "third" floors, on hammocks made out of different materials. A doctor, specialized in public health, visiting these cells, stated: "The condition of the prisoners in this institution is one of maximum deprivation: overcrowding, lack of air, promiscuity, bad odours, no privacy whatsoever, radical discomfort. One may affirm that the prisoners are living in a situation of physical and mental torture. The intensity of human misery imposed upon these men is unspeakable and indescribable. Most of these men are awaiting trial, although sentenced prisoners may be often also found. A special note should, however, be added: if one has a university diploma, one will never see the interior of these cells. Brazilian legislation allows university diploma holders to have special prison conditions until their case is heard through all courts of appeal in the country. As the appeal procedures can last for many years, as is generally the case when one has good lawyers, the chances are that the defendant, being a university diploma holder, will be sentenced definitively only when it is time to leave.

The lives of those deprived of liberty in the State prison systems are not as terrifying as the conditions of those kept in police lock-ups but severe levels of overcrowding and violence are also common in the penitentiary system. The prisons in Rio, like most in the country, may be defined as inhumane and degrading. Violence is widespread among prisoners and between prisoners and guards. Corruption is everywhere. Legal and health aid are lacking and even the most basic hygiene items are not regularly distributed.

Despite efforts by the federal and state governments in the last few years to build new prison spaces, the deficit in the Brazilian prison system is still enormous as can be seen in graph 8. A fast growth in the number of prisoners, which rose from a rate of 95 per 100,000 in 1995 to 137

Photograph 1: Polinter Centro: a police lock-up



per 100,000 in 2002, explains the continuous deficit, despite the creation of a significant number of new prisons in the country. There are various reasons for this growth but stricter penal laws, mostly in the area of drug trafficking, certainly help explain this situation.

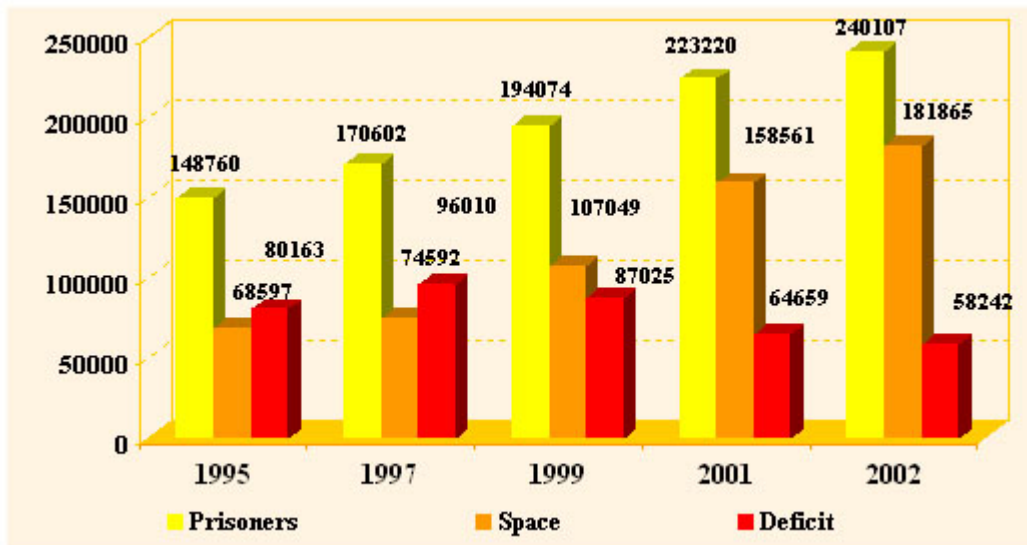
The percentage of prisoners sentenced for drug-related offences is high in most states but it is specially high in the state of Rio and, as can be seen in Graph 9 (next page), the numbers rose dramatically in the 1990s.

### Final remarks

The fear of crime in Rio, as in most metropolitan areas of the country, has risen intensely in the last few years and the scenario just described leaves no room to think it could be otherwise. Heavily armed gangs of drug traffickers, imposing terror in the poor communities, are basically made up of very young men for whom consumption of desirable material goods is almost completely unachievable by legal means. The power of these groups have grown so much that many of those who dedicate themselves to studying the phenomenon mention a "parallel state" in Rio. Their power has gone beyond the boundaries of the *favelas*, the slum areas, where they even impose traffic restrictions, and have reached surrounding neighbourhoods. More than once, orders for the closing of commercial establishments have been issued by drug traffickers in the aftermath of a clash with police forces or the killing of one of their leaders by the police.

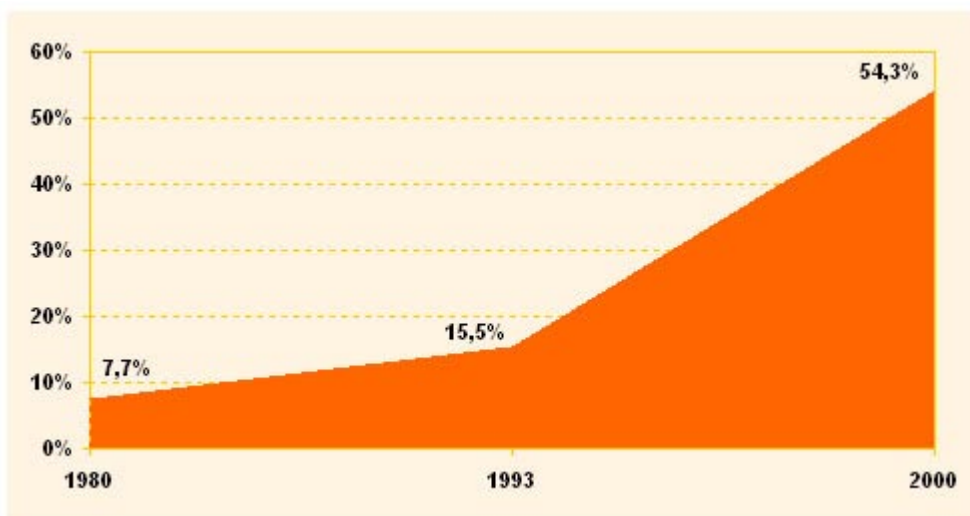
As a rule, the State has been absent from these poor communities for many years and drug traffickers have taken control of large geographical areas, basically on the hills of Rio. The police only enter these areas when there are clashes between rival gangs and, during the incidents, stray bullets often kill innocent passers-by. Generally, there is no preventive work done by police forces. Only in one *favela*, in the southern part of Rio, has a successful experience of community policing been under way for three years now. Fortunately a number of NGOs have made a tremendous contribution, substituting for the State and providing social services lacking in the *favelas*.

Graph 8. Prisoners in Brazil. Number of prisoners, space and deficit



Source: Ministry of Justice

Graph 9. Percentage of prisoners on drug trafficking charges in state of Rio de Janeiro, 2000



Not only are the police violent. Corruption is widespread among both the military and the civil police and their involvement with organized crime is a recognized fact. No wonder the poor fear the police more than the criminals (Lemgruber, 2002). On the other hand, deficient training and very low salaries help undermine self-esteem within police forces.

Now, in view of this dramatic scenario what can one say about the implementation of UN Standards and Norms in the area of crime prevention and the criminal justice system? Where is the adherence to the UN Minimum Rules for the Treatment of Prisoners, to the real implementation of the Tokyo Rules? How far away are the police in Rio and in the country from the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials? Recommendations contained in the basic UN Declarations and Guidelines for the area of crime prevention and public security have been simply unknown or completely ignored.



A National Plan of Public Security was tried in the last few years but no targets were established; no indicators to measure efficiency were built. No serious diagnosis of the situation in the area of violent crime in the country as a whole has been possible simply because there is no reliable database. Without data, how can one plan public security? The criminal justice system lacks computerized data. The Federal Government does not even know for sure the number of prisoners the country has. A national census of prisons and prisoners has been under study for at least seven years. National victim surveys have never been done.

The new Brazilian President, Luiz Inacio Lula da Silva, who took office on 1 January 2003, presented a National Security Plan to the population during his campaign. It is certainly the most comprehensive plan ever put together in the country, involving all levels of Government: federal, state and local authorities. It proposes measures that may be taken without legislative changes and those that will even need constitutional alterations. Many of the UN recommendations for crime prevention and public security have been incorporated in the document. Let us await its implementation.

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## United Nations Standard Rules for the Treatment of Prisoners: A tool for reforming Russian Federation penal law

Dr. Valentin Mikhailov, Chief of Division of Administration of the President of the Russian Federation, State and Law Department, Moscow

With its integration into the international community Russia has been obliged to find a new approach to its penal policy. World experience in this field is a wellspring of new and promising ideas. One of the basic international instruments regarding the treatment of prisoners is the Standard Minimum Rules for the Treatment of Prisoners (1955).

A major step towards bringing Russian law into harmony with international standards was the adoption of the Russian Federation Penal Code (RFPC), that came into effect on 1 July 1997. In common with similar instruments adopted by other members of the Commonwealth of Independent States, it embraces many of those standard minimum rules.

It should be noted that while the Russian Penal Code was being drawn up heated debate raged over the extent to which the rules of national law should correlate with those of international law. The point is that international legal instruments contain both mandatory and recommended rules. The ban on torture is a mandatory rule; the rule providing that each prisoner be kept in a separate cell, as stipulated in Item 9 of the Standard Minimum Rules for the Treatment of Prisoners, is a recommendation. By no means all countries can afford to provide such accommodation for all their prisoners. Thus, the mandatory rules are to be complied with without reservation, and the recommendations carried out if the necessary economic and social conditions are available in the country in question, as indicated in the Standard Minimum Rules for the Treatment of Prisoners.

The RFPC envisages extending the rights of detainees and convicted prisoners, as well as differentiating and humanizing detention and prison conditions. A minimum of four square metres of cell space per person has been established; women in custody are not separated from their children under three; and persons held in pre-trial prisons may receive an additional daily allowance and medical services. Those provisions meet the requirements of international legal instruments

Many international experts point out that, in general, Russian penal law meets the requirements under the Standard Minimum Rules for the Treatment of Prisoners and other international treaties and, in some cases, is even more progressive. That particularly applies to providing general education and vocational training for prisoners. Pursuant to Article 50 of the Russian Penal Code, prisoners may receive not only a secondary education but also take correspondence courses at secondary and higher vocational training schools. The administration of correctional institutions is charged with ensuring all the necessary conditions for this type of study.

It should be noted that this approach is also formalized in the legislation of other CIS Member States. For example, Article 104 of the Republic of Kazakhstan Penal Code indicates that correctional institutions shall provide primary vocational or occupational training for prisoners who do not have a profession (specialization), which will allow prisoners to work in the given institution while serving their term or find a job after release. Article 103 of the Republic of Belarus Penal Code states that correctional institutions shall carry out mandatory vocational and technical training and occupational training of prisoners who do

not have a profession (specialization). Moreover, particular emphasis is placed on the fact that the attitude of prisoners towards obtaining vocational, technical or occupational training will be taken into account when determining how far they have mended their ways. In Ukraine, approximately 5,700 prisoners (20 per cent of the total number of those who have no education) in 78 out of 131 correctional institutions are receiving a secondary and secondary specialized education.

In 1997, Russia began its penal system reform with a view to meeting international law requirements. Penal institutions and agencies were transferred from the Interior Ministry to the jurisdiction of the Ministry of Justice. A shortage of funds, however, is making it impossible at present to ensure that detention conditions for prisoners are in keeping with the requirements of Russian and international law. The level of healthcare services does not guarantee prisoners their rights to medical assistance and the protection of health and life. At present, there are more than 400,000 sick inmates in prison. There are also several other serious problems.

Members of parliament and Government, Ministry of Justice and officials of the office of the public prosecutor have repeatedly noted the critical situation in the Russian Federation penal system.

To remedy the situation, increased funds are being allocated to the penal system; legislation is being improved. In particular, punishment for many offences has been mitigated; and a special department for the protection of the rights of prisoners, as well as an institution of human rights assistants to prison governors, has been formed. Such measures are helping to improve the situation to a certain extent. For example, the number of prisoners in penal institutions has decreased by more than 200,000 compared with the peak figure (in May 2000).

Speaking at the December 2002 Russian Conference on the problems of observing legality and human rights in the system of penal institutions, Sylvia Casale, chair of the European Committee for the Prevention of Torture, said that positive changes had taken place in the Russian penal system.

Of course, the practical results of international penitentiary cooperation in the sphere of social support for prisoners arouse a certain amount of professional interest. Russian experience shows that the training of prisoners in occupations and professions that are currently in demand on the market is a promising way of exerting a positive influence on prisoners to make them law-abiding citizens, as well as facilitating their adaptation to a life that will have changed greatly during their imprisonment.

## Kosovo: rule of law at a watershed

Kamudoni Nyasulu, former Director of Public Prosecutions of Malawi;  
International Prosecutor, Kosovo

The past three years have witnessed a steady construction and reconstruction of social, economic and governance structures and institutions in Kosovo, including a fledgling rule of law and a judiciary. Even the local members of the Kosovar justice system have recognized that the United Nations Standards and Norms in Crime Prevention and Criminal Justice, complemented by the European Conventions, have been a major catalyst in laying a strong foundation for a functioning criminal justice system and a possible independent judiciary. At the end of the war in Kosovo in 1999, the justice system was in tatters for a variety of reasons other than the war itself.

The Albanian population had been disenfranchised for nearly 10 years, such that it had little or no participation at all in the justice system, whether as judges, prosecutors, lawyers, complainants or defendants. Many of the Kosovar Albanians did, however, go through the justice system, to be more precise the criminal justice system, as victims of Government machinery. Thus, the view became entrenched in the Albanian mind that the criminal justice system was a tool for oppression that must be resisted.

The socialist laws were badly out of date and needed reform to accommodate and regulate the rapid changes in Kosovar society. Yet changes in the law and the justice system required a corresponding awareness by society of its own benefits, duties and responsibilities under the new order. Compounding that problems was the fact that the people, especially during their disenfranchisement, had resorted to their own cultural norms of justice; namely, alternative dispute resolution (by village committees) and reliance on the Code of Leke Dukagjini which, in the criminal justice area, embodies blood revenge. Thus, any new changes in the justice system would need to be accepted as a fair and effective replacement of those norms.

The phenomenon of revenge manifested itself fully as the war drew to a close, with Kosovar Albanians committing multiple atrocities upon Serbs or other minorities, and fellow Albanians being perceived as having collaborated with the Serbs. When Kosovar Albanians began manning the judiciary there was an outcry that they were using the system to avenge themselves against the Serbs and their "collaborators". While Kosovar Serbs were complaining that the new judiciary manned by Kosovar Albanians was treating them unfairly, the Kosovar Albanians were complaining that the laws they were being asked to apply were not fair because they had been passed to oppress Albanians.

There was merit in both complaints. A cut-off date was introduced for the disputed laws which created further lacunae in the legal system. The United Nations Mission in Kosovo (UNMIK) passed regulations to fill the gaps and introduced the United Nations and other international standards and norms in crime prevention and criminal justice to supplement the application of the existing laws and the UNMIK regulations. International judges, prosecutors, legal officers and police were recruited to spearhead and complement the application and enforcement of this "new" law: the authorized existing law, UNMIK regulations and international norms and standards.

In that regard the Mission in Kosovo is unique; the international judges, prosecutors and police are not merely advisers but have the authority to apply and execute the law. They enjoy

the same powers as the local judiciary and local police which were non-existent at the start of the exercise. Apart from executing police functions, the internationals have been instrumental in setting up police structures, recruitment and training of local police, Albanian, Serbs and other minorities, based on international standards and conduct. Serbs and other minorities have also been recruited into the judiciary. Most of the local members of the judiciary, however, were unfamiliar with concepts in the new regulations or the international norms and standards for a number of reasons:

The previous legal system was based on civil law (Roman-Dutch) in a communist/socialist political environment while most of the new regulations and the international norms and standards are a hybrid of civil and common law system with heavy borrowing from the common law system operating in a free market economy and political environment. The majority of the local members know only the Albanian or Serbian languages, making access to materials outside those languages impossible. The concepts of precedent and *stare decisis* were almost non-existent. Although commentaries were often cited, case law was not directly analysed. That meant that no capacity was developed for searching the law outside commentaries, making law, norms and standards beyond federal borders unattainable, unfamiliar and unknown to the local judiciary.

The participation of internationals in the implementation of the law using international norms and standards has thus been invaluable. There was a time when internationals were themselves guilty of laxity, no doubt because there were no local scales of performance or standard of work. That was remedied by the vigilant court monitoring teams from the Organisation for Security and Cooperation in Europe (OSCE) that check not only the fairness or lawfulness of proceedings but also the conduct of all parties.

There has been a marked improvement in the way parties dress for court; there is better respect for proceedings and more effective representation of clients now than three years ago when judges and counsel would come to court in T-shirts, counsel would walk out of the courtroom to answer a ringing cell phone or for a smoke while a witness was testifying against his client, or would request the court to proceed with a trial in his absence, leaving a client to conduct his or her own case in the meantime without consultation. The law and practice as it stood allowed for many practices that internationals applying international standards have stemmed, including the representation of more than one co-accused, the obtaining of testimony of an accused in the absence of a co-accused and unnecessary communications between accused or complainants and the bench or prosecution.

The latter has done a great deal to minimize the perception of corruption. As in crime prevention, where strategies to prevent crime must also deal with eliminating crime, where there is corruption the perception of corruption must be eliminated or minimized. The ease with which relatives of accused persons used to communicate with judges and prosecutors not only led to the perception that judges and prosecutors took bribes but it actually made judges and prosecutors vulnerable and amenable to taking bribes. Many succumbed. Allegations abound of local prosecutors taking bribes to withdraw charges or judges taking bribes in exchange for non-custodial sentences. The Judicial Inspection Unit, which has often been chaired by an international, has rooted out abuse, misconduct and corruption from the judiciary, albeit to a limited extent.

In certain instances, the application of international norms and standards has necessitated the passing of authorizing legislation, as has been the case with the recording of police witness statements for purposes of admissibility, the use of a co-accused as a cooperative witness and the covert gathering of evidence. Unlike substantive criminal legislation, the procedural UNMIK regulations have received some resistance as they appear totally alien to the local legal system. The local practitioners have equally vociferously opposed the reading into the case record of absentee witness statements and the reliance on rogorities even though such precepts are part of the authorized existing law. Several of the arguments advanced in opposition have fair support from international norms and standards of human rights, testifying to the fact that the

introduction of and access to international standards and norms are bearing fruit. There can therefore be no doubt that a foundation has been laid for a functional criminal justice system but the criticism has been that it is too fragile and driven by internationals. The local members of the judiciary also feel that they are not participating fully in the moulding or executing system.

The time may be approaching, if it is not already here, for the local judiciary to exercise greater participation in the rule of law for many reasons:

The basic foundation has been laid; there is enough substantive and procedural law in place for the system to function; some local jurisprudence is being developed based on international norms and standards which should help shape the new or future independent judiciary.

The role of the international judicial support is embodied in the overall goal of UNMIK. As the UNMIK Special Representative of Secretary General, Michael Steiner said in his speech at the London School of Economics on 27 January 2003, "A peace-building mission's endgame is to hand over all its responsibilities to a capable partner. It has only succeeded when it has made itself superfluous."

The resistance to cooperative witnesses, rogatories and absentee witness statements may result from failure on the part of the internationals to explain the benefits that these may have in the pursuit of justice, or it may be a result of old practices refusing to die. There may also be a perceived contradiction between those tenets and the norms of human rights and justice that have been introduced. What that illustrates, however, is that change or systems cannot be forced on a society. Michael Steiner in the same speech also said, "Change is not a one-way lecture, but a dynamic process of mutual learning. The international community brings its experiences to a community that wants to leave conflict behind and enjoy the fruits of peace."

For the rule of law, that is a paramount reason for the local community to participate in the justice system. Laws regulate society and society must see that justice has been or is being done. The culture and traditions of the local society must be understood and the law or norms and standards of justice introduced must not supplant but complement them, unless it can be shown that a particular tradition would be to the detriment of the development or harmonious existence of the society. A society must feel that it owns the system; the system must therefore reflect the values of that society. To build the confidence of society in the system it must be seen to be effectively carrying out the functions of the acceptable social order, the customs or culture that it replaces. The system must therefore not be seen to be imposed but supported by culture and the accepted social order while at the same time influencing culture or the social order to evolve to the level of the norms and standards introduced into the system. The reaction of the local judiciary to the application of international human rights standards at the start of the Mission in Kosovo supports that view and is underlined by the accommodation that was offered by the United Nations Secretary-General in 1999. Making his report to the Security Council on 23rd December 1999, he stated:

"UNMIK regulation No. 1999/1 of 10th June 1999 provided, inter alia, that the laws in force in Kosovo prior to 24th March 1999 should continue to apply in the province, insofar as they did not contravene internationally recognized human rights standards. The local judicial community has been extremely reluctant to apply these laws, especially the Serbian criminal law, which is viewed to have been part and parcel of the revocation of Kosovo's prior autonomous status and an instrument of oppression since then. Judges and Prosecutors in Kosovo have interpreted regulation No. 1999/1 to include laws in force until March 1989. Given the acute and urgent need for functioning courts, my Special Representative determined that regulation 1999/1 should be amended so as to give explicit legal validity to the practices followed by the courts."

On similar lines, the prosecutor in one war crimes case suggested an accommodation in applying international rules to witnesses who obviously finds the rules alien to their culture. The existing law in Kosovo, and indeed the applicable law, does not specifically regulate hearsay,

corroboration, burden or standard of proof and reasonable doubt. The practice is to let witnesses tell everything they know, whether it is from first-hand knowledge or hearsay, and then to find out how they came to know about what they have told the court. Some of the witnesses were interrupted in their testimony and told to tell the court only that which they personally saw and experienced. Two of these witnesses lost their temper; they could not understand why they were being restricted or why the court did not want to hear some of the "evidence". In the submission of the prosecution this is what was suggested:

"It is against the background of these three scenarios and the responsibilities of the court as shown in the provisions cited above that we propose to the court to indulge the witnesses to tell their story in their own way conforming to flexible formal rules of evidence especially with regard to admissibility, relevancy and hearsay evidence. The majority of the witnesses as shown above will be unaware of the restrictions procedural law places on the tendering of evidence. Most of them will not even believe that the court is not interested to know what their mother, brother or friend told them about a particular incident or about a particular person. Unless the court allows them to bare their chest, to tell the story the way they see and feel about it, in fact for most of them in this case, to relive the experience. In a society emerging out of inter-ethnic conflict and in the absence of a truth commission the system should not be seen to indicate that only the players have changed or have switched roles but that the system itself is different, which will enjoy the confidence of all groupings, and will thereby nurture reconciliation, tolerance and coexistence. To achieve this requires that the full truth must be known and acknowledged by all parties. And that wrong doers must be punished for their wrongdoing. Otherwise society feels dissatisfied and the subsequent outcome of the trial may have no meaning for it and make little contribution to the building of an effective criminal justice system ...the law...reposes full discretion in the court to determine what is admissible and or relevant."

Whether the time has come for transfer of responsibilities is a matter that has to be determined with caution. Comments from observers have indicated that although the judiciary has been doing a commendable job in Kosovo, the situation is still fragile because it has not dealt with organized crime and criminalized power structures. Recently, however, there has been a concession that the international community has started to attack these structures. This is what places the rule of law in Kosovo on a watershed. In April 2002 in his address to the Security Council, Michael Steiner said, "We are also enhancing capabilities to effectively combat organized crime, terrorism and corruption. However, I must emphasize that as we begin to make significant arrests against the criminal gangs we should anticipate a criminal backlash."

Unfortunately when the backlash did come the authorities seemed unprepared for it. Upon the arrest and during the trial of Idriz Balaj and Daut Haradinaj, high-ranking officers in the liberation army, and other soldiers, locally referred to as the case of the Dukagjini Five, the authorities managed to contain the adverse reactions that followed. After the verdict, however, when the scale of the backlash escalated, the authorities seemed to flounder. Nearly a month after the hideous assassination of a central witness in the case and part of his family there seem to be no clues as to who carried out the assassination. In the same month that he was assassinated, a Regional Police Headquarters building which also houses international judges and prosecutors was hit by a rocket-propelled grenade causing serious damage but fortunately no injuries. There are no clues as to the perpetrators.

The same witness was attacked while sitting at a café soon after testifying before the investigating judge in the same case and about three months before he testified at the main trial. Unknown persons threw a hand grenade at him and his friends as they were having coffee, again causing damage but the witness survived. The perpetrators have not been found. Apart from him, three other witnesses were attacked with guns or hand grenades before the main trial but soon after they had testified before the investigating judge. In all there have been 15 gun or grenade attacks on witnesses in this case. The assassinated witness was not an eye-witness to the crime committed by the Dukagjini Five; he was not even in Kosovo when the crime was

committed but his evidence had a lot to do with power structures and rogue intelligence used for criminal activities. Unfortunately these power structures with intelligence networks and criminal enterprises also straddle political and public institutions.

Yet, this is just the beginning of the move against extremist political criminal elements. Success in dismantling these structures will require refined and coordinated strategies and better security preparedness. But there is a more important aspect to this and to the application of all norms and standards. In its 2002 report on trafficking in humans the United States Department of State commended the contribution of non-governmental organizations to the fight against trafficking. In Kosovo, civil society does not seem to have received significant attention in the work of the judiciary. There has been fair amount of awareness of human rights especially in relation to the areas of operation of the ombudsman but there is need for civic education with regard to citizens' rights and duties to the State/Government. While it might be easy to explain that a citizen is obliged to pay taxes because the money will be used to build him a road to the city, it is not so easy to explain a citizen's duty to report a crime, give information to police of a crime or its perpetrator, to testify in court and to tell the truth in doing so, not to accept being bribed or influenced to conceal a crime. This is a task that the judiciary cannot do alone. This requires multi-sectoral public mobilization that needs to be integrated into other education and social programmes.

The mere fact that local judges and prosecutors learn and understand how to apply international norms and standards will be of little benefit if villains are concealed or worshipped. One legacy of the war has been to hail every fighter in UCK (Ustria Clirimtare e Kosova) or KLA (Kosovo Liberation Army) as a liberator and a hero. The means used in the fight, even if they led to personal gain for some of the 'liberators' are justified. Extortion was 'requisition' for or 'contribution' to the war, trafficking of weapons was part of 'supplies' to the liberation soldiers who, of course, needed food, clothes and ammunition. Most of the activities were of course illegal but illegal against a Government they were fighting. Now society needs to be re-educated to the effect that anyone committing such illegal activities is doing so against their own Government with adverse effects on the economy, security and the rule of law of the country. Again, this transformation of society needs multi-sectoral programmes and would benefit hugely from civil society involvement. The media has in the main been compromised since it has been or is a beneficiary of the political-criminal networks.

Local police are being trained in international rules and modes of conduct but many early recruits served under one or other of these political-criminal structures and many still owe allegiance to them. Indeed, some still collect intelligence for their former networks. Some members of the public know which local police serve political-criminal networks and are therefore scared or intimidated about reporting perpetrators. They know that the information they supply will end up in the hands of political-criminal elements. There must be a way of encouraging these people to help the police establishment to weed out the rotten officers from the service.

This is an area where internationals could have done more than they have. Violence against the local police and general disrespect (not mere mistrust) for the local police has been inadequately addressed. The law on resisting arrest or violence against police creates minor offences. This has resulted in such offences being regarded as outside the mandate of international judges and prosecutors. Yet, the majority of those defying police orders, resisting arrest or assaulting police officers belong to the same political-criminal networks. They are usually the 'liberators' and, once taken before a local judge or prosecutor, their cases never see the light of day. Their growing impunity galvanizes them into bolder criminal activity. Indeed it is this impunity that has manifested itself in their recent attack on an international police officer in charge of a station and the rocket attack on the Regional Police Headquarters.

Many local judges and prosecutors are not motivated. They have huge workloads, are understaffed and underpaid. They do not have security. Faced with a case against the political-criminal power brokers they have no choice but to pass the case on to an international or let the



accused walk. Until now it is hard to know which local judges and prosecutors would be prepared to take on these structures unless there was an offer of security and remuneration to compensate the possible risk. Most of them believe internationals can take on these serious cases because, (a) internationals are well paid, (b) they are offered security, (c) they do not have their families here and (d) after their mission is ended they will go back to their homes and family, therefore, away from the risk of reprisals. When the time comes for internationals to hand over to capable local partners it must be seen that the local partners are capable, and this will not be possible until the local partners begin to take on cases now being undertaken by internationals. If they are to do this it must be shown that authorities are willing to compensate their risk, otherwise they feel they are on their own and will be abandoned once they attack the political-criminal networks, leaving them and their families open to reprisals.

# The rule of law as a priority in criminal justice reform: building on experiences in technical cooperation between Europe and Central Asia

Andrzej Rzeplinski, Professor, Institute for Social Prevention and Resocialization, Human Rights Research Centre, University of Warsaw

## Introduction

The rule of law is one of the foundations of the 1950 European Convention of Human Rights. It is mentioned in its preamble: "European countries which ... have a common heritage of political traditions, ideas, freedom and the rule of law".

Rule of law is a legal principle and means "the supremacy of law". According to Law of the Constitution (1885) by Dicey, the concept requires that the government should have no arbitrary authority over the individual and that all persons, including officials, should be equally subject to the ordinary law administered by the ordinary courts. Moreover, the officials must avoid the use of discretion in application of laws. Under the rule of law, law and not the will of public officials, rules. In that context, a definition of the law is very important. A well known and generally accepted definition was given by the European Court of Human Rights in the case, *The Sunday Times v United Kingdom*, where it held that the expression, 'prescribed by law' in Article 10 (2) of the European Convention of Human Rights, must be interpreted as involving at least two requirements:

"Firstly, the law must be adequately accessible; the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" .

There is no doubt that too many UN Member States are still not able to fulfill that requirement.

The social and political situation in the five nations of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan prior to the 1920s and during the Soviet era inhibited the development of a proper definition of the basic legal concepts or, at best, allowed them to be understood and used in an abused fashion. Good examples are such notions as "rule of law", "human rights" "democracy" and "justice system". At the beginning of the 1990s, it was hard to find anyone in the five Republics who understood such notions as "civic society", "open society", "privacy", "free elections" or "opposition". There was, however, a well established understanding of the ideas of an alien legal culture where concepts were used such as: "socialist rule of law", "Leninist *prokuratura*", "leading role of the communist party", "class enemy", and "collectivism". The experience of several generations under Tsarist and Soviet rule convinced people that it was dangerous to enter into disputes with the authorities, as that could lead to torture and forced labour in concentration camps .

Just as in Soviet times, but at a lower level of intensity, the corrupt oligarchic systems of today are run by individuals with a presidential licence to access power or business, and there is no political, economic, judicial, media or third sector autonomy. As a result, there is no real independent control of the activities of the authorities; and there is no rule of law, only the rule of the capricious will of a president and, where he permits, of other power holders.

In all five Republics, laws grant immunity from prosecution to the current presidents and

members of their families. The first law dates back to 1990. People and public officials realize that, whatever they do, presidents and their families will always go unpunished. It is difficult to imagine a more demoralizing and degrading aspect to public life.

### **Constitutional framework of criminal justice systems in the region**

Basic constitutional laws in the five Republics guarantee the "rule of law": Tajikistan (Article 4); Turkmenistan (Article 1); Uzbekistan (Article 10); and separation (or division) of powers: Kazakhstan (Article 3); Kyrgyzstan (Article 7); Tajikistan (Article 5); Turkmenistan (Article 4); Uzbekistan (Article 11). Fundamental rights formally guaranteed in constitutional provisions are, however, corrupted in the same basic law by other provisions giving excessive or even unlimited power to presidents of those States, to their security services, and to Leninist-type Prosecutor General institutions. Constitutional fundamental rights are also not sufficiently adhered to in criminal and civil law codes.

Constitutions guarantee basic rights include the right to a fair trial. According to basic laws in Tajikistan (Article 88); Turkmenistan (Article 105); Uzbekistan (Article 26), hearings must be held in open court. In practice, it is hard to imagine any free access to the courtroom. There are police officers on the door who accept only those who have *propiska* to be in a courtroom, actual parties to the case and named witnesses.

All nations of the region have a Constitution that embraces a strong presidential system in which the chief executive exercises power and authority disproportionate to that of the other branches. Presidents are empowered to take any decision, to enact laws, to annul acts of parliament, even to overrule judgements of constitutional courts, to appoint and dismiss any public official, including judges, to order any investigation by the *Prokuratura*. Their power is not balanced by either the legislative or judicial branches of Government. They are not accountable. Constitutions offer them and their families immunity and protection against any censure and the heads of those States decide who belongs to their family. When the term of their presidential office is nearing its end, they accept amendments to the Constitution extending their right to be "elected" for a third or longer term, or just for life.

The institution of ombudsman has not been incorporated into basic laws in any of those five countries.

None of the five has declared recognition of the competence of the Human Rights Committee under article 41 of the International Covenant on Civil and Political Rights (ICCPR).

The aggregation of power in the hands of an executive has led to a judiciary that lacks de facto independence and a legislative branch that is ineffective in exercising oversight functions.

The often mentioned constitutional provision that "judicial power belongs only to the courts" (or similar formula): is always followed in the five Republics by provisions demonstrating that the administration of peace and justice resides in the hands of the *Prokuratura*: Kazakhstan (Article 99); Kyrgyzstan (Article 79); Tajikistan (Article 84); Turkmenistan (Article 99); Uzbekistan (Article 107). Let us quote the Kazakh Constitution:

"Article 83. 1. The procurator's office, on behalf of the State, shall exercise the highest supervision over exact and uniform application of law, the decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the Republic, legality of preliminary investigation, inquest and inspection, administrative and executive legal procedure; and take measures for exposure and elimination of any violations of the law, the independence of courts as well as the appeal of laws and other regulatory legal acts contradicting the Constitution and laws of the Republic. The Procurator's office of the Republic shall represent the interest of the State in court as well as conduct criminal prosecution in cases using procedures and within the limits, stipulated by law.

2. The procurator's office of the Republic shall be a unified centralized system with subordination of junior procurators to their seniors and the Procurator General of the Republic. It shall exercise its authorities independently of other State bodies and officials and be accountable only to the President of the Republic."

Very similar formulations appear in other basic laws in that region: Kyrgyzstan (Article 78); Tajikistan (Article 93); Turkmenistan (Article 110); Uzbekistan (Article 118).

It is a purely Soviet-type *Prokuratura*, shaped personally by Lenin, a mirror image of the Soviet Constitution of 1936 (Article 113: "The highest supervision over exact application of law by all departments of Council of Ministers and subordinated to the offices as well as by public officials and citizens of the USSR are entrusted with the Procurator General of the USSR"). It is still in force the Constitution of North Korea of 1975 (Article 144) .

It is not surprising that the presidents of the five Central Asian countries under discussion monopolize the hiring and firing of all prosecutors and use them to institute or dismiss any criminal investigation.

Lack of independence and lack of separation of the courts from the presidential office and powerful presidential administrations is observed not only in practice but also in constitutions, and sometimes it reaches an extreme. In Uzbekistan "the President appoints and dismisses from office judges of regional, district, city, and commercial courts" (Article 93(11)). When there is no limit to presidential power, even to dismiss judges, there is no independence of judges and there is no rule of law.

Let us take an example of a criminal justice system situation in one of those countries, Uzbekistan: not the country with the worst human rights record, according to reports of the International Helsinki Federation for Human Rights (Vienna) and Human Rights Watch (New York) . As in all other four nations in the region, Uzbekistan carries the political, social, cultural and economic burdens of its Soviet past: lack of enlightenment, lack of well educated elites, the incompetence and corruption of public authorities, and threats of political, criminal and State terrorism.

During its entire period of independence (from 1991 to today) the fabrication of charges in Uzbekistan have been widespread, and those on trial are, as a rule, presumed guilty. The courts regularly accept planted evidence, such as drugs, weapons and illegal religious leaflets, as well as confessions extracted as a result of torture. Such practices are particularly important elements in the campaign against "anti-State activities". Evidence put forward by the defence during trial has been routinely ignored. Authorities have been known to force relatives of alleged religious extremists to undergo public humiliation at neighbourhood assemblies organized for the purpose.

Frequently, suspects are denied a lawyer of their choice, or the lawyer is granted access only after the suspect has spent several days in custody, and under strictly limited conditions. In addition, it is not uncommon for detainees to be held incommunicado, sometimes for up to six months. Physical abuse is used not only to extract confessions from detainees but also to force victims to incriminate or reveal the whereabouts of others, mostly relatives. Typical forms of torture include electric shocks, suffocation and sexual abuse. During 2001 there were several reports of deaths in custody due to violent abuse, and statistics indicated that a total of 70 political prisoners died as a result of police violence in the country in the last two years. The same practices continue. Defendants often claim that the confessions on which the prosecution typically based its cases were extracted by torture.

There is a widespread tendency, during preliminary investigation in political cases, to declare any independent politician, human rights defender or religious activists as an Islam fundamentalist: a *wahabit*. In October 2001 the Russian human rights group, Memorial, published a credible list

of over 2,600 individuals arrested and convicted from January 1999 through August 2001 for political opposition, suspected Islamic extremism or suspected terrorism.

Human rights defenders, as well as senior officials, have acknowledged the overwhelming power of the prosecutors not only in the preliminary investigation but also in a judicial hearing, taking decisions normally reserved for judges and executing penalties leading to deprivation of liberty.

Trials are conducted in Uzbekistan without much regard for international standards, and not only when they involve political defendants.

Judges whose decisions have been overturned on more than one occasion may be removed from office; consequently, judges rarely defy the recommendations of prosecutors. As a result, defendants are almost always found guilty.

Trials against political opponents, and especially against those charged with being Islamic activists are conducted by military courts rather than normal courts, and in closed proceedings. Where there is no other evidence, the accused are charged with "organizing a criminal society" or "distributing materials that threaten public security." Actually (like the Nursi group trial in 2002) the primary accusation was that defendants read, possessed or distributed books. In that case, 10 of the defendants received prison sentences ranging from 15 to 18 years; the other two were sentenced to five years each.

Most defence lawyers are not skilled at defending their clients and judges rarely give lawyers the opportunity to defend their clients.

Journalists and representatives of international, national or local human rights organizations are often prevented from attending trials where accused were denied an adequate defence.

Courts buildings are devastated. Judges have problems accessing legal texts and other legal literature. Judges are paid badly and it is no surprise that they are "open" to "bonuses" from public authorities (apartments, gifts) or bribers of clients.

It is difficult to find anyone naïve enough in Uzbekistan, be it an ordinary citizen, journalist, business person, teacher or public official, who would say that he or she believes that somebody can find a just final decision in a court. Real justice is administered outside the courtrooms.

Torture and ill treatment are rampant in detention facilities and prisons.

Prison conditions remain atrocious. Prisoners suffer torture as well as lack of food, medical attention, heating and other basic needs. Religious and political prisoners suffer particularly harsh treatment. According to the testimony of relatives and several letters smuggled out of prison facilities, religious prisoners are forced to write statements renouncing their faith, to ask President Karimov for forgiveness every day and to sing the national anthem. Prisoners who refuse are punished with beatings, rape, solitary confinement, denial of food and water and are even boiled alive.

In May 2002, the United Nations Committee against Torture considered the report of Uzbekistan on compliance with the Convention Against Torture. Using unusually strong language, as per its annual report, the Human Rights Watch, the Committee called on the Uzbek Government to review all convictions handed down since 1995 that were based solely on confessions, recognizing that they may have been coerced through torture. The committee expressed concern about the "numerous, ongoing and consistent allegations of particularly brutal acts of torture by law enforcement personnel." It also pointed out that Uzbekistan had failed to provide requested statistics on detainees and executions.

What should be done in countries of Central Asia in a criminal justice reform programme? What can be imported from Europe?

First, from the point of view of prospects for final success, it would be best, if all countries, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, demonstrated, in parallel, the political will to reform their criminal justice system to meet the standards observed in Europe. If not, assistance should be offered by organizations such as the United Nations to those countries that are ready and determined to upgrade their justice system.

