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Discussion guide

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I. Introduction

1. In its resolution 63/193 of 18 December 2008, the General Assembly decided that the main theme of the Twelfth Congress on Crime Prevention and Criminal Justice would be “Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world”.

2. In resolution 63/193, the Assembly also approved the following provisional agenda for the Twelfth Congress, finalized by the Commission on Crime Prevention and Criminal Justice at its seventeenth session:

1. Opening of the Congress.
2. Organizational matters.
3. Children, youth and crime.
4. Provision of technical assistance to facilitate the ratification and implementation of the international instruments related to the prevention and suppression of terrorism.
5. Making the United Nations guidelines on crime prevention work.
6. Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime.
7. International cooperation to address money-laundering based on existing and relevant United Nations and other instruments.
8. Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime, including the case of cybercrime.
9. Strengthening international cooperation in fighting crime-related problems: practical approaches.
10. Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families.
11. Adoption of the report of the Congress.

3. The Assembly also decided that the following issues should be considered in workshops within the framework of the Twelfth Congress:

- (a) International criminal justice education for the rule of law;
- (b) Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system;
- (c) Practical approaches to preventing urban crime;
- (d) Links between drug trafficking and other forms of organized crime: international coordinated response;
- (e) Strategies and best practices against overcrowding in correctional facilities.

4. The Assembly decided that the high-level segment of the Twelfth Congress would be held during the last two days of the Congress in order to allow Heads of

State or Government and government ministers to focus on the main substantive agenda items of the Congress.

5. In accordance with paragraph 2 (h) and (i) of General Assembly resolution 56/119 of 19 December 2001, each of the United Nations congresses on crime prevention and criminal justice shall adopt a single declaration containing recommendations derived from the deliberations from the high-level segment, the round tables and the workshops, to be submitted to the Commission on Crime Prevention and Criminal Justice, acting as the preparatory body of the congresses, for its consideration.

6. In its resolution 63/193, the Assembly requested the Secretary-General, in cooperation with the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, to prepare a discussion guide for the regional preparatory meetings for the Twelfth Congress, and invited Member States to be actively involved in that process.

7. The Assembly urged participants in the regional preparatory meetings to examine the substantive items on the agenda and the topics of the workshops of the Twelfth Congress and to make action-oriented recommendations for consideration by the Twelfth Congress and the Commission at its nineteenth session.

8. The present discussion guide, which outlines the substantive items included in the provisional agenda, has been prepared with a view to stimulating discussion of issues of major concern with a view to identifying the main policy options for consideration and action by the Twelfth Congress. It will also facilitate substantive discussion of the topics to be covered by the workshops to be conducted within the framework of the Congress.

9. In that context, it should be recalled that, pursuant to General Assembly resolution 46/152 of 18 December 1991, the United Nations congresses, as a consultative body of the United Nations Crime Prevention and Criminal Justice Programme, are to provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters submitted to it by the Commission;

(e) The submission of suggestions, for the consideration of the Commission, regarding possible subjects for the programme of work.

II. Substantive items of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Substantive item 1. Children, youth and crime

A. Background

1. Why is the link between children, youth and crime important?

10. Crime may have a negative impact on the development of children¹ and youth² at three levels. Firstly, the emotional, physical, psychological and intellectual development of children and youth is affected by crime when members of these groups are involved in crime as offenders or affected by criminal acts as victims or witnesses, whether on specific occasions or through repeated exposure (violence in the family, for instance). Secondly, such development is affected by the involvement of their parents or other relatives in crime, as this can have an impact on the safe and viable environment that these groups require. Thirdly, children and youth are also affected by crime in their community, city or country because of the effect of crime on economic and social opportunities and development. Schools play an essential role in this regard: in some countries, regions or cities they are no longer able to provide a safe and secure learning environment to children and youth as crime and violence has become a regrettable feature of society.

11. The recent United Nations study on violence against children (A/61/299) has highlighted the unacceptable levels of violence affecting children in all areas of life, in particular in schools, in their families and within institutions, including criminal justice institutions.

12. On the other hand, the safe and harmonious development of children and youth is a prerequisite to the effective prevention of crime and violence as well as to fostering economic and social development in any country. This is even more so in developing countries or countries emerging from conflict in which the population is young.³

13. It is clear that any crime prevention and criminal justice reform efforts, in particular in developing and post-conflict countries, need to contain a strong focus on children and youth. Reforms also need to take into account the views and experiences of children and young people in their relations with crime and the institutions responsible for preventing and controlling it. This participative approach remains a challenge, including for United Nations bodies and other international actors.

¹ Children are defined in accordance with the Convention on the Rights of the Child as anyone below the age of 18.

² The United Nations defines "youth" as persons between the ages of 15 and 24 years.

³ According to the United Nations Children's Fund (UNICEF), in 2006, 2.2 billion of the world's 6.5 billion people were under 18 (children) and 1.2 billion were aged 15-24 (youth). In Africa, close to 43 per cent of the population is under 15 and another 16 per cent between 15 and 24.

2. International law and standards: recent developments

14. In the area of justice for children a strong body of international law and standards that provide guidance to Member States has been developed over the years. In addition to the provisions of the Convention on the Rights of the Child,⁴ and its Optional Protocol on the sale of children, child prostitution and child pornography,⁵ United Nations standards and norms on crime prevention and criminal justice provide guidance in the areas of youth crime prevention, juvenile justice, children in detention and children as victims and witnesses of crime.⁶

15. In 2007 and 2008, further developments took place in standard setting, with the adoption by the Committee on the Rights of the Child of its General Comment No. 10, "Children's rights in juvenile justice",⁷ and the issuance in September 2008 of the guidance note of the Secretary-General on a United Nations approach to justice for children.

16. The goal of that approach is to ensure that children are better served and protected by justice systems, including by the security and social welfare sectors. The approach provides practical guidance to United Nations bodies on how to ensure that children's rights are taken into account in broader rule of law and security sector reform programmes. In addition, with the United Nations study on violence against children (A/61/299) there is a move towards a total ban of all forms of violence against children, including corporal punishment as a form of sanction by courts or in penal institutions.

3. The need for data

17. In order to address challenges and to design policies adapted to reality there is a need for quality data on the extent to which children and youth experience crime, or engage in it. While it was recently estimated that at least 1.1 million children were in detention worldwide,⁸ there is a lack of comparable data on children and youth coming into contact with other parts of the criminal justice system. Data can help put into perspective perceptions of children and youth who pose a threat to security and peace in society and respond to the consequent public demand for tougher policies as children and youth are often (wrongly) perceived as the main threats to security and peace in society.

18. In this regard, UNICEF and the United Nations Office on Drugs and Crime (UNODC) in 2006 developed the *Manual for the Measurement of Juvenile Justice*

⁴ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁵ *Ibid.*, vol. 2171, No. 27531.