Secondly, technical assistance could be more efficient, if it offered the experience of countries that have been successful in reforming their justice systems in recent years and that have, at least to some extent, a similar past, for example, the Baltic States, Czech Republic, Hungary, Poland or Turkey. Experience regarding written law, law in action, judges, prosecutors, police officers, prison and probation officers and independent experts from those countries would be helpful. Central Asian countries would relate more readily to ideas, institutions and people from those countries.

## Conclusion

In the process of reforming criminal justice system the first step should be to change basic laws.

1. The role of the *Prokuratura* has to be changed. The Czech example is relevant here. The Constitution of Czech Republic of 1992 (Article 80) states simply,

1. The Public Prosecutor's office represents public prosecution in criminal proceedings; it also executes other tasks, if the law so stipulates.

2. The status and jurisdiction of the Public Prosecutor's office are defined by law.

2. Basic laws in those countries should leave the decision to appoint new judges to national councils of the judiciary. Heads of States could not appoint anyone without a motion from such a body. Presidents should be deprived of any right to dismiss a judge.

3. The institution of ombudsman should be introduced to Constitutions.

4. All countries of the region must declare recognition of the competence of the Human Rights Committee under Article 41 of the ICCPR.

The next step should be a substantial reform of professional training for criminal justice systems in the region: future judges, prosecutors, police investigators and prison officers on the one hand, and future defence lawyers on the other. The most efficient, best and cheapest way, according to European experience, is to set up a national school for law graduates wishing to practice as future judges and prosecutors. Because of the same history, very similar current situation and similarity of language (except Tajikistan) it would be reasonable to establish, with assistance of the international community one such school for all countries in the region. Students of that school would also be offered training in European countries. Similar schools should be set up for future defence lawyers, police investigators and for prison officers.

Finally, criminal justice systems in those countries should cooperate closely with the UN Committee against Torture, the UN special rapporteurs to those countries and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe.



# The criminal justice system of Bosnia and Herzegovina in the process of reform. Lessons learned from the application of United Nations standards and norms in crime prevention and criminal justice

Hajrija Sijercic-Colic LL.D., Docent, Law Faculty, University of Sarajevo

## Introduction

In the post-war transformation of the social, political, economic and legal systems of Bosnia and Herzegovina, the priority areas have been:

- Transformation of the inherited criminal justice system;
- Substantive and procedural reform of criminal legislation; and
- Reform of the law on the implementation of criminal sanctions.

The organization of the criminal justice system, the modernization of more traditional aspects of criminal legislation and the acceptance of new measures against crime are all receiving specific attention. There are numerous reasons why such reforms are taking place. Particularly noteworthy are the calls to apply international standards for the protection of fundamental human rights and freedoms in Bosnia and Herzegovina, as well as the emergence of new trends in combating modern types of organized crime

There have been significant changes in the criminal justice system in Bosnia and Herzegovina in recent years, especially since the signing of the Dayton Peace Agreement in November 1995. The basic goals of such changes are as follows:

- To combat growing corruption and organized crime more efficiently;
- To protect human rights and freedoms; and
- To harmonize criminal legislation in Bosnia and Herzegovina.

The document, "The Reform Plan Agreed on Between the Government of Bosnia and Herzegovina and the International Community", was accepted just before the elections in October 2002. The document emphasizes, inter alia, rule of law reforms, improving the efficiency of the criminal justice system with the aim of combating corruption and other forms of organized and financial crime, and the integration of the judicial system.

In the normative field, global conditions require new national legal provisions. In the normative and practical field, global action also requires new criminal justice and criminal legislation at the national level based on the international legal instruments. In domestic legislation, a balance must be struck between the need for effective preventive action against corruption and organized crime and the protection of human rights. In the context of the short post-war history of Bosnia and Herzegovina, bringing about such reforms has proved complicated. Legal reforms have sometimes produced solutions that are not based on sound legal principles. Another consequence has been to produce mechanisms that have not always been practicable. For a country in transition like Bosnia and Herzegovina, it is understandable that circumstances sometimes necessitate short-term solutions to legal problems. Today, such discussions and concerns are the focus of the current reform of the rule of law principle and of efforts against organized crime.



## **United Nations instruments and standards and their influence on the national system of criminal justice and criminal legislation. The example of Bosnia and Herzegovina**

United Nations instruments and standards related to international human rights law and combating crime are well developed and have an enormous influence on national (or domestic) criminal justice and criminal legislation. That influence is an integral part, on the one hand, of the internationalization and harmonization of the standards in protecting basic human rights and freedoms, and on the other hand, of taking steps to combat crime, especially mounting organized crime. United Nations standards and instruments for the development of criminal justice and crime prevention are transforming the image of national criminal justice systems and criminal legislation. Such transformations can be noted not only in all modern, developed countries but in other countries, in particular those that joined the circle of countries in transition in the 1990s.

As far as criminal justice and combating crime are concerned, of the numerous international conventions, declarations and recommendations, the following universal international documents can be singled out:

- The Declaration of Human Rights (1948);
- The International Covenant on Civil and Political Rights (1966) with additional protocols (1989);
- The International Covenant on Economic, Social and Cultural Rights (1966);
- The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955);
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- The Basic Principles on the Independence of the Judiciary (1985); The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985);
- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985);
- The Convention on the Rights of the Child (1990);
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (1990);
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990);
- The United Nations Standard Minimum Rules for Non-custodial Measures (1990),
- The United Nations Declaration against Corruption and Bribery in International Commercial Transactions (1996),
- The United Nations Convention against Transnational Organized Crime (2000.)

There are norms in those documents, inter alia, pertaining to:

- The right to personal integrity and human dignity;
- Prohibition of every type of discrimination and torture;
- Conditions regarding the deprivation of liberty or restriction of rights to freedom and safety of every individual;

- Right to fair trial for every individual;
- Presumption of innocence;
- Right to privacy and protection of residence and correspondence;
- Right to use legal remedies against the decision of a Government body;
- Prohibition of retrial for same offence;
- Fundamental principles regarding juvenile delinquents and juvenile rights protection (or "in the best interests of the child");
- Rights of convicted persons and treatment of the persons against whom the criminal sanctions are executed;
- Right to rehabilitation and compensation for persons who are unjustly convicted and unjustly deprived of liberty;
- Independent and autonomous judiciary;
- Efficient means of fighting against contemporary forms of organized crime; and
- Protection of rights of victims of crime, and especially right to compensation.

In this regard the intensive efforts made by United Nations institutions to seek cooperation in the field of criminal justice must be recalled, as must its efforts to promote legal understanding based on the interpretation of international standards in cases coming before the Human Rights Committee.

As a result of work carried out in incorporating universal international standards in criminal justice and crime prevention into the criminal justice and criminal legislation (substantive, procedural and enforcement) in Bosnia and Herzegovina, the following general observations may be made:

1. United Nations conventions and declarations are accepted by the Constitution of Bosnia and Herzegovina. Those international legal documents have become instruments for the protection of human rights and freedoms; they have the same legal force as constitutional provisions, they have priority over domestic law and they are being directly applied in the country.
2. There are no problems regarding the harmonization of this segment of the legal system of Bosnia and Herzegovina with international standards in human rights protection and criminal justice and the prevention of crime. The application of international standards in the national criminal justice system erases the borders between international and domestic legal instruments.
3. In their application, human rights, as recognized by the law, are no longer the internal issue of an individual country. The international human rights law and institutions for protection of those rights encroaches on the legal relations between the country and individual as the holder of those human rights. Thus, interventions into fundamental human rights and freedoms are allowed only if they are in accordance with the international provisions on human rights protection.

### **Reform of criminal justice and criminal legislation in Bosnia and Herzegovina in the last decade**

In the reform of criminal justice and criminal legislation in Bosnia and Herzegovina after 1992, the following phases can be noted:

#### **Phase 1.**

The criminal legislation of the former Yugoslavia became an integral part of criminal legislation

in Bosnia and Herzegovina through the process of "inheritance" of legal norms. The norms were supposed to be replaced within a certain period of time by the legal regulations of the new State.

### **Phase 2.**

New criminal legislation came into effect at the end of 1998 in the Federation of Bosnia and Herzegovina and, with some limited changes and supplemented by criminal legislation from the former Yugoslavia, in Republic Srpska during 1997. This phase of development of criminal legislation in Bosnia and Herzegovina was also marked by the passing of the Criminal Code and the Law on Criminal Procedure in the Brcko District during 2000.

### **Phase 3.**

The adoption of the Law on the Court of Bosnia and Herzegovina. The establishment of a State court calls for the adoption, inter alia, of criminal legislation at the State level. There have been intensive efforts in Bosnia and Herzegovina in the last two years to draft the Criminal Code, the Criminal Procedure Code, the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, the Law on the Prosecutor's Office and other laws popularly known as laws against corruption and organized crime. Simultaneously, the activities regarding the reform of criminal legislation (substantive, procedural and enforcement) in the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District were under way.

This phase was also marked by efforts to reform the criminal justice system in both the Federation of Bosnia and Herzegovina and Republika Srpska. Within these reforms, an effort was made to improve the role, significance and position of the main criminal justice subjects, as well as to implement basic instruments for efficient, independent and legal efforts against crime. It must be emphasized that, in the activities described, harmonization occurs on two levels. On the one hand, there is harmonization with international human rights standards and the rule of law and the experience of the efforts of other countries against organized crime; and, on the other hand, harmonization has occurred internally in Bosnia and Herzegovina itself, meaning that internal reforms of criminal justice and criminal legislation are based on the same principles and programmes as in the international sector.

### **Lessons learned from the application of United Nations standards and norms in crime prevention and criminal justice**

One of the basic issues of the reform of the legal system in Bosnia and Herzegovina concerns the changes to criminal justice and criminal legislation. Those changes result from requests in Bosnia and Herzegovina over a long period of time for:

- The principle of the rule of law to be strengthened;
- More efficient efforts against crime, especially corruption and other forms of organized crime;
- Establishment of uniform criminal legislation for the whole country; and
- Development of an efficient and independent judiciary.

Bosnia and Herzegovina is therefore entering a period of extensive change in the following areas.

In the area of criminal-legal protection, by expanding the range of criminal offences pertaining to the control and prevention of abuse of official authority, corruption, money-laundering and other forms of financial crime; by more severe sanctioning of criminal organizations and their members; by introducing the criminal responsibility of legal persons; and by confiscation of illegal proceeds.

**In crime-detection procedures and presentation of evidence in criminal cases;** by abandoning the concept of the investigative judge and entrusting the investigation to the prosecutor, as well as the police, customs, tax and other bodies obliged to conduct their actions in accordance with the laws of criminal procedure and under the supervision of the prosecutor. Special investigative measures used in many contemporary criminal procedure systems are also being incorporated. Such measures may be labelled repressive and encompass different investigative methods, secret surveillance and infiltration into criminal groups, for example electronic surveillance of telecommunications, surveillance and technical recording of premises, secret observation of the activity and communications of individuals and buildings, use of informants, undercover investigators and secret agents, simulated purchase of items and simulated bribery, controlled delivery of objects, mail censorship and inspection of computer databases and systems.

The goal of such measures is to learn about organized crime structures and methods so that an appropriate response can be made and appropriate criminal investigations instituted. Among such investigative provisions are those pertaining to seizure of property to prevent their use or disposal during criminal proceedings. The function of the judge at this stage of criminal proceedings is vital for the application of coercive procedural measures, for example, ordering custody and restricting the basic rights and freedoms of the suspect when carrying out search and seizure operations or while undertaking covert investigative measures.

**In the area of intervention into basic human rights and freedoms,** because combating crime, especially organized crime, often requires the restriction of basic human rights and freedoms. In that respect, criminal legislation contains many provisions whose goal is to improve the position of the defendant in criminal proceedings, with full respect of guaranteed rights, particularly the right to a defence and prompt trial. It should be emphasized here that criminal legislation clearly envisages the presumption of innocence, deprivation of liberty and pretrial custody, limitation of the right to privacy and humane treatment during the criminal proceedings.

**In the area of education and training of the criminal justice agencies.** Law enforcement officers, prosecutors, judges, customs and tax officials, as well as defence attorneys must be educated through special programmes in order for crime to be reduced and a more efficient criminal justice system established. In that context, centres for the education of judges and prosecutors have been established in Bosnia and Herzegovina, and certain international institutions are developing programmes for education of other participants in the criminal justice system.

## **Conclusion**

For everyone dealing with criminal justice and criminal legislation nowadays in Bosnia and Herzegovina, the understanding of criminal-legal issues is, at the same time, a discussion of the legal existence of Bosnia and Herzegovina. Those discussions frequently focus on the increase in crime, especially those forms of crime that are dangerous to any social and State community, even the most developed. The new approach to crime prevention and its negative consequences raises the complex question of balance between the efficiency of criminal prosecution and the protection of human rights and freedoms. The conclusion that may be drawn is that the reform process is ongoing within the standards that are, among others, envisaged in United Nations documents. Thus, all the aforementioned changes follow certain generally accepted principles that reaffirm the rule of law as the foundation of civilized and democratic society and determine the legal framework that protects citizens against unauthorized actions.

Such optimism confirms the view that criminal justice and criminal legislation reflect how far material, moral and civilized values have developed in certain societies. The influence of the generally accepted principles of civilized nations and law-abiding society in the area of crime prevention and respect for human rights must also be visible in the criminal justice and criminal legislation of Bosnia and Herzegovina.



# The impact of United Nations crime prevention and criminal justice standards on domestic legislation and criminal justice operations

Professor Dirk van Zyl Smit, Professor of Criminology, University of Cape Town, South Africa and Professor of Comparative and International Penal Law, University of Nottingham, United Kingdom

## Introduction

How do United Nations crime prevention and criminal justice standards come to impact on domestic legislation and criminal justice operations? There is no easy answer in law or in practice to this question. The primary difficulty is that the legal status of the various standards is uncertain. A narrowly focused lawyer might even be tempted to question whether they contain rules that bind national legislators and thus influence criminal justice operations.

The answer, this paper argues, is more nuanced. Some rules in some standards do approach the status of customary international law but that is not the only way in which they may have impact. United Nations criminal justice standards may impact on national law by being used to interpret more general rules that do have binding international force. States may then be compelled by their international obligations to translate these rules directly into domestic legislation. Moreover, the impact may come about in ways other than through the direct line of binding rules. Expressed differently, policy makers may be persuaded rather than legally compelled to follow the standards set in these instruments.

Having sketched these processes the paper goes on to consider how they can best be stimulated. It provides a number of suggestions of how this can be done outside the formal process of reporting.

Finally, the paper notes that the impact and influence is not unidirectional. In some instances national law may be more progressive than the international standards. There is the paradoxical danger that, if the United Nations standards are too widely accepted, they may be regarded as the norm. Sight may be lost of the fact that they set *minimum* standards and that the aspiration should be to better them. How can this danger be avoided and the desired goal achieved?

## The status of the standards in international law

Penal reformers have sometimes expressed the wish that United Nations criminal justice standards should be cast directly into international conventions negotiated in the form of multinational treaties. Should there not, for example, be a 'Convention on Minimum Standards for the Treatment of Prisoners'? The reason for this wish is obvious. If States undertake to enter into such treaties they are bound by them in international law and the impact on national law and practice is likely to be direct: ideally it will be cast in national legislation. Unfortunately, in most areas this is unlikely to happen soon, not least because the penal policy is seen as the preserve of national governments (*Bernard 1994; American Bar Association 1974; Van Zyl Smit 1995*).

In some instances, however, United Nations criminal justice standards can be incorporated in international treaties by indirect reference. A dramatic example of this is Article 18 of the Inter-American Convention on Forced Disappearance of Persons, which provides that by means of ratification or accession to the Convention the States Parties adopt the United Nations Standard Minimum Rules for the Treatment of Prisoners as an integral part of their domestic law. Although of course the Convention does not purport to be binding law outside the Americas, it is interesting that the European Court of Human Rights (*Kurt v Turkey 1999*) has referred to this provision of the Convention.

There is also the possibility that long-established standards will reach the status of customary international law. Some of the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners provide the best example of this. Thus, while a distinguished commentator such as Sir Nigel Rodley recognizes that as a whole these Rules lack inherent legal status, he goes on to explain that "specific rules may also reflect legal obligations" (Rodley 1999, p. 280). This is particularly true of rules that give content to wider international prohibitions that do have the status of customary international law, such as the prohibition on torture which is supplemented by Standard Minimum Rule 31 outlawing detention in a dark cell as a disciplinary punishment.

Supplementation also often takes place when the United Nations criminal justice standards are used to interpret international instruments that do have binding international force. So, for example, the United Nations Standard Minimum Rules for the Treatment of Prisoners have been used on numerous occasions by the Human Rights Committee to interpret the provisions of the International Covenant on Civil and Political Rights that deal with torture and cruel, inhuman and degrading treatment or punishment in order to apply the Rules to conditions of detention. (See Rodley 1999, pp. 278-279; Chung 2000, pp. 2377-2381 and the sources cited there.)

In more recent times an equivalent supplementary role has been played in interpreting the criminal justice related provisions of the Declaration of the Rights of the Child by standards such as the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines'). It is important to note that this interpretative role might be mediated through regional human rights instruments but that it could still impact directly on national legislation (Van Bueren 1998)

A dramatic example of such mediation is in the case of *V. v United Kingdom* (2000) in which the European Court of Human Rights was asked to apply various provisions of the European Convention on Human Rights to the procedures followed in the United Kingdom for the trial and sentence to life imprisonment of two 10 year-old boys convicted of the murder of a toddler. In its judgment the European Court quoted the Beijing Rules at some length. Although the European Court noted that these Rules are not binding at international law, it nevertheless used them to interpret sections 37 and 40 of the United Nations Convention on the Rights of the Child to which the United Kingdom is a party. The application of the European Convention on Human Rights was in turn to be informed by the Convention on the Rights of the Child. The outcome of the case was that the United Kingdom was held to be in breach of Article 6 of the European Convention, both in respect of the fairness of the trial and of the manner of determining the minimum period of indeterminate sentence imposed on him that the offender would actually serve. The direct application was that domestic United Kingdom legislation was amended as a result of the decision of the European Court (Section 82 of the Powers of the Criminal Courts (Sentencing) Act 2000). This aspect of English criminal justice now conforms more closely to the standards of the Beijing rules.

### **The standards in national jurisprudence**

Such a clear line cannot always be drawn from an international instrument through an international court to an application in domestic legislation. Often the process is less direct, but not necessarily less effective. Thus, for example, a national court may invoke one of the United Nations criminal justice standards to support a particular interpretation of a national constitution or a rule of domestic law. That too will have an impact, for even if it does not lead necessarily to legislation it will inevitably mean that the relevant United Nations standard has increased impact on criminal justice operations in that country.

A recent example from the United Kingdom is in the case of *Procurator Fiscal Linlithgow v Watson and another, Her Majesty's Advocate v Kane* (2002) where the Privy Council held that, in deciding whether there had been a breach of the reasonable time requirement in a case

involving a juveniles, regard should be paid to international instruments affecting children, among them the United Nations Convention on the Rights of the Child and the Beijing Rules. It noted that Article 40(2)(b)(iii) of the Convention entitles every child accused of crime to trial "without delay" and that Rule 20.1 of the Beijing Rules requires that any criminal case against a child shall from the outset be handled expeditiously, without any unnecessary delay. The Privy Council found that these internationally agreed statements of good practice should colour the approach of the courts to the reasonable time requirement when applied to the child accused (at para. 23). On this basis the Privy Council, in one of the cases before it, overturned the ruling of a Scottish court that there had not been an unreasonable delay.

Further examples of the United Nations criminal justice standards being used in ways that directly affect the operation of national criminal justice systems can be recorded from around the world: in Canada the Supreme Court has ruled that it is an unconstitutional breach of privacy for the authorities routinely to inform school authorities of the details of juveniles that are to be tried, and used the Beijing Rules to support this conclusion. (*re F. N, 2000*)

In South Africa the Cape Provincial Division of the High Court has held that in interpreting the impact of the post-1994 constitutional dispensation on the determination of appropriate sentences for youthful offenders, regard must be had to international instruments (*S v Kwalase, 2000*). In order to interpret Section 28(1)(g) of the Constitution of the Republic of South Africa Act 108 of 1996, which provides that every child has the right "not to be detained except as a measure of last resort" and then only for "the shortest appropriate period of time" Judge van Heerden followed a similar course of reasoning to the European Court of Human Rights in *V. South Africa*, she explained, had ratified the United Nations Convention on the Rights of the Child and, by so doing, assumed an international legal obligation to put into effect in its domestic law the provisions of this Convention. Moreover, she noted, the Committee on the Rights of the Child (the supervisory body provided for by the Convention on the Rights of the Child for the international implementation of its provisions) had stated categorically that the provisions of the Convention relating to juvenile justice had to be considered in conjunction with other relevant international instruments. Judge van Heerden explained further:

"The approach to the treatment of juvenile offenders set out in s. 28(1) (g) of the South African Constitution and in the above-mentioned articles of the CRC is echoed in, *inter alia*, the Beijing Rules. For the purposes of the case presently under review, the provisions of rules 5 and 16 are particularly significant. In terms of rule 5(1), the aims of a juvenile justice system are to "emphasize the wellbeing of the juvenile and (to) ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence." Rule 16 requires that, in all cases except those involving minor offences, "the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated (prior to sentencing) so as to facilitate judicious adjudication of the case by the competent authority." The Commentary to this rule indicates that these so-called 'social enquiry reports' (i.e. what would be known as a pre-sentence report in South Africa) are 'an indispensable aid' in legal proceedings involving juveniles....

Section 39(1) of the Constitution provides that a court, when interpreting the Bill of Rights (Chapter 2 of the Constitution), '(b) must consider international law; and (c) may consider foreign law'. Thus, the provisions of the South African Constitution governing the treatment of children in conflict with the penal law ... should be interpreted having due regard to the provisions of the above-mentioned international instruments relating to juvenile justice. The *judicial approach towards the sentencing of juvenile offenders must therefore be reappraised and developed in order to promote an individualised response which is not only in proportion to the nature and gravity of the offence and the needs of society, but which is also appropriate to the needs and interests of the juvenile offender. If at all possible, the sentencing judicial officer must structure the punishment in such a way as to promote the reintegration of the juvenile concerned into his or her family and community.*" (*S v Kwalase 2000*, pp. 139c-e and f-g Emphasis in the original).



Finally, it is worth noting that United Nations criminal justice standards may even be applied by national courts in countries that have not adopted, or have only adopted with reservations, the international conventions that are often used to give legal force to the United Nations standards. Thus the United States of America acceded to the International Covenant on Civil and Political Rights only in 1992, and then with the reservation that the prohibition on "cruel, inhuman and degrading treatment or punishment" in Article 7 of the Convention was to be interpreted in the same way as the prohibition on "cruel and unusual punishment" in the US Constitution" (Chung 2000 pp. 2376). Nevertheless, United States courts, both prior to the American accession to the Convention and after it (for example, *Lareau v Manson* 1980 pp.1192-1193; *Williams v Coughlin* 1995), have continued to refer to the Standard Minimum Rules on the Treatment of Prisoners as one of the sources of the evolving standards of decency against which an evaluation should be made of whether prison conditions are "cruel and unusual" and therefore in contravention of the United States Constitution. Where the link of the national jurisprudence to the United Nations criminal justice standards is as indirect as in the United States the influence of the United Nations standards is likely to be reduced significantly. Nevertheless, it cannot be ignored entirely.

### Other influences

One of the indirect ways in which the application of United Nations criminal justice standards can be brought within the ambit of national legislation is if they form part of the national discourse about criminal justice legislation. In this respect academic commentators in general and law reform agencies in particular have important roles to play.

Academic commentaries that deal directly with the various standards are commonplace. They tend to cover the full range of United Nations criminal justice standards. Even the relatively new standards, such as those dealing with non-custodial penalties or more recently general pronouncements on restorative justice are the subject of intensive critiques and speculation about their possible application. (See among many examples, on non-custodial sanctions Van Zyl Smit 1993; Morgenstern, 2002; and on restorative justice, McCartney 2001.)

Of particular practical significance are those commentaries that discuss the United Nations standards and their related regional equivalents in the context of the individual provisions of national legislation. A good example of this is the commentary by Grunau and Tiesler (1982) that reproduced provisions of the German Prison Act and directly alongside it the equivalent provisions of the (European) prison standards before proceeding to comment on them. A similar, if less systematic, technique is used in the leading English textbook, *Prison Law* by Livingstone, Owen and MacDonald (2003). The authors comment generally on the whole framework of United Nations criminal justice standards that deal with prisons and then go on to record that they will refer to them at various points of their text. In this subtle way the standards become part of the national prison law discourse.

The application of United Nations criminal justice standards is further strengthened if they are routinely consulted by national law reform commissions. Examples of where this has been done are legion. The extent to which this is done depends on the extent to which these international standards are regarded as an acceptable point of departure. As a general rule, it seems that countries that are keen to establish themselves as international 'good citizens' after a period of undemocratic rule and isolation from the international community may be particularly keen to have national legislation that conforms directly to the current international standards. This tendency is reinforced where the writings of local scholars and Judgements of the national courts consistently refer to United Nations criminal justice standards. South Africa is a particularly good example of these tendencies. A number of commentators have remarked on how closely proposals for juvenile justice reform put forward by the South African Law Commission have been based on international best practices derived from those standards (Skelton 2002; Sloth-Nielsen 2001. For further examples in respect of juvenile justice in Australia, see MacDonald n.d; for Hong Kong, see the Hong Kong Law Reform Commission, 2000.)

Recent initiatives to reform prison law in a range of African countries, Uganda and Malawi are prominent examples, have also been informed by attempts to meet international standards. The impetus to do so has been increased by the fact that the standards are constantly referred to in regional prison reform initiatives. This was the case, for example, at the 1996 Pan-African meeting that adopted the Kampala Declaration of Prison Conditions in Africa. (Penal Reform International, 1997). One of the fruits of the Kampala meeting was that there is now in Africa a Special Rapporteur on Prisons and Conditions of Detention operating under the auspices of the African Charter of Human and Peoples' Rights. Her most recent report for Mozambique recommended explicitly that the national prison law of that country be reformed in accordance with international standards (African Commission on Human and People's Rights 2001)

### **What is to be done?**

The question that remains is, what can best be done to ensure that United Nations criminal justice standards enjoy the widest application? In attempting to answer this question I will not consider directly the formal process of reporting on the application of the various standards. This is not because I regard it as an insignificant tool. On the contrary, a system of reporting and the other steps taken by the United Nations and its various organs are essential components of any attempt to increase awareness of, and compliance with, the standards. I assume that other papers will deal fully with this aspect and also comment directly on the comprehensive account of steps taken and envisaged in the Report of the Secretary General on the use and application of United Nations standards and norms, especially concerning juvenile justice and penal reform ( Report to the Eleventh Session of Commission on Crime Prevention and Criminal Justice, Vienna, 16-25 April 2002, E/CN.15/2002/3)

What is required is further thought on how the processes that I have described, where standards are translated into national law, either through their recognition in international law as formally binding or through indirect processes at the national level, are best encouraged. In this regard the United Nations Office on Drugs and Crime through the Center for International Crime Prevention and other United Nations bodies can play an important part. I would emphasize a few possible steps.

First, as I hope I have demonstrated, the substantive law matters, for it can make a significant difference to real conditions. Therefore the agencies should do what they can to see that United Nations criminal justice standards are continually propagated within the framework of international human rights law. This can happen at various levels. In particular it is important to ensure that these ideas are constantly drawn to the attention of those who develop regional standards and the instruments to implement them, as the "trickle down" effect from there into national jurisdictions is strong. The legal initiative should also encourage lawyers, both those in practice who need material when they argue their cases and the academic lawyers who shape human rights law through their writings, to have regard to United Nations criminal justice standards.

Secondly, in initiatives aimed at national Governments by United Nations organs and other bodies that provide assistance in the criminal justice area there should be an awareness that there has to be a mix between the ideals contained in the standards and technical expertise. Precise legislative drafting is a crucial part of converting standards into enforceable rules.

New laws, however, are not enough. What is required also is the humility to recognize the real operational concerns of those who will have to manage the new or revamped criminal justice agencies. Planning also has to make a realistic assessment of the financial costs of implementing international standards (Sloth-Nielsen, 2003). Much more can be done in developing techniques for making such assessments.

## Postscript: a cautionary word

A meeting designed to consider the application of the United Nations criminal justice standards and ways of improving their implementation should pause to consider whether their application is desirable in all circumstances. This may be a strange note to strike, but the story that prison authorities would crowd three prisoners into a single cell because Rule 9(2) of the SMR forbade them from housing two prisoners in a single cell is not apocryphal, as I can testify from my experiences in South Africa in the early 1980s.

Sometimes, however, the use of international standards for non-progressive purposes is more subtle: in late 2002 the Supreme Court of Canada decided by a narrow majority that a law preventing prisoners sentenced to terms of two years or more from voting was unconstitutional (*Sauvé v Canada*, 2002). The Court did so because it found that the right to vote, which is protected in general terms by the Canadian Charter of Rights, was so fundamental to the constitutional order of a democracy like Canada that the law recently passed by the elected parliament could not be allowed to stand. In this judgment reference is made to the manual, *Making Standards Work* (1995), which is supposed to reflect a progressive interpretation of international best prison practice. What is extraordinary though, is that only the judge who spoke for the minority of the court, who would have wished to uphold the law denying prisoners the right to vote, referred to the manual! When one follows up the reference made by the Court one finds that the judgment refers to a passage where the manual distinguishes between retained rights of prisoners and those that may be limited. The right to vote is included in the latter category. As one of those who were originally responsible for drafting the manual and who had high hopes that it would play a progressive role in propagating best practice based on the United Nations criminal justice standards, I realize now that there is a lesson to be learnt. It is that one should seek always to set out also what is desirable rather than simply sticking to a minimum standard derived from existing practice.

In sum, the application of United Nations criminal justice standards can expand only if an understanding of the process by which these standards are propagated is combined with an active campaign to increase their use. Such a campaign must be informed, however, by an understanding that these standards must continue to evolve if they are to be a guide to best practice in the future.

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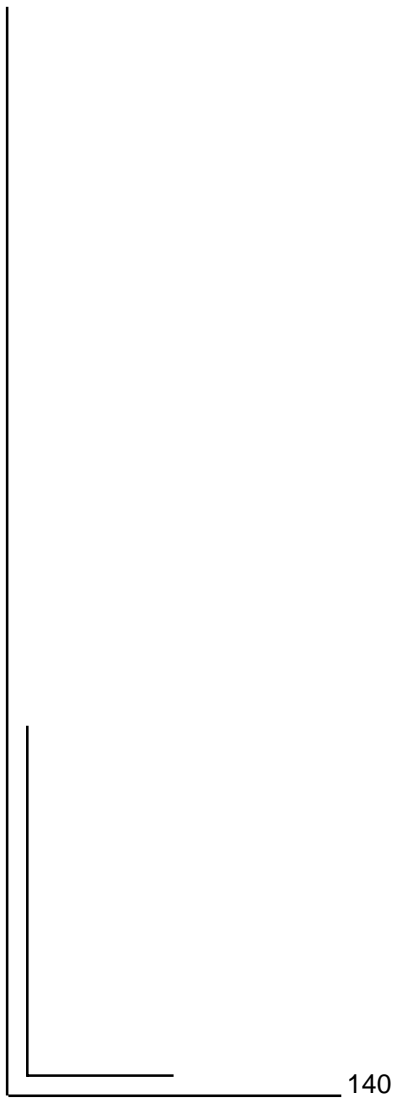
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## An overview on the use and application of United Nations standards and norms in the first cycle.

Takashi Watanabe, former Director of UNAFEI; Notary, Ueno Notary Office

In almost all of the countries in the world, crime has had a serious impact on the lives of citizens, on the economy, and on political life. The phenomenon of crime may be attributable to the rapid growth of economy, transportation and communication technology on one hand, and to the expansion of poverty, dissatisfaction with social mechanisms and lack of law-abiding behaviour on the other. Countermeasures for crime today have to be focused, inter alia, on building and enhancing truly effective criminal justice systems or mechanisms to prevent and control crime. Effective criminal justice systems can be attained in two ways: by preparing effective laws to combat crime and establishing the financial resources and manpower to enforce them, and by building public confidence in the criminal justice system itself.

Today, however, no single nation can focus solely on the improvement of its own criminal justice system. International cooperation in the field has become indispensable in many ways, and prevention and control of crime cannot be attained within a single set of territorial boundaries. The United Nations and its systems have contributed greatly to the prevention and control of crime through elaborating and implementing various policies in the form of conventions and other documents. The United Nations standards and norms are clearly one of such outcomes and they will continue to expand their influence in the criminal justice system of many jurisdictions. The standards and norms need to be observed and applied by all Member States even though they are not a legally binding mechanism.

The measurement and evaluation of the degree of use and application of the standards and norms, however, seem to have remained unchanged in spite of the initiation of the reporting mechanism. That has been for various reasons. First, the composition and style of the questionnaire directed to Member States, although carefully designed and detailed, has not met the expectations of many Member States and criminal justice practitioners. Some questions are too broad and others require unnecessarily detailed statistics, for example the question on how many persons there are per square metre in prison cells. The latter type of question may often cast doubt on the intention of the questionnaire itself and thus result in no response. It is also difficult, in such instances, to collect the data required.

Reporting to the questionnaire on time relies very much on how effectively national correspondents in each Member State collect the necessary information and fill in the relevant forms. Often, the importance of national correspondents is neglected partly because the people concerned do not occupy an influential position in the criminal justice system and partly because they do not stay in their posts for very long or do not adequately brief their successors. Malfunction and discontinuation of the role of national correspondents may stem from lack of manpower and budget, as well as ineffective coordination among criminal justice institutions.

It must be recognized, however, that lack of confidence in the importance of the standards and norms and of the function of UN system in criminal justice administration may be another of the reasons for neglecting the questionnaire. Though the diversity and heterogeneity among criminal justice systems should not be exaggerated as an excuse for non-compliance with the UN standards and norms, over-expectations may also lead to the loss of confidence in the UN criminal justice programmes, including the standards and norms. The UN and Member States should endeavour to build confidence in the role of the standards and norms in the criminal justice system in each jurisdiction.

As an example of the possible ways in which that might be achieved, the national correspondent in Japan is appointed by the Minister of Justice and is usually appointed as a section director of the Criminal Affairs Bureau. He or she coordinates with the National Police Agency, courts, other law enforcement agencies, prison authorities, probation offices and bar associations, and is supported by numerous staff in order to assemble the necessary data, research the detailed information published in Government documents as well as to convene meetings with Government agencies. The analysis and description of the status of use and application of the standards and norms are always passed on comprehensively to a successor so that the continuity of the survey is not lost.

One means of reinforcing of the role of national correspondent in Japan is through legislation giving the correspondent official status, providing awareness of the significance of the role, not only to the criminal justice system but also to other sectors of society. The legislation empowers the national correspondent to collect data, coordinate with other agencies and assess the use and application situation. The UN can contribute to this respect. The UN may contact national correspondents periodically through the regional advisers to support their task and promote cooperation among national correspondents in the same regions. The UN may also help national correspondents by forming contact points or contact persons from experts, universities, commissions, attendants, NGOs and regional institutes to coordinate with and assist national correspondents.

Another way of revitalizing the role of correspondents may lie in new types of reporting or the reporter. As reporting has to be official and is the responsibility of the Government, national correspondents make the final decisions on the domestic use and application status of the standards and norms as a whole or individually. Notwithstanding the importance of the official status of the national correspondents, the information and data on the functions of the criminal justice system can also be obtained through publications, media and various researches by the public and private sectors. Even the most difficult task of evaluation of the use and application of the standards and norms could also be made by experts, universities, NGOs and regional institutes as long as careful consideration is given to ensuring that the evaluation is fair and impartial, and based on objective data and reliable information.

Many of the UN standards and norms are far from ideal or are not legally required, and the degree of their application varies from one jurisdiction to another. The UN should take appropriate measures and strategies to ensure their wider use and application. Non-application or non-implementation is often the outcome of the lack of knowledge of the standards and norms themselves. Understanding how to disseminate and promulgate them are vital for their use and application.

In some nations, even domestic laws are not always available to criminal justice personnel, much less to the public because of the lack of resources available for document publication. In other countries, the UN standards and norms are rarely published or translated into the local language, again because of the lack of resources as well as a lack of motivation to translate. Ideally all criminal justice personnel should have a copy of the standards and norms pertinent to their duties, but this is possible only in very limited areas or for specific functions.

The Japanese Ministry of Justice, has made efforts to inform various sectors of the existence and contents of the UN standards and norms in the Japanese language, although no national budget has been allocated for that purpose. Official training and seminar courses for criminal justice personnel are not yet fully utilized for the promulgation of the standards because of limited resources, but lecturers and course officials, being aware of the importance of the dissemination of the standards and norms, make mention of their applications in their courses.

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) which has conducted various training and seminar courses on crime prevention and criminal justice for more than 5,000 criminal justice personnel in the region has

also stressed the importance of the UN standards and norms over a long period of time. It has selected the issue of the use and application of the standards in many courses within the institute and, in cooperation with the Asia Crime Prevention Foundation, disseminates the Compendiums to the course participants and to seminar participants in other countries in the region. It also translates the whole or provides the gist of some standards in its domestic language periodicals to draw attention to them.

Awareness of the importance of the UN standards and norms is essential, all the more so because they are not legally binding and having no direct effects on the duties of criminal justice personnel. Thus, motivation for accessing the standards may be low. The UN system should endeavour to obtain and allocate financial resources for dissemination of the standards and norms, including the utilization of the Criminal Justice Fund. It should also translate and publish some of the most fundamental standards and norms in the small-sized booklets in the necessary languages.

As training and seminars for criminal justice personnel are indispensable to elevate awareness, the UN should encourage Member States, NGOs and various institutions to hold and assist training courses and seminars. UNAFEI, as mentioned, has utilized its regular training courses and seminars to familiarize participants with the UN standards and norms. As the UN has continuously sought to form new types of standards and norms in various criminal justice fields to combat the rising volume of crime and to protect new rights and interests, their number has grown. Indeed, the massive volume of the standards and norms is, in itself, an obstacle to their promotion.

In most of its training courses and seminars in the last few years, UNAFEI has had to focus mainly on such immediate issues as countermeasures against organized crime, transnational crime, computer crime and international cooperation to enforce them. It cannot afford the time to concentrate on the traditional human rights standards and norms. If new standards and norms continue to be elaborated in future, training courses and seminars conducted by regional institutes may not be able to cover all areas. All interested organs and various institutions, including universities and NGOs, need to intensify their efforts to realize the application of the UN standards and norms through training courses and seminars.

Obstacles to the use and application of the UN standards and norms lie in legislation, practices and lack of resources. The primary obstacle is legislation; in some cases there is simply a lack of legislation to implement the UN standards and norms and, in other cases, legislation needs to be reformed or amended so as to conform to them. As often asserted, use and application of the UN standards and norms should correspond to the different conditions in each nation and cannot simply alienate national laws and regulations. As most criminal justice legislation is deeply rooted in practices based on the economic, social and cultural conditions and traditions of each nation, new legislation or substantial reform could meet with opposition from criminal justice organizations, various other entities and the political world.

What makes the issue more complicated is that opposition against or negative attitudes towards reform are often not rationally based but may be inexplicable or even unreasonable. In Japan, for instance, to reform a 90-year-old law, the Ministry of Justice has drafted a penal institution law that aims to make a distinction between prisoners awaiting trial and those convicted; other goals of the draft legislation are the appropriate management and administration of penal institutions, and fully fledged protection of the human rights of prisoners. The legislators, for a long period, have not recognized the importance of the reform, nor have they tried to pass the draft legislation, mainly under the influence of political interests. Ignorance, indifference and prejudice on the part of legislators or legislative bodies in criminal justice reform may jeopardize all the efforts of the UN. The Commission or Crime Congress need to act on these issues.

Lack of resources for new facilities and manpower to tackle the use and application of the UN standards and norms is a chronic problem in many countries. As the resources needed even



in a single field of criminal justice system are enormous, incessant efforts should be made by the authorities both to acquire national budgetary resources and to invite technical assistance for the alleviation of poverty for which the UN has set its priority in 21st century. In the Asian region almost all countries, except a few such as the Republic of Korea that has succeeded in building new penal institutions, suffer from prison overcrowding.

Some rules in the UN standards and norms will be used and applied when traditional practices can be changed and reformed or new mechanisms can be introduced. In such areas, training of personnel and provision of technical advice on tangible problems will help greatly to enhance their use and application. The UN can contribute tremendously by adopting a mechanism under which special coordinators or advisers provide technical assistance to Member States needing an insight into ways of adapting their own internal practices to conform to the standards and norms.

After the first cycle of reporting and evaluation of the standards and norms has ended, the UN and Member States must consider the next step to be taken in using and applying the standards. A cross-sectoral approach to the standards and norms should be carefully designed. If the same type of questionnaire is used that is used at present, it will be ineffective. The items and data to be collected should be limited in numbers but broadened in depth. The standards and norms concerning human rights, conduct of public officials and the effective administration of criminal justice systems should be examined continuously as the first cycle has yet to attain its original purpose.

## Prison overcrowding as an obstacle to the application of the United Nations standards on penitentiary systems

Elias Carranza, Director, ILANUD

Prisons and penitentiary conditions have been a permanent topic of major concern in the United Nations throughout its more than half a century of existence, as it has made efforts to procure more moderate use of imprisonment and prison conditions that respect the minimum standards of human rights, within a framework of effective and fair criminal justice systems. Recently, the General Assembly adopted two important instruments that make significant reference to the current penitentiary conditions. One of them is the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the General Assembly on December 4th, 2000. In its paragraph 26 the Member States state: "We commit ourselves to according priority to containing the growth and overcrowding of pre-trial and detention prison populations, as appropriate, by promoting safe and effective alternatives to incarceration". The other instrument, adopted on the 20th Session of December 21st, 2001, is entitled Action Plan for the Application of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century. In paragraph X, the instrument proposes measures regarding prison overcrowding and secure and effective alternatives to imprisonment.

Both documents from the General Assembly of the United Nations refer to penitentiary conditions in the countries of world in general, both in developed and developing countries, without any distinction between regions, since the problem of prison overcrowding affects, to a greater or lesser extent, almost all countries. From that point of view, it has been interpreted as one of the undesired or negative social effects of globalization. Nevertheless, comparatively speaking, the penitentiary situation in developing countries with middle and low income, among them those of Latin America, is much more serious than in developed countries (or "high income", following the new concepts laid down by the World Bank). That difference, which is present in other areas, is very much related, though not exclusively, to the different economic situations of different countries.

The United Nations texts that have been quoted refer to prison overcrowding and persons deprived of liberty awaiting trial. The best way of presenting an overview of the situation is by using tables. We thank in advance the Governments of all those countries that have made the information available and helped us to analyse it by combining it with the population data published periodically by the Latin American Demographic Center (CELADE).

Table 1 (see next page) gives information on almost all Latin American and Caribbean countries, 26 of them, all of which at the time the information was supplied had overpopulated penitentiary systems, with the number of prisoners surpassing installed capacity. The only exception is Dominica which had capacity for one more person.

It is important to take note that in 19 of the 25 countries with prison overpopulation, the overcrowding situation is critical, presenting density equal or superior to 120 per cent. The parameters used were those established by the European Union that consider "critical overcrowding" to occur when the penitentiary density is 120 per cent or more. (COMITE 1999: 50)

It is also important to refer to other aspects of the tables. What we are seeing are national overcrowding averages. Once particular provinces, or states within a country, or specific prison

The following table shows an overview of the prison overcrowding situation:

Table 1. Prison overcrowding in Latin America (1999 - 2002)

	CAPACITY	POPULATION	EXCESS	DENSITY
<b>LATIN AMERICA</b>				
Bolivia (1999)	4.959	8.057	3.098	162
Brazil (2002)	181.865	240.107	58.242	132
Colombia (2001)	39.591	54.034	14.443	136
Costa Rica (2002)	6.032	6.613	581	110
Chile (2001)	23.855	33.635	9.780	141
Ecuador (2001)	6.831	7.859	1.028	115
El Salvador (2002)	6.137	10.278	4.141	167
Guatemala (1999)	7.233	8.169	936	113
Haiti (1999)	2.000	3.694	1.694	185
Honduras (1999)	5.235	10.938	5.703	209
Mexico (2000)	119.972	151.662	31.690	126
Nicaragua (2002)	5.348	5.555	207	104
Panama (2002)	7.036	9.607	2.571	137
Paraguay (1999)	2.707	4.088	1.381	151
Peru (2002)	19.949	27.493	7.544	138
Rep. Dom. (1999)	4.460	11.416	6.956	256
Uruguay (2001)	3.386	5.107	1.721	151
Venezuela (2000)	20.449	23.147	2.698	113
<b>THE CARIBBEAN</b>				
Belize (1999)	500	1.097	597	219
Dominica (1999)	208	207	-1	100
Jamaica (1999)	2.816	3.488	672	124
St. Kitts & Nevis (1999)	105	135	30	129
Santa Lucia (1999)	134	373	239	278
San Vincent and Grenadines (1999)	300	405	105	135
Suriname (1999)	1.188	1.933	745	163
Trinidad and Tobago (1999)	4.348	4.864	516	112

**Notes:** In some countries the numbers in this chart are not the same as those in the charts with rates and total figures of penitentiary population, since the units of analysis used by the authorities in one and other case were different ones. In the latter cases, a total number was achieved by including persons deprived of liberty in provinces and police stations. In the present table only the persons deprived of liberty in the penitentiary system are included, excluding those in programs of alternative sanctions or community service.

**Bolivia:** Dir.Gral. de Régimen Penitenciario del Ministerio de Gobierno. Datos a junio de 1999 correspondientes a todo el país.

**Brazil:** Dep. Penitenciario Nacional del Min. de Justicia. Datos a mayo 2002, de todo el país.

**Colombia:** Instituto Nacional Penitenciario y Carcelario INPEC del Ministerio de Justicia y del Derecho. Datos al 31 de mayo 2001. Costa Rica: Dir. Gral. de Adaptación Social. Datos a septiembre 30 del 2002. Incluye solo el nivel institucional.

**Chile:** Gendarmería de Chile. Datos de todo el país, a junio 30 del 2002. Incluye menores con discernimiento entre 16 y 18 años.

**Ecuador:** Dir. Nac. de Rehab. Soc. del Min. de Gobierno. Datos al 30 de junio 2001. No incluye menores de 18 años.

**El Salvador:** Dir. Gral. de Centros Penales del Min. de Gobernación. Datos de todo el país al 8/VII/02. El reporte oficial indica 7.137 cupos, pero hay una unidad de 1.000 cupos inutilizada por mal estado.

**Guatemala:** Dir.Gral. del Sistema Penitenciario. Datos al 30 de junio 1999, de todo el país.

**Haiti:** Info. de UNDP-HAITI Proyecto HAI/99/004 "Penitentiary Reform - Phase II". Datos de todo el país. Incluye menores de 16 años y más.

**Honduras:** Dir.Gral. de Establecimientos Penales, Despacho de Gobernación y Justicia. Datos a junio de 1999. No incluye personas menores de 18. México: Info. de la Dir.Gral. de Prev. y Readaptación Social de la Secr. de Gobernación, a junio de cada año, de todo el país. No incluye menores de 18 años.

**Nicaragua:** Info. de la Dir. Gral. del Ss. Penitenciario Nacional, Min. de Gobernación, correspondiente a todo el país, al 30 de junio de cada año. Incluye menores de 18 años y un cálculo de personas alojadas en comisarías policiales a partir de información dada por la Policía Nacional.

**Panamá:** Años 1999 y anteriores, info. del Comité Nacional de Análisis de Estadística Criminal del Min. de Gob. y Justicia; años 2000 y posteriores, info. de la Dir. Gral. Del Sistema Penitenciario del mismo ministerio, correspondiente a todo el país.

**Paraguay:** Info. de la Dir. Nacional de Política Criminal del Min. Público, de todo el país. Incluye menores de 18 años. No incluye personas alojadas en policía.

**Perú:** Info. del Inst. Nacional Penitenciario del Min. de Justicia, al 30 de junio de cada año, correspondiente a todo el país. No incluye menores de 18 años.

**República Dominicana:** Info. de la Comisión para la Definición, Ejecución y Supervisión de la Pol. Penitenciaria Nacional, para todo el país, al 31 de mayo para los años 1997-1999, y al 30 de junio para los anteriores. No incluye menores de 18 años.

**Uruguay:** Info. de la Dir. Nac. de Cárceles. Las cifras son la sumatoria de las personas presas en el sistema de la DNC más las alojadas en las cárceles departamentales.

**Venezuela:** Info. de la Dir. Sectorial de Defensa Social, Ministerio de Justicia.

units are analysed, situations much worse than the present averages surface. Overcrowding situations up to 900 per cent have been discovered, in other words having 900 people living in places built for only 100. They are truly horrific situations that frequently end up in violent clashes with numerous deaths, and are shown on news programmes and in regional and world newspapers.

The United Nations Standard Minimum Rules on the Treatment of Prisoners, adopted almost 50 years ago, in its article 9, state that each prisoner shall occupy at night a cell or room by himself. They also establish the possibility, as an exception, of having collective rooms under predetermined security conditions that are not fulfilled in most cases. From the perspective of the Standard Minimum Rules most prisons in the region do not have adequate conditions and, what is worse, most new constructions continue to be built inadequately, creating conditions that impede proper classification and security as well as promoting violence.

Furthermore, concerned about the situation, and with much reduced budgets, penitentiary authorities frequently remodel the units, trying to increase the number of available spaces, by creating dormitories in areas that previously served other purposes, such as workshops, classrooms and other common rooms. The solution creates a certain relief but reduces the quality of life of prisoners. In other situations, more beds are simply installed in the existing dormitories. Thus, if a more precise analysis were carried out, the overcrowding averages would be seen to be even higher.

The present document is centered on the conditions of prisons in Latin America and the Caribbean. Evidently, overcrowding in itself is serious and has been defined as a cruel, grave and degrading form of imprisonment (Sala Constitucional 1996: III). Moreover, in addition to its cruelty, overcrowding is a variable that negatively affects other penitentiary conditions, since in situations of overcrowding it is not possible to fulfill an acceptable standard of almost any other essential penitentiary functions, such as health, food, hygiene, security, visits, and other much less important functions such as recreation, sport, training and work, all which limit the deterioration of persons deprived of liberty and promote their return to freedom.

In order to understand the table on the situation of penitentiary systems in the region and, more importantly, to comprehend the possibilities of future evolution, another important variable must be considered, since it influences overcrowding and greatly impedes finding a definite solution to it. That variable is the accelerated penitentiary population growth, generated by the passive increase of country populations, and growth created by an increase in incarceration rates.

Let us observe this in the two following charts (see tables 2 and 3) The first exhibits the number of persons deprived of liberty for each 100,000 people of the countries of Latin America

and the Caribbean. In this table one can observe the general and sustained slow growth of rates. Each year the number of persons within a group of 100,000 persons that go to prison increases. The only two exceptions to this trend are Ecuador and Venezuela, countries that nevertheless, and as observed in the previous chart, also have prison overcrowding and have adopted emergency measures to contain the situation.

Table 2. Imprisoned persons in Latin America, rates per 100,000

Includes federal, provincial and in some cases police stations (see footnotes).

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
<b>LATINA</b>											
Argentina	63	64	68	74	97	96	99	106			
Bolivia						80	86	102	110	97	
Brazil	75	81	82	93		104		115	132	135	137
Colombia	92	96	96	97	119	128	127	137	145	156	
Costa Rica	103	104	107	118	129	156	158	164	154	178	176
Chile	155	155	150	155	163	172	181	205	214	216	212
Ecuador	74	81	81	84	94	80	78	69		61	59
El Salvador	101	103	109	124	138	157	136	112	119	141	158
Guatemala					62			74			70
Haiti				21	37	44	47	51			
Honduras	110	113	138	158	163	150	155	172			174
México	102	105	98	102	109	117	128	143	153		
Nicaragua	83	84	97	104	116	110	136	146	129	123	137
Panama	178	218	224	232	274	288	300	303	305	332	335
Paraguay					69	74	73	76			
Peru	77	80	83	88	96	100	104	108	107	103	103
Dominic. R.	148	138	155	164	132	143	169	172			
Uruguay	96	99	100	99	101	106	119	121	128	146	166
Venezuela					102	112	106	98			
<b>CARIBB.</b>											
Belize	310	350	343	293	349	462	448	459			
Dominica	387	415	354	392	427	456	421	420			
Guyana	174	153	169	183	188	206					
Jamaica	178	167	168	171	161	166	162	170			
S. K & Nev.				295	268	268	288	338			
St. Lucia	210	254	263	263	269	269	216	243			
Sn. V. Gr	294	305	298	323	318	375	390	368			
Surinam	308	304	287	302	327	365	382	437			
T. Tobago	269	258	285	299	324	349	353	351			

NOTES:

**Argentina:** Info de la Dir.Nac. de Pol.Criminal del Min.de Justicia. Las cifras de los años 92-95 no incluyen los presos en policías. Las cifras de los años 96-98 son la sumatoria de las personas presas en el Servicio Penitenciario Federal y un cálculo de las personas presas en las cárceles de provincias y en las policías, realizado a partir de la cifra cierta de dichas personas de 31811 de enero del 2000 (24.188 en provincias y 6.793 en policías).

**Bolivia:** Info. de la Dir. Gral. de Régimen Penitenciario del Min.de Gobierno correspondiente a todo el país, a junio de cada año. Las cifras incluyen las personas alojadas en el Sistema Penitenciario y una estimación de las alojadas en las cárceles de provincia y en comisarías policiales hecha por el mismo ministerio. Incluye menores de 18 años.

**Brasil:** Info. del Departamento Penitenciario Nacional del Ministerio de Justicia correspondiente a todo el país. (En 1998 no hubo censo penitenciario).

**Colombia:** Info. del Instituto Nacional Penitenciario y Carcelario INPEC, del Ministerio de Justicia y del Derecho. Incluye las personas presas en el INPEC mas una estimación de las alojadas en cárceles de provincia.

**Costa Rica:** Info. de la DGAS del Min. de Justicia, a junio. Incluye los niveles institucional , semiinstitucional y en comunidad, y menores de 18 años. Se excluyeron las suspensiones del proceso a prueba y las sanciones alternativas.

**Chile:** Info. de la División Defensa Social del Min.de Justicia. Población penal de todo el país. Incluye menores con discernimiento entre 16 y 18 años de edad.

**Ecuador:** Info.de la Dir. Nac. de Rehabilitación Social del Min. de Gobierno. No incluye personas en comisarías policiales ni menores de 18 años.

**El Salvador:** Info. de la Dir.Gral. de Centros Penales del Min.de Justicia, de todo el país. No incluye personas en comisarías policiales.

**Guatemala:** Dato de junio 1996 del Procurador de los Derechos Humanos; datos posteriores, de la Dir .Gral. del Sistema Penitencia

**Haití:** Info. de UNDP-HAITI Proyecto HAI/99/004 "Penitentiary Reform - Phase II". Datos de todo el país, incluyendo un cálculo de presos en policías (cifra que en dic. 1999 era de 300). Incluye menores de 16 años y más.

**Honduras:** Info.de la Dir. Gral. de Establecimientos Penales, Despacho de Gobernación y Justicia. No incluye personas menores de 18 años ni alojadas en comisarías policiales. Años 1997-1999 info.a junio; 92-97 al 31 de nov.

**México:** Info. de la Dir.Gral. de Prev. y Readaptación Social de la Secr. de Gobernación, a junio de cada año, de todo el país. No incluye menores de 18 años.

**Nicaragua:** Info. de la Dir. Gral. del Ss. Penitenciario Nacional, Min. de Gobernación, correspondiente a todo el país, al 30 de junio de cada año. Incluye menores de 18 años y un cálculo de personas alojadas en comisarías policiales a partir de información dada por la Policía Nacional.

**Panamá:** Años 1999 y anteriores, info. del Comité Nacional de Análisis de Estadística Criminal del Min. de Gob. y Justicia; años 2000 y posteriores, info. de la Dir. Gral. Del Sistema Penitenciario del mismo ministerio, correspondiente a todo el país.

**Paraguay:** Info. de la Dir. Nacional de Política Criminal del Min. Público, de todo el país. Incluye menores de 18 años. No incluye personas alojadas en policía.

**Perú:** Info. del Inst. Nacional Penitenciario del Min. de Justicia, al 30 de junio de cada año, correspondiente a todo el país. No incluye menores de 18 años.

**República Dominicana:** Info. de la Comisión para la Definición, Ejecución y Supervisión de la Pol. Penitenciaria Nacional, para todo el país, al 31 de mayo para los años 1997-1999, y al 30 de junio para los anteriores. No incluye menores de 18 años.

**Uruguay:** Info. de la Dir. Nac. de Cárceles. Las cifras son la sumatoria de las personas presas en el sistema de la DNC más las alojadas en las cárceles departamentales.

**Venezuela:** Info. de la Dir. Sectorial de Defensa Social, Ministerio de Justicia.

Table 3 (see next page), entitled "Variables that influence the penitentiary growth in Latin America and the Caribbean" shows in its first column the names of the countries. The second column has the number of persons imprisoned in each country for the year 1992. The third column indicates the number of persons imprisoned seven years later, in 1999, and the fourth column shows the growth within those seven years. The fifth and sixth columns show, in absolute numbers and percentages, the growth in accordance with the population increase in each country (growth that fluctuates approximately between 10 per cent and 30 per cent with variations in each country). Finally, the seventh and eighth columns reveal the enormous growth present in all countries resulting from an increase in the use of imprisonment, a subject that leads us directly to the topic of crime policies, and particularly to the area of existing policies regarding the use of prison.

In order to complete the panorama of conditions in prisons in Latin America, it is important to look at a table on the juridical condition of persons deprived of liberty (see table 4). The table exhibits the number of prisoners awaiting trial and its evolution over time. As a result, one can interpret that certain advances have been achieved in the last years in the reduction of prisoners awaiting trial. Nevertheless, one must be careful in jumping to conclusions, since what one can observe are percentages of persons residing in prisons, and that information does not include the persons deprived of liberty in police stations, a situation that has increased in the last few years in almost all Latin American countries. It is within police stations that the largest percentage of prisoners in preventive custody or awaiting trial accumulates. On the other hand, persons serving a sentence accumulate in prisons of the penitentiary system. Hence, the percentages of prisoners awaiting trial are undoubtedly much higher than those observed in the table.

Table 3. Variables that influence the penitentiary growth in Latin America and the Caribbean

	Imprisoned Persons			Growth due to demographic growth		Growth due to increase in prison use	
	1992	1999	Growth	Number	%	Number	%
<b>Latin America</b>							
<b>Argentina</b>	21 016	38 604	17 588	1 800	10	15 788	90
<b>Bolivia</b>	6 235	8 315	2 080	296	14	1 784	86
<b>Brazil</b>	114 377	194 074	79 697	13 701	17	65 996	83
<b>Chile</b>	20 989	30 852	9 863	2 282	23	7 581	77
<b>Colombia</b>	33 491	57 068	23 577	3 867	16	19 710	84
<b>Costa Rica</b>	3 346	6 650	3 304	558	17	2 746	83
<b>El Salvador</b>	5 348	6 868	1 520	888	58	632	42
<b>Guatemala</b>	6 387	8 169	1 782	562	32	1 220	68
<b>Haiti</b>	1 617	4 152	2 535	139	5	2 396	95
<b>Honduras</b>	5 717	10 869	5 152	1 254	24	3 898	76
<b>México</b>	87 723	139 707	51 984	11 145	21	40 839	79
<b>Nicaragua</b>	3 375	7 198	3 823	906	24	2 917	76
<b>Panama</b>	4 428	8 517	4 089	570	14	3 519	86
<b>Paraguay</b>	3 427	4 088	661	264	40	397	60
<b>Peru</b>	17 350	27 452	10 102	2 448	24	7 654	76
<b>Rep. Dominican</b>	10 800	14 188	3 388	1 409	42	1 979	58
<b>Uruguay</b>	3 037	4 012	975	122	13	853	87
<b>The Caribbean</b>							
<b>Belize</b>	617	1097	480	124	26	356	74
<b>Dominica</b>	275	298	23	0	0	23	10 0
<b>Santa Lucia</b>	288	365	77	27	35	50	65
<b>San Vicente and Grenadines</b>	321	405	84	3	4	81	96
<b>Surinam</b>	1258	1933	675	102	15	573	85
<b>Trinidad and Tobago</b>	3394	4794	1 400	271	19	1 129	81

E. Carranza, ILANUD. Elaborado con datos penitenciarios brindados por las direcciones de los sistemas de cada país y datos de población del Centro Latinoamericano de Demografía CELADE, Boletín Año XXVIII, núm. 55. NOTAS: Bolivia: El dato de la primera columna es de 1997. Guatemala y Paraguay: El dato de la primera columna es de 1996. Haití: El dato de la primera columna es de 1995.

Table 4. Imprisoned persons awaiting trial in Latin American countries

	1978-1982			1999			2000-2002		
	TOTAL	Awaiting Trial	%	TOTAL	Awaiting Trial	%	TOTAL	Awaiting Trial	%
<b>LATIN A</b>									
Argentina	23.732	12.122	51	6.796	3.752	55			
Bolivia	728	653	90	7.445	2.679	36	7.382	4.100	56
Brazil				19.4074	70.681	36	240.107	80.841	34
Colombia	28.680	21.107	74	45.942	19.337	42	54.034	22.225	41
Costa Rica	2.407	1.141	47	6.650	1.223	18	7.836	1.880	24
Chile	12.876	6.723	52	30.852	15.675	51	33.098	13.387	40
Ecuador	5.709	3.658	64	8.520	5.819	68	7.716	5.399	70
El Salvador	3.402	2.809	83	6.868	5.224	76	10.278	5.119	50
Guatemala	4.367	2.355	54	8.169	4.971	61			
Haiti				3.659	3.055	83			
Honduras	1.016	593	58	10.869	9.569	88	11.502	9.039	79
México	58.352	43.316	74	144.261	61.211	42	151.662	64.204	42
Nicaragua				5.446	1.677	31			
Panama	2.339	1.556	67	8.517	4.827	57	9.864	5.686	58
Paraguay	1.460	1.376	94	4.088	3.791	93			
Peru	14.322	10.161	71	27.452	17.341	63	27.493	18.473	67
R. Dom.	5.355	4.278	80	14.188	12.818	90			
Uruguay	1.890	1.446	77	4.012	3.096	77	5.629	4.080	72
Venezuela	16.552	12.245	74	23.147	13.630	59			
<b>CARIBBEAN</b>									
Belize	235	29	12	1.097	134	12			
Dominica	84	29	35	295	128	43			
Guyana	935	350	37						
Jamaica	3.254	588	18	3.488	2.228	64			
St. K & Nevis	117	32	27	135	29	21			
St. Lucia	161	17	11	373	106	28			
S. V. Gr.	153	34	22	405	38	9			
Surinam				1.933	800	41			
Tr. Tobago				4.794	1.398	29			

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In most countries of the Latin American group, the number of prisoners awaiting trial are higher than the figures shown in the chart since persons in police stations are not included, even if it is in these places where most of these prisoners predominantly are. Sentenced persons deprived of liberty but awaiting appeal are not included in the figures of people awaiting trial. Information on years 78-82 from: El preso sin condena en América Latina y el Caribe (Carranza et alii, 1983); See references for more detail. **Notes for 1999:** **Argentina:** Datos sólo del Servicio Penitenciario Federal. Faltan los servicios provinciales y las personas alojadas en policías. **Bolivia:** Las cifras no incluyen las personas presas en las cárceles de provincias ni en comisarías policiales (sí incluidas en el cuadro que exhibe las tasas), lugares de detención estos donde predominan los presos sin condena. **Brazil:** Información de todo el país. **Chile:** Datos a septiembre, de todo el país. Incluyen menores de edad con discernimiento entre 16 y 18 años. Los "detenidos" (2343 en 1999) se computaron como "sin condena". **Colombia:** Datos al 31 de mayo. Incluyen solo las personas presas en el INPEC. Faltan las alojadas en cárceles de provincia. **Costa Rica:** Datos a junio. Incluyen personas menores de 18 años. Ecuador: No incluye personas en comisarías policiales ni menores de 18 años. **El Salvador:** Datos a junio, de todo el país. No incluyen personas en comisarías policiales. **Guatemala:** Datos al 30 de junio. Haití: Datos de todo el país. Incluyen menores de 16 años y más. No incluyen personas alojadas en policías (aprox. 300 al 30 dic. 1999). **Honduras:** Datos a junio. No incluyen personas menores de 18 años ni alojadas en comisarías policiales.



**México:** Datos a junio. No incluyen personas menores de 18 años. **Nicaragua:** Datos de todo el país, al 30 de junio. Incluyen menores de 18 años. No incluyen personas alojadas en la Policía. **Panamá:** Datos al 30 de junio, de todo el país. **Perú:** Datos al 30 de junio, de todo el país. No incluyen menores de 18 años. **República Dominicana:** Datos de todo el país, al 31 de mayo. No incluyen menores de 18. **Uruguay:** Datos al 29 de noviembre de 1999. Venezuela: Datos de la Dir. Sectorial de Defensa Social del Min. Jus. **Belice:** Datos al 30 de junio, de personas de 14 años y más. **Dominica:** Datos al 30 de junio, de personas de 14 años y más. Además hay otras 117 personas clasificadas como "otros". **Jamaica:** El dato de 1999 es al 22 de diciembre. **St. Kitts & Nevis:** Dato al 30 de junio, de personas de 16 años y más. La cifra "sin condena" es la sumatoria de 9 a la espera de juicio y 20 calificados "otros". **Santa Lucía:** Personas de 16 años y más. **San Vicente y las Granadinas:** Personas de 16 años y más. **Surinam:** Dato al 30 de junio; incluye presos alojados en policías. **Trinidad y Tobago:** Datos al 30 de junio. Los presos sin condena son la sumatoria de 183 a la espera de juicio, más 1215 catalogados "otros". **Notas para los años 2000-2002:** **Argentina:** Dir.Nac. de Pol.Criminal del Min.de Justicia. Info. sólo del Servicio Penitenciario Federal. Faltan los servicios penitenciarios provinciales y las personas alojadas en policías; **Bolivia:** La información del tercer cuadro es de junio 2001. No incluye los presos en las cárceles de provincias ni en comisarías policiales, lugares de detención éstos donde prevalecen los presos sin condena; **Brasil:** La información del tercer cuadro es de mayo 2002, del Departamento Penitenciario Nacional del Ministerio de Justicia correspondiente a todo el país; **Chile:** División Defensa Social del Min. de Justicia. El dato del tercer cuadro es de junio 2002, de la población penal de todo el país. Incluye menores con discernimiento entre 16 y 18 años de edad. Los simplemente "detenidos" (2.343 en 1999) se computaron como "sin condena"; **Colombia:** Info. Del Instituto Nacional Penitenciario y Carcelario INPEC, del Ministerio de Justicia y del Derecho. El dato del tercer cuadro es de mayo 2002. Incluye sólo las personas presas en el INPEC. Faltan las alojadas en cárceles de provincia; **Costa Rica:** Info. de la Dir. Gral. de Adaptación Social del Min. de Justicia y Gracia, a junio. Incluye personas menores de 18 años. El dato del tercer cuadro es el promedio del primer semestre 2002; **Ecuador:** DNRS del Min. de Gobierno. No incluye personas en comisarías policiales ni menores de 18 años. El dato del tercer cuadro es de junio 2002; **El Salvador:** Dir.Gral. de Centros Penales del Min.de Justicia, a junio, de todo el país. No incluye personas en comisarías policiales. El dato del tercer cuadro es de julio 2002; **Guatemala:** Dir.Gral. del Ss.Penitenciario, dato al 30 de junio; **Haití:** UNDP-HAITI Proyecto HAI/99/004 "Penitentiary Reform - Phase II". Datos de todo el país. Incluye menores de 16 años y más. No incluye personas en policías (aprox. 300 personas al 30 dic. 1999); **Honduras:** Dir. Gral. de Establecimientos Penales, Despacho de Gobernación y Justicia. No incluye menores de 18 ni personas alojadas en comisarías policiales. Info. a junio de cada año. El dato del tercer cuadro es de octubre 2002; **México:** Dir. Gral. de Prev. y Readaptación Social de la Secr. de Gobernación. Info. a junio, de todo el país. No incluye personas menores de 18 años. El dato del tercer cuadro es de junio 2000; **Nicaragua:** Dir. Gral. del Ss. Penitenciario Nacional, Min. de Gobernación. Info. correspondiente a todo el país, al 30 de junio de cada año. Incluye menores de 18 años. No incluye personas alojadas en la Policía; **Panamá:** Comité Nac. de Análisis de Estadística Criminal del Min. de Gob. y Justicia, al 30 de junio 2002, de todo el país; **Perú:** Instituto Nacional Penitenciario del Min. de Justicia. Info. al 30 de junio de cada año, de todo el país. No incluye menores de 18 años. El dato del tercer cuadro es de sep. 2002; **República Dominicana:** Comisión para la Definición, Ejecución y Supervisión de la Pol. Penitenciaria Nacional, para todo el país, al 31 de mayo. No incluye menores de 18; **Uruguay:** Dirección Nacional de Cárceles. El dato del tercer cuadro es de marzo 2002; **Venezuela:** Info. de la Dirección Sectorial de Defensa Social, Ministerio de Justicia.

## Conclusion

To wrap up the situation (though one is conscious that there are many aspects that we have not been able to cover) let us observe this table on the distribution of penitentiary population by sex (see table 5).

What must be done in the presence of the penitentiary situation just described, and particularly regarding the serious penitentiary overpopulation in the region?

With such penitentiary overpopulation there are two major options in relation with policies: a) construct or enlarge penitentiary unites, and b) reduce the number of prisoners adopting necessary measures. The two options given, and they are not new, are the same ones considered by the European countries in the International Summit in Helsinki that analysed the penitentiary overpopulation problem in Europe (Walmsley 1998:104).

Thus, taking into consideration in each case the situation and peculiarities of each country of our region, it is first necessary to use a combined dosage of both policies (construction and reduction in the use of prison). Except for some specific cases, an exclusive reduction policy would be difficult to implement when there is a high growth in the number of inhabitants of the countries of the region. Even when a stabilization in the imprisonment growth rate is achieved, the fact that the population in general grows (and there is also migratory population growth in some countries) makes it necessary to construct the necessary facilities to avoid overcrowding.

Table 5. Penitentiary population by sex in Latin American countries

	1978-1982			1999			2000-2002		
	TOTAL	Awaiting Trial	%	TOTAL	Awaiting Trial	%	TOTAL	Awaiting Trial	%
<b>LATIN A.</b>									
Argentina	23.732	12.122	51	6.796	3.752	55			
Bolivia	728	653	90	7.445	2.679	36	7.382	4.100	56
Brazil				194.074	70.681	36	240.107	80.841	34
Colombia	28.680	21.107	74	45.942	19.337	42	54.034	22.225	41
Costa Rica	2.407	1.141	47	6.650	1.223	18	7.836	1.880	24
Chile	12.876	6.723	52	30.852	15.675	51	33.098	13.387	40
Ecuador	5.709	3.658	64	8.520	5.819	68	7.716	5.399	70
El Salvador	3.402	2.809	83	6.868	5.224	76	10.278	5.119	50
Guatemala	4.367	2.355	54	8.169	4.971	61			
Haiti				3.659	3.055	83			
Honduras	1.016	593	58	10.869	9.569	88	11.502	9.039	79
México	58.352	43.316	74	144.261	61.211	42	151.662	64.204	42
Nicaragua				5.446	1.677	31			
Panama	2.339	1.556	67	8.517	4.827	57	9.864	5.686	58
Paraguay	1.460	1.376	94	4.088	3.791	93			
Peru	14.322	10.161	71	27.452	17.341	63	27.493	18.473	67
R. Dom.	5.355	4.278	80	14.188	12.818	90			
Uruguay	1.890	1.446	77	4.012	3.096	77	5.629	4.080	72
Venezuela	16.552	12.245	74	23.147	13.630	59			
<b>CARIBBEAN</b>									
Belize	235	29	12	1 097	134	12			
Domínica	84	29	35	295	128	43			
Guyana	935	350	37						
Jamaica	3 254	588	18	3 488	2 228	64			
St.K Nevis	117	32	27	135	29	21			
St Lucia	161	17	11	373	106	28			
S.V.Gr.	153	34	22	405	38	9			
Surinam				1 933	800	41			
Tr.Tobago				4 794	1 398	29			

Elías Carranza, ILANUD, 2002

On this topic there exists a classical discussion on criminal policy, regarding whether more prisons must or must not be constructed. This matter was well studied by Thomas Mathiessen several years ago. He argued that the problem of penitentiary capacity is as old as prisons themselves; that while we continue building prisons they will continue filling up, thus what must be done is to execute policies that tend to use imprisonment less in criminal justice.

The argument of Mathiessen is well established and is politically viable in the northern European countries that have a stable demographic situation without general population growth. Those countries have also been able to create political, economical and social conditions that, among other things, have resulted in an evident stable conventional criminality within the world reality. Regarding Latin American and Caribbean countries, reduction and prudent use of prison policies in criminal justice are also essential but, simultaneously, the periodic needs of infrastructure construction cannot be ignored because of the demographical conditions previously observed.

The topic of penitentiary construction has been recently debated in Latin America in relation to the topic of the delegation of sentence execution to private enterprises. Several countries have already asked ILANUD for advice on this matter.

Private enterprises offer to execute prison sentences with packages that include the design, finance, construction and administration of prisons (this has been called "penitentiary privatization", since there are other forms of private enterprise participating in the penitentiary that do not include the execution of prison sentences). This matter must be analysed carefully, and must be considered from different perspectives: from crime policy, juridical, economical and ethical points of view. The analysis has already been carried out in more detail (CARRANZA, 2002). Only the crime policy argument will be made here, since it is important to create awareness among those responsible for the criminal and penitentiary policy in their countries or who have the possibility to influence them. The argument has a direct relationship with the prison overcrowding phenomenon that we have been referring to. It is the following:

The vast majority of privatization proposals result from the overcrowding situation and the need of greater spaces and areas, which are fundamental to adequate prison conditions under international law. Hence, in countries such as those of the Latin American and the Caribbean Region which present high penitentiary population growth and face meagre penitentiary budgets, high monetary deficits and foreign debt, the construction of private prisons produces a certain immediate relief to overcrowding, but immediately afterwards, the overcrowding is transferred to public prisons of the system, thus increasing their deterioration and creating a privileged situation for a small group at a high cost. In the following tables, is just such an example:

Countries X and Y built their last prison three years ago. Country X builds a State-owned prison; country Y builds a privately owned prison. Both countries have 10 prisons with a total capacity of 10,000 imprisoned individuals, but both have 15,000 persons deprived of liberty. Thus, both are working at 150 per cent of capacity. Country X has 10 State-owned prisons, while country Y has nine State-owned prisons and one privately owned. The situation is exhibited in the table on the following page:

**Country "X" with capacity for 10,000, but with 15,000 persons deprived of liberty :**

<b>Prisons with a capacity for 1000 each</b>	<b>Distribution per unit</b>
<b>0 privately-owned prisons</b>	<b>0</b>
<b>10 state-owned prisons</b>	<b>1 500</b>

**Country "Y" with capacity for 10,000, but with 15,000 persons deprived of liberty:**

<b>Prisons with a capacity of 1000 each</b>	<b>Distribution per unit</b>
<b>1 privately-owned prisons</b>	<b>1000</b>
<b>9 state-owned prisons</b>	<b>1555</b>

It is observed that in country X, the limited penitentiary resources can be equally distributed with better results. On the contrary, in country Y, the overpopulation is progressively accumulated in State-owned prisons, establishing an unfair distinction of doubtful constitutionality between those that are in State-owned prisons and the few in a private prison that are in a privileged situation.

In countries where there is a high penitentiary population growth, as is the case of Latin American and Caribbean countries, overpopulation increases as time goes by, and is unequally accumulated, overcrowding persons into State-owned prisons while the privileged few are in a private prison at a high cost.

In order to conclude the present exposé, it is important to summarize a presentation of the Discussion Panel of the Inauguration Session of the XI Session of the United Nations Committee for Crime Prevention and Criminal Justice (COMISIÓN: 2002). The penitentiary problem must be analysed in relation to the need of integral reforms, with action coming from legislation, from the office of the Attorney General, from the police and from the judicial branch. The penitentiary system is the last phase in the chain of the criminal justice system, receiving the persons deprived of liberty, and it also generates the first phases at the beginning of the same chain.

Three fundamental objectives must be prioritized in the actions carried out by those responsible for each of the components of the criminal justice system, as well as by those responsible for criminal policy, both in the legislative and executive aspects in each country:

1. Avoid using criminal justice measures unnecessarily. Mechanisms such as those proposed by restorative justice (and also transformative justice), such as conciliation and victim reparation, and also the principle of opportunity, have produced excellent results. Some Latin America and Caribbean countries have been very successful using such methods in juvenile criminal justice.

2. Introduce into the criminal code, and work to make effective, multiple sanctions that do not deprive people of their liberty yet take into account the interests of victims. Use imprisonment for violent crimes and crimes that cause serious social damage.

3. Accomplish conditions of imprisonment that are respectful of fundamental rights for prisoners as long-established precepts in international law and in the internal law of many countries.

To achieve that, it is necessary to develop mechanisms that guarantee that prisons accommodate only the number of persons for which they have capacity.

## **STATISTICAL INFORMATION SOURCES**

### **Latin American countries**

Argentina: Dirección Nacional de Política Criminal del Ministerio de Justicia. Las cifras de los años 92 a 95 no incluyen los presos en policías. Las cifras de los años 96 a 98 resultan de la sumatoria de las personas presas en el Servicio Penitenciario Federal y un cálculo de las personas presas en las cárceles de provincias y en las policías, realizado a partir de la cifra cierta de dichas personas de 31 811, en enero del 2000.

Bolivia: Dirección General de Régimen Penitenciario del Ministerio de Gobierno. Datos de todo el país, a junio de cada año. Las cifras incluyen las personas alojadas en el Sistema Penitenciario y una estimación de las alojadas en las cárceles de provincia y en comisarías policiales hecha por el mismo Ministerio. Se incluye a menores de 18 años.

Brasil: Departamento Penitenciario Nacional del Ministerio de Justicia. Información correspondiente a todo el país. (En 1996 y 1998 no hubo censo penitenciario.)

Chile: División Defensa Social del Ministerio de Justicia. Datos de la población penal de todo el país. Incluyen los menores con discernimiento entre 16 y 18 años de edad.

Colombia: Instituto Nacional Penitenciario y Carcelario (INPEC) del Ministerio de Justicia y del

Derecho. Los datos incluyen las personas presas en el INPEC más una estimación de las alojadas en cárceles de provincia.

Costa Rica: Dirección General de Adaptación Social del Ministerio de Justicia y Gracia. Datos al mes de junio. Incluyen las personas menores de 18 años.

Ecuador: Dirección Nacional de Rehabilitación Social del Ministerio de Gobierno. No incluye personas en comisarías policiales ni menores de 18 años.

El Salvador: Dirección General de Centros Penales del Ministerio de Justicia. Datos de todo el país. No incluyen las personas en comisarías policiales.

Guatemala: El dato de 1996 es al mes de junio y fue proporcionado por el Procurador de los Derechos Humanos; el dato de 1999, por la Dirección General del Sistema Penitenciario.

Haití: UNDP-HAITÍ Proyecto HAI/99/004 "Penitentiary Reform-Phase II". Datos de todo el país, que incluyen un cálculo de presos en policías (cifra que en diciembre de 1999 era de 300). Incluyen menores de 16 años y más.

Honduras: Dirección General de Establecimientos Penales, Despacho de Gobernación y Justicia. No incluye personas menores de 18 años ni alojadas en comisarías policiales. La información de los años 1997 a 1999 es a junio; la de 1992 a 1996, al 31 de noviembre.

México: Dirección General del Sistema Penitenciario Nacional, Ministerio de Gobernación. Datos de todo el país, al 30 de junio de cada año. Incluyen menores de 18 años y un cálculo de personas alojadas en comisarías policiales a partir de información dada por la Policía Nacional.