⁶ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules); the Guidelines for Action on Children in the Criminal Justice System; the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; and the Guidelines for the Prevention of Crime.

⁷ A comprehensive juvenile justice policy should focus on prevention, diversion and reintegration of children in conflict with the law (CRC/C/GC/10).

⁸ G. Cappelaere and A. Grandjean, *Enfants privés de liberté. Droits et réalités* (Liège, Éditions Jeunesse et Droit, 2000).

*Indicators.*⁹ The *Manual* identifies 15 key indicators and sets out strategies for their measurement, and also highlights the importance of individual records for each child brought into contact with the justice system. Collation of such records at the central level then forms the basis for quantitative indicators and provides an opportunity to compare results with other countries.

19. In addition to children brought into conflict with the law, there is an equal need for high-quality information concerning child victims and witnesses. One tool for acquiring information on the nature and extent of child victimization is the international standard household survey questionnaires (victimization surveys), which are based on interviews and examine victimization over the preceding five years. Such surveys are able to capture the victimization experience of persons aged 11 years and over. Disaggregation of older respondents by age is, in addition, able to capture information on “youth” experience of crime.

20. The preparations for the regional preparatory meetings and the Twelfth Congress, as well as the preparation of country reports, would provide an excellent opportunity to carry out data collection and research efforts in order to guide reform policies. It would be extremely helpful for countries to present figures relating to the core indicators mentioned above in order to compare the experience of different countries, regions and approaches to children, youth and crime.

B. Substantive focus

21. Given the broad scope of the agenda item it is proposed that the debate be focused on:

(a) Reviewing good practices in designing and implementing reform programmes in this area through a participatory approach;

(b) Exploring the need to review and/or supplement existing international standards in the area of justice for children;

(c) Defining key difficulties and priority action at the regional level with regard to children, youth and crime;

(d) Discussing how new forms of crime affect children and youth and how prevention and control efforts for such forms of crime can take into account the special needs of children and youth;

(e) Discussing best courses of action to address the problems posed by the high vulnerability and exposure of children to different forms of abuse and exploitation, including sexual exploitation and forced labour;

(f) Assessing and exploring the best ways to tackle the increasing risks of exploitation of children arising from the use of information and communications technologies by both children and perpetrators of crime;

(g) Presenting research and data on the comparative impact and cost of custodial sentences in relation to alternatives to detention, diversion and restorative justice;

⁹ United Nations publication, Sales No. E.07.V.7.

(h) Exploring ways and means to prioritize prevention of violence against children, including through awareness-raising campaigns and information; educational programmes; diagnostic surveys on related issues focusing on gender- and age-related aspects; and the adoption and implementation of policies and programmes that devote particular attention to economic and social factors conducive to crime (unemployment, urban overcrowding, etc.) and to immediate risk factors (family breakdown, lack of housing, abuse of alcohol or drugs, access to firearms, etc.).

C. Questions for discussion

22. The regional preparatory meetings and the Twelfth Congress may wish to consider the following questions for further discussion:

(a) Is there any experience in designing youth and child justice programmes and policies through a participatory approach? What is the role of civil society in this regard?

(b) What are the key factors that cause children and youth to come into conflict with the law? Are there any successful policies to avoid the victimization and involvement in illicit activities of vulnerable groups of children and youth?

(c) Are there any data available on the treatment of children and youth within the justice system? Have independent inspection bodies or children's ombudsmen been successful in preventing maltreatment and overseeing criminal justice institutions?

(d) Have multidisciplinary and comprehensive approaches to child victims and witnesses of crime been evaluated?

(e) Have successful national action plans been developed in the area of child and youth justice?

(f) If tough-on-crime policies, including in relation to youth gangs, have been implemented, is there any evidence of their impact on the involvement of children and youth in violent crime?

(g) Which programmes, policies or reforms to reduce the use of pre-trial detention and incarceration for children and youth have proved successful?

(h) Have any successful programmes aimed at the rehabilitation of child and young offenders been implemented?

(i) How have the use of new technologies and the development of new forms of crime affected children and youth? What measures have been efficient in fighting such crimes with due regard to laws relating to freedom of expression and other constitutional challenges?

(j) Are there any data and research relating to girls and young women and their involvement in crime or victimization? What successful measures have been developed to address the situation of girls and women in contact with the law, including within institutions? Are there any comprehensive violence prevention strategies that also address the gender dimension of violence against children?

(k) How is access to justice ensured for children in contact with the law? Do children have the right to a lawyer and how is this ensured in practice? Are children recognized as full parties to all civil, criminal and administrative proceedings relating to them?

(l) Are there any good practices in providing technical assistance in the area of justice for children?

(m) Do good practices exist for mobilizing national and international financial and human resources for comprehensive reforms?

Substantive item 2. Provision of technical assistance to facilitate the ratification and implementation of the international instruments related to the prevention and suppression of terrorism

A. Background

23. Terrorism poses a major threat to international peace, security and stability in all countries and all people, and therefore requires a global response. The United Nations Global Counter-Terrorism Strategy, adopted unanimously by the General Assembly in its resolution 60/288 of 8 September 2006, reaffirms the international community's firm resolve to strengthen the global response to terrorism, through a broad range of counter-terrorism measures, underpinned by the commitment to uphold the rule of law and human rights.

24. To be effective, such a global response needs to be comprehensive, focus on prevention and follow a criminal justice-based approach. One key aspect of the international community's counter-terrorism efforts has been the gradual establishment of a common international legal framework against terrorism to address serious crimes committed by terrorists. This framework is based on the premise that perpetrators of terrorist crimes should be denied safe haven: they should be brought to trial by their national Governments or should be extradited to a country willing to bring them to trial. The core of the framework consists of a set of – currently 16¹⁰ – sectoral conventions and protocols on the prevention and

¹⁰ Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963); Convention for the Suppression of Unlawful Seizure of Aircraft (1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); International Convention against the Taking of Hostages (1979); Convention on the Physical Protection of Nuclear Material (1979); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988); Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); International Convention for the Suppression of Terrorist Bombings (1997); International Convention for the Suppression of the Financing of Terrorism (1999); International Convention for the Suppression of Acts of Nuclear Terrorism

suppression of terrorism that cover specific terrorist acts. The framework further encompasses a series of Security Council resolutions relating to terrorism, many of them adopted under the authority of Chapter VII of the Charter of the United Nations. Most prominent among them is Security Council resolution 1373 (2001), adopted immediately after the terrorist attacks of 11 September 2001, which calls on Member States to become party to these international conventions and protocols.

25. While significant progress is being made with regard to the ratification of these international legal instruments,¹¹ universal ratification has not yet been achieved. Even when universal ratification is reached, long-term sustained efforts will be required to achieve the effective practical application of the provisions of these instruments. To reach this goal, States need adequately functioning national counter-terrorism legal regimes, as well as associated implementation capacity in their criminal justice systems relating to a broad range of measures to enhance international cooperation in criminal matters relating to terrorism.