Nicaragua: Dirección General del Sistema Penitenciario Nacional, Ministerio de Gobernación. Datos de todo el país, al 30 de junio de cada año. Incluyen menores de 18 años y un cálculo de personas alojadas en comisarías policiales a partir de información dada por la Policía Nacional.

Panamá: Comité Nacional de Análisis de Estadística Criminal del Ministerio de Gobierno y Justicia. Datos de todo el país.

Paraguay: Dirección Nacional de Política Criminal del Ministerio Público. Datos de todo el país. Incluyen las personas menores de 18 años. No incluyen las alojadas en policía.

Perú: Instituto Nacional Penitenciario del Ministerio de Justicia. Datos al 30 de junio de cada año, correspondientes a todo el país. No incluyen menores de 18 años.

República Dominicana: Comisión para la Definición, Ejecución y Supervisión de la Política Penitenciaria Nacional. Datos de todo el país, al 31 de mayo para los años 1997 a 1999, y al 30 de junio para los anteriores. No incluyen menores de 18 años.

Uruguay: Dirección Nacional de Cárceles (DNC). Las cifras son la sumatoria de las personas presas en el sistema de la DNC más las alojadas en las cárceles departamentales.

Venezuela: Dirección Sectorial de Defensa Social, Ministerio de Justicia.

### **The Caribbean**

Belize: Superintendent of Prison, Belize Department of Corrections. Datos de todo el país, de personas privadas de libertad de 14 años y más. Hay algunas personas alojadas en comisarías policiales (10 personas en 1999).

Dominica: Office of the Secretary to the Cabinet. Datos de todo el país, de personas privadas de libertad de 14 años y más. No hay presos alojados en comisarías policiales.

Guyana: Directorate of Prisons. Datos de todo el país, que incluyen solo personas de 18 años y más. No hay presos en comisarías policiales.

Jamaica: Department of Corrections. Datos de todo el país, que incluyen solo personas de 18 años y más. Las cifras incluyen una estimación que se hizo para cada año de las personas presas en lugares de detención policial, las que en 1999 eran 800.

Saint Kitts & Nevis: Ministry of Finance, Development and Planning. Datos de todo el país, que incluyen personas de 16 años y más. No hay personas presas en comisarías policiales.

Santa Lucía: Superintendent of Prisons. Datos de todo el país, que incluyen personas de 16 años y más.

San Vicente y las Granadinas: Attorney General and Minister of Justice. Datos de todo el país, que incluyen personas de 16 años y más. No hay presos en comisarías policiales.

Surinam: Superintendent of Prisons. Las cifras de población penitenciaria se obtuvieron de la sumatoria de las personas alojadas en prisiones, más un cálculo, para cada año, de las alojadas en comisarías policiales.

Trinidad y Tobago: Ministry of National Security. Datos de todo el país, que incluyen personas de 15 años y más. No hay personas presas en comisarías policiales.

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Privatización de prisiones, Trabajo presentado en Auditorio de la Corte Suprema de Justicia de Costa Rica, ILANUD, julio.

### **Comite 1999**

Comité Europeen pour les problemes criminels. Projet de rapport sur le surpeuplement des prisons et l'inflation carcérale. (cdpc plenary/docs 1999/18F Add I - Rec CP Surpeuplement).

### **Comision 2002**

Comisión de las Naciones Unidas sobre Prevención del Delito y Justicia Penal, Panel de Discusión, sesión inaugural, Viena, 16-17 abril.

### **Sala Constitucional 1996**

Sala Constitucional de la Corte Suprema de Justicia de Costa Rica, sentencia 1032-96 del 1 de marzo de 1996.

### **Walmsley Roy, y Joutsen Matti 1998**

"Prison Populations in Europe and North America: Problems and Solutions". En: Penological Information Bulletin, núm. 21, diciembre, Council of Europe.



# Implementing international standards In corrections: challenges, strategies and outcomes

Professor Curt Griffiths PhD, School of Criminology, Simon Fraser University, Canada (with Yvon Dandurand and Brian Tkachuk)

## Introduction

In comparison with other areas of international cooperation, technical assistance in the field of corrections and prison reform rarely gets the attention and the support it requires. Finding effective ways to ensure the practical application of existing United Nations standards and norms in the field of corrections continues to be a challenge. Member States are beginning to better understand the urgency of the problem and that was indeed reflected in the Vienna Declaration . That document contains a number of proposals which may contribute to the effective implementation of existing standards in the field of corrections.

The reforms required to ensure that international standards and norms are actually met within a correctional system are far more complex than often assumed. They go well beyond the mere formal reaffirmation of the standards at the national level. Furthermore, some of the required reforms actually reach well beyond prison systems and have to address sentencing and other criminal law reform issues, as well as the need for alternative to prisons and the need to challenge the over-reliance of society on prisons. In recent years, all these challenging problems have been compounded by the problem of prison overcrowding.

Current approaches to prison and criminal justice reform have often proved insufficient, and technical assistance in the field of corrections is just beginning to explore new modes of intervention to facilitate the necessary reforms. To date, technical assistance efforts in the field of prison reform have tended to focus on a number of valid, but usually insufficient forms of cooperation. These have included: facilitating legal reform (e.g., model legislation), needs assessments missions, training of trainers and correctional officials, exchange of officials, development and translation of manuals to explain existing international standards, and assistance in planning and executing prison construction programmes. Without fundamental attitudinal, structural, system-wide changes to the troubled correctional organizations, however, the prospect of these organizations meeting the minimum goals set by international standards remains distant.

If the international criminal justice community is serious about assisting correctional organizations to meet the standards it has set for them, it must address the question of how international cooperation can contribute to the significant and complex organizational changes that are required at the national level. Further, it must identify and support the development of the local capacity and leadership required to implement the standards. A comparative analysis of successful attempts to bring major organizational and leadership changes in a correctional setting would be essential. The role of technical assistance and international cooperation in this endeavour should also be carefully delineated.

This paper identifies some of the prerequisites for successful application of international standards through international cooperation and the provision of technical assistance. There are three components to the paper: 1) a preliminary examination of the challenges and strategies involved in providing technical assistance to recipient countries in order to address issues of transferability, sustainability, continuity, and evidence-based correctional policy development and programming; 2) a reflection on the need to develop practical tools to facilitate organizational



changes, using the example of the recent experience of the International Centre for Criminal Law Reform and Criminal Justice Policy in developing and offering a non-prescriptive International Prison Policy Development Instrument to advance, in a practical manner, the implementation of international standards; and, 3) a reflection on how the experience of Canada in the field of correctional reform could be compared, for example, to that of other countries in order to learn about the particular organizational change challenges faced in that sector.

### **Achieving the objectives. The challenges and strategies of providing effective technical assistance**

Although the UN human rights and criminal justice standards in the field of corrections have articulated the objectives to be achieved by systems of corrections, how these objectives are to be achieved by Member States has not been articulated. Various efforts have focused on training prison officials, developing manuals, and providing legislative models through which the standards can be enshrined in legislation. Unfortunately, many of the initiatives have had little impact on the operation of prison systems throughout the world.

There is, then, a distinct difference between establishing the objectives, standards, and framework for prison reform, and the issues that must be addressed in undertaking reforms. For donor countries, the objective is to provide technical assistance that is sustainable, practical, and cost effective, and that enhances the performance and effectiveness of systems of corrections.

#### **The challenges**

##### **Prison overcrowding**

The international preoccupations with human rights, prison overcrowding, international standards, technical assistance, and multilateral vs. bilateral assistance, among others, were highlighted in the Vienna Declaration, the broad strategic policy development agenda that was set forth in the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 2000 and in the work of the UN Commission on Crime Prevention and Criminal Justice. One of the most critical challenges confronting all systems of corrections is prison overcrowding. This phenomenon undermines and severely limits reform initiatives and also creates a number of additional challenges. The report prepared for the Secretary General for submission to the Commission on Crime Prevention and Criminal Justice entitled "Reform of the Criminal Justice System: Achieving Effectiveness and Equity" stated,

"The issue of prison and detention, and particularly prison overcrowding, transcends a number of areas addressed in the Vienna Declaration and the action plans, such as women, juveniles, victims of crime, protection of witnesses, prison health, pretrial detention and restorative justice and alternatives to incarceration." (2002:12)

It was further noted in the report (2002:12) that, "...until the problem of overcrowding was resolved, efforts to improve other aspects of prison reform were unlikely to have any meaningful impact."

##### **Convincing donor agencies to invest in prison reform**

Recipient countries rarely identify prison reform as a major priority in the official development plans that are submitted to donor agencies. This has been because, in many jurisdictions, prison systems are administered by the police and the military and are closely associated with national security and the maintenance of the political status quo. Such areas are often viewed as "off limits" to external intervention and reform. Problems such as prison-overcrowding, however, create a range of other difficulties for societies, including increases in the rates of communicable diseases such as Tuberculosis, Hepatitis B and C, HIV/AIDS that, in turn, place

severe demands on the health care system.

### **The absence of a knowledge base**

There has not been a comprehensive inventory of technical assistance initiatives in the field of corrections, nor an attempt to evaluate the impact of these initiatives on prison systems. This should be a priority. Most systems of corrections lack a well developed body of empirical knowledge upon which to base the formulation of policies and the operation of programmes. Where they do exist, research findings have little influence on correctional policies, programmes and services, which are affected by a variety of factors including political considerations and public opinion. Contributing to the problem is the lack of experimental research and rigorous evaluation of correctional policies and programmes. Prison policies and programmes are rarely subjected to independent evaluation to assess their effectiveness. That makes it difficult to determine if the policies and programmes are effective in meeting their stated objectives.

### **Identifying receptive jurisdictions**

It is important that countries involved in providing technical assistance develop the capacity to identify those jurisdictions that have the most potential to benefit from assistance. Desirable attributes are an active NGO sector, the potential for developing community-based alternatives to imprisonment that may include restorative justice programmes, and persons in Government who have indicated a commitment to undertake significant reforms.

### **Offering expertise. The issue of transferability**

The field of technical assistance is rife with case studies in which countries providing technical assistance have erroneously assumed that there is direct transferability of policy and practice to the recipient country. There may be religious, cultural or other attributes of the recipient country that will prevent, or hinder, the adoption of certain policies. A framework must be established that allows the recipient country the opportunity to devise indigenous policies and practices that will meet minimum standards. Ideally, the basis for technical assistance in the field of corrections should be a comparative analysis of existing practices and their relative outcomes among countries, followed by the identification of the "conditions of transferability" of a programme. This is rarely done.

One challenge is that the donor and recipient country rarely have correctional systems that are at the same level of development and sophistication although, ironically, there may be more potential for developing innovative and effective strategies of corrections in jurisdictions that do not have expansive, well entrenched systems of corrections. Too often, bilateral assistance takes the form of "do as I do", with very little critical examination of whether the practices/technologies that are being transferred are worth transferring, or whether, in fact, such approaches are adaptable or even applicable to the context of the jurisdiction of the recipient.

It is also important to match the expertise resident in the country providing the technical assistance with counterparts in the recipient country. There is in Canada, for example, a considerable expertise among aboriginal persons that could be accessed by recipient countries seeking to develop policies and programmes for indigenous peoples.

### **Building individual, organizational and community capacity**

Far too often, reform projects have been initiated, and have terminated, with funding. At all stages of the process, efforts must be directed to building individual and organizational capacity. This will enhance the prospects for long-term change.

### **Sustaining reform**

A key challenge is to devise strategies to ensure the sustainability of the reform effort and

policy initiatives once external financial support has been reduced or terminated. This requires that in-country organizations and persons have "ownership" of the project and be trained in the requisite skill sets to direct and manage the reform effort and specific policy initiatives. Study tours are an effective way of increasing the knowledge base of key reform participants from the recipient country. It is important, however, that study groups include persons from senior management to the line level as well as persons from the community.

Moreover, the tendency to establish costly infrastructure that cannot be sustained once funding levels are reduced must be avoided. There are, in all countries and communities, non-capital resources that can be mobilized to participate in and sustain programme initiatives. They include the volunteer sector, which may have to be cultivated and encouraged, and in-kind services that can be provided by not-for-profit organizations and by the private sector.

## **The strategies**

There are a number of strategies that may be utilized by countries to increase the efficacy of reform efforts. They include:

### **Promoting reform. Establishing legitimacy**

A key issue in promoting reform in prison policy is establishing the legitimacy of the reform effort. There are several strategies that can be utilized to establish the legitimacy of a reform effort:

The recipient country must play the central role in identifying the areas in need of reform and improvement: If an initiative is identified as being solely the effort of an outside agency or Government, the effort is not likely to be legitimized and will not be sustainable. Rather, the reform will be viewed as externally imposed and as a prerequisite for receiving other types of assistance. It is important that the recipient country have "ownership" of the reform effort. The recipient country should play the primary role in identifying and prioritizing the areas in need of reform.

Efforts to reform prison systems must be legitimized in terms of the rights of offenders, victims, and general public safety: Historically, the focus of human rights and criminal justice standards has been on the rights of inmates, albeit more recently, this has also included a recognition of the rights of crime victims. Post-911, reforms to promote the efficiency and efficacy of prison systems must also be legitimized in terms of increased public safety. This presents unique challenges to both donor and recipient countries.

The legitimacy of the reform effort must be established at all levels: Too often, technical assistance projects have been sponsored by, and are therefore viewed as, projects of central governments. The cynicism with which externally funded projects are viewed and their association with "the development set" must be acknowledged and countered. There has often been little consultation with managerial and operational personnel who are responsible for implementing correctional policies. It is not sufficient just to secure the cooperation and sponsorship of senior Government; from the outset, there must be representation and input from the managerial and operational levels. Without cooperation at those levels, reform initiatives are likely to fail. It should not be assumed that merely securing the involvement and participation of senior levels of Government would be sufficient to ensure the success of reform projects.

Key resource persons who are in a position to initiate and legitimate the reform effort must be identified as the outset. One of the most challenging tasks in providing assistance is to identify those persons who are in a position to facilitate the reform process. Countries providing technical assistance must consult with a wide range of informants in an effort to separate out those persons who are "figureheads" from those persons who are committed to reform and have the requisite influence and authority to enhance the reform process. Investing sufficient

time and resources in identifying such persons will increase the likelihood of success of the reform effort.

### **Securing "buy in"**

Reform is a difficult task in all systems, due in large measure to the tendency of agency personnel to resist change and not to challenge the status quo. There must be some incentive for senior personnel and individuals at the managerial and line levels to participate in the reform effort. It is not realistic to expect that there will be enthusiastic support for an initiative merely because it is labelled as "reform."

### **Creating a holistic framework for assistance**

The reform effort cannot be limited to prison systems. To be effective, there must be a more holistic framework that considers criminal justice policy generally, including sentencing reform, bail reform, a fine payment system, conditional release policies and programme, and alternatives to incarceration.

### **Creating public-private partnerships (P3s) and adopting private sector practices**

In many jurisdictions, efforts to find more cost-effective ways of providing services have led to a re-examination of the potential of private sector involvement, not only in programme and service delivery, but also in the construction and operation of correctional facilities. In Canada, the expansion of public-private partnerships builds upon a long tradition of private sector involvement in institutional and community corrections. For example, the Correctional Service of Canada (CSC) contracts out for the provision of medical services, technical services, education, and some treatment programmes in prisons, as well as for offender programmes in the community.

### **Creating policies and programmes for indigenous peoples**

Worldwide, indigenous communities and organizations are becoming increasingly involved in designing and delivering corrections services in community and institutional settings. In Canada, aboriginal communities are involved in institutional programmes through native liaison workers, activities sponsored by aboriginal organizations, and the participation of elders in providing treatment. Communities and the justice system also collaborate in programmes, many of which incorporate elements of traditional aboriginal spirituality and principles of restorative justice. These programmes include sentencing circles, community mediation, and various sentencing advisory committees. Aboriginal communities also create and control their own programmes, some of which are geared toward aboriginal women.

### **Establishing realistic benchmarks and reform objectives**

Even the most well designed technical assistance project will fall short of its objectives if it is not planned adequately. It is unrealistic to expect that all the reforms required to establish systems of accountability, training and legislation can occur simultaneously. Specific, achievable objectives must be established that hold the best potential for success. Demonstration projects and carefully selected and developed case studies can provide early, demonstrable successes that will increase the momentum of and support for organizational change and reform.

### **Conducting project evaluations**

All technical assistance projects should include an evaluation component. This evaluation should be conducted by independent researchers from the jurisdiction in question, working where required, in collaboration with evaluators from the country providing the technical assistance. There are a number of key issues surrounding project evaluation including the use of an evaluative framework that is not externally imposed but rather reflects the realities of the recipient country. Further, if the measures of success are too rigid, then any reform initiatives may not produce positive outcomes.

### **Creating alternatives to confinement**

In addition to creating overcrowding, incarceration is an expensive proposition that cannot be sustained by any country. There are a variety of programmes and strategies that have been developed under the general rubric of restorative justice that hold considerable promise. Experience indicates that the principles of restorative justice can be utilized to create alternative forums for dispute resolution and sanctioning in remote, rural, suburban, and urban centres. A key attribute of restorative justice is the significant involvement of the community in the response to persons whose behaviour has been harmful to the victim and to the community. Restorative justice holds considerable promise as a cost-efficient and effective alternative to traditional responses to criminal offenders.

### **Increasing accountability and a concern with the rule of law and justice**

In many jurisdictions, there has been an increase in the accountability of systems of corrections and conditional release. This has coincided with the increasing involvement of the courts in imposing on corrections agencies and personnel a duty to act fairly in managing offenders and to ensure that the decision-making process is fair and equitable. Court decisions have also extended the rights of prison inmates, including giving federal offenders the right to vote in elections. A component of this initiative is establishing and enhancing the role of ombudsman offices, correctional investigators and other human rights mechanisms.

### **Ensuring the rights of victims**

There have been concerted efforts in many jurisdictions to identify and address the needs of crime victims. Increasingly, the rights of victims have been enshrined in legislation to ensure that such rights are recognized and enforced. Although some observers have argued that empowering crime victims by involving them in the criminal justice and corrections process introduces undue emotionalism and increases the punitive nature of the system, such resistance has decreased in recent years. In fact, there is considerable evidence that acknowledging the rights of victims has served to legitimize the objectives and actions of justice and corrections systems, rather than undermine them.

In many jurisdictions, legislation has established the rights of victims in the correctional process. At their request, victims can be advised of the parole eligibility dates of their perpetrator, the decision of the parole board and release status of the offender. In addition, crime victims can attend parole hearings and submit written victim impact statements to the parole board. In cases involving federal offenders before the National Parole Board and in several provincial jurisdictions, victims can present oral victim impact statements to the parole board.

### **Creating alternatives to incarceration**

Correctional systems are increasingly focusing on intermediate sanctions and on programmes based on the principles of restorative justice. Most provinces and territories have in place policies that encourage the development of initiatives such as conflict resolution, community mediations and panels, aboriginal elders panels, and community accountability panels. Communities, religious organizations, and non-profit agencies are playing a major role in the development of alternatives to incarceration.

### **Policies and programmes for specialized prison populations**

Special categories of offenders such as sex offenders, the mentally disordered, indigenous peoples, and female offenders require policies, programmes, and facilities specific to their needs.

### **Focusing on human resources**

Correctional systems can become more efficient and effective only with highly motivated,

trained, and skilled employees. It is important to remember that systems of criminal justice and corrections are, first and foremost, a human enterprise. This fact must not be obscured by a sole focus on legislative frameworks and standards. Key to reform initiatives is leadership and systems of corrections must have the capacity for leadership development. This not only increases the receptivity to reform, but assists in maintaining continuity of the reform effort.

### **The ICCK prison policy development instrument: a catalyst for change**

As part of its contribution to the worldwide effort of the United Nations to implement minimum standards in corrections, the International Centre for Criminal Law Reform and Criminal Justice Policy has produced the International Prison Policy Development Instrument. The Instrument was designed as a tool to assist countries in the development and/or review of prison policies, regardless of region or culture, and provides the basis for the development of correctional policy in six key areas: 1) administration; 2) case management; 3) inmate rights; 4) security; 5) health; and, 6) discipline. Significantly, the manual can be used to develop an entirely new set of prison policies or to conduct a review of or revisions of existing correctional policy.

For each of the six areas within the instrument, reference is made to the applicable UN and other international standards, including the UN Standard Minimum Rules for the Treatment of Offenders, the Basic Principles for the Treatment of Offenders, and the Universal Declaration of Human Rights. The manual is not a set of exact policies but rather is to be used as the basis for policy discussions, improving the performance of prison systems and to illustrate the potential for creating fair and justice corrections. It is a template designed so it can be modified or edited to be in compliance with and supportive of local legislation and consistent with local culture and needs.

In addition to the proposed policy and applicable references to international standards and instruments, the document entitled Towards Improved Corrections, A Strategic Framework, has been incorporated into the manual. The Strategic Framework is the product of two international symposia on the future of corrections, the first held in Ottawa, Canada in 1991 and the second in Popowo, Poland in 1993. The intention of the strategic framework is to assist correctional organizations in defining their role within the criminal justice system. This involves:

1. Explaining what corrections is;
2. Defining what is meant by effectiveness in corrections;
3. Explaining what corrections can realistically achieve; and
4. Expressing the values that are vital to corrections in a democratic society.

The framework itself is again not a set of precise, specific standards, but a broad vision that will serve to guide developments in the field of corrections. Its aim is to inspire improvement in performance, not just change. It should serve as a starting point for discussion. How the framework is used must be determined by each system that is in search of a better future. It can serve as a reminder of the opportunities for improvement and an impetus for action. Commitment to the values and principles contained within the framework will allow correctional systems to achieve significant progress and improvement within their organization.

### **Lessons from the Canadian experience**

Canada has much to offer, but also much to gain, from international cooperation in the field of corrections. Systems of corrections in Canada operate in an environment that presents numerous challenges. Considerable experience and expertise has been developed in both federal and provincial/territorial corrections systems in addressing a wide range of issues, including, but certainly not limited to:

- Serving a diverse clientele, including mentally disordered offenders, female offenders, long-term offenders, elderly offenders, and sex offenders:
- Developing correctional policies and programmes for aboriginal peoples, most often in consultation with aboriginal leaders, political organizations, and communities
- Delivering correctional services in a diversity of geographic and cultural settings, ranging from the urban centres of Montreal and Toronto, to the remote North in Yukon, Northwest Territories, and the Inuit territory of Nunavut.
- The implementation of restorative justice practices in correctional settings
- The development of effective risk assessment instruments
- The development of effective correctional treatment programmes, including effective interventions for sex offenders and cognitive skills programmes that are internationally recognized.

Despite these achievements, there are number of challenges that remain. Systems of corrections are dynamic and the political, economic, social, and cultural forces that influence the identification and response to criminal offenders are multifaceted and ever changing. An understanding of such forces, and of the factors that precipitate and sustain reform is a critical component of any technical and financial assistance provided to those jurisdictions seeking to implement and extend the minimum standards for corrections.

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# Alternatives to imprisonment as a global policy tool in criminal justice reform: how to increase public support for their implementation

Ahmed Othmani and Kajsa Marsk, Penal Reform International

## Introduction

Several surveys carried out on public opinion and criminal justice systems show that those who are the most negative about the criminal justice system are those who know least about it. As a matter of fact, the public as a whole is generally poorly informed about crime, the administration of the criminal justice system (CJS) and alternatives to imprisonment. Even those who are informed are often misinformed about one or other aspects of the system.

The present paper will attempt to show ways of informing the public and the effects that such an awareness-raising may have on the use of alternatives to imprisonment, mainly community service. It will also illustrate what Penal Reform International (PRI) does to reach the public and raise its knowledge about the CJS and alternatives to imprisonment.

## Knowledge of crime and the criminal justice system

### Poor knowledge among the public

The overall knowledge about crime and the criminal justice systems among the public is poor. Many also have a false picture of trends in crime and sentencing practices and are strongly influenced by mistaken beliefs. Studies from the United States show that during the years 1996 to 1998 a strong majority of the American public thought crime was increasing whereas the crime index showed the opposite during the same period of time. The use and length of custody in sentencing is also often underestimated by the public.

People with poor knowledge about crime and punishment tend to have a more negative rating of courts and sentences than better the informed. One could therefore expect that improving public knowledge about crime, sentencing and the criminal justice system in general would result in a more positive rating of alternatives. This is also often the case.

### Improving knowledge

Research done in Rio de Janeiro, Brazil, in 1998 showed that when the public is informed about issues such as the cost-benefit of alternatives versus prisons and the limitations of the CJS to reduce criminality, public opinion tends to be very different from general expectations and perceptions

Research projects show that awareness-raising workshops may have a considerable impact on public opinion.

A project in Rio de Janeiro with 320 randomly selected persons showed that after having participated in a series of activities plus a three-hour-long group dynamic, including video presentations and group discussions, support for alternatives to imprisonment increased in 19 out of the 21 crime cases presented to the participants.

Two major misunderstandings about the CJS among the public are: 1) that the CJS controls crime efficiently; and 2) that the rate of crime decreases if the rate of incarceration increases.



Public debates should be encouraged to make people aware of the limits and possibilities of the CJS. The public should be informed that only a minority of criminals end up being caught and punished. Various studies in the United States and in Great Britain show that an increase in prison sentences does not reduce the rate of crime. The prison can instead be a “school for crime” which favours recidivism.

The public is always interested in the cost-effectiveness of a system. A cost-benefit approach to the question is therefore often effective. Prison is a very expensive punishment. Calculations made in Brazil show that in 1995 there were 45,000 non-violent criminals in Brazilian prisons. The cost of keeping these criminals imprisoned for one year would have been enough to build 500 schools or 23,000 houses in the poor areas of the country. A study from the US showed that USD1 million spent on high school education prevents far more crimes (five times more) than if the same amount is spent on prisons.

The cost-benefit argument is especially important in poor countries and is one of the reasons for the success of the community service programme in many African countries. The cost of a prisoner carrying out community service in Zimbabwe is six times lower than if he or she were in prison.

Informing the public about the shortcomings of the CJS and the advantages of alternatives is crucial if one wishes to convey the message that the need for penal reform is important and urgent.

PRI has developed training sessions on alternatives to imprisonment that include training on how to convey the message of the advantages of alternatives to the public. The training mainly addresses public officials and NGO people. Workshops have been held in Kazakhstan with a very positive result. The training aims to teach the participants how to work with the media and how to make the best use of it to raise awareness among public opinion in favour of reforms. The training is also a good forum for discussing alternatives to imprisonment and learning more about the importance of public opinion in penal-reform-related issues.

In Kenya, as well as in Russia, the community service officers organize workshops in the communities to inform people about the programme. The cost-effectiveness, together with the very low rate of recidivism, has made the programme gain the confidence of both public opinion and the judiciary.

### **Public opinion and decision-makers**

The support of public opinion is especially important when a penal system is undergoing reform. Public opinion may resist implementation of non-custodial alternatives to imprisonment. Just as the need for alternatives to prison is a central issue when the Criminal Justice System is discussed, conveying the message of its importance and effectiveness well will be crucial for the success of any legislative reform in this area.

Nevertheless, it seems that an efficient strategy is still lacking, which conveys the message that alternatives to prison are crucial, mainly in countries with huge prison overcrowding.

On the one hand, politicians are often reluctant to propose new and progressive legislation in the area of criminal justice, fearing a negative reaction from public opinion that may eventually have an effect on their re-election. On the other hand, judges frequently do not apply the legislation on alternatives saying that “it is not what the public wants”. Politicians and policy-makers often misjudge public attitudes. A study by the Michigan Prison and Jail Overcrowding Project from 1985 shows that policy-makers grossly underestimated the public support for alternative sentencing to be 12 per cent compared to the actual level of 66 per cent. The survey revealed that decision makers “overestimate the proportion of all crime that is violent or person-related”. Such information suggests that policy-makers are misinformed in ways that may bias them against alternative sentencing and reforms, which reduces reliance on incarceration.

## The information format

For campaigns to be efficient and to change behaviour and opinion, the intended audience must be exposed to the message and pay attention to it. It is therefore important to take into account different sections of public opinion are affected by different media; newspapers, magazines, radio and television. Other ways of improving the knowledge of the CJS include for example, seminars, booklets and videos.

### Media

Although in many countries the public accuses the media of being corrupt, inaccurate and biased, the media remains the predominant tool for disseminating information. The media, the maker and shaper of images, is therefore important to campaigning efforts to change the behaviour of Governments and public opinion.

The media can:

- Play a key role in building awareness and shaping public opinion on alternatives to imprisonment;
- Shape the framework and nature of debates over important issues affecting the CJS;
- Generate action from its audience;
- Influence Government policy both directly and through its power to influence and mobilise opinion;
- Shape public perceptions of the those institutions promoting alternatives as campaigning institutions and raise their public profile;
- Put direct pressure on a government by placing it in the spotlight;
- Help build and influence the morale of the public.

In Zimbabwe and Kenya, it took the National Committees on Community Service months, and even a few years in the case of Kenya, to get the support of public opinions for community service before starting to implement the schemes. Public debates, use of media, work with the target groups, influencing policy makers, members of parliaments and so on were successfully used to make the schemes a proven success.

In Russia for example, the work of PRI with the media is an important part of the programme on alternatives to prison. PRI Russia works with the national press as well as with the local press to disseminate information about the alternative project and its results. In some regions cooperation with the media is especially active: staff of the territorial criminal executive inspection services are regularly interviewed by local journalists and appear on the radio and in television programmes.

In an attempt to increase the influence of the information campaign on society, FNR (the Independent Radio Broadcasting Foundation) proposes a new format: radio dramas. The documentary radio drama is a new, unique genre on the Russian airwaves, combining the virtues of a documentary programme with the entertaining features of a radio show.

As the media is often the best and main way to communicate an institutional message to different audiences, it is important to make sure that clear media objectives are fully integrated into campaigning and development strategies. A part of such a strategy should be to build good working relationships between the institution and the media thus allowing the institution to get its message across. Individual campaign strategies should benefit from, and aim to strengthen, such relationships.

## **Media and NGOs**

As mentioned above, a good relationship between campaigning institutions and the media is important. NGOs have an important role to play both as sources of valuable information and as potential allies in raising public awareness on critical issues of public policy. One of the most important roles that NGOs play is to independently gather information, monitor situations, compile databases and statistical reports. What is even more important and convenient is that in most cases the data are freely and readily available particularly to the press.

Since most NGOs are founded by the people who either have a particular interest in the area (in the case of PRI, prison administration) or are somehow affected by a problem (for example, former prisoners) they have high motivation, a deep understanding of the issues and are just as professional, if not more so, than State officials. Many NGOs also employ highly qualified professionals and experts who makes them an unbeatable source of information and expertise.

## **Conclusion**

As shown, penal reform can not be undertaken without support from the decision-makers and the public. Education of both the public and policy-makers is therefore critical for change since public opinion is uninformed when it comes to crime and sentencing policies. Recent studies have established that the better educated people are about the issue, the more supportive they are of alternative sentencing. Information campaigns and training on the issue is therefore of great importance.

Policy-makers obviously often misjudge public attitudes, believing that the public wants all criminals behind bars. Surveys show, however, that the public generally embraces alternative sentencing options (particularly for non-violent crimes) once they have a better understanding about the alternatives and see the rationale behind them. Policymakers and advocates should therefore take greater advantage of the potential support for alternative sentencing among the public and should be encouraged by civil society and the media to investigate public opinion on crime and justice and to re-evaluate current sentencing policies for better strategies and more efficient and effective programmes to prevent crime.

## The Standard Minimum Rules for the Treatment of Prisoners : the experience of the International Committee of The Red Cross in monitoring the treatment of inmates

Nicolas Roggo, Protection Division, International Committee of the Red Cross, Geneva

### **The Standard Minimum Rules (SMR): a pertinent set of rules**

It is somehow fascinating to consider how visionary the Standard Minimum Rules for the Treatment of Prisoners were when they were developed and adopted by the United Nations in 1957. Indeed, almost 50 years later, despite the developments in prison policy and practice, they still remain fully pertinent and appropriate. As a matter of fact, there is no or very little need to clarify the interpretation of the specific concepts on which the rules are based. Recently published handbooks on prison practice demonstrate clearly, if need be, that the SMR remain a very strong reference.

### **Poor respect for these rules**

That is the problem to be addressed. Prison conditions in many parts of the world fall well below the minimum standards recognized as required for the treatment of prisoners: overcrowding, poor hygiene and sanitation, poorly prepared and inadequate food, restricted exercise and inadequate bedding, ventilation and light, exposure to diseases of all kinds: such conditions cause immense suffering. The current challenge lies therefore in how to improve compliance with the rules, and every opportunity, such as this experts meeting, should be seized to examine ways of improving effective implementation of the existing norms.

Looking at what can be done to improve the implementation of the SMR, it may be said that the dissemination and knowledge of the norms have certainly improved, thanks to the tremendous efforts of many individuals and institutions, organizing seminars on human rights in prisons, developing training manuals and writing handbooks on good practices for prison staff and managers. The work must continue and the impact of the various initiatives will certainly be positive in the medium term.

Improvements are also to be noted in the area of supervision and independent control mechanisms at both national and international levels. The mechanisms must be strengthened. Still, much progress is still needed because of the lack of political will of many States to engage in reforms, because of the laxity of many prison administrations, and indeed because of the lack of resources. It is our duty to strengthen the dialogue with all the actors involved (administrators and politicians) to lead them towards a better knowledge, understanding and respect for the existing standards.

### **The experience of the International Committee of the Red Cross (ICRC)**

The ICRC is very active in the monitoring of the treatment of prisoners and the conditions of detention in special circumstances, such as armed conflicts and situations of internal violence. Besides visiting prisoners, reporting to the authorities, reminding them of their obligations and presenting in as convincing a way as possible recommendations on how to improve the situation where necessary, ICRC delegates also provide concrete cooperation in the implementation of agreed solutions.

In its work, the ICRC bases its requests or recommendations to the authorities primarily on International Humanitarian Law (IHL), but also on Human Rights norms and standards, depending on the situation. In situations of armed conflicts, IHL applies and the ICRC has the mandate to ensure the respect of these rules by the parties involved. In other situations where there are tensions that could turn into internal troubles or even armed conflicts, IHL is not applicable and parties have no obligation to comply with these rules. The ICRC does, however, encourage the authorities to respect them in a spirit of humanity. At the same time, it usually refers explicitly to Human Rights norms and international standards, such as the SMR, in its representations to the authorities or non-State actors.

It is a fact that most contexts where the ICRC operates are in crisis and are therefore marked by a considerable weakening of the economic situation and of the capacity of the State to run the administration, including the penitentiary system. Budget priorities are reorganized, administrative staff have to face new and heavy constraints, many of which affect their own lives, and coping mechanisms become the norm. In such circumstances, the lack of resources is endemic and there is very little will from the authorities and even from the public at large to consider paying any attention to the treatment of inmates, which tends to fall rapidly well below standards. In such cases, emergency measures must be taken to ensure that the very basic needs of the prisoners are covered. The ICRC consistently undertakes emergency operations to upgrade the conditions to a minimum level for survival, for example by improving the water supply, complementing nutritional provision and building sanitary facilities.

In crisis situations, one should distinguish between where there is an intention to humiliate prisoners and where the authorities are simply confronted with inadequate funds and resources. Where there is a clear or apparent intention to be harmful, the protection of the individuals or groups targeted becomes a priority for the ICRC. Maintaining a regular presence in places of detention and following up on individual cases is the operational response. Where there is no intention to harm but rather defects and failures in the system, the ICRC works within existing structures, providing support to the system in order to maximize the impact of assistance. In both cases, there is a task of persuasion that must be carried out: bringing important issues to the attention of the authorities and mobilizing those in charge, extracting improvements step by step, without ever losing sight of the final objective, namely the reinforcement of the structures themselves to improve their capacity to optimize the resources available. We must be convincing and, in order to win attention and respect from the authorities with whom we deal, we must be ready to provide concrete cooperation for project implementation.

### **Some general remarks from observation of the current situation**

Many prison systems in the world are still run by military-style structures. Policemen are transferred, usually on a temporary basis, from the street to the jails, without a single day of training or sensitization to their new tasks. A minimum degree of professionalism is required if human rights are to be respected. In that regard, we commend warmly the efforts made by a number of researchers and institutions to develop manuals and handbooks on good prison practice. Documents recently published by Penal Reform International, the International Center for Prison Studies, the International Center for Criminal Law Reform and Criminal Justice Policy, among others, are indeed excellent instruments made available to prison staff to help them put into practice international norms and standards. They must be made widely available.

Of major concern are the numerous prison systems where the management has lost or "given up" control of their institutions at various levels, with control becoming more apparent than real. There are situations where the national direction is not aware of what is going on and shows little interest in keeping control over what is taking place locally. There are also situations where control has been willingly delegated by the local administration to individual prisoners or groups of detainees who have gained far-reaching power over other detainees and the staff. Where the system has weakened to such an extent, application of standards and norms becomes nothing but wishful thinking.

Regarding treatment of prisoners, it is all too often the case for detainees to be systematically submitted to psychological pressure and physical force to extract confessions during interrogations. At any time, but in particular in time of crisis, the risk of ill treatment is higher during the arrest and the first hours following arrest. Particular attention should therefore be paid to ensuring that persons under interrogation or in provisional detention are protected. Judicial control over the treatment and the way in which information has been obtained by investigation bodies to support the charges, must be reaffirmed and strengthened: confessions still need proof and confessions obtained by force have no value in criminal proceedings

Today, a matter of great concern is the ever increasing number of prisoners who are foreign nationals. In some prisons the situation is such that foreigners, in particular asylum seekers and illegal immigrants, represent a third or a half of the population which represents additional challenges for the management of the prison. Such individuals are particularly vulnerable: without any support from their families for additional food or clothes for example, they depend totally on the prison system for their survival. It is clear that they should not be treated in the same way as persons who have been convicted or accused of criminal offences. The growing migration flows and the extreme vulnerability of displaced persons when detained or interned should impel the international community to pay special attention to their situation and to strengthen standards ensuring their protection.

Privatization seems to be becoming a trend in some regions. It could be useful to keep a close watch on how private companies intend to respect standards, how authorities intend to keep control over the treatment of detainees and how open companies will be to public scrutiny and external and independent inspection. A proactive dialogue with the authorities concerned would seem necessary in order to draw their attention to the potential risks inherent in privatization unless accompanied by safeguards to avoid loss of control and to lower abusive treatment.

In the field of health, particular attention should be given to human rights aspects of HIV/AIDS in prisons, because HIV-infected prisoners and prisoners with AIDS are extremely vulnerable. World Health Organization (WHO) guidelines provide standards from a public health perspective that should be applied by all prison authorities. Human rights standards should also reinforce the rights of prisoners to benefit from adequate medical care, to access effective preventive healthcare measures and to obtain relevant health information, without discrimination.

### **Implementing the SMR: a matter of financial resources only?**

In principle, even in times of crisis and grave economic difficulty, nothing can relieve the State of its responsibility to provide the necessities of life to those whom it has deprived of liberty. In reality, lack of financial resources is stressed most of the time by the authorities to explain the poor state of penitentiary systems. It is obvious that economic difficulties and a low level of development are major causes of non-compliance with international standards. Such reasons cannot, however, simply explain away the deplorable and inhuman conditions of detention that are observed in many parts of the world. Lack of political will to effect policy changes, laxity and mismanagement are also strong factors. In every context, the root causes and consequences must be analysed in depth in order to understand the problems and contribute to find solutions.

As a matter of fact, one sees an enormous disparity in the capacity to make the best use of available budgets, with huge differences in the conditions of detention, even between prisons with similar resources and constraints. Some prisons are quite impressive in the way they get the best results out of their limited resources. Depending on the way the prison is managed, it can be clean or filthy, ventilated or muggy, and detainees can be sufficiently fed or under-nourished. It often is just a matter of will, of management skill and of organization. It is essential to succeed in persuading the prison management and the authorities that the implementation of minimum standards and good practices often does not require much additional resources. Indeed, it is often possible to do much better with the resources that are available.



# Prisons in Africa: statistics, health situation, main problems and good practices

By N. Masamba Sita (PhD), Acting Director, UNAFRI

## Introduction

The present paper deals with statistics from 28 African countries. It looks at variables such as: "number of prisons", "capacity of prisons"; and "number of prisoners" in countries with a view, inter alia, to examining the problem of "overcrowding" in prisons in Africa. This problem appears to be seriously affecting the living conditions in prisons in Africa. The "health situation" (main diseases, HIV/AIDS policy, mortality rate), "main problem" and "good practices" in prisons are also examined. It is hoped that such an approach will facilitate comparisons with data from other regions.

The presentation will attempt to explain and show how the above variables are articulated. In so doing, it goes beyond the descriptive level of conceptualization by proposing an explanation or interpretation of the quantitative and qualitative materials under study.

## Prison Statistics

The statistics are from the following 28 countries: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central Africa Republic, Chad, Cote d'Ivoire, Gambia, Ghana, Guinea, Kenya, Lesotho, Malawi, Mali, Mauritania, Namibia, Niger, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Uganda, Zambia and Zimbabwe. Only the 17 countries that have provided sufficient information are listed in table 1 (see next page).

As table 3 will reveal, "overcrowding" is the most common problem faced by a large number of listed countries, 14 of the 16 countries. A projection with caution from such observations leads to the conclusion that 87.5 per cent of African countries face the problem of overcrowding. Thus, it is important to look at the negative implications that overcrowding might have on the implementation of the provisions of the Standards Minimum Rules for the Treatment of Prisoners. In the case of African countries, it in fact results in the violation of the rights of the prisoners.

In order to emphasize the relationship between "overcrowding", "prison population" and "capacity", it is worth noting that "overcrowding is a quotient of the other two variables, ("prison population" divided by the "capacity"). By definition, we consider that there is overcrowding when the prison population exceeds the total capacity of prisons. Table 1 reveals that of the 17 countries, only four (Angola, Central African Republic, Niger and Nigeria) do not have more prisoners than the indicated capacity. It is important to look at the rights of prisoners in those countries. The issue of overcrowding should, however, be regarded with caution. With the population not being evenly distributed, the situation of overcrowding may exist in some of the prisons of these countries (See PRI, 2002:6) for example Angola, where a problem of overcrowding is reported due to congestion in the court system (PRI, 2002, Annex).

## Health situation

The following parameters: main diseases, HIV/AIDS policy and mortality rate, are used to account for the health situation in African prisons. Table 2 lists countries providing enough information on the above variables.



Table 1. Number of prisons, their capacity and population

Country		Statistics				
		(1) NO. OF PRISONS	(2) CAPACITY	(3) PRISON POPULATION	(4) OVERCROWDING IN %	(5) RATE PER 100K INHABITANTS
1	Angola	22	6000	4975	83	37
2	Benin	8 Functioning	1950	4975	255	82
3	Burkina Faso	11	1650	2700	164	23
4	Burundi	11	3750	8647	231	133
5	Cameroon	73	6749	20000	296	132
6	C.A.R.	55	6000	4168	69	112
7	Mauritius		1581	2438	154	203
8	Namibia	11	3822	4814	126	267
9	Niger	35	8722	6000	69	54
10	Nigeria	230	42681	39368	92	34
11	Rwanda	18	46700	94512	240	1418
12	Senegal	38	7090* 2972***	4894	165	51
13	South Africa	241	109106	124460	162	404
14	Tanzania	120	22699	44063	194	122
15	Uganda	194	8530	16016	188	67
16	Zambia	53	5357	13173	246	124
17	Zimbabwe	41	16000	21000	131	163

Table 2 reveals that the most common diseases in the 13 countries listed are malaria (in Angola, Benin, Burkina Faso, Burundi, Cote d'Ivoire, Guinea, Rwanda and South Africa; and tuberculosis (in Angola, Benin, Burkina Faso, Burundi, Cote d'Ivoire, Guinea, South Africa and Uganda. The next most common are skin diseases, diarrhoea and HIV/AIDS. It is very encouraging to note that eight countries (61.54 per cent) have an HIV/AIDS policy in prisons. Concerning the mortality rate, the comparison remains difficult because of the use of different count units, e. g., (1) per cent, (2) per cent per year, (3) per 10,000 per month, and the fact that the statistics are not from the same years.

### Main problems

The most common problems identified by the countries listed in table 3 ( see opposite page) is "prison overcrowding". Some 14 of the 16 countries have indicated overcrowding as a problem. We might project that 87.5 per cent of African countries are facing the problem of overcrowding. As mentioned earlier, its negative implications compromise the implementation of Standards Minimum Rules for the Treatment of Prisoners. In Tanzania, "... the implications of prison overcrowding" being mentioned as one of the main problems.

A trend from table 3 is the common concern of African countries of "prison overcrowding". The observation indicates that once the causes of overcrowding are met, efforts aimed at

Table 2. Health situation

COUNTRY	MAIN DISEASES										HIV/AIDS Policy	MORTALITY RATE	
	Malaria	Tuberculosis	Skin	Diarrhoea	Dysentery	HIV/AIDS	STD	Typhoid	Respiratory	Cholera			
1	Angola	*	*	*	*							Testing	0.5%
2	Benin	*	*				*	*	*	*			
3	Botswana											Prevention /control programmes	0.5% per year
4	Burkina Faso	*	*	*				*					0.9% of inmates
5	Burundi	*	*			*	*		*			Awareness programmes	0.13 per 1000 inmates
6	Cote d'Ivoire	*	*	*	*		*	*			*		37.64 per 10 000 per month
7	Guinea	*	*		*								2%
8	Namibia									*		Release for medical reason*	0.68% per year (2001)
9	Nigeria											-do-	0.4%
10	Rwanda	*			*							Awareness programmes	0.1%
11	South Africa	*	*	*			*				*	Awareness	7 per 1000 inmates
12	Uganda		*									Specific programmes	20 per 1000
13	Zimbabwe											Awareness programmes	2%
T		8	8	4	4	1	4	3	2	2	2	8	

curbing overcrowding in African prisons might effectively facilitate the application of Standards Minimum Rules for the Treatment of Prisoners and contribute to improving prison conditions in Africa. The second concern revealed by the African prison authorities is the "insufficient funding of prisons". Nine countries report this (see table 3 next page). Lack of qualified staff is the fourth problem (see table 3).

The study of the relationship among the variables raises, as indicated above, the presentation from the "descriptive level" to the conceptual levels of "explanation" and "interpretation" (T. Hirschi et al., 1967:43-44). Indeed, it reveals how the selected variables and later the subsections of the presentation are related. In so doing, it brings about a shift from the descriptive level of conceptualization to the levels of explanation and interpretation of the quantitative and qualitative materials at our disposal. It might be deduced from table 3 that "recidivism" for instance, could be explained by the factors such as (1) overcrowding, (2) lack of qualified staff, (3) insufficient funds, (5) unprepared rehabilitation, and (6) lack of alternatives to imprisonment.

Table 4 reveals two perceptible trends from the listed 11 countries. They are: the rights of prisoners being taken into consideration by the prison authorities and the introduction of "social rehabilitation and reintegration programmes" in prisons. As good practice, it is reported

Table 3. Problems faced

Country		PROBLEMS FACED							
		(1) Overcrowding	(2) Lack Of Qualified Staff	(3) Insufficient Funds	(4) High Mortality Rate	(5) Unprepared Rehabilitation	(6) Lack Of Alternative Natives	(7) Recidivism	(8) HIV/Aids
1	Angola	*							
2	Benin	*	*	*		*	*		
3	Botswana	*						*	*
4	Burkina Faso					*			
5	Burundi	*		*					
6	Cameroon	*	*						
7	Ghana	*		*					
8	Kenya	*		*					
9	Lesotho	*			*			*	
10	Malawi	*		*					
11	Mali	*	*	*					
12	Namibia		*	*					
13	South Africa	*							*
14	Tanzania	*		*					
15	Uganda	*		*					
16	Zimbabwe	*							
T.		14	4	9	1	2	1	2	2

by South Africa that "rehabilitation of prisoners is now the core function of the department (PRI, 2002). It is suggested that ways and means of supporting the emerging trends be explored to help the continent improve living conditions in prisons.

What, then, might be considered as good practice? The answer must be the effective involvement of "local communities" in the administration of prisons and implementation of non-custodial measures. UNAFRI and the Uganda Prison Service (UPS) study, titled "From Prison Back Home: Social Rehabilitation as a Process (the case of Uganda)", sheds light on the role to be played by the local communities in Africa. The implementation of non-custodial measures such as "community service" is successful only if local communities are involved (See N. Masamba Sita et al., 1999). Suffice to say that the effective involvement of local communities gives access to local available (human, material, cultural) resources that no government is able to offer and that, unfortunately, are often ignored or neglected as many field cases examined by the above study reveals. We are convinced that successful social rehabilitation and reintegration of a prisoner is possible only if the community receiving him/her is effectively involved in the process. These remarks lead to the proposal of a conceptual framework that might be used for guidance (see chart 1).

Table 4. Good practices

COUNTRY		GOOD PRACTICES							
		National Standards	International Standards	Inmates Visits	Pre-release Programmes	NGO involvement / outside world	Release of terminally ill patients	Prisoner rehabilitation programmes	Human rights of prisoners
1	Angola	*	*						
2	Botswana				*		*		
3	Burundi							*	
4	Cameroon								*
5	Cote d'Ivoire				*	*			
6	Mali							*	
7	Namibia	*							
8	Nigeria					*			*
9	Rwanda			*					*
10	South Africa					*		*	*
11	Uganda							*	*
T.		2	1	1	2	3	1	4	5

The time allocated to the presentation does not allow each of the relationship identified in the conceptual framework to be fully commented on. Thus, it should be indicated that "overcrowding" is the independent variable that leads to "violation of prisoners' rights", the dependent variable in the case of the African prisons. The framework shows precisely how overcrowding in prisons might lead to the violation of the rights of prisoners.

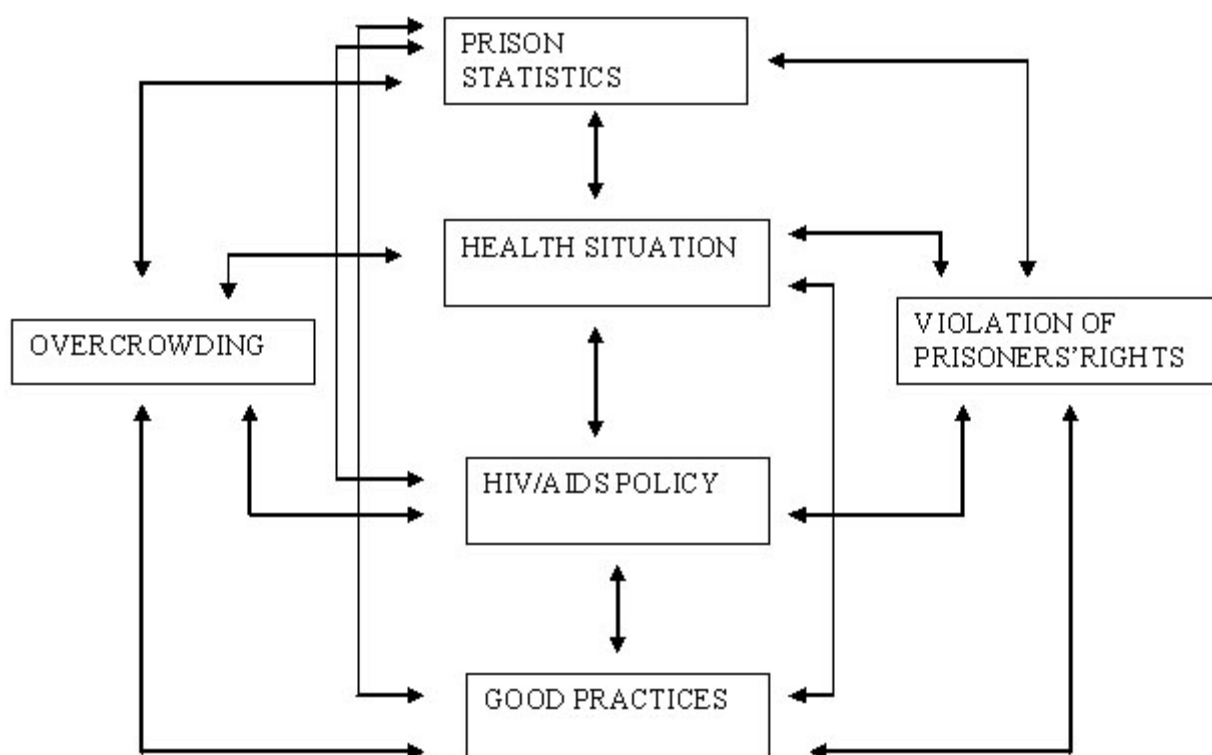
The other variables: Prison statistics, health situation, HIV/AIDS policy and good practices are intervening variables (T. Hirschi, Op. Cit.) They show how overcrowding affects the rights of prisoners.

## Conclusion

It is worth noting, inter alia, that:

1. Prison statistics help measure the negative impact of overcrowding on the Rights of Prisoners.
2. Overcrowding has negative repercussions on the health of prisoners, resulting in violation of their rights.
3. Overcrowding affects the implementation of corrections policies, notably those related to health, social rehabilitation and reintegration of prisoners, which results also in violation of the rights of prisoners.
4. The introduction of "good practices" (implementation of corrections policies) might

Chart 1. A conceptual framework



curb the negative effects of overcrowding in prisons, and consequently, ensure a better protection of the rights of prisoners in the African continent.

5. It would be interesting to determine the situation, in terms of human rights, in other regions, where the problem of overcrowding does not exist.

6. It would be interesting to examine the correlation between "overcrowding" and "insufficient funding" of prisons. There seems to be a negative correlation in the case of African countries. Some 9 of the 14 countries (64.29 per cent) experiencing the problem of insufficient funding of prisons, have also a problem of overcrowding (see table 3). That suggests that "insufficient funding" leads to an increase of "overcrowding". The situation in other regions might also be instructive.

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# Reporting on the crime situation and trends: HEUNI experiences of operationalizing data and information from the UN Crime Trends and Criminal Justice Surveys

Kauko Aromaa, Director, European Institute for Crime Prevention and Control, (HEUNI) [1]

## Introduction

The Seventh UN Crime and Criminal Justice Survey is soon to be analysed and reported. The basic idea of the surveys has been to collect routinely produced and published data on recorded crime trends and features of the criminal justice system, as provided by national correspondents for each country. It is understood that such data are, as a rule, not fully comparable across countries, and also that they reflect central features of the phenomena to be described only in a distorted and biased manner, i.e. the validity of the data is often questionable. Further, there is sometimes even a lack of clarity as to how reliable the data provided are.

A very basic problem seems to continue to be that all member countries are simply not able to provide any or some of the required information. This state of affairs reflects a lack of motivation, as well as a need for technical assistance and support both with regard to information systems and criminological expertise in the countries concerned.

A further problem is related to the time lag always involved: data collection, validation, complementation, and analysis/reporting requires a certain minimum time. Overcoming undue delays is a major practical problem of the entire endeavour. That is because of the final objective of the exercise: monitoring trends in crime and the criminal justice system is a necessary exercise if Governments are to understand and evaluate the consequences of their policies and how successful those policies are.

Assessing how successfully UN standard and norms are applied provides in that sense the justification for the entire data collection and reporting work. It is not a matter of scientific curiosity but a very practical matter of knowing how recommendations become action.

Monitoring the situation and trends, then, is only possible at a national level if the data are reliable and if they reflect the central features of the target as defined from a policy perspective. At a comparative level, the same requirements are necessary but not sufficient: in addition to those features, comparability must be achieved. In view of the routinely produced data on recorded crime and on features of the criminal justice system, comparability is notoriously hard to achieve.

It is those two aspects of the work that are discussed below. The perspective here is restricted to what can be made out of existing acceptable data sources and to the validation problems, overcoming and/or circumventing these. In other words, data quality and adequacy are central in this work.

## The contents of the surveys [2]

Each of the UN surveys was designed to obtain quantitative and qualitative information on crime trends and the operation of national criminal justice systems. The data include statistics such as the number of crimes reported to the police, the clearance rate, the number of suspects

and offenders dealt with at the different stages of criminal procedure, sentences and the enforcement of sentences, and the resources available to the criminal justice system.

Since it is understood that data routinely provided by various national information systems do not cover many important aspects of the target area, the information collected through the survey instrument is supplemented by other information available to the experts engaged in the analysis and reporting work.

In the preparatory process related to reporting on the Fifth UN Survey, the data were subjected to quantitative analysis in order to test whether a set of crime and social indicators could be developed that could explain the differences between countries. The analysis was carried further for some dimensions in the analysis of the data for the Sixth survey. Such an analysis was thought to be promising in identifying differences that would otherwise have gone unnoticed in an analysis that proceeds on a country-by-country basis.

A complementary element in the report on the Fifth Survey was the compilation of brief "criminal justice profiles" of all the European and North American countries with an independent criminal justice system, even if they did not respond to the Fifth Survey. Each profile sought to provide background information on the criminal justice system, the trend in crime, resources and special issues of concern. The profiles were prepared by individual members of the expert group involved in the work, and sent to the authorities and experts in the respective countries for review. Looking at this exercise from a distance, it seems that this approach could be developed further in order to create a complementary element to the present UN Survey approach that could be more explicitly targeted at assessing the performance of each country with regards to standards and norms: a benchmarking approach.

## **Statistics**

A number of problems have been noted with the United Nations Surveys. They are problems that, to a large extent, are common to all efforts in gathering international crime and criminal justice statistics. The major problems with regard to data analysis are the imprecise definition of the terms, improper classifications, ambiguous coding structures, and differences in the units of count used.

The survey instrument includes a brief section setting out some key definitions, for example the definition of "assault", the definition of "persons prosecuted" and the definition of "admissions to prison". Such a section is a necessity, since even the basic terms are defined differently in the different countries. Even the most rigorous definitions, however, are no final remedy if countries have not also adopted them in their statistical reporting systems. In that respect, as in some others, the UN Surveys are expected to function as an instrument of "emancipation" in this area. Progress in these matters, however, is slow. In practice therefore the problem of imprecise definitions remains.

First, the detection rate or the likelihood of crimes being recorded varies considerably across crime categories and also over time, one consequence of this being that the desire to measure some aspects of public safety by using recorded crime does not have a very realistic basis.

Secondly, the legal definitions of offences vary considerably from one country to the next. For example, "assault" may be an independent category in some jurisdictions, while others may not consider an incident to be an assault unless it results in bodily injury; similarly, "burglary" or "robbery" may encompass quite different types of acts. Another illustration is the extent to which negligence affects the determination of criminal responsibility. A third example is the extent of criminalization. Matters that in one country are dealt with by regulatory authorities (such as labour safety authorities) may be matters for the police in another country. Acts that are criminalized in some countries (such as the possession of drugs, certain sexual behaviour and gambling), may be tolerated elsewhere; similarly, the scope of criminalization may vary

considerably across countries even if the crime definitions would seem to be similar as, for example, dissimilar blood alcohol limits (or the total lack of accurate limits) stipulated for drunk driving or dissimilar criteria applied when ascertaining driving under the influence of drugs. All such differences would call for extreme caution in comparisons of crime rates or absolute numbers. It is often held that such problems become less central if the assessment and the comparisons concentrate on trends. Even then, however, pitfalls remain in that even trends are vulnerable to changes in definitions that do indeed occur rather frequently.

Problems of definition may also be encountered elsewhere. For example, a classic case is the comparison of imprisonment rates. The deprivations of liberty included in the counts for each country may present large variations as to the kinds of institutions to which they refer. Persons imprisoned as a consequence of offending may be kept in institutions that are not classified as prisons at all.

Thirdly, there are considerable procedural differences between countries. It is not always the police and the lower courts that deal with crime. Certain cases may be handled with a simplified procedure or by special investigatory and adjudicatory bodies. A category such as "persons prosecuted" may be understood by some respondents to refer only to persons against whom the public prosecutor brings charges in court, while other respondents may include cases where the prosecutor takes other action, such as closing the case with a warning or the arrangement of victim/offender mediation.

Another example of the importance of procedural differences is provided by traffic offences. In many countries they are not considered "offences", and are dealt with by a special branch of the police or through a special procedure (and, often, are not recorded in the statistics). Without a full appraisal of such procedural differences, countries that include such petty offences in their statistics will have considerably higher figures than countries that do not include them.

Yet another procedural difference relates to the extent to which discretion is permitted, either formally or informally. Some countries require criminal justice agencies to proceed with any prima facie case (the "principle of legality"). Other countries may allow more discretion (the "principle of opportunity", also known as the "principle of expediency") which, in practice, may mean that further measures are waived in a large portion of the cases. In still other countries, the police and prosecutor will not proceed with certain types of cases unless the victim requests that measures be instituted. If no such request is made, the case will generally not be recorded as an offence.

A fourth difference between countries in respect of definitions is in the statistical classification of crime. The classification of theft is a good example. Depending on the country, it may or may not include burglary or theft of a motor vehicle. It may or may not include simple or aggravated theft as defined by the law of the jurisdiction in question, and it may or may not include shoplifting.

Fifthly, the rules for counting offences or offenders vary. Some authorities in some countries count offenders, others count offences; some count each separate incident in a series of offences, while others record a series as one unit. One particular difference that has led to considerable confusion is the unit used for the successful outcome of police investigations. Some countries count "arrests", others use "reported offences", and still other countries use "cleared offences". Any comparison of statistics based on such different units would be quite misleading.

A further instance of variations in counting units are prosecutor data. Some countries count persons prosecuted, others may count cases dealt with by the prosecutor where several persons may be included in one "case".

Still another examples of differences in counting rules is provided by admissions to prison. Some countries count only those cases where an individual is admitted to prison the first time.



## Benchmarking

The UN surveys date from an era when criminologists attempted to improve the cross-national comparability of data on crime recorded by the authorities. After coping with considerable obstacles to comparability, for instance making the major breakthrough of comparable population surveys of individual crime victimization, followed by similar surveys targeted at businesses, they still also deal with the notoriously unreliable and invalid data on recorded crime as a central information source. All would be well if the exercise were just aimed at estimating the workload of law enforcement. As, however, it is still believed that the objective of the crime-monitoring effort should continue to be a performance assessment, where countries are compared in terms of how well they have managed to guarantee the personal security of their citizens, and anyone else within their jurisdiction, other and more valid approaches might deserve to be considered. A promising alternative approach along those lines could be the application of "benchmarking", an approach perhaps more to the point and more direct considering the motive of doing such country assessments and comparisons.

This approach represents the introduction of more robust measures and these are indeed required if comparison becomes more global/more comprehensive. This alternative does not prohibit the further development of the previous approach (striving to improve the quality and comparability of traditional crime data). That approach remains an important dimension of the work. One central reason is that, despite all warnings against using available official crime data for simple straightforward comparisons of different countries, this is constantly being done anyway. Another reason is that it is conceivable that in a very faraway future, both technically and definitionally, more similar data are eventually going to be produced in an increasing number of countries. Such a development is supported in an important manner by continued work with the more traditional types of data.

Instead, the benchmarking exercise represents a possibility for developing parallel assessment methods that are more valid, i.e. more directly to the point of assessing country performance in terms of UN standards and norms. In practice, this could be achieved in part by further developing the contents of the International Crime Victim Survey, and in part by creating new ways of reporting on the performance of the relevant authorities, for instance by applying the approach used by the European Union when recently assessing the eligibility for membership of the ten "accession countries".

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[1] As HEUNI only has reported on Europe and North America, some of this commentary may not apply in full in a global perspective.

[2] This discussion is largely taken from Matti Joutsen (1998): Introduction, in Kristiina Kangaspunta, Matti Joutsen and Natalia Ollus (eds.): *Crime and Criminal Justice Systems in Europe and North America 1990-1994*. HEUNI Publication Series No. 32.

# The European Union and its activities in Europe with regard to training of judges. Applying European and United Nations principles in practice

Professor James Farsedakis, European Union

Most of what is included in the Compendium of the United Nations Standards and Norms in Crime Prevention and Criminal Justice is part of the legal culture of the Member States of the European Union (EU). Through the work of the United Nations, Member States of the EU have contributed to the elaboration of the standards and to their implementation by participating in various technical assistance programmes in developing countries. Moreover, European experts were actively involved in compiling and presenting, at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1995 in Cairo, the international handbook on good prison practice, "Making Standards Work".

Regarding the training of judges within the EU in particular and with reference to the standards and norms, one could make the following observation. The Member States of the EU, as founding and active members of the Council of Europe and having been instrumental in shaping its character, have contributed to the creation of an important asset in the area of crime prevention and criminal justice, namely the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms ([www.conventions.coe.int/Treaty](http://www.conventions.coe.int/Treaty)) through the decisions of the European Court of Human Rights, ([www.echr.coe.int](http://www.echr.coe.int)). It must be noted that human rights, as recognized by the Convention, are also recognized and applied by the European Court in Luxembourg ([www.curia.eu.int](http://www.curia.eu.int); see : W. Wade, p.2). Special mention, at this point, must be made of the publication of the Chapter of Fundamental Rights of the European Union (2000/C 364/01).

Also important are the contributions made in the area of crime prevention and criminal justice by:

- a) The European Committee on Legal Cooperation (CDCJ);
- b) The European Committee on Crime Problems (CDPC); and
- c) The Steering Committee for Human Rights (CDDH).

The work of the Council of Europe, from 1956 to the present day, regarding criminological issues is founded, as is well known, on the request of the Secretary-General of the United Nations (see D/11635/28.10.1955). Within the framework of the Council of Europe, many conventions have been elaborated, many resolutions taken and some very important recommendations addressed to Member States (see Compendium\_of\_Recom.OC\_INF\_03E). The most important are:

## Conventions

- European Convention on Extradition (ETS 24) ;
- European Convention on the Suppression of Terrorism (ETS90);
- European Convention on Mutual Assistance in Criminal Matters (ETS 30);
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51);

- European Convention on the Punishment of Road Traffic Offences (ETS 52);
- European Convention on the International Validity of Criminal Judgments (ETS 70);
- European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73);
- European Convention on the Transfer of Sentenced Persons (ETS 112);
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141);
- European Convention on the Protection of the Environment through Criminal Law (ETS 172);
- Criminal Law Convention on Corruption (ETS 173) ; and
- European Convention on Cybercrime (ETS 185).

(For the complete list, see Council of Europe, European Conventions and Agreements, vol. I-VII, Strasbourg, 1992-1999, and European Treaties, vol. I-II, Strasbourg, 1998)

### **Resolutions**

- Resolution (75) 12 on the Practical Application of ETS 24;
- Resolution (78) 43 on Reservations Made to Certain Provisions of ETS 24; and
- Resolutions (71) 43 and (77) 36 on the Practical Application of ETS 30.

### **Recommendations**

- Rec. R (80) 7 concerning the practical application of ETS 24;
- Rec. R (80) 9 concerning extradition to States not party to the European Convention on Human Rights;
- Rec. R (86) 13 on the practical application of ETS 24 in respect of detention pending extradition;
- Rec. R (96) 9 concerning the practical application of ETS 24;
- Rec. R (82) 1 concerning international cooperation in the prosecution and punishment of acts of terrorism;
- Rec. R (80) 8 concerning the application of the ETS 30;
- Rec. R (83) 12 concerning safe conduct for witnesses in application of Article 12.1 of ETS 30;
- Rec. R (85) 10 concerning letters rogatory for the interception of telecommunications;
- Rec. R (94) 12 on the independence, efficiency and role of judges;
- Rec. R (97) 14 concerning the application of ETS 51;
- Rec. R (79) 15 concerning the application of ETS 52;
- Rec. R (79) 13 concerning the application of ETS 70;
- Rec. R (79) 12 concerning the application of ETS 73;
- Rec. R (84) 11 concerning information about ETS 112;
- Rec. R (88) 13 and R (92) 18 concerning the practical application of ETS 112;

- Rec. R (91) 12 concerning the setting up and functioning of arbitration tribunals under Article 42 par.2 of ETS 141;
- Rec. R (99) 20 on the friendly settlement of difficulties;
- Rec. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts;
- Rec. R (87) 18 concerning the simplification of criminal justice;
- Rec. R (95) 12 on the management of criminal justice;
- Rec. R (95) 13 concerning problems of criminal procedural law connected with information technology;
- Rec. R (96) 8 on crime policy in Europe in a time of change; and
- Rec. R (99) 19 concerning mediation in penal matters.

(For a complete list, see Council of Europe, Recommendations by the Committee of Ministers relating to Crime Problems, vol. I-VI, Strasbourg).

Also very important are:

- The European Chapter of the Statute for Judges (DAJ/DOC (98/23). It contains special references to United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985.

The activities of the Council of Europe also comprise :

- Many conferences and symposia (see the relative publications of the Council of Europe, Collected Studies in Criminological Research, vol. I-XXXIII).

Regarding the training of judges within the framework of the Council of Europe, the following have been developed:

- The so-called "Lisbon Network" (see : Council of Europe, The Training of Judges and Public Prosecutors in Europe, Proceedings (Lisbon, 27-28 April 1995), Strasbourg, 1996).

The Lisbon Network was created based on a meeting held in Lisbon on 27 and 28 April 1995 to exchange information among individuals and institutions responsible for the training of judges and public prosecutors. The meeting was organized by the Council of Europe with the aim of analysing the training structures for judges and public prosecutors in Europe and considering the possibility of pan-European cooperation in that field.

The Lisbon Network is a tool for improving different training systems in order to ensure the functioning of a competent, independent and impartial judiciary. Its main objective is to develop and reinforce cooperation in Europe in the field of training of judges and prosecutors through an exchange of information and experiences among interested partners, and by finding joint solutions on subjects of common interest.

Since its creation, the Network has held five plenary meetings:

- Training of judges and prosecutors in matters relating to their professional obligations and ethics, in Strasbourg, 13-15 May 1996;
- Training of judges on the application of international conventions, in Bordeaux, 2-4 July 1997;
- Competence, impartiality and independence in the recruitment and training of judges, in Warsaw, 17-18 December 1998;

- Training of trainers, in Budapest, 25-26 October 1999; and
- Training of judges and prosecutors in professional skills, in Vilnius, 30 September to 1 October 2002.

At the end of each meeting, the delegates adopted conclusions highlighting the converging points among participants, identifying common problems and indicating the measures to be recommended to strengthen the systems as well as the contents of the training sessions in the different countries.

Resolution (99) 1, adopted by the Conference of European Ministers of Justice, recommended to the Council of Europe that regular Meetings of the Lisbon Network should continue to be organized.

On the basis of the above Resolution, the Consultative Council of European Judges (CCJE) reaffirmed, at its first meeting in Strasbourg (8-10 November 2000), the importance of training to ensure judicial independence. CCJE members also identified the theme of training as a priority among the different questions set out in the Framework Global Action Plan for judges in Europe, adopted by the Committee of Ministers of the Council of Europe at its 740th Meeting (see document CCJE (2001) 24). In 2003, the CCJE will prepare an opinion on initial training and in-service training for judges at the national and European levels. It will present the opinion to the members of the Lisbon Network so that they can take it into account in their future activities.

The CCJE, as an advisory body of the Committee of Ministers, prepares opinions for that Committee on general questions concerning the independence, impartiality and the competence of judges. In expressing its opinions, it refers several times, *expressis verbis*, to UN standards and norms (see CCJE, Preliminary draft specific terms of reference of the CCJE, Appendix II, No 5, Appendix III, Nos. 3 and 10 (CCJE (2001) 32 revised).

The CCJE was given the task of contributing in 2002 and 2003 to the implementation of the framework of the global action plan for judges; it has addressed to the Member States of the Council of Europe two questionnaires, one on the training of judges and the other on the conduct, ethics and responsibility of judges (see doc. CCJE (2000) 3, Part IIIB).

During its meeting in Bordeaux, the Network recalled the principle of the pre-eminence of law, which cannot be dissociated from the rule of law. Members emphasized that the implementation of this widely recognized principle must be effective, noting that, despite slight differences, all the States tended to recognize the primacy of international norms in domestic law. It also observed that there are obstacles to achieving implementation regarding access to information, as well as other of a psychological or a specific legal nature. In the light of the foregoing, the members of the Network agreed to recommend a certain number of measures with regard to the training of judges on the application of international conventions (for further details, see the Conclusions of the Meeting, Themis Plan, Project 3, Bordeaux.97).

Two regional Meetings were also organized by the Network, the first in Ankara, 23-24 March, 2000 (with the theme: Training of judges and prosecutors - an essential element for the stability of South-Eastern Europe); the second in Tirana, 5-6 July, 2001 (with the theme, Working together to improve methods of training judges and prosecutors).

Another Seminar on the training of judges was organized by the Council of Europe, in conjunction with the Judicial Training Department of the Russian Federation Supreme Court in Moscow from 12-13 December 2001, on Selected Articles of the European Convention of Human Rights and the case law of the European Court of Human Rights.

Apart from the activities within the framework of the Council of Europe, many of the Member States of the European Union have founded special schools and institutions for the training of their judges. (The training of judges belongs to the competence of Member States.) For example,

France has the Ecole Nationale de la Magistrature ([www.enm.justice.fr](http://www.enm.justice.fr)), Germany the Deutsche Richtersakademie and the Europäische Rechtsakademie ([www.era.int](http://www.era.int)), Greece the National School of Justice ([www.esdi.gr](http://www.esdi.gr)), Italy the Consiglio Superiore della Magistratura ([www.csm.it](http://www.csm.it)), Portugal the Centro de Estudo Judiciarios ([www.cej.pt](http://www.cej.pt)), Spain the Escuela Judicial Espanola, United Kingdom the Judicial Studies Board ([www.jsboard.co.uk](http://www.jsboard.co.uk)), for England and Wales, the Judicial Studies Committee of Scotland, the Judicial Studies Board of Northern Ireland, among others.

All aforementioned schools and institutions are active participants in the European Judicial Training Network, constituted under a charter signed in Bordeaux in November 2000 (see Initiative of the French Republic with a view to adopting a Council Decision setting up a European judicial training network, 2001/C 18/03, Official Journal of the European Communities, C 18/9-19.1.2001), to promote cooperation between the judicial training institutions in each of the Member States of the European Union (see below).

Regarding the teaching programmes of such schools, one can observe the great importance attached to themes such as: international cooperation in penal matters, the European Convention of Human Rights, the case law of the European Court of Human Rights, Ethics and Deontology, the incorporation of the European Convention of Human Rights into the national legal order, the Charter of Human Rights, European judicial space, recognition and enforcement of foreign judgments in the context of the European legal space, extradition, European warrant, vulnerable witnesses, evidence of children, scientific progress and penal proof, contemporary social problems, cyber crime, drugs, alternative justice, treatment of offenders, treatment of juvenile offenders, sentencing, the prison service, the probation service, serious fraud, economic crime, protection of the environment through penal law, terrorism, corruption, politics against discrimination, the training of trainers, victims, etc.

Regarding the teaching methods of the schools, most have developed "an integrated approach to all aspects of judicial training, using a combination of judicial seminars, written and electronic materials, so as to maximize the effectiveness of the training, whilst having regard to the limited judicial release time presently available for such training to be carried out", (see Judge William Rose, JSB Annual report, 2.4). There are also provisions for distance learning by CD-ROM for the judiciary, paper guidance, publication of guidelines in parallel with the traditional courses (introductory, intermediate, follow-up), lectures, conferences, seminars, visits (to institutions, remedial facilities and criminological services), special meetings (see, for example, the 1st Informative Meeting of the South-Eastern European Countries Judiciary, organized by the National School of Judges of Greece, in Thessalonica, 10-17 November 2002).

Within the framework of the European Union itself and its organs, especially after the Treaty of Maastricht (1993), the following have been developed in the Section of Justice and Home affairs (JHA):

The European Justice Training Network (EJTN). Its close link with the related activities of the Council of Europe is obvious, as indicated by the provision in its foundation act (article 7.2) for the participation of a delegate of the Council of Europe on the Governing Board of the EJTN.

The principal aims and objectives of the EJTN are :

- To promote a training programme for judges and public prosecutors with a genuine European dimension;
- To develop knowledge and improve the use of European and international instruments in force within the European Union;
- To cooperate with candidate countries especially in the field of judicial cooperation;
- To provide expertise and know-how to European, national or international institutions in all questions of judicial cooperation; and

- To facilitate the participation in national training activities of judges and public prosecutors from other countries.

The training network has met regularly to prepare and coordinate common projects in the context of the JHA cooperation programmes and to exchange information among its members. As the Charter did not provide for a legally constituted structure to be created, the training network does not have its own budget or any permanent staff. Financing is borne partly by the members of the training network and partly through grants for individual projects. The Secretariat of the training network is temporarily managed by the Europäische Rechtsakademie in Trier.

Many activities, programmes and actions relevant to the training of judges take place in areas connected, directly or indirectly, with the standards and norms of the UN, for example:

The programmes supported by the EU to stimulate networking and contacts between legal practitioners of Member States : Oisin II (OJ L 186 ,7.7.2001, p.4), Falcone (OJ L 99, 31.3.1998, p.8), Grotius II-Criminal (OJ L 186, 7.7.2001, p.1), Stop II (OJ L186, 7.7.2001, p.7).

Most projects selected for support have focused on furthering mutual knowledge of legal and judicial systems and on international cooperation in penal matters.

The more recent programmes are Hippokrates (establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime, OJ L 186, 7.7.2001, p.11) , and Agis (establishing a framework programme on police and judicial cooperation in criminal matters, OJ L 203,1.8.2002 p5). Both have special provisions concerning training (see Hippokrates, Article 4 para. a and Agis, Article 2 para a).

The main priorities of the Hippokrates programme are :

- Training for professionals;
- General crime prevention, focusing on youth crime, urban crime and drugs-related crime; and
- Prevention of organized crime.

The general objectives of the projects and activities supported by the Agis programme are those that :

- Develop the European criminal justice area;
- Strengthen cooperation among judicial authorities and among legal practitioners, further judicial cooperation in general and in criminal matters;
- Strengthen cooperation among law enforcement authorities;
- Prevent and fight organized crime;
- Prevent and fight drug trafficking;
- Concern crime prevention;
- Deal with victim assistance;
- Concern crime-proofing; and
- Deal with comparability and circulation of information and statistics.

Their specific objectives are:

- Development of a European criminal law enforcement area and introduction of European instruments to promote cross-border cooperation;

- Improving the professional skills of practitioners in judicial services through improved knowledge of the legislation, procedures and strategies in operation in the different European States;
- Developing methodologies, instruments and knowledge to support cooperation between authorities;
- Study and research, particularly into strategies and techniques for fighting particular types of crime;
- Evaluation of the policies pursued; and
- Exchange of information and experience and the dissemination of best practices.

#### **The Robert Schuman Project.**

Under the Robert Schuman Project, the Commission has supported a large number of training projects for legal practitioners, including judges. A limited number of the projects have focused on the area of judicial cooperation.

#### **The Project for Training for Civilians in Aspects of Crisis Management.**

The European Council Meetings at Feira in June 2000 and Göteborg in June 2001 identified and stressed the priority of training for civilian aspects of crisis management with a view to enhancing the capacity of the European Union to respond effectively to international crises. In that respect, the EU needs to establish capabilities covering all stages of conflict prevention, crisis management and post-conflict settlement. The needs in officials include judges and prosecutors, as well as correctional officers.

Different functional areas have been identified, among them the priority area of the "rule of law", to be seen in a broader context embracing:

- The rule of law, *stricto sensu*, (including promoting, securing and strengthening the rule of law in the administration of justice, as well as in civil administration in general )
- Human rights, (including monitoring, fact-finding, reporting, human rights promotion, remedies and capacity building, as well as human rights education);
- Democratization and good governance (including dynamics of State formation and crisis-affected societies, strengthening of civil society, good governance, capacity building and enhancing impact).

Among the different types of missions , there are those for:

- Strengthening the rule of law;
- Substitution for local judiciary/legal system;
- Technical assistance (including advice on implementation of legislation, reforms within the rule of law, organization of the judiciary and penitentiary system, training and education of personnel within the field of rule of law.)

In that regard, of course, the work of the EU should take full account of the body of experience built up by the United Nations.

For that reason, an informal EU Group on Training was formed of project partners from Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Spain, Sweden and the United Kingdom.

The EU Group on Training will implement 14 training courses in 9 EU Member States between January and July 2003, four two-week "Core Courses" and 10 two-week "Specialization Courses".