26. Countries that do not have the required capacity need to be provided, upon request, with specialized technical assistance for the ratification, legislative incorporation and full implementation of the measures contained in the international legal instruments. The Twelfth Congress offers an ideal opportunity to take stock of technical assistance provided so far and to identify what can be done to make assistance more effective and efficient in future.

B. Main issues

27. The regional preparatory meetings and the Twelfth Congress may wish to discuss how to further strengthen the provision of technical assistance for facilitating the ratification and implementation of the international instruments related to the prevention and suppression of terrorism.

28. The discussion may focus on the substantive content and format of the technical assistance to be provided, and participants may wish to discuss how such assistance can be further tailored to the needs of the recipient countries and be provided in a sustained manner. The discussion may also address the modalities of assistance delivery and debate the involvement of all stakeholders, including recipient and donor countries, as well as possible processes of consultation, facilitation, coordination and cooperation among assistance providers, including UNODC, in particular its Terrorism Prevention Branch.

(2005); Amendment to the Convention on the Physical Protection of Nuclear Material (2005); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

¹¹ When UNODC started to provide ratification assistance in January 2003, only 26 countries had ratified the – at that time 12 – international instruments. Significant progress has been made since then in the ratification status and 101 countries had ratified all the first 12 instruments by the end of September 2008.

C. Questions for discussion

29. The regional preparatory meetings and the Twelfth Congress may wish to consider the following questions for further discussion:

(a) How do requesting States identify their needs and how do they ensure that such needs are properly communicated to – and reflected in the needs assessments of – assistance providers?

(b) What kind of technical assistance activities (national-level activities, regional and subregional workshops, development of substantive tools and publications) are considered to be effective and efficient in facilitating the implementation of the international instruments related to the prevention and suppression of terrorism? What needs to be done to further increase the sense of ownership among officials of recipient countries of counter-terrorism technical assistance requests and delivery? To what extent can the establishment and further expansion of networks of field-level experts enhance the effectiveness of counter-terrorism technical assistance? How do Member States use the opportunity of participating in technical assistance activities, especially those organized at the regional or subregional level, to solve specific issues hampering international cooperation in criminal matters?

(c) What are the different thematic areas that need to be covered – when offering implementation assistance – to provide criminal justice officers with the capacity for effective counter-terrorism prosecution and sentencing in a national and international context?

(i) To what extent have the goals set out in the plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 56/261, annex), the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (resolution 60/177, annex) and the plan of action to implement the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex) been achieved?

(ii) What are the requirements for maintaining a functioning criminal justice system, based on the rule of law, that can serve as an effective deterrent to terrorist crimes and can respond adequately to terrorist acts? Which aspects of the national criminal justice system, including those related to the criminal procedure, need to be addressed?

(iii) What can be done to address the difficulties encountered by Member States in implementing the Security Council resolutions relating to terrorism, in particular resolutions 1276 (1999) and 1373 (2001)?

(iv) What can be done to address challenges and to promote promising practices with regard to mechanisms for international cooperation in criminal matters with a view to effectively countering terrorism? In particular, how can the difficulties encountered in extradition, mutual legal assistance and prosecution of not-extradited individuals be overcome? Do Member States use the international conventions and protocols related to the prevention and suppression of terrorism as a basis for international cooperation in criminal matters? Could the mediating role of the United Nations, established under the

Charter, be of use in solving issues relating to the implementation by Member States of the international conventions and protocols related to terrorism?

(v) What can be done to enhance assistance and improve expertise at the national, regional and subregional levels in more specific and complex areas of counter-terrorism action, such as the suppression of the financing of terrorism (including the identification of possible sources of such financing), the prevention of nuclear terrorism or the suppression of the use of the Internet and information and communications technologies for terrorist purposes?

(vi) How to tackle the links between terrorism and other forms of crime (such as transnational organized crime – including international drug trafficking and money-laundering – as well as corruption) and what are the implications of those links for international cooperation and for technical assistance delivery? What are the implications of the links between terrorism and other forms of organized crime on technical assistance aimed at furthering international cooperation? What synergies can be obtained between the implementation of the provisions of the United Nations Convention against Transnational Organized Crime¹² and those of the international instruments related to the prevention and suppression of international terrorism? What are the implications of the links between terrorism and other forms of organized crime on technical assistance aimed at furthering international cooperation?

(d) How do international mechanisms for the facilitation of technical assistance delivery in the counter-terrorism legal and related areas function and how can they be maximized?

(e) How can consultation, coordination and cooperation among the different stakeholders in assistance delivery (that is, the various assistance providers at the international, regional, subregional and bilateral levels, as well as the recipient countries and the donor community) be further strengthened and maximized? In particular, how can coordination among UNODC and other United Nations entities and international organizations be fostered and utilized?

(f) To what extent has UNODC, in particular its Terrorism Prevention Branch, been able to respond to the technical assistance needs of Member States in the area of counter-terrorism? Should the role of UNODC as technical assistance provider in this area be reviewed? How can the sustainability of technical assistance best be achieved to ensure the long-lasting impact of such assistance? How are in-depth follow-up activities conducive to that effect? What can be done to further enhance the utility and long-term impact of UNODC's assistance delivery in the area of counter-terrorism?

¹² United Nations, *Treaty Series*, vol. 2225, No. 39574.

Substantive item 3. Making the United Nations guidelines on crime prevention work

A. Background

30. The Guidelines for the Prevention of Crime of 2002 (Economic and Social Council resolution 2002/13, annex) provide guidance to Member States on the main elements for effective crime prevention. The Guidelines spell out a set of basic principles that lie at the heart of an effective and human crime prevention strategy: (a) government leadership; (b) socio-economic development; (c) cooperation and partnership; (d) sustainability and accountability; (e) knowledge-based action; (f) human rights/rule of law/culture of lawfulness; (g) interdependency; and (h) differentiation.

31. The Guidelines also indicate methodologies that Governments should consider in developing strategies to prevent crime and reduce victimization, such as including crime prevention as a permanent part of their structures and programmes for controlling crime; developing training and capacity-building in crime prevention; developing and supporting partnerships with all segments of civil society; guaranteeing the sustainability of crime prevention programmes by providing adequate funding and resources, as well as strengthening international action in crime prevention through the application of existing standards and norms, technical assistance and networking.

32. In addition, the Guidelines recognize evidence as a key element in the success of crime prevention policies and strategies. Victim surveys are an important tool in obtaining information and data. Population-based surveys may be used as a primary research instrument to assess the nature of the major crime problems, the main population groups at risk and people's concerns and fears, as well as perceptions and views on crime prevention measures. In addition to providing information that can be used by policymakers, population-based surveys promote citizen participation in crime prevention by facilitating open discussion on crime problems, by establishing benchmarks for monitoring changes and assessing performance and by providing transparent information to the public on crime problems and trends, as well as assessing performance of competent authorities in preventing and controlling them.