A major Training Conference of national training institutions and training contact points of all 15 Member States, in conjunction with an international training conference with high-level representatives of the UN, OSCE and Council of Europe and other training institutions, will take place in autumn 2003, under the Italian Presidency, with the aim of discussing the results of the project.

Within the framework of efforts to create a European Judicial Space and a European Enforcement Order to deal with new and serious international forms of criminality, new institutions and plans have been created, for example:

- The *Corpus Juris* for the protection of the financial interests of the European Union;
- Europol;
- European Prosecutor;
- European Judiciary Network;
- Eurojust; and
- European Crime Prevention Network (EUCPN).

Several Seminars have been organized to focus on these special matters.

One of the most recent EU creations is the European Crime Prevention Network (EUCPN) whose aim is to increase the scope of practice and policy in crime prevention across the European Union by adding value to national efforts.

Its first Annual Report has already been presented (June-December 2001). The evaluation of its operational activities will be carried out in 2004. For the moment a well organized and very interesting website has been launched "as a resource for those interested in European prevention policies and practices". It provides background information (contact points, crime prevention policies, Member States crime profiles, good practices and research highlights) and updates and notifications (upcoming and past events, grants and funding service, etc).

Collaboration in all those areas forms an important part of the activities of the EU

As will have become obvious from the foregoing, within the area of EU, concentrated and systematic efforts have been made in the area of training of judges in matters of crime prevention and criminal justice, based on standards and norms of the UN. Of course, much more remains to be done in that area. The issues are especially complicated and not easy to resolve without making even greater efforts.

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# The rule of law in post-conflict recovery in Bosnia and Herzegovina. United Nations and European criminal policy standards for the treatment of offenders and victims in the work of the Office of the High Representative

Biljana Potparic, Legal Officer and Coordinator of Public Law Projects, Legal Reform Unit, Office of High Representative, Bosnia and Herzegovina

## Introduction

The General Framework Agreement for Peace in Bosnia and Herzegovina, negotiated in Dayton and signed in Paris on 15 December 1995, put an end to a war that had lasted almost five years. At the same time, it brought to a formal conclusion a relatively coherent constitutional and legal system that had existed in Bosnia and Herzegovina before 1992. The Peace Agreement is composed of 11 Annexes regulating various aspects of the peace settlement, of which the fourth is the Constitution of Bosnia and Herzegovina. The fact that the Constitution came into force without being considered and consequently adopted by the national parliament already indicates the peculiarity of the newly established constitutional and legal order of the country. The Constitution provides that Bosnia and Herzegovina "...shall continue its legal existence under international law as a state, with its internal structure modified as provided herein..." . The modification confirmed the status of the two Entities, the Federation of Bosnia and Herzegovina (the Federation) and Republika Srpska as fully embodied administrative structures with their own institutions, judiciary and legislation.

By establishing Bosnia and Herzegovina as a rather weak State with a very complex and unique nature, the Constitution in practice provided for the coexistence of two different legal systems that were further developed by legislation in the Entities. By dividing responsibilities between the Entities and institutions of Bosnia and Herzegovina, it also allowed for the creation of a third and different State legal framework to facilitate the functioning of the State institutions. Moreover, it appeared that the Brcko District of Bosnia and Herzegovina (Brcko District), formally established by the Final Award 1999, created a fourth legal unit based on a different institutional structure from those applicable in the Entities and at State level.

Where four separate legal systems exist in one country, it is very difficult to say that rule of law principle is consistently incorporated in all the affairs of the country, including legislation and administration of justice at all levels.

Aware of the impossibility of developing a sustainable peace without strengthening the rule of law principle, both the international community, represented by a number of international organizations and agencies, and the national authorities recognized the need to carry out legal and judicial reform at all levels. The aim of the proclaimed reforms was to ensure that internationally recognized standards, primarily in the field of human rights protection, that made provision for procedural efficiency and guaranteed individual procedural rights, would be integrated into the legal system of Bosnia and Herzegovina.

All the conclusions adopted by the Peace Implementation Council underlined the need to adopt new legislation and establish new institutions mainly at the level of the State of Bosnia and Herzegovina, thus ensuring the highest level of internationally recognized human

rights and fundamental freedoms as provided for by the Constitution.

As the weak State institutions and other relevant domestic authorities were not efficient in achieving the desired goals, the international community in Bosnia and Herzegovina, led by the Office of the High Representative, took the initiative in instituting a process of overall legislative reform. The power of the High Representative to substitute for the national legislative authorities was of crucial importance to the adoption of some urgent legislation that was of vital importance to the country .

### **The criminal justice system in Bosnia and Herzegovina**

The justice system in Bosnia and Herzegovina mirrors the constitutional settlement of the country. There are currently four systems of criminal justice: in the Federation, in Republika Srpska, in Brcko District and in the State of Bosnia and Herzegovina itself. It must be noted here that the criminal legislation of the State of Bosnia and Herzegovina refers mainly to the Criminal Code of Bosnia and Herzegovina and the Criminal Procedure Code of Bosnia and Herzegovina, enacted by the Decisions of the High Representative on 24 January 2003. The coming into effect of those laws will enable the Court of Bosnia and Herzegovina to start exercising its jurisdiction with minimum delay.

In the post-war period in Bosnia and Herzegovina, the need for the reform of criminal legislation emerged, as current legislation was based on the socialist concepts. Amendments to the criminal legislation were required by the principles of a new constitutional and social order and ?...it was also necessary to harmonize the criminal legislation with a number of the international conventions which required that the basic human rights and liberties be additionally protected...? .

The post-war reform of criminal legislation started with the reform of the criminal legislation of the Federation, back in 1998, under the auspices of the Council of Europe. The aim of the reform was to bring the criminal code, law on criminal procedure and law on execution of criminal sanctions of the Federation into line with European standards in the area of criminal justice. After the new criminal legislation was adopted in the Federation, which was only one part of Bosnia and Herzegovina, it became clear that an overall reform of criminal legislation was necessary in order to establish uniform rules promoting the protection of human rights as well as fundamental freedoms and procedural guarantees throughout Bosnia and Herzegovina. The need for harmonization of the criminal legislation within the country was underlined after the Brcko District adopted a Criminal Procedure Code that provided for a significantly different procedure compared with the criminal procedures stipulated by the Laws of the Federation and of Republika Srpska. The harmonization of the legislation and establishment of uniform procedural rules appeared to be a necessary step towards securing the implementation of basic procedural rights as required by international norms. Therefore, in 2001, criminal justice reform, including criminal legislation, became one of the highest priorities of the Office of the High Representative. The fact that the Law on the Court of Bosnia and Herzegovina stipulated the criminal competence of the Court to try cases where the highest values of the State were violated, channelled the process of criminal reform primarily towards the adoption of the Criminal Procedure Code of Bosnia and Herzegovina. That Code would afterwards serve as a model in the harmonization process of the criminal legislation of the Entities and of the Brcko District.

The Criminal Procedure Code of Bosnia and Herzegovina, resting as it does on the recognized United Nations and European standards as well as on the national legal tradition in this field, aims at an efficient criminal procedure that provides safeguards for the protection of human rights. The establishment of a system in which the Prosecutor takes the lead in the investigative process represents a major change as compared with the traditional model. The fact that the Code was drafted by highly reputed national experts of varied legal backgrounds and that the Code was reviewed and commented upon by almost all international organizations and agencies present in Bosnia and Herzegovina, has given sufficient guarantees that the initial goal of

introducing a modern and effective piece of criminal legislation will be achieved.

In general, when assessing only the theoretical side of the criminal legislation of Bosnia and Herzegovina in the post-war period, without looking at its implementation aspects, one has to note that most standards and principles required by the United Nations documents and European conventions are integrated into the legislation. The present paper gives an overview of this assessment by evaluating the treatment of offenders and victims as provided for by the respective laws in Bosnia and Herzegovina.

### **The treatment of offenders**

As mentioned above, it must be noted that the criminal legislation, notably the existing criminal procedure laws, set out the rules determining the position of an offender in a manner that is consistent with most of the United Nations and European standards. For example, in criminal proceedings, the universal principles incorporated into the legislation guarantee, inter alia, the equality of everyone before the law without discrimination and the application of the following principles: presumption of innocence, *in dubio pro reo* and *ne bis in idem*, the right to a defence, the right to trial without delay, the rights of a person deprived of liberty, the right to appeal, the right to compensation and rehabilitation, the right to be informed of all rights and many other procedural rights.

Aware of the need to strengthen the position of the offender regarding pretrial detention and to assure the protection of rights to liberty and to due process in the criminal justice system, as stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (1950) and the International Covenant on Civil and Political Rights (1966), the High Representative amended the Criminal Procedure Laws of the Federation and of Republika Srpska in 2001. The provisions of the respective laws that, under certain circumstances, had provided for mandatory pre-trial custody were deleted by Decisions of the High Representative, establishing the rule that pretrial custody should be ordered only where necessary at the discretion of the judge.

The newly introduced Criminal Procedure Code of Bosnia and Herzegovina has gone further in affirming the procedural rights of the offender. By respecting the basic principle that custody would be imposed as a last resort to guarantee the presence of the offender at the criminal proceedings and, thus, their successful conduct, the Code narrowed the grounds for ordering custody and limited the period during which the offender had to stay in the custody until the final verdict was pronounced. Furthermore, because of the application of the presumption of innocence principle throughout the whole procedure and on the suggestion of a Council of Europe expert, the Code abandoned the provision on mandatory custody after the pronouncement of the first instance verdict, as is presently still stipulated by the Codes of the Federation and of Republika Srpska.

In any case, it must be mentioned that the position of the offender is to a large extent weakened when it comes to the practical implications of the provisions related to the execution of custody ordered in the pretrial and trial period or of the sanction imposing imprisonment. Legislation governing the treatment of detained persons, as contained in criminal procedure legislation in relation to custody in the pretrial and trial period and in the respective laws on execution of criminal sanctions with regard to imprisonment sanctions, provides to some extent for the basic principles required by European Prison Rules (1987) and United Nation Standard Minimum Rules for the Treatment of the Prisoners (1955). In spite of the existence of advanced rules regulating this matter, the overall inadequate conditions of the existing prison system in Bosnia and Herzegovina make proper implementation of the rules impossible and also prevent the required international standards being met in this field.

There are many reasons for such an unsatisfactory situation, among which the following are

regarded as the most important, most of them identified by experts tasked by the Council of Europe to carry out surveys of the existing prison system in the last couple of years:

- The system of financing prisons, both in the Federation and in Republika Srpska, is inflexible. The budget is determined at the beginning of the financial year and the funds allocated to the prisons by the respective Ministries of Finance. Therefore, although the relevant legislation provides for the right to health care, education and treatment of prisoners, the lack of available funds and the rule that each prison must request the competent Ministry to approve the spending for certain projects, does not allow for proper enjoyment of guaranteed rights.
- There is only one institution suitable and compliant with international standards for the treatment of mentally disabled persons or addicted individuals in the entire territory of Bosnia and Herzegovina. The lack of appropriate hospitals for such treatment have been remedied by the establishment of special units for people receiving compulsory psychiatric treatment within prison buildings, but that cannot be regarded as appropriate treatment of such persons.
- The traditional dormitory prison system makes implementation of the desired principle as provided by the European Prison Rules that require persons to "...normally be lodged during the night in individual cells..." impossible. Moreover, the potential substantial financial outlay required to turn the large rooms into smaller units is prohibitive.
- The absence of institutions meeting the prescribed international standards frequently results in institutional and correctional measures for juveniles not being carried out.
- With no legislation at the level of the State of Bosnia and Herzegovina regulating the implementation of criminal sanctions throughout the country, the rights and interests of offenders to serve their sentences in a place convenient for receiving visits and communicating with families and friends are not properly protected. Neither the legislation of the Federation nor of Republika Srpska provides for a procedure under which a sentence pronounced by a court of one Entity could be served in another.

The aforementioned reasons, together with many other obstacles to the practical implementation of prescribed individual rights, were recognized by the Office of the High Representative and other international organizations working closely with the Office as issues to be resolved in the forthcoming period.

Furthermore, in order to limit prison population growth and to comply with other international standards regarding the treatment of offenders, other legislative steps need to be undertaken to facilitate the imposition of non-custodial measures on offenders, as stipulated in the Recommendation of the Council of Europe on Prison Overcrowding and Prison Population Inflation and provided for in the United Nations Standard Minimum Rules for non-Custodial Measures (1990). For example, until the entry into force of the Criminal Code of Bosnia and Herzegovina, community service orders were made only in respect of juvenile offenders. Offender/victim mediation is still not provided by any national legislation except, again, in the case of juvenile offenders.

### **The treatment of victims**

While the legislative framework in Bosnia and Herzegovina provides adequate protection of the procedural rights of the offender, the status of the victim in criminal proceedings still needs to be brought closer into line with international standards. The fact that the four existing Criminal Procedure Codes differ significantly from each other in respect of determining the procedural rights of the victim again implies the necessity for urgent harmonization of the Codes.

The Criminal Procedure Laws of the Federation of Bosnia and Herzegovina and of Republika Srpska, as well as identifying the rights of an injured party related to any property claim deriving from the crime, still provide for certain significant procedural rights for victims, including the right of the injured party to continue the prosecution if the public prosecutor abandons it.

Neither the Brcko District Criminal Procedure Code nor the Criminal Procedure Code of Bosnia and Herzegovina has defined the role of the victim in this traditional way. To accommodate ever-increasing demands for simplification and increased efficiency in criminal proceedings, the role of the victim has been reduced in the procedure provided by the Criminal Procedure Code of Bosnia and Herzegovina. The Code does not stipulate the right of the victim to "replace" the Prosecutor if an indictment is officially withdrawn but only to address the Office of the Prosecutor with his or her complaint. Nor does it provide for other procedural rights of victims, such as a right to inspect the files, a right to play an active role during the main trial and a right to appeal against the verdict. The rights of the victim are limited to any property claim related to the commission of a crime and, in general terms, to the obligation of the Prosecutor to protect the interests of victims and inform them about all measures undertaken in relation to the prosecution. The Code leaves it open for other regulations to set out more detailed rules on the relationship between Prosecutor and victim. It is important to stress that the post-war period of transformation of the social, political, economic and legal system has focused on the need to effectively combat organized crime, corruption, money-laundering, violent crime and other serious crimes. Consequently, the immediate measures to reform criminal legislation have been taken in order to create a legal basis for achieving that particular goal. It is clear that further steps in the process of the reform of criminal and other legislation would address widening of the scope of the rights of victims to achieve compliance with the United Nation Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power (1985) and with other international documents devoted to this matter.

As to the treatment of victims, it is important to note that the newly enacted Law on Protection of Witnesses under Threat and Vulnerable Witnesses provides for a special mechanism and rules under which vulnerable witnesses may be heard. The imposition of that law was necessitated, among other reasons, by the fact that, in the post-war period, Bosnia and Herzegovina has faced a growth in crime related to trafficking in persons, leading persons into prostitution and other crimes involving vulnerable groups who need special treatment during the criminal procedure.

Notwithstanding the commitment of governmental bodies to fulfil their international obligations in respect of victim protection both by adjusting domestic legislation to the international standards and by implementing the practical measures, special attention should be paid to advancing the role of non-governmental organizations in this matter.

## **Concluding remarks**

Although significant improvements have been achieved in bringing the overall legislation in Bosnia and Herzegovina, including criminal justice, closer to the international standards, it is clear that further substantive measures must be taken to establish the pre-eminence of the principle of the rule of law throughout the country. In the field of criminal justice, besides the immediate harmonization of the criminal codes, that primarily means the development of a crime prevention strategy in accordance with the established international norms and recommendations, including the raising of public awareness in that regard. In addition to effective and modern legislation, the development of a culture of justice is of high priority and civil society in the form of non-governmental organizations should play an important role in that process. Given the social and economic circumstances in Bosnia and Herzegovina, such goals may be achievable only in close cooperation with international organizations; such organizations provide for necessary technical cooperation as well as the establishment of an effective support and



monitoring mechanism for compliance with the standards.

Notwithstanding the obligation of all levels of Government in Bosnia and Herzegovina to "...play a leadership role in developing effective and human crime prevention strategies in creating and maintaining institutional frameworks for their implementation and the review..." , given the experience to date it is expected that the international community represented by the Office of the High Representative will continue to play an active role in the coordination of the reform process. Promoting a sustainable rule of law that would enable full implementation of the constitutional provisions and annexed international conventions in Bosnia and Herzegovina, is still possible only in close cooperation with and with the support of the international community. The High Representative made it his priority to invite all political parties in Bosnia and Herzegovina, to pledge, prior to publication of the elections results, that the objectives, specific reforms and timelines as set forth in the agreed Agenda between the authorities of Bosnia and Herzegovina and the Peace Implementation Council would be their priorities for the coming years. One of the core tasks outlined in the Agenda is entrenching the rule of law: "...Building on the progress that has been made..., we need now to work energetically with the international community to establish the rule of law in this country..." .

# Application of the United Nations standards and norms in law enforcement: training experience of the International Committee of the Red Cross

Purév Erdenebayar, International Committee of the Red Cross Regional Delegate to Police and Security Forces for Central Europe

## 1. About the International Committee of the Red Cross and its mission

The International Committee of the Red Cross (ICRC) is best known as an impartial, neutral and independent organization with exclusively humanitarian missions aimed at protecting the lives and dignity of victims of war and internal violence and providing them with assistance. It directs and coordinates the international relief activities carried out by the International Movement of the Red Cross and Red Crescent in situations of armed conflicts. It is also well known as the guardian and promoter of international humanitarian law and universal humanitarian principles.

Preventive actions taken by the ICRC play an important role in making the rules of international humanitarian law and the universal principles known to all bodies concerned: States and their agents such as politicians, public officials, military, educational institutions (both military and civilian) and the civil society. Moreover, the ICRC approaches police and security forces (PSF) i.e. those charged mainly with performing law enforcement functions such as prevention and detection of crimes, maintenance of public order, and rendition of assistance services in public emergencies, in order to implement a training programme for them. Its relationship with law enforcement officials is very special.

## 2. ICRC vis-à-vis PSF

### 2.1. Objectives and strategy

Mandated by the four Geneva Conventions of 1949, the ICRC deals with the military as far as its traditional dissemination activities are concerned. While attempting to promote adherence to international humanitarian law, the ICRC inevitably focuses on the armed forces.

It has, however, been several years since the institution launched the training programme for PSF. The reason why the ICRC approaches PSF is the changing nature of armed conflicts; the majority of present-day armed conflicts are of a non-international character. Even if most of these situations are not formally recognized as non-international conflicts, to which universal humanitarian principles apply, the key actors in present-day conflicts frequently include members of PSF as well as armed forces. All this leads to a complication created through a blurring of the absolute distinction between tasks typically belonging to the armed forces and those typically belonging to PSF, with one readily taking on the apparent responsibilities of the other.

Current situations of armed conflicts and violence are characterized by a widespread and systematic disregard of fundamental principles of humanity. The right to life, liberty and security of the civilian population are jeopardized frequently and as a consequence there are a great deal of victims who require proper protection and assistance. As ICP Director-General Gnaedinger stated, "Our first responsibility, I think, is to identify who the actors are and to get across to all of them the basic message, which is that there are not only human rights but also human obligations; that anybody who uses force must limit this force, they cannot and must not - use force indiscriminately." (Angelo Gnaedinger, ICRC Director-General, 10.01.03, ICRC involvement in the training of law enforcement officials and the challenges in this field for the international

community, videotaped interview, <http://www.icrc.org>.) Furthermore, a large number of individuals are often arrested and held in security or administrative detention by PSF and/or armed forces and it is no secret that many of them are subjected to ill treatment while being detained in police custody or prison.

Hence, the ICRC realizes that the best approach to promoting respect for international human rights law and humanitarian principles among all bodies concerned, including PSF, is through proper training with the aim of ensuring adequate protection and assistance to victims of armed conflicts and violence. The ICRC programme for PSF also aims to achieve the following:

First, effective cooperation with national authorities to assist them in their efforts to enforce and encourage the incorporation of international human rights law and humanitarian principles into the national practice of policing and conduct of security operations.

Secondly, support to any national initiatives and efforts to create, enhance and consolidate national capacities of the teaching and/or dissemination of international human rights law and humanitarian principles to PSF.

In 1996 it was therefore decided that an institutional policy would be developed with comprehensive guidelines and suitable methods for the dissemination of international human rights law and humanitarian principles among such forces. Since then the ICRC has been conducting training activities for national PSF through a network of PSF regional delegates in the field and a pool of trained police experts. According to Rover, "The ICRC is seeking to strengthen its regular field-based support by hiring delegates with a police or security forces background. Such delegates are able to offer expert assistance and support. Moreover, their knowledge and practical experience could be used as the basis for dissemination programmes designed to assist the target force in its efforts to integrate the relevant provisions of law into both operations and training" (Rover, 1999, *Police and security forces: a new interest in human rights and humanitarian law*, International Review of the Red Cross no. 835, pp. 637-647, Geneva.) In February 1999 the ICRC had already posted regional delegates to PSF in its delegations in Brazil, Peru and Hungary. Such delegates or local experts, who also cover others countries in their region, are posted in Amman, Kiev, Moscow, Jakarta, New Delhi, Suva, Conakry and Pretoria.

A training manual ("To Serve and To Protect") has been produced for that purpose. The unique manual, which exists in 23 languages, serves a good basis for all training activities carried out by the institution towards national PSF. It should be noted that the manual has proved to be an important training tool for national PSF instructors/trainers.

In order to provide more support for national trainers/instructors in both teaching and didactic materials, the ICRC has recently published a new booklet entitled "Human rights and humanitarian law in professional policing concepts." The booklet allows for a wider distribution to lower ranks of PSF than the manual, which was intended basically for ministerial authorities, commanders and police trainers. Furthermore, a new DVD product, which is based on the contents of "To Serve and To Protect" will be available by the end of February 2003. This new interactive training tool, which is being produced by Cirquest, a Dutch based multimedia company, for the ICRC would satisfy the ever-increasing demand for new training tools in line with the development and application of a new generation of data information in this specific area of training. In addition to showing many video images (various scenarios) describing multi-faceted law enforcement actions and response choices in different contexts and forms, the new DVD-ROM contains a large amount of text files such as all United Nations standards and norms applicable in law enforcement as well interactive case studies with references to the standards and norms.

## **2.2. Variety of activities and implementation phases**

Training activities run by the ICRC for national PSF vary depending on the needs of countries involved as prioritized by the ICRC policies and guidelines for the dissemination to PSF, and

include the following: seminars, round tables , basic courses offered to PSF commanders, especially those at operational and tactical level. The reason why the ICRC chooses commanders of operations as a primary target group for its training is that they are directly responsible for the actions of individual officers who will apply international human rights law and humanitarian principles in their daily work. The ICRC also runs fully-fledged training courses for trainers such as teachers/instructors of police academies/colleges. Obviously, if the teachers/instructors themselves are well prepared and knowledgeable of the subjects concerned, cadets and students who are the future of the national PSF of their respective countries are in good hands.

When it comes to the exact conduct of the training activities, the ICRC should not compete with other actors (both international organizations and non-governmental organizations) involved in PSF training or other activities for PSF. The ICRC tries to create, maintain and develop a working relationship with them so as to avoid any duplication of efforts. For instance, the ICRC Regional Delegation for Central Europe, in close cooperation with the Centre for International Crime Prevention (CICP) of the United Nations Office on Drugs and Crime, organized a five-day training course on the application of the United Nations Standards and Norms in Law Enforcement last October at Vienna. The course involved selected national representatives of several countries of the region, who received a full scholarship grant from the ICRC. While organizing the Vienna training course, we aimed at delivering better assistance to the national PSF in different forms and approaches. To that end, the ICRC will cooperate with the Crime Programme in organizing a second course of this kind at Vienna in April 2003 involving national representatives of all countries covered by the ICRC Regional Delegation in Budapest. The reason why the ICRC seeks such cooperation is that the UN Crime Programme has authored or taken part in drafting almost all human rights instruments applicable in law enforcement, and thus it can offer the best training in the very same field.

Concerning the other forms of activities, it is worth mentioning the following:

- Networking, especially with a view to dissemination and training;
- Curriculum development in international human rights law and humanitarian principles; and
- Providing advice on how to improve the capacity of PSF to adopt adequate rules of procedure.

With reference to the implementation process, the ICRC renewed guidelines for dissemination; training and advisory activities for PSF envisage three main phases as follows:

First, sensitization (awareness-raising) phase. During this phase efforts are focused on stimulating the interest of the relevant national authorities and PSF commanders in integrating international human rights law and humanitarian principles into the curricula of police academies/ colleges and the daily work of PSF and on obtaining their formal commitment to that. To achieve this objective, during this phase ICRC delegates and experts carry out networking, presentations, round tables, one-day or two-day seminars or even basic courses lasting up to five days.

Secondly, integration phase. The bulk of the work is carried out during this phase, which is meant to give the relevant national authorities the means to teach/disseminate international human rights law and humanitarian principles themselves and to integrate respect for the law into PSF duties and power. This is achieved mainly through "train the trainers" workshops or instructors courses, and support for the creation of a national working group or library with the provision of manuals and reference books.

Thirdly, autonomy phase. Under this phase, the relevant national authorities develop the teaching/dissemination of international human rights law and humanitarian principles to PSF and integrate the law and principles into their domestic legislation. Hence, there should be less need for ICRC support and the institution should restrict itself to organizing or taking part in

conferences and similar events and to providing advice, documentation and new teaching tools. For instance, last November the ICRC organized a regional meeting of representatives of ministries of interior and police directorates of the Central European countries on the implementation of international human rights law and humanitarian principles. The objectives were to provide a venue for exchanges of information and experiences about the implementation of the law and principles concerned within the national PSF, with emphasis on teaching and dissemination, and to receive feedback on the results and achievements of the ICRC programme for PSF, that has been under implementation in the Central European Region since 1998.

### **Curriculum contents of the ICRC training for PSF**

Over the past few years, the ICRC has developed model programmes for different types of workshops and training courses for PSF, depending on their purpose, the composition of the audience and various other factors. What is common, however, is that "To Serve and To Protect," the ICRC training manual, serves as a basis for the said activities as far as programme contents are concerned. They include, inter alia:

- Public International Law (international human rights law and humanitarian principles);
- Policing in democracies;
- Ethical and legal aspects of law enforcement conduct;
- Use of force and firearms;
- Maintenance of public order;
- Prevention and detection of crime;
- Arrest;
- Detention;
- Vulnerable groups;
- Command management, monitoring and investigation of human rights violations; and
- ICRC mandate and activities.

As can be seen from the above list of topics, almost all programmes include a separate topic on international humanitarian principles because of the ICRC mandate, and most importantly because of the blurring of distinction in the functions of both the military and PSF because of the changing nature of conflicts. On the other hand, the other topics have direct relevance to international human rights law, in particular to the standards and norms applicable to law enforcement that exist either in the form of a treaty or 'soft' law instruments.

The presentations on all these topics made by the ICRC delegates/instructors and experts make a great number of references to the existing standards and norms adopted by the United Nations as they are universal for every State and its agents such as law enforcement officials. So also does the ICRC training manual.

One does not need to name all the international instruments setting out the standards and norms. One thing that should, however, be mentioned here is the fact that, as Rover remarks, "rather than emphasizing the differences between international human rights law and humanitarian law, the ICRC, in its dealings with police and security forces, has given preference to identifying what both branches of international law have in common. Thus, it can be observed that the right to life, liberty and security of person, or the right to physical integrity and to the respect for human dignity is protected by both bodies of law. Any restriction to the enjoyment of these rights

will have to be justified by legal and ethical arguments and by referring to the principles of justice, proportionality and necessity. Depending upon the circumstances prevailing in the country or region concerned, the ICRC's message to members of police and security forces will be based on human rights law and/or humanitarian law, and on domestic provisions". (Rover, 1999, Police and security forces: a new interest for human rights and humanitarian law, International Review of the Red Cross no. 835, pp. 637-647, Geneva.)

### **3. Concluding remarks**

What the ICRC tries to achieve by implementing a training programme for PSF is that all national PSF conduct their tasks and operations in accordance with the obligations laid down in international law, in particular international human rights law, ensuring the service d protection of population.

The ICRC training programme for PSF has been well accepted and perceived among national authorities and their PSF. According to them, the ICRC programme has proved to be an important and useful tool in the field of training in international human rights law and humanitarian principles within national PSF.

Needless to say, PSF training is an area where the interests of different international organizations and other actors can match a common goal. That facilitates and assists different countries in their efforts to develop and strengthen democracy and promote and protect human rights and fundamental freedoms. It also upholds the rule of law, which is essential for their prosperity and for a better future for all.

The ICRC believes that it has been able to make its own contribution to the common cause. Nevertheless, both international and national efforts in the area of application of the international standards and norms by national PSF through training require better coordination and affirmative actions. As Gnaedinger says, the international community, organized as an assembly of states, as government, has the responsibility to reinforce each other ... it is extremely important that the whole agenda of state building, of institution building that the UN carries is of extreme importance. Because if you have weak state institutions, how can you have law and order? If you have weak police or absence of a structured security forces, of justice, of judicial instruments, how can you have a principle of legality? And without all of this, how can you have respect for human rights?" (Angelo Gnaedinger, ICRC Director-General, 10.01.03, ICRC involvement in the training of law enforcement officials and the challenges in this field for the international community, Videotaped interview, <http://www.icrc.org>.)

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# On behalf of victims of crime and abuse of power

John P. J. Dussich, Secretary General, World Society of Victimology

## Background

The World Society of Victimology (WSV) is a not-for-profit, non-governmental organization in consultative status, category II, with the Economic and Social Council (ECOSOC) of the United Nations. Its purposes are:

- To promote research on victims and victim assistance;
- Advocacy of the interests of victims throughout the world;
- To encourage interdisciplinary and comparative research in victimology;
- To advance the cooperation of international, regional, and local agencies, groups, and individuals concerned with the problems of victims (Waller, 2002).

The WSV provides a focal point for its members to advocate for the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the UN General Assembly in 1985. Many WSV members have used the Declaration to advocate for legislation and programmes for victims. In the 1990s WSV provided access to a network of experts to assist the UN in assessing the implementation of the Declaration and in the preparation of the UN Handbook on Justice for Victims and the UN Guide to Policy Makers (Waller, 2002).

## Objectives of this paper:

1. To recognize that crime and abuse of power victimizations are significant human experiences, mostly the result of ineffective public policies, the adversarial justice model and cultural support for the use of violence in personal and collective problem solving;
2. To emphasize that crime and abuse of power victimizations have caused extensive and significant pain, suffering and death, a condition which continues every day;
3. To stress the importance of demonstrating social, moral and legal responsibilities toward victims and their families by the delivery of dedicated and professional services, assistance and human compassion;
4. To bring victimization to the attention of policy makers in all countries through the translation (in all the official UN languages) and dissemination of the UN Handbook on Justice for Victims and the UN Guide to Policy Makers so that victimization is not ignored, and the seeds of future crime and abuse of power will be reduced;
5. To encourage the United Nations not only to continue, but to expand the inclusion of victim concerns in all standards and norms promulgated within the realm of crime and social justice and to include considering the widespread adoption of the restorative justice model;
6. To promote the awareness (by gathering victimological knowledge) that greater emphasis is needed to facilitate actions on behalf of victim recovery especially in those areas of the world



where currently there is a great paucity of such efforts and especially as it relates to children; and finally,

7. To recommend the establishment of the UN Victims' Fund; and, the creation of an Office for Victims of Crime and Abuse of Power within the United Nations not only to facilitate the implementation of the noble intentions of the UN Declaration of Principles of Justice for Victims of Crime and Abuse of Power of 1985, but also to periodically measure, monitor and report on the progress of those activities around the world and then recommend changes.

## **Introduction**

For millennia victims of crime and abuse of power the world over have suffered at the hands of their offenders and at the hands of inappropriate societal responses. The history of the human race is replete with events of individual and collective violence and abuses in many forms inflicted on many types of persons. Although the accurate measurement of such events is of recent origin, the existence of massacres, genocides, murder, rape, theft, fraud, pillage, terrorism, slavery, torture, cruelty and widespread brutality are known to span the course of human experience.

As the world culture struggles to evolve away from the primitiveness of savagery and barbarism, and move toward the sophistication of harmony and peace among people, the continued incidents of violence and abuse strongly suggests we have not yet found the right combination of effective methods. Although there are vast differences in the way nations cope with human conflict, as a world civilization we have not yet institutionalized practices that eliminate the injustice and pain inflicted by many on their fellow humans.

As we move into the third millennium and reflect back on the numerous and horrific examples of crime and abuse of power it becomes obvious that there is an urgent need to really understand, not merely describe, these numerous forms of victimization. The tools required to achieve understanding are: research, critical thought, synthesis of information, and the creation of robust theories. Adequate research is still lacking in this area of human experience, especially as it applies to abuse of power victimization and recovery from victimization. What does exist is a plethora of dramatic and subjective descriptions of events usually reflecting personal, political, legal, ethnic, religious, and racial biases. Only when complete understanding of the causes of victimization exists can we hope to devise effective policies, laws and practices that will result in global harmony free from the tyranny of crime and abuse of power.

## **The state of victimizations**

The magnitude of crime victimization in the world today is significant and of great concern to all nations. Over the last three decades much has been done to advance the scientific measurement of crime victimization. The United Nations, the United States of America and the Netherlands have played leading roles in these advances. On the other hand, the measurement of abuse of power victimization has been mostly reported on by historians, reporters, and political scientists covering accounts of mass killings primarily by governments of their own people. The massive abuse of power deaths far exceed the deaths caused by crime. Examples in the last century alone have been mostly the genocides of ethnic minorities that have occurred with relative impunity. Some of the more dramatic examples (taken from Dussich, 2001) were:

From 1915 to 1916 and during World War I, the Turkish Nationalist Government oversaw the systematic deportation of about 1.1 to 1.8 million Armenians who were part of the Ottoman Empire and were subsequently massacred in Eastern Turkey by the Young Turks who ruled the Ottoman Empire (Schneider, 1982; Fein, 1998).

In 1917 the Bolshevik party of Lenin seized power, killing the Czar and his family and starting the Russian Revolution which lasted until 1922 (Ash, 1999); during this period 3,284,000 civilians

were killed (Rummel, 1990). From 1923 to 1928 the New Economic Policy of Lenin caused the death of 2,200,000 civilians (Rummel, 1990). The rule of Joseph Stalin lasted from 1928 until 1953 in the course of which about 49,555,000 civilians were killed, with the most violent part being the Great Terror period of 1936 to 1938 where about 4,345,000 persons were killed (Rummel, 1991b).

In 1932, in response to an insurrection, after it was quelled and as punishment, the president of El Salvador, Maximiliano Fernando Martinez, had his army massacre about 30,000 peasants, mostly natives, in what was known as La Matanza (Woodward, 1998; interview, 2000).

In 1933 Adolph Hitler took power and started World War II in 1939 with Japan joining Germany in 1941; by the end of 1945, 77 million victims were killed (Friedman, 1998) of which only from 15,843,000 to 21,268,992 were military losses, seven million were Jews killed mostly in the extermination camps, about 500,000 were Roma (gypsies) (Encarta, 1998; Šeparovic, 1999; Ash, 1999); the rest were civilians.

From early 1937 to 1941 the Sino-Japanese War started with the Japanese invasion of Manchuria and the taking of the city of Mukden. Then they attacked Shanghai, pillaged the surrounding countryside causing about 1,000,000 military fatalities and hundreds of thousands of civilian deaths. Later that same year the city of Nanjing was captured and about two to three million persons were massacred, mostly civilians and captured soldiers. Two Japanese officers competed to see how many heads of Chinese they could take off with their swords. The event was subsequently reported in the Japanese Newspapers treating the officers as heroes. One reached 326 and the other 325 (Xu, 1995). The atrocities were referred to as the "Rape of Nanjing" (Encarta, 1998; Ash, 1999).

From 1949 to 1987 China went through the establishment of the People's Republic of China, the Totalization Period, the "Great Leap Forward" time, the Great Famine and Retrenchment Period, the infamous "Cultural Revolution", and the Liberalization period which, all of which together produced 35,235,000 Government murders (Rummel, 1991a).

From 1954 to 1987 the Post-Stalin regime killed about 6,872,000 persons in the Soviet Union (Rummel, 1990).

From 1967 to 1970 the Nigerian Civil war broke out between the mostly Christian Ibo and the Muslim Hausa and Fulani Tribes who massacred about 10,000 to 30,000 Ibo. The Ibo were trying to form a secessionist State to be called the Republic of Biafra. This tribal conflict caused the loss of about 1,000,000 civilians mostly because of forced starvation (Encarta, 1998; Ash, 1999).

Starting around 1970, in Guatemala, Central America, tens of thousands of human rights violations (disappearances, tortures, and extra-judicial executions) occurred as a result of the conflict between the Government of Guatemala and the Guatemalan National Revolutionary Unity and mostly perpetrated by the Government forces. About 100,000 deaths, 40,000 disappearances and about one million people, mostly indigenous people, were forced out of their homes and into exile outside Guatemala as a result of the conflicts (Woodward, 1998; Amnesty, 1999).

In 1971 in a military coup in Uganda, Idi Amin Dada seized power and ruled until 1987. He murdered about 300,000 of his opponents, those who criticized him and members of competing tribes and expelled about 70,000 Asians (Encarta, 1998; Rummel, 1997b).

In 1973 in Chile, General Augusto Pinochet overthrew the Government of Salvador Allende and set up a military regime that lasted until 1988. He imprisoned tens of thousands without trials, perpetrated mass murders and extensively used torture. Many opponents simply disappeared (Rummel, 1997a).

From 1975 to 1979 about 450,000 Vietnamese Cambodians were expelled by the Lon Nol regime that was then ousted by Pol Pot, the guerrilla commander of the Khmer Rouge. Subsequently, approximately two million Cambodians from Phnom Penh were forced into the hardship of agricultural labour, about 1.7 million (about one fifth of the population) were killed or starved; of around 425,000 Chinese Cambodians only about half survived; the Vietnamese Cambodians who did not leave under the prior regime were tracked down and murdered; and of the 250 Muslim Chams 90,000 were massacred and the others were dispersed in the rural countryside. By 1979, 15 per cent of the rural Khmer and 25 per cent of the urban Khmer had been killed or starved to death. The worst slaughters took place towards the end of the purge period in the Eastern Zone near Vietnam where about 250,000 people were massacred (Rummel, 1994; Kiernan, 1998).

In April 1994 civil war broke out in Rwanda and 1.1 million Tutsi were murdered by their neighbouring tribe the Hutu (Encarta, 1998).

From 1992 to 1995 the Serbs killed about 288,000 Bosnian and Croat civilians as part of their practice of "ethnic cleansing" (Kreso, 1997).

All told, Government killings (democides) in the previous century have accounted for between 120,000,000 to 170,000,000 people (Rummel, 1997a; Idea, 2000).

### **The nature of a response**

The awareness of such victimizations demands the immediate attention, serious concern and responsible action by Governments, NGOs, and the United Nations entities that deal with these matters. The magnitude and gravity of the victimizations should compel the UN to seek ways to bring about social, moral and legal changes in its crime prevention, criminal justice and human rights activities at both the micro and macro levels. There is no other body with international responsibility capable of addressing and implementing these proposals.

Research has shown us that beyond the drama of the initial and lingering traumas of these victimizations is another type of long-term effect that all too often converts a large proportion of surviving victims into offenders. The impact of many forms of victimization gives birth to a wide range of emotions ranging from fear to anger. These feelings, when not exorcised through the assistance/recovery process become entrenched in the thoughts and behavioural patterns of the victim/survivors and all too often become manifest in the need to expiate long suppressed anger and hostility. A large proportion of adult offenders have significant histories of untreated trauma. Over the last 30 years or so, those who have worked with the various forms of crime victimizations have come to realize that "good victim assistance is good crime prevention." At the international level we have not yet fully acted on this reality. For the most part victim assistance has been justified on two fundamental points: the practicality of ensuring the cooperation of victims so as to have better witnesses in the prosecution of criminal offenders; and, the expression of collective compassion to reduce victim suffering and facilitate victim recovery. This link between victim assistance and crime prevention has been largely unrecognized or ignored by policy and programme developers.

The importance of including victim concerns in UN policies goes to the heart of finding effective means to address the healing of social ills caused by victimization which now impedes the achievement of peace and harmony within and among nations. UN events such as this meeting are magnificent opportunities to go beyond traditional crime responses and belaboured academic rhetoric, and move toward actions that embrace the logic and practicality of restorative justice procedures. The hope offered by this more rational justice concept, has yet to be fully recognized, even among victimologists. It is time to discard the adversarial criminal justice process, which does little to heal the offender and the victim, in favour of the restorative process. This concept recognizes the importance of resolving the offender/victim conflict within the context of justice so that both parties have the chance to resume healthy productive lives rather than to continue

an existence filled with rancour, vengeance and the need to punish excessively.

In spite of the almost 30 years of victim advocate programming primarily at the local levels and mostly in the USA and Europe, a surprising absence of emphasis on the recovery phase of victim assistance exists even today. For the most part, local victim programmes tend to emphasize giving general information, crisis intervention, hotline services, referrals, court companionship, and witness preparation to facilitate the prosecution of offenders. The recovery of the victim is not always a major concern of such programmes. The general sentiment of victim programme personnel is that psychologists, psychiatrists and social workers who can do therapy have that responsibility. Scant mention is made about the status of a victim, especially after the trial is over. Some programmes do maintain contact with their victims; however, these contacts are mostly passive and client-initiated. There are few programmes that use the case management approach to monitor and enhance the progress of a victim towards recovery. There is generally little concern or awareness of the criteria for making a determination of recovery. Successful re-entry into community life and a comfortable level of functionality are usually not key issues in the majority of victim services delivered. In most developed countries, there are victim service programmes at various levels of evolution (albeit with little emphasis on recovery). These then are two important challenges: first, to encourage all victim assistance programmes to identify what recovery is, learn how to achieve it and then create a process that is accountable to all victims who are their clients; and, second, to place greater emphasis on those countries that have fewer resources and have not achieved much in the way of programme implementation at any level.

In underdeveloped and developing countries, it is rare to find any programmes for victims of crime or abuse of power. Some exceptions in Asia are in India (Chockalingam, 2000); Taiwan (Dussich, 2000); in Africa there are programmes in Nigeria (Npa, 1979) and South Africa (Snyman, 2000); and in Latin America there are programmes in Argentina (Marchiori, 2002), Brazil (Kosovski, 2001), Colombia (Pearson, 2002), Guatemala (Gonzales-Leche, 2002), Mexico (Lima-Malvido, 2001; Lima-Malvido, 2003) and Venezuela (Ferrer, 2002).

In many countries that are signatories to the UN Declaration, the key administrators of the criminal justice systems are not aware of the Declaration; those that are have very little understanding about its contents. Thus, the next challenge for the Crime Prevention and Criminal Justice Office of the UN is to ensure that the Declaration is received, understood and implemented by key persons and groups in each country.

Finally, in the light of the significant absence of victim programmes in many parts of the developing world and the lacklustre quality of existing programmes in many developed parts, it is recommended that the United Nations establish a special Victim Services Fund to financially support the development of "seed" or "model" programmes so that each developing and least developed country has, at a minimum, a victim service programme in its capital city. Also recommended is that the UN create an Office for Victims of Crime and Abuse of Power. That would not only facilitate the implementation of the standards embodied in the UN Declaration of Principles of Justice for Victims of Crime and Abuse of Power of 1985 but it would also institute a progressive international agency to follow up the recommendations of the Handbook and Guide of the UN. Thus, periodic measurements could be made as to the status of victim programmes worldwide; monitoring activities could be established to inform regularly about the progress or lack of progress; and reports could be published on the total character of victim assistance operations all over the world with the intention of recommending changes wherever needed.

## Summary

. We have come to know that to be effective, people who work with victims need at least two basic things: the understanding about how people are impacted by victimization in all its aspects

(prior, during and after injury); and the resources to help ease the suffering of victims and facilitate their recovery. Analogous to the Ten Commandments giving rise to thousands of laws, those two simple requirements have given rise to hundreds of national and international standards, laws and programmes. The last 30 years have seen great strides forward in the response to the above two needs. The needs are at the core of the UN Declaration, its Handbook and its Guide. These, however, are only beginnings. It is critical to follow up and continue to fulfill the intentions of the UN Declaration. It is also critical to address the plight of special groups of victims: the children, the elderly, the powerless, the destitute and victims of abuse of power.

Victimology is not an exercise to amuse the curious; it is not an activity to enhance the careers of scholars; it is not a religion for well meaning individuals; and it is not a ritual to soothe the conscience of politicians. In the final analysis, it is a sincere endeavour to recognize a significant social ill, to apply known remedies and to thereby improve a significant part of the human condition. All the research, all the theories, all the changes in laws, all the programmes, all the training and education are of little value if, at the end of the day, victims are not again made whole. I am convinced that the acceptance and implementation of the above recommendations will move the world closer to communities with peace and harmony that all people seek.

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# United Nations crime- and justice-related standards and norms: an integrated approach and framework for future action

Irene Melup, International Council of Psychologists

## Introduction

The crime and justice-related standards and norms adopted by the United Nations over the years are a valuable source of directives and guidelines against which administrations in various countries can assess their respective situation and reform needs. They act as a yardstick developed largely by consensus: a set of basic principles that can serve to upgrade national practice and to harmonize legislative provisions and operational procedures across national frontiers. They can thus help to ensure more cogent and coherent crime and justice-related action on three levels :

- Nationally, by fostering in-depth assessments leading to the adoption of much needed and often overdue criminal justice reforms;
- Regionally and subregionally, by providing a springboard and framework for the formulation of regional and/or subregional plans of action with concrete strategies to be implemented in a phased manner and subjected to periodic evaluations; and
- Globally or internationally, in the largest sense, by highlighting "best practices", helping States to adapt them to their specific needs, and increasing the prospects of inter-State cooperation. These three dimensions are complementary and, if adequately utilized, should create the synergy for informed, comprehensive mutually reinforcing and effective action based on the widespread consensus that the UN standards and norms represent.

## The standards and norms: their range and context

The UN standards and norms cover a variety of subjects: a whole spectrum of crime prevention and criminal justice aspects, including the treatment of adult and juvenile offenders and the protection of victims. To facilitate their application, they can be properly systematized by clustering those designed to meet national needs, (for example, criminal justice subsystems) and those transcending frontiers (for example, the model treaties). In some cases, there may be an overlap because of the focus of the standards, but that can widen their scope (1). It also necessitates relating them to certain kindred principles and norms that may have been developed under other United Nations programmes, or as part of the UN mission as a whole. Among the former are most notably the covenants, conventions and other norms developed under the Human Rights programme, including those against torture, arbitrary and summary executions, disappearances, arbitrary arrest and detention, modern forms of slavery, and redress for massive violations of human rights. Others include those shared with the advancement of women programme (e.g., on violence against women); UNICEF (e.g., rights of the child, juvenile justice), the Office of Legal Affairs (e.g., on terrorism), HABITAT (e.g., on urban crime prevention), etc. Among those with the broadest scope are the UN Charter itself and the Millennium Principles, adopted at the 2000 Summit General Assembly.

Spanning a plethora of issues and often general in phrasing because of the difficulties of reaching consensus, the greater the specificity, the Millennium Declaration lists 8 main goals, such as eradicating extreme poverty (halving it by 2015), promoting primary education, health, gender equality, environmental protection, better sanitation, appropriate technology transfer, non-



discriminatory trading and financial systems, and global partnerships to foster sustainable development. Some 18 targets have been set, including actions to benefit disadvantaged (e.g., landlocked and small island) countries and vulnerable populations (e.g., slum dwellers, HIV/AIDS victims).

To monitor gains in advancing the Millennium Development Goals (MDGs), 74 indicators have been formulated since the Millennium Summit, with a time schedule for reporting by countries on the progress achieved. A "Road Map" for the implementation of the Millennium Declaration was also proposed by the Secretary-General on the basis of consultations in September 2001 (A/56/326). It contains an "integrated and comprehensive overview" of the current situation, outlines potential strategies for action, suggests paths to follow, and shares information on the best practices. It draws on the work of Governments, the UN system, intergovernmental, including regional, organizations, NGOs and civil society.

The Road Map also fills in gaps apparent in the Summit Declaration, which seems to focus more on the material aspects of development to the neglect of somewhat less tangible aspects, such as human security and justice. Indeed, it has been characteristic of most major UN conferences and pronouncements to omit these aspects unless, like the UN Crime Congresses or Security Council anti-terrorism activities, it is specifically concerned with them. That is true also of the Johannesburg Declaration and Plan of Action emanating from the World Summit on Sustainable Development that took place in September 2002. While eloquently noting the perils (growing inequities, etc.), as well as the opportunities of increased globalization, the primary emphasis, understandably, is on the natural rather than the human environment.

In fact, there are inadequate linkages and interfaces between "major UN conferences" and development-related activities, and areas of major relevance, such as crime and justice, which may not be so readily apparent. Moreover, when some programme initiatives are taken by the United Nations Development Programme (UNDP) in this area (for example, a recent meeting on "Governance of the security sector in Latin America" or a project on access to justice), the possible contribution of the UN crime and justice programme, its standards and norms, and operational input has been overlooked, including that of the programme network (e.g., that of ILANUD). Whether because of the lack of ongoing communication (more difficult at a distance) or "turf-guarding", valuable potential synergies are being lost and fruitful collaboration impeded. Ways of overcoming these barriers to productive partnerships must be urgently pursued and their advantages to all stakeholders strongly underlined. That requires a constant multi-way information flow and recognition of the benefits of joint initiatives.

To provide an incentive for such collaboration, one has to be able to offer some form of cost-sharing, in cash or in kind (i.e. expertise, guidelines, experience). Meetings of the Inter-American Development Bank (IDB) and other regional banks that have public security on the agenda may provide opportune occasions to undertake joint ventures. Unfortunately, funding in this area is still scarce and quickly appropriated. The Monterey Conference on Financing for Development has not yet yielded significant results and the commitments of most overseas development agencies do not give priority to this area. The Solidarity Fund for poverty reduction, a worthy initiative, may not recognize the relevance of criminal justice to this objective. The proposed International Financing Facility (December 2002) is also unlikely to do so, unless intensive awareness-raising efforts are made to point out the connections and likely cost/benefits.

Prospective partnerships would have the advantage of common ownership, reducing the usual battles for turf and empire-building, with the quest for mandates and new posts. These have often impeded valid norm addition or expansion, with compartmentalization in spite of wider relevance across bureaucratic lines. Broad-based collaboration in critical areas, such as good governance and human security, could profit from the spadework done by the crime prevention and criminal justice programme and the norms adopted in its context. It is to be hoped that the recent convention-making initiatives under this programme, such as the UN Convention against Transnational Organized Crime and related Protocols, and the forthcoming

convention against corruption, will elicit the kind of system-wide cooperation likely to ensure their effective implementation.

### **Concerted action: a persistent challenge**

It is high time, indeed, for a concerted approach, for key UN justice norms have suffered from a reluctance of full commitment regardless of the importance and relevance of the cause. This is notably the case with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985 (A/Res.40/34) and hailed as a Magna Carta for victims. In spite of its warm reception, however, and the actual need for it, and though comprehensive action plans with all the possible partners have been proposed, including an inter-agency task force, and though a Fund for Victims has been set up, and training manuals developed (2), the kind of integrated action that would give it a strong forward thrust has not yet been forthcoming.

This may not be only for lack of political will and the many different categories of victims (e.g., children in armed conflict, migrant workers) for whom principles and programmes have been articulated as special categories and with their own infrastructure. In some cases, even when a worthy initiative is taken (e.g., strengthening the terrorism prevention efforts of the UN), the plight of the victims, which should be at the forefront of concern, has been neglected: a regrettable omission pointing to the mere lip service that victims seem to receive.

It may also be because of the traditionally dominant preoccupation with offenders rather than victims. Even The Statute of International Criminal Court, that envisaged bastion of justice, devoted most of the attention to detailed provisions for the punishment of the perpetrators and included the issue of victims only as an afterthought, still lacking the practical means for offering them well deserved redress (the Trust Fund for Victims lacks funds).

A proposed special UN day to commemorate victims never materialized (when suggested, it was coupled with the treatment of offenders), and has given way to other special days, even years, celebrating mountains and other kinds of natural wonders in the face of acute human suffering and victimization in many parts of the world that deserve recognition.

In these times, when national and other apologies for the wrongs committed seem to be multiplying, a worthy development and, hopefully, an indicator of the sensitization of the human conscience (in spite of its serious lapses), it may be time for a general apology by the international community and humankind for the callous neglect that has produced innumerable victims: in the holocaust(s), the treatment of indigenous populations, the victims of fratricidal and other genocidal conflicts, and the countless humans and other living beings that have perished or paid a mega-price for the misdeeds of others, or for the crime of omission and failure to come to the aid of the victim, if indeed his or her fate could really be prevented (which all too often is not really the case).

The application of UN norms, such as the Victim Declaration, in the gravest of circumstances, when great harm has been done, reflects their scope and developmental potential. The UN Declaration has served as the basis of, and springboard for, initiatives taken under the Human Rights Programme for victims of gross violations of human rights (3) and in the proposals for the operation of the International Criminal Court (4).

Guidelines have also recently been proposed on the rights of child victims of crime and abuses contravening the Convention on the Rights of the Child (5). Some comprehensive framework for the various victim-related initiatives would be helpful in ensuring coherence and integrated efforts, which are the motto on other fronts such as the crime-drug equation. It had been previously noted that, while the UN Victim Declaration seems to have spurred national reforms, the international scene was still lagging behind. The opportunity for the correction of this lacuna now exists and should be energetically pursued (6).

Proposals for integrated action have previously been made that could be jointly implemented (see annex). The available training materials permit enhanced capacity-building. Model victim assistance could be put in place through multipurpose technical cooperation projects undertaken with possible public/private partnerships, including the UN system, crime and justice programme network and NGOs. With ingenuity, vision and a common resolve, much can be done to redress past injustices, prevent new ones and offer to many the hope of a more secure and fulfilling future.

### **New partnerships for the age of globalization: the norms as signposts**

The forging of partnerships, both within and beyond the UN system, can be helpful in this and other respects. The crime and justice programme, in particular, has cross-cutting issues bearing on social peace and security, which are United Nations priorities. The Road Map for the implementation of the Millennium Declaration, in its section on peace, security and disarmament, outlines measures to promote human security, particularly strengthening the rule of law and taking action against transnational crime, as well as taking action when the rule of law fails, including conflict prevention and violence mitigation, reconciliation and reintegration.

Intensified steps to enhance human security and the rule of law in the age of globalization must respond to the widening reach of "uncivil society", and the flow of "bads" rather than just "goods" across national frontiers. The new UN conventions dealing, respectively, with transnational organized crime and the protocols thereto, on trafficking in persons, smuggling of illegal migrants and trafficking in small arms, and the one being finalized on corruption, as well as the previously adopted model treaties, should be seen to be underpinning the basic counter-strategies, along with the instruments to thwart terrorism, money laundering, and related perils. Strengthened cooperation is necessary with other UN offices concerned, such as the Legal Office, Security Council Affairs, Governance/Public Administration Division, Department of Peacekeeping Operations (which has a large Civil Police component and a new Rule of Law Unit) and the UN Development Programme.

The launching of the International Criminal Court, whose judges have just been elected, to deal with the most serious offences and offenders, should help to curtail the culture of impunity, especially if the Rome statute is still more widely ratified, and States accept its authority, as they should. It seems inconsistent not to emphasize the rule of law and equality before it when differential gauges and exceptions are entertained.

Regional conventions, human rights courts and other arrangements also provide a means of pursuing infractions transcending national frontiers, and of pooling efforts in a common front. While international mechanisms and procedures must be adjusted to fit specific national situations and requirements, regional and subregional cooperation has the advantage of drawing on common standpoints and traditions in facing common problems. Thus, treaties for mutual assistance in criminal matters and others have drawn on this heritage, developing joint approaches to common problem areas, sharing expertise and experience as far as possible. This has also been the basis for the creation of the UN regional institutes for the prevention of crime and the treatment of offenders in different parts of the world.

These have been largely intergovernmental, with the host country bearing the major share of the expenses, and have contributed to the development of UN standards and norms, (e.g., the Tokyo Rules for alternatives to imprisonment and Riyadh Rules on juvenile delinquency prevention). A fruitful innovation in the last two decades has been the enlistment of the alumni network and the private sector in support of the activities of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). This initiative even predates the call by the Secretary-General for collaboration with the private sector, and the "Compact" concluded with it to further productive partnerships (7). In various recommendations and the Road Map for the Millennium Declaration, the private sector has been invited to join

various UN initiatives, as have the NGOs and civil society. The Asia Crime Prevention Foundation (ACPF) has not only been supporting the training activities of UNAFEI but has also organized periodic world conferences and working groups on topics identified by members of national chapters as priority needs. Significant contributions have been made in such areas as mutual legal assistance, especially simplified extradition procedures, penal protection of the environment, the role of prosecutors in a changing world and regional strategies against transnational crime, especially transnational organized crime, corruption and terrorism.

The Declarations adopted by the world conferences, held in different places (e.g., New Delhi Declaration, Beijing Declaration, Tokyo Declaration), and working group recommendations have provided a useful set of guidelines for regional cooperation in priority areas, with active private sector and NGO participation, and the status of the ACPF was upgraded to the general category in recognition of its fruitful work.

Among the recently tackled topics, in line with the emphasis of the UN Millennium Declaration on reducing extreme poverty, has been the role of the criminal justice system in helping to do so. At the ACPF world conference in Beijing and meeting of experts in New Delhi (Feb. 2002), this aspect was energetically pursued. The use of the criminal justice system to reduce tax avoidance and evasion, for instance, to impede corruption and promote greater equity, including ready access to justice and mechanisms for complaints and legal aid, are possible ways of helping the needy rather than the greedy. More specific guidelines are being worked out, as they were, for instance, for the use of the criminal law in environmental protection, and the treatment of offenders to reduce prison overcrowding in the region. The experience of countries of Asia with their application is being collated, and subregional initiatives are also being taken (e.g., for the Pacific States) to help develop collaborative strategies in areas of mutual concern.

The scholarly and scientific community, and other actors of civil society (the media and communications technology providers), have also sponsored relevant initiatives in the crime and justice field, including the topical conferences and publications of the International Scientific and Professional Advisory Council (ISPAC), with its periodic meetings held in Courmayeur, Italy, with the support of the Centro Nazionale di Prevenzione e Difesa Sociale in Milan. Other partners (e.g., the Institute of Human Rights of DePaul University in Chicago) have provided funding for the participation of least developed countries in the first States Parties meeting in February 2003 of the International Criminal Court. Other initiatives, such as the Fund for International Partnerships, show the possibilities for joint ventures that need to be further exploited, especially in view of the relatively limited official development assistance, in spite of the commitments made by Governments in Monterey and elsewhere. The UN Crime Prevention and Criminal Justice Trust Fund is still suffering from a dearth of financial means and could profit from the generosity of all potential donors. Much work needs to be done, especially in helping States to apply the UN standards and norms, implement the new conventions, and pursue promising leads where more could jointly be done, such as promoting public security, restorative justice and victim assistance.

## **Conclusion**

The time for incisive collaborative action is overdue. Multi-disciplinary, cross-cutting joint ventures are called for with partners of various kinds, international, regional, national and private, utilizing the whole gamut of potential inputs to meet stated objectives, within a larger vision geared to the challenging times. Interfaces with other UN offices concerned should be fostered, to give proper scope and create the necessary linkages for increased synergies while stressing the uniqueness and specificity of this programme and its guidelines in a critical area of concern, of paramount importance for human security, development and our common future.

Proposals were made in the past to improve the implementation of the UN crime-related standards and norms and reporting procedures, without rendering the process too onerous.

These might be reviewed, along with systems used elsewhere that have shown promise, including the phased reporting on progress in the advancement of the Millennium Development Goals. In the face of competing priorities, it is not clear whether the Crime Commission could establish, as suggested, a subcommittee or other mechanism to monitor implementation. Model national legislation, regional annotations, and rosters of best practices and sources of technical assistance can all be helpful, but new avenues should also be explored to provide incentives for change and for innovative approaches.

Conducting this exercise in a meaningful context and comprehensive perspective should enhance the results and help States to introduce or consolidate reforms, based on UN principles, widespread consensus (including actual experience), and the lessons learned. By drawing on various sources, evaluating the results and promoting empirically based further action, where necessary with other stakeholders, more viable and integrated crime prevention and criminal justice systems might be achieved, translating the UN standards into practice. Their unique nature and potential should be more widely recognized and exploited. This will require further dissemination efforts, with tangible examples, and adaptation to the range of problems faced by different countries and regions. By pointing out ways of overcoming them, providing samples of helpful practices and opening up new possibilities, geared to new circumstances and the needs of global cooperation, the necessary inroads might be made and the standards receive their due as an invaluable tool for progress in a complex and precarious world.

## END NOTES

1. See also the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations publication, Sales no. 92.IV.1 and corr.1, and Roger S. Clark, *The United Nations Crime Prevention and Criminal Justice Program. Formulation of Standards and Efforts at Their Implementation*, University of Pennsylvania Press 1994.
2. See e.g., *International Victim Assistance Handbook* on the use and application of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (E/CN.5/1998/CRP4, Add. 1). Washington, D.C. Office of Victims of Crime, United Nations, 1998, and *Guide for Policy-Makers* on the implementation of the Declaration.
3. See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, adopted in pursuance of the consideration by the Commission on Human Rights of the proposals of Special Rapporteurs under agenda item 11 on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/2003/63).
4. See e.g., Victims' Rights Working Group of the NGO Coalition for an ICC: summary of proceedings and final recommendations for the Rome Statute and the Rules of Procedure and Evidence, Jan. 2003.
5. International Bureau for Children's Rights, Draft Guidelines on Child Victims and Witnesses of Crime, Jan. 2003.
6. See also Eduardo Vetere and Irene Melup, "Victims of Crime" in Yael Danieli, ed. *International Responses to Traumatic Stress*. Amityville, NY Baywood, 1986, and Irene Melup, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, in Yael Danieli, ed. *The Universal Declaration of Human Rights: fifty years and beyond*. Amityville, NY, Baywood, 1999.
7. Cooperation between the United Nations and all relevant partners, in particular the private sector, Report of the Secretary-General (A/56/323) and Building Partnerships. Cooperation between the United Nations system and the private sector. United Nations Global Compact Office, 2002 (Sales No. 02.I.12).

## ANNEX

### **An integrated plan of action for victims of crime and abuse of power**

The following may be envisaged as the main elements of an integrated collaborative Plan of Action based on UN Guidelines:

#### **1. Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

Surveys of and related efforts for the implementation of the Declaration should permit a more accurate assessment of the advances made nationally and internationally in this respect, the results of which should serve as, inter alia, a basis for further policy development and action. This should include:

- (a) Assessing the progress made at the national level, as reflected in the reports of the Secretary-General submitted to the United Nations policy-making bodies and the synthesis of the responses to the United Nations surveys of the implementation of the Declaration, a summary of which is to be submitted to the Commission on Crime Prevention and Criminal Justice;
- (b) Assessing the progress made at the regional and international level including efforts made by entities of the United Nations system and other relevant organizations, as called for in General Assembly resolution 40/34 adopting the Declaration;
- (c) Identifying the obstacles encountered and ways of overcoming them;
- (d) Action by the Commission on Crime Prevention and Criminal Justice, to consider the balance-sheet and make relevant recommendations to correct the shortfalls, in pursuance of the mandates. Such action should include:
  - (1) The wider dissemination and translation of the Declaration, with possible regional annotations;
  - (2) The formulation of model legislation for the application of the Declaration at the national level, adaptable to different systems;
  - (3) The collation of material on the needs of and assistance to different kinds of victims (e.g., of terrorism) as a complement to the International Victim Assistance Handbook and Guide for Policy-makers, for circulation to Governments (and other quarters) for comments and submission to the Commission for review and approval, with a view to serving as a basis for technical assistance projects and capacity-building;
  - (4) Implementation of relevant recommendations for strengthened international action in this area, taking into account the directions identified by expert group meetings and drawing, inter alia, on the conclusions of the Siracusa and Oñati Workshops, and other workshops on victims of crime and abuse of power.

#### **2. Strengthening operational activities to improve the situation of victims by fostering the application of the United Nations Declaration and specific guidelines, including the Vienna Plans of Action. This would be undertaken through targeted training activities and other forms of technical cooperation and assistance.**

A. Training activities to be conducted, with special emphasis on:

- (a) Developing training programmes using the materials on the implementation of the

Declaration and core curricula for the treatment of victims;

(b) All those working with victims should receive appropriate training. The professionals concerned, inter alia, should include law enforcement, prosecutors, judges and court administrators, correction officers, health professionals (e.g., physicians, nurses, primary health care providers), mental health and social services (e.g., psychiatrists, psychologists, social workers, crisis interveners), the media (e.g., reporters, editors, photographers), clergy and spiritual leaders, traditional healers, educators (e.g., teachers), emergency response personnel, military personnel (including UN peacekeepers), managers and administrators.

(1) All volunteers working with victims should also receive training. Volunteer organizations should ensure that their personnel receive appropriate training and care.

(2) All those who work in the international context should be sensitized to cross-cultural practices, concerns and the particular conditions of their work, and also afforded care when exposed to situations involving the victimization of and trauma inflicted on the population they are mandated to protect and assist.

(3) Training should address the following topics: the concerns and care of the victims in the aftermath of the victimization (attention should be given to populations at risk); the concerns and care of care-givers (e.g., burnout); knowledge of the role of all professions and functioning of institutions involved in the care of victims, coordinating multi-disciplinary responses; addressing and responding to the practical conditions at the particular site (e.g., crime, abuse of power, war, and other mass catastrophes); conflict- resolution techniques and victimization prevention.

(4) Individuals conducting the training, including training of trainers, should have recognized expertise and experience in working with victims, as well as in working in a multi-disciplinary context. Those training in the international setting should, in addition, have cross-cultural expertise.

(5) This training should be done in professional schools and universities, post-graduate studies, continuing education programmes, and through in-service and on-the-job training.

(6) Training should also be provided through seminars and courses:

(i) At the national level, with interested Governments;

(ii) At the regional level, with the United Nations institutes, affiliated institutes and other relevant entities (e.g., regional commissions and development banks);

(iii) At the international level, with UNDP and other United Nations entities and relevant organizations, to provide the necessary leadership and follow-up;

(7) All training programmes should include an evaluation of their effectiveness.

B. Other forms of technical assistance should include:

(1) Incorporation of victim-related provisions in criminal justice reforms to improve the status of the victim in the criminal process;

(2) The establishment of victims services as part of development aid, including the distribution of the Model Project on the Establishment of Victim Services in the context of sustainable development;

(3) Incorporation of victim assistance modules in the missions of the Interregional Advisers and Crime Prevention and Criminal Justice Programme members, as well as of other UN entities and cooperating organizations;

(4) In the context of crimes, man-made catastrophes and natural disasters due to criminal

negligence, where national institutions exist, provision of emergency assistance using interdisciplinary and international crisis-response teams, in order to assist local authorities address the situation and the needs and rights of the victims in pursuance of the United Nations Victims Declaration;

(5) In the aftermath of armed conflict, systematic abuses of power by governments and other cases of widespread and grave victimization, such as the destruction of institutions of government and justice, the Crime Prevention and Criminal Justice Programme and Interregional Advisers should have the authority and resources, in cooperation with other relevant agencies that contribute to the process of reconstruction, to provide assistance in the rule of law and facilitate the recognition of the rights of victims, such as the rights to reparation, including compensation.

(6) Provision of specialized assistance, in collaboration with, inter alia, the High Commissioner for Human Rights, the High Commissioner for Refugees, UNIFEM, UNICEF, the Office of Legal Affairs, WHO and other relevant IGOs and NGOs, to victim groups (e.g., refugee and migrant victims of xenophobic violence, female victims of violent and sexual abuse, victims of terrorism and organized crime, children in difficult circumstances, especially victims of violence and sexual abuse.

(7) Provision of appropriate care for those involved in protecting and assisting victim populations exposed to situations involving victimization and infliction of trauma.

### **3. Action-research and information exchange**

Activities in this regard should be enhanced by:

(a) Endorsing and encouraging participation of governments, intergovernmental and non-governmental organizations and other relevant agencies in contributing to supporting and using the Promising Practices Resource;

(b) Collaborating in the international victimization surveys and inclusion of selected victimization data in the world crime surveys (with the United Nations Interregional Crime and Justice Research Institute, et. al.). A global report on victimization, conflict resolution and victim assistance, drawing on official and unofficial sources was suggested as a task for ISPAC;

(c) Formulating guidelines for the media to protect victims and curtail further victimization in line with the recommendations of the Ninth Congress workshop on mass media and crime prevention;

(d) Improving public information and education to prevent and face victimization, especially through the wide use of the Handbook on Justice for Victims and Guide for Policy-makers;

(e) Familiarity with existing knowledge and further evaluation of the efficacy of different kinds of treatment for victims and of preventive strategies, including evaluation components in technical assistance projects and pilot schemes.

### **4. Development of international means of recourse and redress where national channels may be insufficient**

National remedies may be lacking or insufficient where there are multiple jurisdictions involved, or a conflict of jurisdictions, which may be the case in transnational crimes, and has led to a parallel "internationalization of victims". Under repressive regimes or in cases where recourse for grievances and repatriation are lacking, supranational venues may be necessary which may include the procedures established under the United Nations Human Rights



Programme and regional mechanisms (such as the human rights courts). The establishment of the international tribunals for the former Yugoslavia and for Rwanda and the new International Criminal Court offer added prospects for punishment of perpetrators and remedies for victims, if they are properly invoked. They can also help to quash demands for impunity from negotiations emanating from conflict resolution efforts. There have been repeated calls to give effect to the development of international means of recourse and repatriation by the United Nations Crime Congresses and Oñati Workshops, as well as ECOSOC (Resolution 1990/22), such as an international court capable of establishing the legal responsibility of States for human rights violations. This is an area of mounting need and fruitful prospects in which the Crime Programme can play an important role. The following actions should be undertaken:

- (a) Developing and applying monitoring procedures based on permanent or ad hoc United Nations presence around the world to assess situations of escalating victimization, in collaboration with local and international non-governmental organizations and report thereon;
- (b) Reviewing the relevant provisions of international criminal, human rights and humanitarian law to determine normative, institutional and technical gaps in the protection of victims and make appropriate recommendations (with OLA, DHA, CHR, HCR, International Committee of Red Cross, DPKO, UNICEF and WHO);
- (c) Developing new means of recourse in the United Nations framework: for example, the right of petition in cases of massive threats to the security of people, as proposed by the Commission on Global Governance, expansion of hotlines (such as that of the High Commissioner for Human Rights), the establishment of an international human rights court, and the role of the Commission on Crime Prevention and Criminal Justice as focal point and guardian of the observance of the victim Declaration;
- (d) Conducting a feasibility study on the establishment of an international fund for victims of crime including transnational crime, in case of jurisdictional dispute or lack of national remedies (in accordance with the Eighth Congress resolution on the Human Rights of Victims of Crime and Abuse of Power);
- (e) Promoting the application of the victim-related provisions in the statute of the International Criminal Court, and providing adequate and meaningful forms of redress.

## **5. Promoting an integrated United Nations system-wide approach to curtail victimization and protect/assist victims**

United Nations efforts to stem victimization and help different kinds of victims are now dispersed and compartmentalized, with gaps and overlap, and the available expertise is often not being utilized. This is true especially with regard to victims of crime and abuses (e.g., mistreatment in prisons, criminal child abuse) where the expertise of the Crime Programme and its network of institutions and experts could usefully be enlisted. As the lead agency in this field and focal point for the implementation of the UN Declaration on victims, the Commission on Crime Prevention and Criminal Justice has a special responsibility in this regard, which it can appropriately discharge in close cooperation with other UN entities concerned. The following steps should help to rationalize the relevant activities, improve coordination and promote a concerted and more productive approach.

- (a) Strengthening the ongoing arrangements and procedures to ensure joint planning, operational coordination and more integrated approach to activities on behalf of victims, so as to achieve optimum results. Consideration should also be given to the establishment of an Inter-Agency Task Force on Victims, with the Crime Prevention and Criminal Justice Programme in a lead role, to foster a more integrated approach and coordinated action designed to ensure synergies and complementarity of action;

- (b) Identifying the existing and prospective needs, the tasks to be undertaken, and the division of responsibilities;
- (c) Collaboration with relevant entities on specific standard-setting and implementing activities in relation to victims (e.g., the principles on restitution, compensation and rehabilitation for victims of gross human rights violations with the Centre for Human Rights);
- (d) Elaboration of a possible convention on the protection of and assistance to victims;
- (e) Advocacy and fund-raising activities to draw attention to the plight of victims and their need for proper redress, and to spur its provision;
- (f) Victim mainstreaming to raise the priority of victim-related action in peace-building, post-conflict reconstruction and sustainable development efforts, and to help prevent future victimization.



# Poverty alleviation and the work of the Asia Crime Prevention Foundation in the context of United Nations standards and norms

Jolanta Redo, Resident Representative of the Asia Crime Prevention Foundation for Europe and Central Asia to the United Nations Office at Vienna, Austria (1)

## Introduction

The Asia Crime Prevention Foundation (ACPF) belongs to the family of non-governmental organizations with general consultative status in the United Nations Economic and Social Council. As such, it is mandated to carry out cross-sectoral work to meet the programme priorities of the United Nations in the area of poverty alleviation, sustainable development and the rule of law.

In the above context, the present paper focuses on the contribution of ACPF to the application of United Nations standards and norms in crime prevention and criminal justice, and particularly, on one of their objectives: access to justice.

## Access to justice

"Access to justice" may be understood in different ways. In the most general strategic terms, an efficient justice system is undoubtedly central to development. There is a crucial link between poverty eradication, the rule of law, human rights and sustainable human development.

In legal terms, the poor should be able to seek and obtain justice under laws that are in conformity with international human rights standards and national constitutional norms. Such standards and norms seek to safeguard the rule of law, for all persons, both against governmental lawlessness and that of powerful and well entrenched vested interests in society. There should be improved access to timely and effective justice for all: especially the poor, women and other disadvantaged groups.

In operational terms, those who are delivering justice should exercise independence as judges or impartiality as prosecutors. Their "clients" should be legally literate, benefit from legal aid, pro-poor laws and civic participation in legal and judicial reform. Access to justice also recognizes the importance of informal mechanisms when working on justice sector reform. Judicial, quasi-judicial and other administrative legal remedies are important as a matter of ultimate recourse for the poor. One cannot ignore informal and extra-judicial mechanisms that often, for the majority of the poor, are the only accessible mechanism (2).

Finally, in the most specific criminal law and criminal procedure terms, access to justice means technical cooperation projects whose aim is to facilitate reforms in administration of justice to disadvantaged victims, offenders and juvenile delinquents. Those persons should be dealt with humanely and efficiently, compensated or treated. Justice should be delivered and restored in line with applicable United Nations standards and norms.

## ACPF and action in crime prevention and criminal justice

Since the establishment of ACPF in 1982, the organization has pursued a broad-based approach to technical cooperation in crime prevention and criminal justice.

From 1982 to 2002 it carried out several preparatory assistance missions and organized a number of workshops, conferences and other meetings focusing on various aspects of work of the United Nations Crime Prevention and Criminal Justice Programme (3). Undoubtedly, however, as of the year 2000 (the date of acquiring the general consultative status in the Economic and Social Council), the focus of ACPF turned to the cross-cutting problem of poverty alleviation.

To augment efforts in that direction, ACPF organized in 2002 in New Delhi, India, the Working Group Meeting of Experts on "Criminal Justice Challenges in the Age of Globalization: Regional Strategies for Combating Terrorism, Corruption and Transnational Organized Crime in the Context of Development and Poverty Alleviation".

Soon thereafter in 2002, ACPF held its Ninth World Conference in Tokyo where the above topics, developed by the New Delhi preparatory meeting, were discussed and acted upon globally. Within the above theme, of particular relevance at the Conference was the question of the "role of criminal justice in the alleviation of extreme poverty".

The Conference considered that question using the example of Papua New Guinea (4). In 2000 the country ranked 133 out of 174 countries on the human development index (and continued at that low level in the year 2002-2003) with an average life expectancy of 51.4 years for men and 52.2 years for women.

The role of criminal justice system in a society reportedly plagued by high unemployment, abuse of power, very uneven distribution of wealth, violence and corruption must be to focus on redressing the failures and excessive imbalances in power and resource distribution by prosecuting mismanagement of public funds and resources. Limited as such an action may be, it nonetheless demonstrates that criminal justice tools are instrumental in addressing the alleviation of poverty, as are the relevant United Nations standards and norms and policies for broadening access to justice.

It is in the above context that ACPF, at its Conference in 2002, renewed in its "Tokyo Declaration", its commitment to the treatment of offenders. Regarding the part of the commitment relating to institutions, the Conference recommended that prisoners should be treated in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and Declaration of the Basic Rights of Prisoners. Treatment should be in the light of rational, humane and responsive sentencing policies, that aim at reducing prison overcrowding, consideration of equal access to justice, gender perspective and equality and fairness before the law, regardless of whether the persons being dealt with are rich or poor, and with a view to imprisoning only dangerous offenders.

The latter should be taken in the context of broadening access to justice by further promoting the non-institutional treatment of offenders. It should be a part of an overall regional and global criminal policy based on the more widespread use and application of the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), and the United Nations Rules for the Administration of Juvenile Justice (Beijing Rules).

## **Conclusion**

The above understanding of access to justice whereby "justice" implies a process of widening the use of non-custodial measures in the treatment of offenders and delinquents, is at the heart of the criminal and juvenile justice policy recommended by the ACPF. Its sense can be fulfilled when it meets the objective of treatment, as stipulated by the Covenant on Civil and Political Rights (art. 10. 1 (b)).

The United Nations standards and norms articulate very well the common global ideal of progressive crime prevention and criminal justice reform to meet the above objective.

## END NOTES

(1) Asia Crime Prevention Foundation for Europe and Central Asia: [www.acpf.org](http://www.acpf.org).

(2) <http://www.undp.org/governance/justice.htm>

(3) A broad review and account of ACPF activities can be found on the Internet [www.acpf.org/index\(E\).htm](http://www.acpf.org/index(E).htm), and in its annual reports.

(4) Chronox Manek, Role of criminal justice in the alleviation of extreme poverty - an overview of Papua New Guinea and the South-West Pacific. A paper for presentation at the Ninth ACPF Conference (Tokyo, Japan, 2-4 November 2002).



# The role of United Nations standards and norms in the fight for human rights

## Amnesty International

United Nations (UN) standards and norms in criminal justice have come to play a vital part in the worldwide effort to secure human rights for all people. They provide important agreed benchmarks for official action in ensuring respect for human rights and the proper administration of criminal justice.

Amnesty International makes regular use of UN standards and norms in its daily work. It draws especially from the following standards:

- Standard Minimum Rules for the Treatment of Prisoners;
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Code of Conduct for Law Enforcement Officials;
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Amnesty International also makes extensive use of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, and of the resolutions on the implementation of these Safeguards adopted by the Economic and Social Council in 1989 and 1996, all of which have been repeatedly cited in resolutions of the Commission on Human Rights. Although the focus of discussion of the question of the death penalty has shifted to the Commission on Human Rights in recent years, the quinquennial reports of the Secretary-General on capital punishment have continued to provide valuable information for consideration of the question, as has the study on the question of the death penalty and new contributions of the criminal sciences in the matter, prepared for the Committee on Crime Prevention and Control in 1988 and updated several times since then.

Amnesty International uses UN standards and norms in three principal ways:

- In its research, it evaluates the reported actions of public officials against the rules and principles set out in the standards, for example, reported actions in crowd control or responses to prison disturbances against the standards set out in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the conditions in a detention centre against the provisions of the Standard Minimum Rules for the Treatment of Prisoners, or the conduct of an investigation into suspected extrajudicial executions against the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Thus, Amnesty International is putting the UN standards and norms to work as yardsticks of official behaviour;



- It repeatedly calls on Governments to implement the provisions of the standards and norms, including by ensuring that they are reflected in domestic legislation and in training programmes for law enforcement officials;
- By appending the texts of the relevant standards and norms to its reports on human rights violations in particular countries, it disseminates the standards to officials and the wider public in those countries. (Many Amnesty International reports are translated into the local languages and disseminated widely, both in printed form and through the Internet.)