33. In 2007, UNODC prepared an analysis of the replies provided by more than 40 States to a questionnaire on the use and application of standards and norms related primarily to the prevention of crime (E/CN.15/2007/11). The analysis indicated that many countries had specific crime prevention plans, implementing the Guidelines in whole or in part, and provided important insights into the experiences of countries that had adopted crime prevention policies, strategies and programmes. The replies also highlighted what are considered to be the main elements of a successful crime prevention policy, which can be summarized as follows: (a) establishing a central body, department or unit charged with the implementation of national programmes and coordinating the efforts of central and local government, as well as other organizations; (b) regularly reviewing crime prevention strategies to better identify real needs and best practices, and adapting national and local plans accordingly; (c) institutionalizing programmes focused on

children and youth, producing guides, toolkits and manuals to assist in the dissemination of knowledge on crime prevention and coherent implementation of plans; (d) creating a real commitment on the part of central and local government to the success of crime prevention programmes, backed up by sufficient funding and resources; and (e) creating partnerships and cooperation with non-governmental organizations and encouraging the active participation of the public in the crime prevention effort.

34. The analysis also showed that countries still encounter a number of challenges in delivering effective crime prevention, which include, in particular: (a) strengthening social prevention as public policy and creating organs responsible for its implementation; (b) addressing specific areas of organized crime such as drug trafficking, trafficking in persons and smuggling of migrants; (c) improving coordination among different government bodies involved in crime prevention; (d) disseminating knowledge to local governments and encouraging their active participation in crime prevention; (e) creating training programmes to address lack of expertise in crime prevention and developing databases on best practices; (f) making use of advanced technologies to improve crime prevention strategies; and (g) devising evaluation mechanisms, in particular regarding cost-benefit analysis.

B. Substantive focus

35. It is broadly recognized that the rule of law enhances development. Thus, the capacity to establish and guarantee respect for the rule of law becomes one of the key components of development of a country, the others being economic, social, political and cultural, and all being interdependent.

36. The central role that the rule of law plays in development has also been recognized and emphasized in the report of the United Nations Millennium Project:¹³

“The successful scale-up of investment strategies to achieve the Millennium Development Goals requires a commitment to good governance. This includes upholding the rule of law through administrative and civil services and through legal and judicial institutions.

“The rule of law, a prerequisite to sound governance, can affect the way policies are formulated and implemented.”

At both of its sixty-first and sixty-second sessions, the General Assembly reaffirmed that the advancement of the rule of law at the national and international levels was essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of human rights and fundamental freedoms. Furthermore, the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/63/226, para. 44) stressed the need to enhance and harmonize the United Nations engagement on rule of law issues and opined that ensuring early and appropriate engagement on the rule of law in a country context was the cornerstone of coherent

¹³ *Investing in Development: a Practical Plan to Achieve the Millennium Development Goals* (New York, United Nations Development Programme, 2005), pp. 110 and 115.

and strategic intervention and long-term success, in particular in conflict and post-conflict environments.

37. Crime prevention, in particular through the development of well-planned crime prevention strategies, should be at the heart of the rule of law architecture of a country as well as of its efforts towards sustainable development. Crime prevention promotes community safety and offers opportunities for a humane, fair and more cost-effective approach to the problems of crime. It is also a key to promoting sustainable development, as is the prevention of problems linked to poverty, health, education and urban development.¹⁴ Despite the centrality of crime prevention to the rule of law, an overview of crime prevention throughout the world shows major differences: while some countries have made considerable efforts and reached significant achievements in the development of integrated strategies for prevention, many others have continued to rely heavily on more severe criminal justice responses.

38. Crime prevention should be one of the pillars of the rule of law assistance provided by the international community at all levels. It should also be noted that even among the major rule of law technical assistance providers, including the United Nations system, more efforts have been aimed at strengthening rule of law institutions to enable them to meet their obligations to the public, while less attention has been paid to exploiting the potential of areas such as crime prevention, legal empowerment and access to justice. In recognition of the limits of this approach, the Secretary-General has clearly indicated his intention to request the United Nations system in general to explore means to strengthen its rule of law capacities in the areas of governance; management and oversight; crime prevention; access to justice, legal empowerment and informal justice systems; sexual and gender-based violence; housing, land and property; and constitution making (A/63/226, para. 77).

39. Similarly, the Bangkok Declaration recognized the importance of comprehensive and effective crime prevention strategies for significantly reducing crime and victimization, emphasizing, at the same time, that such strategies should address the root causes and risk factors of crime and victimization and be further developed and implemented at the local, national and international levels, taking into account, inter alia, the Guidelines for the Prevention of Crime.

C. Questions for discussion

40. The Twelfth Congress represents a unique opportunity to examine whether the Guidelines have proved workable and effective after almost a decade since their adoption, with a view of fine-tuning them to the latest national and international developments in the area of crime prevention. The Congress will also enable the international community to respond more effectively to the challenge posed by the link between crime prevention, the rule of law and development by deepening and strengthening its expertise and capacity in the area of crime prevention.

¹⁴ *Crime Prevention and Community Safety: Trends and Perspectives* (Montreal, International Centre for the Prevention of Crime, 2008).

41. The regional preparatory meetings and the Congress may wish to consider the following questions for further discussion:

- (a) What are the main emerging trends in the area of crime prevention?
- (b) What measures can be taken to integrate crime prevention strategies into economic, political and social development?
- (c) What measures can be taken to strengthen the role of crime prevention within the rule of law agenda at the local, national, regional and international levels?
- (d) What measures and initiatives should the United Nations system take to strengthen its rule of law capacities in the area of crime prevention? What needs to be done to integrate fully the United Nations standards and norms in crime prevention and criminal justice into these efforts?
- (e) In the light of developments and research undertaken since the adoption of the Guidelines for the Prevention of Crime, have Member States made progress in applying the Guidelines in practice? Does the application of the Guidelines need to be assessed in a more systematic manner? What mechanisms would enable the Commission on Crime Prevention and Criminal Justice to evaluate the impact of such rules and principles in criminal justice reform? Which of the crime prevention principles and policies contained in the Guidelines have proved most successful and which less effective? What new approaches may be put forward to improve the practical application of the Guidelines?
- (f) Considering developments in recent years, what new elements and ideas should be taken into consideration?
- (g) Are there good practices in the development and implementation of programmes for crime prevention at the local, national, regional and international levels?
- (h) What are the main obstacles in the development and implementation of programmes for crime prevention, at both the central and the local level?
- (i) How could training of criminal justice professionals and community personnel enhance the effectiveness of crime prevention strategies? What should be the main elements of appropriate training in this regard?
- (j) What strategies and measures have proved successful in addressing the prevention of specific forms of crime, such as urban crime, organized crime, corruption and so on? What measures need to be taken to promote public awareness regarding the causes of and the threats posed by such crime?
- (k) What steps can be taken to enhance the dissemination of relevant crime prevention knowledge to local authorities and national Governments?
- (l) What kind of strategies have proved to be effective in involving individual citizens, schools, community organizations, non-governmental organizations and the private sector, as well as other components of civil society, in crime prevention? How can synergies among those stakeholders be fostered in order to enhance the efficiency and effectiveness of crime prevention programmes and policies?

(m) Considering that it is recognized that crime prevention needs diagnosis and audits, benchmarking, monitoring and evaluation, what are good practices in this regard?

(n) Coordination among different government bodies involved in crime prevention is considered a key element. Based on national experiences, what are the most effective and successful ways of ensuring and improving such coordination?

(o) How could advanced modern technologies improve crime prevention strategies?

(p) What measures and initiatives could be explored with a view to operationalizing the Guidelines? What are the priority needs for technical assistance in the area of crime prevention?

(q) What tools and instruments would ensure a more effective implementation of crime prevention strategies?

(r) How can countries best share information and experience on effective crime prevention strategies as well as on the most viable and successful efforts to implement the Guidelines at the national level?

Substantive item 4. Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime

A. Background

42. Trafficking in persons and smuggling of migrants represent serious manifestations of (transnational) organized crime. The involvement of organized criminal groups in their commission and the need to develop appropriate and effective responses at the national and international levels have been acknowledged through the adoption and entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,¹⁵ and the Protocol against the Smuggling of Migrants by Land, Sea and Air,¹⁶ both supplementing to the United Nations Convention against Transnational Organized Crime. The two Protocols, together with the parent Convention, demonstrate the need to take into account and implement effectively a broad range of provisions to tackle the problem comprehensively and in the proper perspective. This, in turn, highlights the importance of capacity-building and training programmes as a prerequisite for enhancing the coherence, robustness and efficiency of criminal justice and law enforcement policies and strategies against these crimes.

43. Trafficking in persons and smuggling of migrants are often overlapping crime problems. The legal definitions of trafficking in persons and smuggling of migrants contain some common elements and actual cases may involve components of both

¹⁵ United Nations, *Treaty Series*, vol. 2237, No. 39574.

¹⁶ *Ibid.*, vol. 2241, No. 39574.

offences. In addition, it has been found that traffickers and smugglers often use the same travel routes and key transit and destination points.

44. Despite common elements, there are differences between the criminal activities under discussion that are crucial when developing appropriate national, regional and international responses. In the case of trafficking in persons, two elements beyond smuggling of migrants must be present: firstly, there must be some improper form of recruitment, such as use of force, coercion, deception or some abuse of power or a position of vulnerability, thus rendering the consent of the person irrelevant; and, secondly, the activity must have been undertaken for an exploitive purpose. In trafficking in persons, the major source of revenue for offenders and the economic driving force behind the offence are the proceeds derived from the exploitation of the victims. In smuggling, the smuggling fee paid by the illegal migrant is the major source of revenue and there is usually no continuing relationship between the offender and the migrant once the latter has arrived at his or her destination. The other major difference between smuggling and trafficking is that the former is always transnational in nature, but the latter may or may not be. The language of the definition requirements of the Migrants Protocol (article 3 (a)) makes it clear that smuggling should only be criminalized where it involves the illegal entry of migrants into a State party, which requires an element of transnationality. No such requirement occurs in the provisions that deal with trafficking in persons: this must be criminalized regardless of whether victims are trafficked within a country or from one country to another.

B. Substantive focus

45. The review of implementation of the two Protocols has been an indispensable component of the work of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime almost since its establishment. In this context, information on national implementation efforts has been gathered indicating that the majority of the States parties responding have adopted legislative and institutional frameworks to ensure the implementation of the two Protocols. It is inevitable, however, that, in view of the different levels of capacity of Member States to fully implement measures in the areas under discussion, more concerted efforts are necessary to assist countries in need in developing effective and multidisciplinary strategies against trafficking in persons and smuggling of migrants, and in building dedicated and sustainable resources to implement such strategies.

46. Bearing this in mind, the regional preparatory meetings and the Twelfth Congress itself can provide an appropriate forum to further consider and identify specific areas for tailor-made ways of addressing technical assistance needs. Training activities, in particular, are a substantial component of upgrading the skills and capacity of criminal justice practitioners, law enforcement authorities, immigration officers and other relevant officials, including providers of services and support to victims of such crimes, especially with regard to the effective use of the provisions of the instruments and the identification of the involvement of organized criminal groups.

C. Questions for discussion

47. The regional preparatory meetings and the Twelfth Congress may wish to consider the following questions for further discussion:

(a) To what extent do Member States' national laws on trafficking in persons and smuggling of migrants comply with the definitions and criminalization provisions of the respective Protocols? To what extent do their laws take into account the criminalization provisions in the Organized Crime Convention on participation in an organized criminal group, money-laundering, obstruction of justice and corruption?

(b) To what extent are all the provisions of the Convention addressed in national laws on trafficking in persons and smuggling of migrants regarding, for example, protection of victims and/or witnesses, seizure and confiscation of proceeds of crime, special investigative techniques, extradition and mutual legal assistance?

(c) To what extent are national authorities equipped to detect, investigate, prosecute and adjudicate crimes of trafficking in persons and smuggling of migrants? Have Member States established specific agencies or units to combat trafficking in persons and smuggling of migrants? Have Member States devoted attention to the specialized skills and knowledge required by prosecutorial authorities to deal with such crimes? When investigating cases of trafficking in persons and smuggling of migrants, to what extent are criminal justice practitioners ready and able to identify and investigate the elements of organized crime involved? How can the cooperation of victims in the investigation and prosecution of traffickers and smugglers best be obtained? To what extent are investigators and prosecutors equipped to pursue seizure and/or confiscation of the proceeds of crime of traffickers and smugglers? Have the competent national authorities the capacity to identify victims of trafficking in persons at an early stage and what kind of indicators need to be considered to that effect? When investigating trafficking in persons and smuggling of migrants and other related forms of organized crime, are Member States effectively using mechanisms for international cooperation in criminal matters, such as extradition, mutual legal assistance and international cooperation for purposes of confiscation? How to further promote closer coordination between national authorities responsible for investigating crimes of trafficking in persons and smuggling of migrants and other agencies responsible for investigating money-laundering and corruption?

(d) What are the characteristics of smuggling of migrants and trafficking in persons operations in the territories of Member States? Have Member States identified the involvement of smugglers and/or traffickers in other forms of transnational organized crime? What methods have Member States used to combat or disrupt the activities of such offenders?