Amnesty International has also participated in the development of human rights training packages for law enforcement officials in some parts of the world. These training packages draw heavily from the relevant standards and norms. Publications such as "Disappearances and Political Killings. . . A Manual for Action (1994) and Amnesty International's forthcoming Manual for Action against Torture are also designed to make the standards and norms better known.

Despite their acceptance in principle, all of the above standards and norms having been adopted by consensus, the experience of Amnesty International indicates that there are widespread shortcomings in the implementation of the Standards. Much more needs to be done to make them known and applied by the relevant public officials.

Amnesty International does not in most instances have the resources or expertise to provide training nor, as a non-governmental organization, does it have to authority or responsibility to ensure that the standards and norms are respected. The efforts of Amnesty International and other NGOs needs to be complemented by efforts by the United Nations and concerned Governments to:

- Obtain political commitments at high levels of government to adhere to the standards and norms;
- Ensure that the standards and norms are reflected in training and regulations;
- Monitor the actions of public officials to ensure that the standards and norms are respected;
- Punish public officials who commit infractions in breach of the standards and norms.

Over the years the UN has made repeated efforts to secure the implementation of the standards and norms . Those efforts have included the adoption by ECOSOC of the Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners in 1984; the adoption of the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials in 1989; and the surveys on the use and application of various standards and norms, submitted to the Commission on Crime Prevention and Criminal Justice in 1996. Much more needs to be done to make the standards and norms truly operational in all countries.

The standard-setting and monitoring work of the Commission on Crime Prevention and Criminal Justice is essential for the effectiveness of Amnesty International and other non-governmental organizations. The Commission should give renewed attention to the implementation of standards and norms in criminal justice. It should also keep them under review with a view to strengthening their provisions where necessary, in the effort to ensure universal respect for human rights and the proper administration of criminal justice systems worldwide.

# Children's rights: the role of NGOs in supporting the application of United Nations standards and norms. Is there a need for new standards?

The International Bureau for Children's Rights (IBCR)

## Introduction

Abuse, exploitation, trafficking, slavery, kidnappings and street murders have, over the past decades, significantly contributed to crimes against children. Such children suffer not only from the impact of the crime itself but also from the effects of further victimization because of their age, level of maturity and emotional development as well as their powerless status and subordinate position in an adult world. The impact of crime is exacerbated in the case of children who come from poor or marginalized families, or have to face other hardships such as disability, disease or discrimination. The experience of children who have to face the criminal justice system and, more specifically, have to testify in court, can be traumatic due to inadequate protection of child-friendly court procedures, thereby seriously undermining the full respect of the rights of the child and in some cases the rights of the accused to a fair trial. In addition, national legislation and practice often fail to effectively promote the best interests of the child and protect the rights of child victims and witnesses of crime.

This paper will examine the contribution of non-governmental organizations (NGOs) in the elaboration and application of UN standards and norms in the area of child rights. More particularly, it will discuss the elaboration of Guidelines on Child Victims and Witnesses of Crime by the International Bureau for Children's Rights (IBCR).

## The contribution of NGOs in the elaboration and application of UN standards and norms in the area of children's rights

Over the past few decades, a whole range of United Nations standards and norms have been elaborated to promote and protect the rights of the child, both within and beyond the criminal justice system, in particular with regard to children in conflict with the law. These include the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

As the role of non-governmental organizations (NGOs) in the elaboration of such standards and norms has grown considerably, so has the contribution of NGOs to their dissemination and application. Many NGOs, including the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, have contributed significantly to the development and application of UN standards and norms within the Crime Commission mandate. With regard to victims and witnesses of crime and the integration of child rights into the criminal justice system, much as been done by NGOs such as the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR & CJP), the International Association of Prosecutors (IAP), the International Center for the Prevention of Crime, the World Society of Victimology and ECPAT, to name but a few. ICCLR & CJP and IAP, to give one example, have developed 'Model Guidelines for the Effective Prosecution of Crimes Against Children'. Not only were these model guidelines developed in such a way as to be respectful of children's rights and mindful of their special circumstances, but they aim to assist in the effective implementation of UN standards and norms that call for fair and sensitive treatment of child victims by the criminal justice systems by providing a relevant set of model guidelines to individuals with prosecutorial power in every country taking

into account the various differing legal traditions and cultures.

The contribution of NGOs to the development and application of UN standards and norms within other United Nations entities is also worthy of recognition. A good example is the ad hoc NGO Group on the Drafting of the Convention on the Rights of the Child, which developed into the NGO Group on the Convention. Once the Convention was adopted by the United Nations General Assembly, the NGO Group reorganized with a view to raising awareness about the Convention, promoting its full implementation, and acting as a forum for the exchange of information for the Committee on the Rights of the Child, concerned UN bodies and interested NGOs.

NGOs have been actively involved in the application of United Nations standards and norms in the field of child rights, and are uniquely placed to do so, by reason of their independence from Government, their knowledge of the situation of children at the local and national levels, their extensive networks with the children themselves and other members of civil society, and their contacts with representatives of institutions and Government. NGOs use a wide variety of means to apply United Nations standards and norms. They actively lobby Governments and parliaments to encourage the ratification of instruments; they provide additional information on the respect of child rights to supervisory mechanisms, in particular the Committee on the Rights of the Child; by commenting on State party reports and drafting shadow reports, they organize awareness-raising and information campaigns on existing instruments to make them better known; they exert pressure on relevant ministries and departments to amend legislation and integrate child rights into policies and programmes; and they are active in training professionals, including judicial and law enforcement personnel, with a view to enhancing knowledge of child rights and ensuring their effective implementation.

Not only have NGOs been active in directly applying United Nations standards and norms, they have also focused on developing and producing tools which provide practical guidance on effective application of existing standards and norms. Such tools have been developed in response to the fact that many international and regional standards are perceived to be too vague for legal enforcement; effective implementation remains hampered by a lack of incorporation into domestic legislation and practical application at national level; programmes, policies and practices often fail to effectively promote the best interests of the child and protect the rights of the child, largely because of a lack of awareness of existing standards which apply. Moreover, many children face insensitive treatment by professionals, including the police, prosecutors, lawyers and court officials, thus further undermining the respect of their rights.

One example of such tools is the development of guidelines, principles or rules that aim to sharpen the focus of existing norms and standards and enhance their effective application among children and at the local level, where it really matters. In a number of cases, these have often been developed by NGOs together with experts, Governmental and non-governmental representatives, and academics, and bring together existing standards, norms and principles scattered throughout a variety of documents with a view to protecting particularly vulnerable population groups. Some examples include the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Guidelines for the Prevention of Juvenile Delinquency, while other examples focus on enhancing professional conduct such as the Guidelines on the Role of Prosecutors, the Guidelines on the Role of Lawyers and the Code of Conduct for Law Enforcement Officials, and the Guidelines for the Effective Prosecution of Crimes Against Children.

### **The International Bureau for Children's Rights and its work on child victims and witnesses of crime**

The second portion of this paper will focus on Guidelines developed by the International Bureau for Children's Rights (IBCR), an international non-governmental organization created in 1994 to ensure, inter alia, that children's rights are respected. The Guidelines have been

elaborated with a view to giving effect to one of the key recommendations of an International Tribunal for Children's Rights on the issue of the international dimension of sexual exploitation, organized by the IBCR between 1997 and 1999. More specifically, the recommendations of the Tribunal called for the implementation of special measures to address the particular demands of prosecuting crimes committed against children, and for the development of child-friendly systems and procedures, taking into account the special needs of child victims and witnesses of crime. In response, the IBCR decided to draft Guidelines on justice for child victims and witnesses of crime, which aim to draw and build upon existing international and regional human rights norms, standards and principles that address the issues of child victims and witnesses of crime, and bring together, in one document, the major provisions that afford this particularly vulnerable group of children added protection.

The Guidelines are the result of an extensive two-year process of consultation with NGOs, Government representatives, criminal lawyers, experts in the field of child rights and victimology and academics, as well as research on State protocols, legislation, and good practices in implementing child-friendly procedures, as well as professional practices. In order to ensure that the Guidelines represent regional specificities, different cultures, traditions and values of society and reflect, as far as possible, the heterogeneity of criminal justice systems, the IBCR established a Steering/Drafting Committee (the Committee), to contribute to the drafting and elaboration of the Guidelines. This led to a first meeting of the Committee in June 2000, during which a number of decisions were taken regarding the content and scope of the Guidelines. First, the Guidelines would focus on the protection of child victims and child witnesses within the criminal justice systems throughout the world. Secondly, the Guidelines would not apply to sexual crimes only, as initially suggested, but to all types of crimes against children. Thirdly, the Guidelines would be applicable essentially to the protection and promotion of the rights of children within the criminal justice process but would be adaptable to other instances when child victims and witnesses of crime could be called upon to testify, whether or not the allegations actually led to a criminal trial.

In January 2001, the IBCR undertook extensive research on existing best practices on child victims and witnesses of crime around the world with a view to guiding the Committee in drafting the provisions to be contained in the Guidelines. A report was prepared on the various provisions, protocols and practices that have been implemented throughout the world for the protection of the rights and needs of child victims and witnesses of crime. This research was further complemented by the preparation of a questionnaire to gather practical information on the effective application of laws and recommendations in this field.

Both the report and the responses to this questionnaire were presented to the Committee members on the occasion of the second meeting of the Committee in December 2001. At that meeting, a number of further decisions were taken with regard to the structure and content of the Guidelines. First, it was decided that in developing the Guidelines, the Committee would pay special attention to the structure of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985, which focuses on access to justice and fair treatment, restitution, compensation and assistance. Second, it was suggested that each section of the Guidelines would be subdivided according to the order of events during an investigation, namely: pretrial, trial, sentencing, and post sentencing. Thirdly, it was agreed that no definition of crime would be included in the text, thereby ensuring that the Guidelines would not be restricted to national definitions of crime, and the Committee members would not have to embark on the lengthy process of arriving at an acceptable definition. Fourth, it was decided that the Guidelines would target professionals working with child victims and witnesses of crime, in a number of capacities which varied from one country to the next. These included childcare workers, social workers, teachers, law enforcement personnel, judges, lawyers, prosecutors, and the staff of international and non-governmental organizations, as well as child welfare agencies. Finally, with regard to the possible implementation of the Guidelines, the Committee suggested that an appendix containing examples of good practices from jurisdictions

selected throughout the world would be drafted in order to exemplify possible ways of implementing the guidelines that are drawn upon these same practices.

In December 2001, the work on the Guidelines was presented by the IBCR as part of a workshop on "Improved Law Enforcement for Child Protection" at the Second World Congress Against the Commercial Sexual Exploitation of Children, held in Yokohama, Japan. During this Congress, the IBCR drew the attention of Government and NGO representatives to the Guidelines and used this occasion to receive information on additional elements that could be included in the Guidelines and on the practices and legislation that exist in various countries. This was followed by research on existing laws and practices on child victims and witnesses of crime throughout the world, as well as on a compilation of relevant provisions on the rights of child victims and witnesses of crime, drawn from binding and non-binding international and regional instruments, for use by policy- and decision-makers as well as professionals working with child victims and witnesses of crime. This ongoing research, as well as the numerous comments and suggestions from the Committee members, was used as the basis for the elaboration of the first draft of the Guidelines, which was discussed during a third Committee meeting in April 2002 at which the final structure of the Guidelines was adopted, reflecting the structure of the Convention on the Rights of the Child, as a means to sharpen the focus on child rights.

A second draft was then prepared, reflecting the findings of the ongoing research and comments received from NGOs in particular on the occasion of the UN General Assembly Special Session on Children held in New York in May 2002. This second draft was again submitted to the Committee for additional comments and suggestions, as well as to a number of external reviewers from a wide range of countries, who were selected by the Committee members. The Guidelines were further discussed on the occasion of an International Workshop on Child Victims and Witnesses of Crime held in Montreal on 14 and 15 December 2002, organized by the IBCR in collaboration with the International Center for the Prevention of Crime and the International Centre for Criminal Law Reform and Criminal Justice Policy, based in Montreal and Vancouver respectively. The final version of the Guidelines was completed in January 2003.

The Guidelines provide guidance on desirable practices that can be applied in different circumstances. They draw upon existing provisions of regional and international standards, norms and principles, including: the Convention on the Rights of the Child; the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power; the Guidelines on the Role of Prosecutors; the Basic Principles on the Role of Lawyers; the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; the Guidelines for Action on Children in the Criminal Justice System; the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice; and the Convention against Transnational Organized Crime. Furthermore, the Guidelines follow-up on the priorities identified in the Vienna Declaration and the Plans of Action, namely: crime prevention, witnesses and victims of crime and juvenile justice.

The Guidelines aim to provide a practical and user-friendly tool to ensure that child victims and witnesses of crime fully enjoy their rights and are treated fairly and with dignity. They provide good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles. More specifically, they provide a practical framework to achieve the following objectives: a) to guide professionals, and where appropriate volunteers, working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power; b) to assist in the review of national and domestic laws, procedures, and practices so that these ensure full respect for the rights of child victims and witnesses of crime and fully implement the Convention on the Rights of the Child; c) to assist governments, international organizations, public agencies, non-governmental and community-based organizations and other interested

parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime; d) to assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

While recognizing the right of the defendant to a fair trial, the Guidelines emphasize the following fundamental rights and principles of the child in the judicial process: the right to be treated with dignity and compassion; the right to be protected from discrimination; the right to be informed; the right to express views and concerns and to be heard; the right to effective assistance; the right to privacy; the right to be protected from justice process hardship; the right to safety; the right to reparation, and; the right to special preventive measures. They also point to the need for professionals to be trained and educated in order to deal effectively and sensitively with child victims and witnesses of crime and that they should achieve a level of cooperation so that child victims and witnesses of crime are dealt with efficiently and effectively.

The Draft Guidelines on Justice for Child Victims and Witnesses of Crime, as finalized by the International Bureau on Children's Rights in January 2003, are as follows:

## **A OBJECTIVES AND PREAMBLE**

### **Objectives**

1. The Guidelines on justice for child victims and witnesses of crime provide good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.
2. They provide a practical framework to achieve the following objectives:
  - (a) To guide professionals, and where appropriate volunteers, working with child victims and witnesses of crime in their day to day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power;
  - (b) To assist in the review of national and domestic laws, procedures, and practices so that these ensure full respect for the rights of child victims and witnesses of crime and fully implement the Convention on the Rights of the Child.
  - (c) To assist governments, international organizations, public agencies, non governmental and community based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
  - (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.
3. Each jurisdiction will need to implement the Guidelines consistent with its legal, social, economic, cultural and geographical conditions. However, the jurisdiction should constantly endeavour to overcome practical difficulties in their application, as the Guidelines are, in their entirety, a set of minimum acceptable principles and standards.
4. In implementing the Guidelines, each jurisdiction must ensure that adequate training, selection and procedures are put in place to meet the special needs of child victims and witnesses, where the nature of the victimisation affects categories of children differently, such as sexual assault of girl children.
5. These Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.

6. The Guidelines should also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorces, adoption, child protection, mental health, citizenship, immigration and refugee law.

### **Considerations**

7. The Guidelines were developed:

(a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of these children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;

(b) Reaffirming that every effort must be made to prevent victimization of children, particularly through implementation of the UN Guidelines on the Prevention of Crime;

(c) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and support;

(d) Stressing that all States Parties to international and regional instruments have a duty to fulfil their obligations, including the implementation of the Convention on the Rights of the Child and its Protocols;

(e) Recalling international and regional initiatives that implement the principles of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, including the Handbook and Guide for Policy Makers;

(f) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;

(g) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;

(h) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders, including those that focus on children in conflict with the law, such as the Beijing rules;

(i) Bearing in mind the variety of legal systems and traditions and noting that crime has an increasingly transnational nature and that there is a need to ensure child victims and witnesses of crime receive equivalent protection in all countries.

### **Principles**

8. In order to assure justice for child victims and witnesses of crime, professionals and others responsible for the wellbeing of these children must respect the following cross-cutting principles as stated in other international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child:

(a) Dignity. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.

(b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(c) Best interests of the child. Every child has the right to have his or her best interests given

primary consideration. This includes the right to protection and to a chance for harmonious development:

(i) Protection. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect including physical, psychological, mental, and emotional abuse and neglect;

(ii) Harmonious development. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) Right to participation. Every child has the right to express his or her views, opinions and beliefs freely in all matters, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes and to have those views taken into consideration.

## **Definitions**

9. Throughout the Guidelines, the following definitions apply:

(a) Child victims and witnesses of crime denotes children, under the age of 18, who are victims of crime or witnesses to crimes regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;

(b) Professionals refers to persons, who within the context of their work, are in contact with child victims and witnesses of crime, and for whom these Guidelines are applicable. This includes but is not limited to the following: child and victim advocates and support persons, child protection service practitioners, child welfare agency staff, prosecutors and defence lawyers, diplomatic and consular staff, domestic violence programme staff, judges, law enforcement officials, medical and mental health professionals, and social workers;

(c) Justice process encompasses detection of the crime, making of the complaint, investigation, prosecution, and trial and post-trial procedures, regardless of whether the case is handled in national, international or regional, adult or juvenile criminal justice, or in customary or informal systems of justice;

(d) Child-sensitive denotes an approach which takes into account the child's individual needs and wishes.

## **B. GUIDELINES ON JUSTICE FOR CHILD VICTIMS AND WITNESSES OF CRIME**

### **1. The right to be treated with dignity and compassion**

(a) Child victims and witnesses of crime should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

(b) Every child should be treated as an individual with his or her individual needs, wishes and feelings. Professionals should not treat any child as a typical child of a given age, or as a typical victim or witness of a specific crime.

(c) Interference in the child's private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.



(d) In order to avoid further hardship to the child, interviews, examinations and other forms of investigations should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

(e) All interactions described in these Guidelines should be conducted in a child-sensitive and empathetic manner in a suitable environment that accommodates the special needs of the child. They should also take place in a language that the child speaks and understands.

## **2. The right to be protected from discrimination**

(a) Child victims and witnesses of crime should have access to the justice process that is protected from discrimination based on the child, parent, or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(b) The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition, immigration or refugee status, as well as to the special needs of the child, including health, abilities, and capacities. Professionals should be trained and educated about such differences.

(c) In many cases, special services and protections will need to be instituted to take account of the different nature of particular offences against children, such as sexual assault involving girl children.

(d) Age should not be a barrier to a child's right to participate fully in the justice process. Every child has the right to be treated as a capable witness, and his or her testimony should be presumed valid and credible at trial until proven otherwise and as long as his or her age and maturity allow the giving of intelligible testimony, with or without communication aids and other assistance.

## **3. The right to be informed**

(a) Child victims and witnesses of crime, their families, and/or their legal representatives, from their first contact with the justice process and throughout that process, have the right to be promptly informed of:

(i) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;

(ii) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which "questioning" will be conducted during the investigation and trial;

(iii) The progress and disposition of the specific case, including the apprehension, arrest, and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments; and the outcome of the case;

(iv) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;

(v) The specific places and times of hearings and other relevant events;

(vi) The availability of protective measures;

(vii) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings, or through other processes;

(viii) The existing mechanisms for review of decisions affecting child victims and witnesses of crime; and

(ix) The relevant rights for child victims or witnesses of crime pursuant to the Convention on the Rights of the Child and the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.

#### **4. The right to express views and concerns and to be heard**

(a) Professionals should make every effort to enable child victims and witnesses of crime to express their views and concerns related to their involvement in the justice process.

(b) Professionals should:

(i) Ensure that child victims and witnesses of crime are consulted on the matters set forth under 3 The Right to be informed; and

(ii) Ensure that child victims and witnesses of crime are enabled to express freely, and in their own manner, their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony, and their feelings about the conclusions of the process.

(c) Professionals should give due regard to the child's views and concerns and, if they are unable to accommodate them, should explain the reasons to the child.

#### **5. The right to effective assistance**

(a) Child victims and witnesses of crime and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in subsection C-1. This includes assistance and support services such as financial, legal, counselling, health and social services, physical and psychological recovery services, and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable them to effectively participate at all stages of the justice process.

(b) In assisting child victims and witnesses of crime, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

(c) Child victims and witnesses of crime should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until these services are no longer required.

(d) Professionals should develop and implement measures to make it easier for children to give evidence and to improve communication and understanding at the pretrial and trial stages. These measures may include:

(i) Child victim/witness specialists to address the children's special needs;

(ii) Support persons, including specialists and appropriate family members to accompany the child during testimony; and

(iii) Guardians ad litem to protect the child's legal interests.

#### **6. The right to privacy**

(a) Child victims and witnesses of crime should have their privacy protected as a matter of primary importance.

(b) Any information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

(c) Where appropriate, measures should be taken to exclude the public and the media from the courtroom during the child's testimony.

## **7. The right to be protected from justice process hardship**

(a) Professionals should take measures to prevent hardship during the detection, investigation, and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses of crime are respected.

(b) Professionals should approach child victims and witnesses of crime with sensitivity, so that they:

(i) Provide support for child victims and witnesses of crime, including accompanying the child, throughout his or her involvement in the justice process, when it is in his or her best interests;

(ii) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

(iii) Ensure speedy trials, unless delays are in the child's best interest. Investigations of crimes involving child victims and witnesses should also be expedited, and there should be procedures, laws, or court rules that provide for cases involving child victims and witnesses to be expedited;

(iv) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an on-call system to ensure the child only goes to court when necessary, and other appropriate measures to facilitate the child's testimony.

(c) Professionals should also implement measures to:

(i) Limit the number of interviews. Special procedures for collection of evidence from child victims and witnesses of crime should be implemented in order to reduce the number of interviews, statements, hearings, and specifically, unnecessary contacts with the justice process, such as through use of pre-recorded videos;

(ii) Avoid unnecessary contacts with the alleged perpetrator, his or her defence team and other persons not directly related to the justice process. Professionals should ensure that child victims and witnesses of crime are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by their alleged perpetrator. Wherever possible, and as necessary, child victims and witnesses of crime should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(iii) Use testimonial aids to facilitate the child's testimony. Judges should give serious consideration to permitting the use of testimonial aids to facilitate the child's testimony and to reduce potential for intimidation of the child, as well as exercise supervision and take appropriate measures to ensure that child victims and witnesses of crime are questioned in a child-sensitive manner.

## **8. The right to safety**

(a) Where the safety of a child victim or witness may be at risk, appropriate measures should

be taken to require the reporting of these safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

(b) Child-focused facility staff, professionals, and other individuals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed, or where harm is likely to occur.

(c) Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses of crime. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include: avoiding direct contact between child victims and witnesses of crime and their alleged perpetrators at any point in the justice process, using court-ordered restraining orders supported by a registry system; ordering pretrial detention of the accused; setting special "no contact" bail conditions; placing the accused under house arrest; and, wherever possible, giving child victims and witnesses of crime protection by police or other relevant agencies, and safeguarding their whereabouts from disclosure.

## **9. The right to reparation**

(a) Child victims and witnesses of crime should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

(b) Provided the proceedings are child-sensitive and respect the Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

(c) Reparation may include restitution ordered by the court, aid from state victims compensation programmes, and civil recovery proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care, and legal services should be addressed. Procedures should be instituted to ensure automatic enforcement of reparation orders and payment of reparation before fines.

## **10. The right to special preventive measures**

(a) In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses of crime who are particularly vulnerable to repeat victimization and/or offending.

(b) Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks of further victimization to child victims. These strategies and interventions should take into account the nature of the victimization, including related to: abuse in the home, sexual exploitation, abuse in institutional settings, and trafficking. The strategies include those based on government, neighbourhood and citizen initiatives.

## **C. IMPLEMENTATION**

1. Professionals should be trained and educated on these Guidelines in order to deal effectively and sensitively with child victims and witnesses of crime

(a) Adequate training, education, and information should be made available to front-line professionals, criminal and juvenile justice officials, justice system practitioners and other professionals working with child victims and witnesses of crime with a view to improving and sustaining specialized methods, approaches and attitudes.

(b) Professionals should be selected and trained to meet the needs of child victims and witnesses of crime, including in specialized units and services.

- (c) This training should include:
  - (i) Relevant human rights norms, standards and principles, including the rights of the child;
  - (ii) Principles and ethical duties of their office;
  - (iii) Signs and symptoms that point to evidence of crimes against children;
  - (iv) Crisis assessment skills and techniques, especially for making referrals with an emphasis placed on the need for confidentiality;
  - (v) Impact, consequences and trauma of crimes against children;
  - (vi) Special measures and techniques to assist child victims and witnesses of crime in the justice process;
  - (vii) Cross-cultural and age-related linguistic, religious, social and gender issues;
  - (viii) Appropriate adult-child communication skills;
  - (ix) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
  - (x) Skills to deal with child victims and witnesses of crime in a sympathetic, understanding, constructive and reassuring manner;
  - (xi) Methods to protect and present evidence and to question child witnesses; and
  - (xii) Roles of and methods used by professionals working with child victims and witnesses of crime.

**2. Professionals should cooperate on the implementation of these Guidelines so that child victims and witnesses of crime are dealt with efficiently and effectively**

- (a) Professionals should make every effort to adopt an interdisciplinary approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, health, legal, and social services. This approach may include protocols for the different stages of the justice process that encourage cooperation amongst agencies that provide services to child victims and witnesses of crime, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services, and psychological personnel working in the same location.
- (b) International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including, mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses of crime.

**3. The implementation of the Guidelines should be monitored**

- (a) Professionals should utilize these Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses of crime involved in the justice process.
- (b) Professionals should periodically review and evaluate their role, together with other agencies in the justice process, in ensuring protection of the rights of the child and the effective implementation of these Guidelines.

**A need for implementation**

There is an urgent need now to implement the Guidelines, encouraging their use in various

countries in the formulation of national policies and domestic legislation to enhance the promotion and protection of the rights of child victims and witnesses of crime and contribute to the reduction of victimization by society as well as crime prevention. To this end, and in collaboration with other NGOs working in this area, the IBCR envisages encouraging the integration of the Guidelines into the work of key bodies of the United Nations, including that of the Crime Prevention Centre, the Institutes in the United Nations Crime Prevention and Criminal Justice Programme network, the Office of the High Commissioner for Human Rights, UNICEF and the Division for the Advancement of Women, as well as the networks at the field level such as the UNDP resident coordinators, and the UNICEF child protection officers who may wish to adapt the Guidelines to the social, political, economic, and cultural circumstances of the States concerned. The IBCR also envisages encouraging the incorporation of the Guidelines into the work of the International Criminal Court, criminal tribunals, and truth and reconciliation commissions as these address child victims and witnesses of crime. Further dissemination of the Guidelines will be undertaken through the organization of awareness-raising workshops and seminars as well as information sessions on the occasion of relevant meetings, conferences and workshops.

In addition, the IBCR plans to provide advisory services in the form of guidance and easy-to-use reference materials for use, among others, by Governments, international organizations, agencies, NGOs as well as professionals working with children, to monitor and effectively implement the rights of child victims and witnesses of crime. These include the dissemination and use of the IBCR toolkit on the implementation of the Guidelines which provides an overview of the content and scope of the Guidelines and the sources of international and regional provisions of relevance from which the Guidelines have been drawn, and the wide dissemination of the IBCR compilation on the rights of child victims and witnesses of crime.

As a further measure to ensure effective application of the Guidelines, the IBCR envisages organizing a series of implementation workshops to encourage the exchange of information and experiences, particularly on cross-cutting issues and common concerns at regional and national levels. These workshops would bring together Government representatives, representatives from regional and non-governmental organizations, professionals such as child rights advocates, law enforcement and judicial personnel, and social workers, as well as members from civil society to discuss: the content and scope of the Guidelines; gaps in national legislation regarding the rights of child victims and witnesses of crime, in accordance with the Guidelines as well as the relevant regional and international provisions; the best means to implement the Guidelines within the region, drawing on the IBCR toolkit on the implementation of the Guidelines and the collection of good practices in this field; and the provision of advisory services as follow-up to the workshops which may focus on networking, training, advocacy and dissemination activities.

Finally, the IBCR envisages translating the Guidelines into child-friendly language to ensure that children and young people are aware of the rights and principles in the Guidelines, making them easier for children to understand and use, and thereby ensuring their full participation in speaking up for their rights and making their voices heard.

In conclusion, the experience of the Centre for International Crime Prevention of the UN Office on Drugs and Crime, and the Commission on Crime Prevention and Criminal Justice testify to the need to use and apply the standards whether through reporting systems, the development of measures that provide detailed practical guidance for States, the promotion of programmes and projects, the identification of desirable practices, or the development of more detailed standards and norms as well as guidelines for their application. Without a doubt, the NGO community can play an important role in meeting these challenges. It already does.



## Expert Group Recommendations to the Commission on Crime Prevention and Criminal Justice (1)

1. The application and formulation of the United Nations standards and norms in crime prevention and criminal justice should continue to be accorded high priority by the Commission on Crime Prevention and Criminal Justice. The standing agenda item on those standards and norms should be maintained and appropriate time and resources should be devoted to it.
2. Possible future United Nations standards and norms in crime prevention and criminal justice should focus on emerging practices in crime prevention or criminal justice, in order to facilitate the development of detailed practical guidelines for use by interested States in carrying out specific tasks.
3. The Commission should establish a mechanism, such as a group of experts and/or a special rapporteur, to supplement existing procedures for undertaking periodic reviews of the application of selected standards and norms in order to ensure their promotion, as well as to make appropriate recommendations to the Commission.
4. The focus in subsequent review cycles should be on identifying difficulties that have been encountered in the application of United Nations standards and norms, in crime prevention and criminal justice, ways in which technical assistance can be used to overcome those difficulties and desirable practices in crime prevention and control.
5. The resulting data and other information should be shared in order to enhance the level and impact of technical cooperation in the world, the overall objective being to promote criminal justice reform in line with applicable United Nations standards and norms in crime prevention and criminal justice.
6. The entire review process should be guided by the need to relate it to the main programme priorities of the United Nations, as noted in the United Nations Millennium Declaration (General Assembly resolution 55/2) and the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (Assembly resolution 55/59, annex), including strengthening the rule of law, good governance, sustainable development and the alleviation of poverty.
7. In line with the programme priorities of the United Nations, the Commission, at each of its sessions, should seek to focus on the application of a cluster of United Nations standards and norms in crime prevention and criminal justice. The Commission may wish to consider the possibility of reviewing a presentation of a particular cluster of standards and norms and their application in specific countries. Such a presentation could be prepared in cooperation with the institutes of the United Nations Crime Prevention and Criminal Justice Programme network.
8. In redesigning the information-gathering mechanisms and within the limits of current programme budget resources, the Commission should examine and propose focusing the future review process on selected clusters of instruments with the most widespread potential and relevance for application in criminal justice reforms in the world, in the following order of priority, bearing in mind gender as a cross-cutting issue, and grouped into clusters as follows:
  - (a) Juvenile justice and prison reform, including alternatives to imprisonment and restorative justice;
  - (b) The conduct of law enforcement and criminal justice practitioners, including the integrity of the judiciary;
  - (c) Public security and crime prevention;
  - (d) The treatment of victims and witnesses;



(e) Legal, institutional and practical arrangements for international cooperation (model treaties).

9. The Commission should request donor States and relevant intergovernmental and non-governmental institutions to support criminal justice reforms, in accordance with the United Nations standards and norms in crime prevention and criminal justice, in countries requesting assistance. The Commission could rely on a roster of national and regional experts who could, upon request, provide technical assistance and advice on the use and application of selected standards and norms.

10. The Commission should encourage donor countries to make financial contributions to the United Nations Crime Prevention and Criminal Justice Fund. Contributions should be directed towards technical cooperation projects for implementing and promoting United Nations standards and norms in crime prevention and criminal justice, as well as organizing meetings of experts to identify priority areas for the development of future standards and norms.

### **Recommendations to Member States and other entities**

11. Each of the Member States should be encouraged to identify at least one contact person who could serve as a knowledgeable source for the analysis of the State's response concerning the application of United Nations standards and norms in crime prevention and criminal justice.

12. Member States should establish mechanisms and provide resources at the national level for promoting and monitoring the application of United Nations standards and norms in crime prevention and criminal justice.

13. Focused efforts should be made to obtain the commitment of policy makers and criminal justice managers to the implementation of United Nations standards and norms in crime prevention and criminal justice.

14. Member States should publish and disseminate, in their local languages, the United Nations standards and norms in crime prevention and criminal justice.

15. The United Nations standards and norms in crime prevention and criminal justice should be easily accessible and explained in understandable language.

16. Member States, financial institutions and development agencies should support projects for the implementation of United Nations standards and norms in crime prevention and criminal justice.

17. Member States, intergovernmental and non-governmental organizations and interregional, regional and national training and educational institutions should vigorously promote programmes and projects that advance the United Nations standards and norms in crime prevention and criminal justice.

18. National institutions and non-governmental organizations should integrate United Nations standards and norms fully in their relevant training programmes. Recommendations to the United Nations Office on Drugs and Crime

19. The United Nations Office on Drugs and Crime should emphasize in its organizational structure and operations the essential role of the United Nations standards and norms in crime prevention and criminal justice.

20. The United Nations Office on Drugs and Crime should assist Member States, upon request, in the application of United Nations standards and norms in crime prevention and criminal justice and in the development of projects.

21. The United Nations Office on Drugs and Crime should seek to ensure that the relevant entities within the Secretariat and in the field are fully aware of the importance of the United

Nations standards and norms in crime prevention and criminal justice for building and maintaining the rule of law.

22. Well-focused efforts should be undertaken to encourage officials in peacekeeping and peace-building operations and their counterparts to apply United Nations standards and norms in crime prevention and criminal justice.

23. The United Nations Office on Drugs and Crime should identify opportunities for sharing data and other information on United Nations standards and norms in crime prevention and criminal justice with Governments and with intergovernmental and non-governmental organizations.

24. The information provided by Member States on the application of United Nations standards and norms in crime prevention and criminal justice should be distributed by the United Nations Office on Drugs and Crime via the World Wide Web.

25. The United Nations Office on Drugs and Crime should encourage financial institutions, development agencies and non-governmental organizations to expand their technical assistance programmes for improving access to justice and the rule of law.

26. The information-gathering mechanisms used by the United Nations Office on Drugs and Crime should be reviewed in order to bring them in line with the overall programme priorities of the United Nations. The goal should be to redesign the mechanisms in a more comprehensive, consistent and operational manner, so that the collected data and other information are more relevant to those priorities. The goal should also be to enhance cooperation among respondents, both in the collection of data and in the execution of technical cooperation projects.

27. New information-gathering mechanisms should be focused on identifying difficulties encountered in application and desirable practices. The mechanisms should be based on the present United Nations priorities unless the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, to be held in 2005, identifies new priorities.

28. Bearing in mind the priorities, the new information-gathering mechanisms should be conceptualized and existing mechanisms reviewed along the following parameters:

(a) Standards and norms related to the rule of law and to human rights in the administration of justice;

(b) Standards and norms related to good governance, the independence of the judiciary and the integrity of criminal justice institutions and personnel;

(c) Standards and norms related primarily to crime prevention, victim issues and gender equality;

(d) Provisions of standards and norms that deal with legal, institutional and practical arrangements for international cooperation.

29. Reviews of United Nations standards and norms related primarily to capital punishment should be conducted pursuant to Economic and Social Council resolution 1995/57 of 28 July 1995, in which the Council recommended that the quinquennial reports of the Secretary-General should continue to cover the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.

30. In gathering information on the above-mentioned priorities, the United Nations Office on Drugs and Crime should also focus its efforts on practical measures that make it possible to determine their operational usefulness in restoring or maintaining law and order, with particular reference to developing countries, countries with economies in transition and post-conflict situations.

31. The United Nations Office on Drugs and Crime should continue to explore the possibility of additional approaches and techniques in information-gathering in order to develop even more concise, simplified and cross-sectoral methods.

32. The survey instruments should be designed to be short, easy to complete and comprehensible.

33. The Secretary-General is requested to involve the regional institutes of the United Nations Crime Prevention and Criminal Justice Programme network in the review and design of the information-gathering instruments and the analysis of information collected.

34. Procedures should be developed according to which the Secretary-General, in reporting on the application of United Nations standards and norms in crime prevention and criminal justice, would be able to utilize not only other relevant information available within the United Nations, but also the expertise of specialized agencies, relevant intergovernmental and non-governmental organizations and academic institutions.

#### **Recommendations on training**

35. The United Nations Office on Drugs and Crime should continue to develop and produce manuals, modules and tools to be used in providing training on United Nations standards and norms in crime prevention and criminal justice, to carry out a limited number of such training courses and workshops and to coordinate such training with other United Nations entities.

36. A training unit should be created within the United Nations Office on Drugs and Crime, and resources should be allocated for training and coordination functions.

37. To the maximum extent possible, the institutes in the United Nations Crime Prevention and Criminal Justice Programme network should be utilized in the planning and conduct of such training activities.

38. In cooperation with the Department of Peacekeeping Operations and the Department of Political Affairs of the Secretariat, the United Nations Office on Drugs and Crime should develop basic training materials for peacekeeping and peace-building operations.

#### **Recommendations on technical cooperation**

39. The United Nations Office on Drugs and Crime should establish rosters of national and regional experts who would be able to provide, upon request, technical assistance and advice on the application of particular types of United Nations standards and norms in crime prevention and criminal justice. Such rosters should be developed in accordance with the different clusters of such standards and norms.

40. The advisory services of the United Nations Office on Drugs and Crime in relation to United Nations standards and norms in crime prevention and criminal justice should be enhanced. Projects should be evaluated in the light of the information gathered. The lessons learned should be incorporated into future planning so that the capacity to execute technical assistance projects can be improved.

41. At the request of Member States, practical projects should be developed, in particular for victims' support services and witness protection, prison reform and alternatives to imprisonment, juvenile justice and restorative justice.

#### **END NOTES**

(1) Excerpted from doc. E/CN.15/2003/10/Add.1

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**- List of participants -**

Expert participants

Jay Albanese (United States of America)

Otto Boenke (Germany)

Roger Clark (New Zealand)

Pedro David (Argentina)

Joseph A. Etima (Uganda)

Ye Feng (China)

Anthony Harriott (Jamaica)

Matti Joutsen (Finland)

Julita Lemgruber (Brazil)

Gabriele Loidl (Austria)

Valentin I Mikhailov (Russian Federation)

Roland Miklau (Austria)

Kamudoni I. Nyasulu (Malawi)

Andrzej Rzeplinski (Poland)

**Jutharat Ua-amnoey (Thailand)**

**Dirk van Zyl Smit (South Africa)**

**Takashi Watanbe (Japan)**

Permanent Mission of Austria to the United Nations participating as observers

**H.E. Thomas Stelzer**

**Hans J. Almoslechner**

**Alexander Wojda**

**Valerie Kyrle**

**N.S. Memela, First Secretary**

United Nations Bodies

**Biljana Potparic (Bosnia and Herzegovina)**

Office of the High Commissioner for Human Rights

**David Johnson**

Affiliated Regional Institutes and Associated Institutes

**Kauko Aromaa (European Institute for Crime Prevention and Control (HEUNI))**

**Brian Tkachuk (International Centre for Criminal Law Reform and Criminal Justice Policy)**

**Elias Carranza (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD))**

**N. Masamba Sita (African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI))**

Intergovernmental Organizations

**Professor James Farsedakis (European Union)**

**Purev Erdenebayar (International Committee of the Red Cross)**

**Nicolas Roggo (International Committee of the Red Cross)**

Non-Governmental Organizations

**Marian Pink (Amnesty International)**

**Jolanta Redo (Asia Crime Prevention Foundation)**

**Jean-François Noël (International Bureau for Children's Rights)**

**Ahmed Othmani (Penal Reform International)**

**David McKenna (Victims' Support)**

**John P. J. Dussich (World Society of Victimology)**

Centre for International Crime Prevention, United Nations Office on Drugs and Crime

**Eduardo Vetere**

**Michael Platzer**

**Slawomir Redo**