(e) What progress has been achieved at the national level in developing and maintaining systems for the collection, systemization and analysis of information on national measures against trafficking in persons and smuggling of migrants, including criminal justice responses and assistance to, and protection of, victims, as well as in compiling best practices to fight these crimes?

(f) Is there appropriate infrastructure to collect and analyse operational intelligence to develop and aid investigations? What can be done to improve the relationship between police, prosecutors and other relevant units such as financial investigation units in order to ensure successful prosecution of the related crimes and the freezing, seizure and confiscation of the proceeds derived from them?

(g) With regard to trafficking in persons, what types of victim protection measure are offered to protect and support victims during trial proceedings, such as video and telephone conferencing, written victim statements and in camera testimony, as well as in pre-trial and post-trial proceedings? Are there specific measures in place for the protection of disabled persons who are victims of trafficking?

(h) With regard to smuggling of migrants, are there measures in place to deal with undocumented migrants?

(i) What progress has been made in the field of cooperation between States parties to the two Protocols regarding the repatriation/return of victims of trafficking in persons and smuggling of migrants? What measures need to be taken to promote such cooperation further?

(j) What strategies have proved to be effective and successful in preventing trafficking in persons and smuggling of migrants and in protecting victims from revictimization? What needs to be pursued to address the root causes of such crimes?

(k) What types of technical assistance are needed to combat organized crime involvement in smuggling of migrants and trafficking in persons? How can UNODC fully utilize its mandate to increase Member States' capacity to identify the links between organized crime and trafficking in persons and smuggling of migrants and on that basis to adopt appropriate crime prevention and criminal justice responses? How can UNODC promote closer coordination between countries of origin, transit and destination and relevant international and regional organizations? How can UNODC mainstream its relevant work into that of United Nations entities that are lead agencies in humanitarian crises or emergency situations?

Substantive item 5. International cooperation to address money-laundering based on existing and relevant United Nations and other instruments

A. Background

48. International legal instruments such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption¹⁷ call on States to afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings related to money-laundering through international cooperation. Those instruments also require Member States to

¹⁷ United Nations, *Treaty Series*, vol. 2349, No. 42146.

criminalize the laundering of money derived from the widest range of predicate offences, including offences committed both within and outside the jurisdiction of the State party in question. In many cases, the money-laundering offence and the predicate crime are not committed in the same country, so cooperation among Member States is key to the successful prosecution of money-laundering offenders and the effective confiscation of the proceeds of crime.

49. The incorporation of specific provisions on money-laundering in the two Conventions mentioned above indicate the importance of the link between money-laundering and transnational organized crime and corruption, respectively. Drawing on the successful experience of the incorporation of money-laundering provisions in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,¹⁸ the two later Conventions have codified in a comprehensive manner a broad range of anti-money-laundering measures. The evolution evident in the additional detail reflected in the provisions of the Convention against Corruption is a result of progress in familiarity with, and practical experience stemming from, application of measures against money-laundering by a broad range of constituencies in multiple jurisdictions. The provisions of the Organized Crime Convention and the Convention against Corruption benefit greatly from the fact that they are the product of an open-ended, fully participatory negotiation process. As such, they represent consensus at the global level. The promotion of their provisions forms part of the ongoing work of the Conferences of the Parties established by each Convention and by UNODC in its capacity as the secretariat of the Conferences and in accordance with the mandate entrusted to it by the Conventions, the Conferences and the competent legislative bodies of the United Nations. This work continues to produce valuable insights into the requirements for implementation, the needs of competent institutions in countries and ways to address those needs, as well as means of strengthening international cooperation.

B. Substantive focus

50. In this context, the regional preparatory meetings and the Twelfth Congress may wish to address the following issues:

(a) The issue of the parallel economy, which is often beyond the radar of financial control and monitoring, as well as the use of information and communications technologies for the establishment of money-laundering schemes and the related challenges that need to be addressed through legislative and/or regulatory action;

(b) Challenges encountered in the implementation of the pertinent provisions of international legal instruments;

(c) Evaluation of existing standards to prevent and address money-laundering, including domestic legal and regulatory frameworks and international norms;

¹⁸ Ibid., vol. 1582, No. 27627.

(d) The need for enhanced and specialized technical assistance to strengthen the capacity of the relevant authorities and institutions to efficiently detect, investigate and prosecute cases involving money-laundering.

C. Questions for discussion

51. More specifically, discussion could cover the following issues:

(a) What obstacles are encountered, and how do Member States overcome them, in the field of international cooperation regarding investigation and prosecution in money-laundering cases, including the seizure and confiscation of proceeds of crime? In particular, how do Member States overcome obstacles in exchanging information through mutual legal assistance, as well as in achieving extradition in relation to money-laundering?

(b) Are there other ways in addition to mutual legal assistance to exchange information, especially at the operational level? What can be done to further encourage the establishment of institutions such as financial intelligence units to serve as national centres for the collection, analysis and dissemination of information on potential money-laundering activities? How can coordination among those units and other domestic agencies be fostered? How often and to what extent do the financial intelligence units of Member States exchange information and what systems do Member States have in place to facilitate this? How can membership in mechanisms such as the Egmont Group of Financial Intelligence Units and use of the Egmont Secure Web to exchange information help improve the capacity of competent authorities to perform these functions?

(c) How have Member States applied the provisions of related international legal instruments on the prevention and detection of the transfer of proceeds of crime, especially by identifying the customers of financial institutions and the real beneficiaries of the funds; by increased monitoring of the financial flows involving “individuals with political exposure”; and by discouraging the operation of banks without physical presence and not affiliated to an established financial group? What difficulties are encountered in this regard?

(d) What are the formal and informal mechanisms to exchange information available to other agencies involved in the countering of money-laundering, such as supervisory authorities, law enforcement agencies and prosecutors?

(e) What can be done to encourage the setting up of joint investigative teams to combat money-laundering? How often do Member States create such teams and how effective have they proved to be?

(f) To what extent has UNODC been able to respond to the technical assistance needs of Member States in combating money-laundering? How can UNODC further strengthen its operational partnerships with relevant international, regional and subregional organizations, in particular the international financial institutions, the Financial Action Task Force and other technical assistance providers? How can it further enhance its consultation and communication with both requesting countries and donor countries?

(g) What tools, including information technology solutions, are necessary to facilitate international cooperation in relation to money-laundering?

(h) How do requesting States identify their needs and how do they ensure that their needs are properly communicated to – and reflected in the needs assessments of – technical assistance providers?

(i) Which kind of technical assistance activities are considered to be effective and efficient in facilitating the adoption of legislation to combat money-laundering and the financing of terrorism so as to build an effective system in those areas and to enhance the capacity of the officials involved in such cases? How do Member States assess the opportunity of participating in technical assistance activities, especially those organized at the regional or subregional level, to address problems in exchanging operational information?

(j) How do Member States assess the impact of the work of regional mechanisms to combat money-laundering, such as the regional bodies modelled on the Financial Action Task Force, in assessing member countries' systems to combat money-laundering and the financing of terrorism, sharing experience and conducting typology exercises?

(k) How have the adequacy of regional standards and recommendations to combat money-laundering been assessed in the light of the ever-evolving phenomenon of money-laundering? How do Member States assess the role and impact of existing mechanisms to combat money-laundering? How do Member States assess the role of prevention of money-laundering as a prerequisite for effective international cooperation, including asset recovery in accordance with chapter V of the Convention against Corruption? What obstacles and difficulties are encountered in the return of confiscated assets to their countries of origin in cases of money-laundering resulting from the commission of certain offences, in particular corruption?

(l) In the area of international cooperation to combat money-laundering and in particular in cases where the laundered proceeds are derived from predicate offences committed in a foreign country, what difficulties, such as possible restrictions or obstacles of a legal nature or related to the domestic jurisprudence, are encountered in the absence of a conviction for the predicate offence in the other country?

(m) Is there a need to harmonize the various mechanisms in place to assess the implementation of standards to combat money-laundering?

(n) Given the low level of participation in the so-called "formal" financial system in many countries, what is the current situation with regard to the vulnerability of the informal sector or underground economy to money-laundering?

(o) Is there a risk that financial institutions, in complying with stringent anti-money-laundering regulations and therefore imposing strict financial controls and high commission rates, could alienate a large part of the population in a cash-based economy, thereby forcing them rely on the informal sector?

(p) Are the vulnerabilities and risks associated with new, sophisticated and innovative schemes such as the misuse of electronic payment systems, offshore banking and the use of informal remittance systems, being adequately addressed at

the domestic and international levels? How can cooperation among Member States be promoted to tackle such vulnerabilities and risks?

(q) How do Member States address identity-related crimes committed for money-laundering purposes, especially the use of false identification information to make remote transfers through offshore banking?

(r) How do law enforcement officials deal with complex financial and company formation schemes to investigate money-laundering cases and keep abreast of rapidly evolving criminal techniques?

(s) Are the vulnerabilities of the trade movements of value and goods to money-laundering sufficiently covered by the international standards? How should the international standards on prevention and detection of money-laundering be applied in designated “low-capacity” countries with cash-based economies?

Substantive item 6. Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime, including the case of cybercrime

A. Background

52. The worldwide proliferation of new information and communications technologies has given rise to increasing forms of cybercrime, which pose threats not only to the confidentiality, integrity and availability of computer systems, but also to the security of critical infrastructure. Over the past few years, both the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice, UNODC’s governing bodies, together with the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, in various resolutions, in particular the 2005 Bangkok Declaration of the Eleventh Congress, have recognized the important contribution of the United Nations to regional and other international forums in the fight against cybercrime. The Bangkok Declaration, in particular, reaffirmed the fundamental importance of implementation of existing instruments and the further development of national measures against cybercrime, and welcomed the efforts to enhance and supplement existing cooperation to prevent, investigate and prosecute high-technology and computer-related crime (General Assembly resolution 60/177, annex, paras. 15 and 16). The Declaration invited the Commission on Crime Prevention and Criminal Justice and UNODC, together with its network of institutes on crime prevention and criminal justice, to explore the feasibility of providing assistance to Member States in addressing computer-related crime under the aegis of the United Nations and in partnership with other similarly focused organizations.

53. The development in science and technology in forensics is also of interest. Major forensic technological advances and the increased use of science in judicial proceedings have made significant contributions to the fight against crime in the past decade. New technologies are continually enhancing the work performed at crime scenes and in forensic laboratories. Such advances have enhanced the

efficiency of the criminal justice system in detecting crimes, convicting offenders and exonerating innocent persons.

B. Substantive focus

54. Cybercrime is a relatively recent form of criminal activity, which is not restricted by national boundaries: criminals can change their location from one country to another country within seconds in the cyberworld, irrespective of their physical location. Thus, to combat cybercrime effectively, international cooperation must be further enhanced. It is also vital for technical assistance and training tools to be provided to developing countries with a lack of capacity and expertise to deal with cybercrime, as this will enable them not only to share knowledge and information to properly detect, investigate and prosecute cybercrime, but also to overcome the deepening digital divide between developing countries and developed countries in the field of information and communications technologies.¹⁹

55. At the normative level, the Council of Europe Convention on Cybercrime²⁰ provides a legal basis for cooperation in a much broader context than that of the Council of Europe member States, as it is open for accession to other States as well. However, the United Nations Convention against Transnational Organized Crime can also be utilized, where applicable, with a view to fostering international cooperation in this field. The latter Convention commits States parties to introduce a range of measures for the strengthening of mutual legal assistance, extradition and other forms of judicial and law enforcement cooperation to combat all serious crime, including cybercrime. Although the Convention applies only in cases where an organized criminal group is involved and defines a group as such if one of its objectives is to generate a “financial or other material benefit”, most serious cybercrime falls within the scope of the Convention. In any case, the meaning of the term “financial or other material benefit” is relatively broad and encompasses, for example, identity-related crimes committed online where stolen or fabricated identification or identity information is treated as a form of illicit commodity and bought, sold or exchanged, and where identification is misused for personal or organizational gains, including non-financial gains such as securing entry into another country. The treatment of a “subject matter” as a form of illicit commodity being bought, sold or exchanged by organized criminal groups would also apply to the use of information technologies, in particular the Internet, for child sexual abuse and exploitation.

56. The Internet has increased the range, volume and accessibility of sexually abusive imagery, including child pornography, by creating an environment for its proliferation and creating an expanding market for its consumption. There is a persistent core of child sexual abuse websites, most of which are commercial, generating huge wealth for organized criminal groups. This, in turn, poses challenges for law enforcement authorities that devote increasing attention and

¹⁹ See the discussions held in recent years under the aegis of the Internet Governance Forum, a platform for multi-stakeholder policy dialogue on Internet issues convened by the Secretary-General in line with his mandate from the World Summit on the Information Society, in particular the discussions on the two thematic areas “security” and “access” (<http://www.intgovforum.org/cms/index.php/home>).

²⁰ Council of Europe, *European Treaty Series*, No. 185.

resources to combating online sex offences. Investigations are in most cases complex and time-consuming, because they are often coordinated across jurisdictions and they target networks of offenders using varying levels of security. An estimate of approximately 3,000 websites associated with sexual offences have been hosted around the world since 2005. For global partnerships to disrupt and investigate such sites means that Governments, the Internet industry, police, hotlines, non-governmental organizations, children's charities, educators, psychologists and financial investigators must all work together in order to effect change and minimize the continued sexual abuse of children via technology. Moreover, such criminal activities highlight the significance of fostering the best possible cooperation between law enforcement authorities and Internet service providers in the fight against cybercrime.²¹

57. Another area in which such cooperation may be required is that of social networking (MySpace, Facebook), which, owing to the rapid development of Internet technologies, has become increasingly popular as a means of social communication. This revolution in social interaction goes along with the disclosure of private information that can be abused by perpetrators and may thus facilitate new forms of criminality that need to be addressed.

58. The abuse of the Internet for terrorist purposes represents a serious threat and more efforts are needed to gain a better understanding of the issue. In this regard, it is noted that the Counter-Terrorism Implementation Task Force, which brings together 23 entities of the United Nations system and the International Criminal Police Organization (INTERPOL) with a view to ensuring overall coordination and coherence in the counter-terrorism efforts of the United Nations system, including collaborative work to support the efforts of countries for implementing the United Nations Global Counter-Terrorism Strategy, has established a Working Group on Countering the Use of the Internet for Terrorist Purposes. The objectives of the Working Group are to identify and bring together stakeholders and partners with a view to sharing information, as well as to identify possible ways to counter the threat at the national, regional and global levels and to examine what role the United Nations might play in coordinating action by Member States.

59. Recent developments in forensics can be classified in three categories:

(a) Development of new technologies, such as DNA analysis technologies that enable the analysis of extremely small amounts of biological material left by offenders and provide information that was not available in the past. For example, the material left by the simple manipulation of objects (e.g. firearms or steering wheels) is now sufficient to produce a DNA profile with which to identify a person. It is now possible to analyse DNA material dating back many years, thus contributing to the solution of "cold" cases;

²¹ See the study commissioned by the Council of Europe on the cooperation between law enforcement and internet service providers against cybercrime: towards common guidelines (June 2008) (http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/Documents/Reports-Presentations/567_prov-d-wgSTUDY_25June2008.pdf) and the guidelines for the cooperation between law enforcement and internet service providers against cybercrime, adopted on 2 April 2008 (http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy_activity_Interface2008/567_prov-d-guidelines_provisional2_3April2008_en.pdf).

(b) Improvement and strengthening of existing technologies. For example, there are new chemical agents for the detection of fingerprints on specific types of material. The increased robustness of some analytical techniques has also led to the development of portable devices primarily for the timely identification of drugs and explosives in the field;

(c) Improvement of existing technologies as the result of advances in computer technology, such as, for example, image processing to enhance latent fingerprints of poor quality, digital photography and database developments.

C. Questions for discussion

60. The regional preparatory meetings and the Twelfth Congress may wish to consider the following questions:

(a) How can the international community promote a wide-ranging strategy to fight cybercrime, including technical assistance, as well as models of legislation and cooperation between law enforcement authorities? With regard to legislation, to what extent do existing legal frameworks cover various forms of cybercrime? Do databases exist that contain information on various aspects such as incidents of cybercrime, arrests, prosecutions and convictions? What are the priorities for technical assistance with a view to addressing the lack of capacity and expertise in the field of cybercrime?

(b) What good practices exist for strengthening the capacities of law enforcement officials and prosecution services to deal with cybercrime? What is the role and mission of surveillance platforms in the Internet and of the round-the-clock national units? Are there any specialized law enforcement units in charge of fighting cybercrime and exchanging related practices and information? What measures can be put in place to ensure that criminal justice authorities keep abreast of changes in technology and trends associated with cybercrime?

(c) How can the gaps in training be addressed and what types of training material are needed?

(d) What is the typology of online child pornography and what are the implications for legislative action and law enforcement?

(e) How can effective international methods of combating child sexual abuse content online be achieved? Some of the following could be considered:

(i) Combating these operations should be part of the work of agencies already set up to combat organized crime and corruption and child sexual abuse via technology;

(ii) The need for a united international law enforcement approach to take ownership of commercial child sexual abuse websites with significant longevity, hopping between servers and national police jurisdictions to ensure investigation of the distributors and removal of the content;

(iii) Industry self-regulation and support of national hotlines, backed up by the necessary relevant legislation;

- (iv) International and national adoption of “notice and take-down” measures between hotlines and industry to enable all web-hosting companies and Internet service providers to remove child sexual abuse content from their networks, regardless of whether they are members of a national centre or hotline;
 - (v) The supply of a comprehensive, dynamic list of live child sexual abuse websites to Internet service providers, mobile operators, search providers and filtering companies to facilitate the blocking at the network level of access to such content, to protect Internet users from exposure to it and to minimize the perpetuation of the sexual abuse of the child victims through repeated viewing;
 - (vi) Adherence to an industry code of practice to achieve online sector support of recognized good practice aims and principles;
 - (vii) International efforts by domain name registries and relevant authorities to enable the de-registration of domains associated with child sexual abuse;
 - (viii) Participation of all hotlines in a centralized, for example regional, database project of child sexual abuse sites to enable optimum data sharing, comprehension of the scale of the problem and effective targeting of resources;
 - (ix) Sharing of comprehensive international data, intelligence and expertise, as well as the pooling of ideas to help combat the cross-border nature of these crimes;
 - (x) The need for the establishment of recognized international good practices, outside national systems, to ensure united responses and include and enhance the safe provision of the Internet in less developed countries so that opportunities for the abuse of such online services can be proactively minimized;
- (f) What needs to be done to enable efficient action against the use of the Internet for terrorist purposes? The following action could be considered:
- (i) More work on the issue to better understand its various dimensions, and in particular to better understand the process of how online propaganda and incitement lead to recruitment and specific offline terrorist activity;
 - (ii) Monitoring online activities of (potential) terrorists within existing legal frameworks;
 - (iii) Reaching voluntary agreements with Internet service providers who are in a position to answer promptly properly documented and legitimate requests from law enforcement and to provide technical expertise when needed;
 - (iv) Promoting awareness-raising campaigns for Internet users, which could also involve law enforcement authorities and the private sector;
- (g) What needs to be done to further promote international cooperation in combating cybercrime? Could the following be useful to that effect?
- (i) Creation of working groups with operational skills at the regional level;
 - (ii) Pursuing standardization of legislation and procedures for investigating systems;

(iii) Training of staff;

(h) How can UNODC help Member States upgrade their capacity to address cybercrime efficiently? How can UNODC facilitate the delivery of specific technical assistance activities in this field?

(i) How can UNODC improve its partnerships with other involved parties, including regional and international agencies and organizations, Governments, the Internet industry and other private sector entities, law enforcement authorities and financial investigators? What needs to be done to enable coordination of ongoing initiatives in various forums with a view to articulating more coherent and concerted approaches and action?

Substantive item 7. Strengthening international cooperation in fighting crime-related problems: practical approaches

A. Background

61. International cooperation in criminal matters is the cornerstone of coordinated efforts to prevent and fight crime in its most serious transnational manifestations. Building on the provisions of the 1988 Convention, the United Nations crime conventions (the Organized Crime Convention and the Convention against Corruption) have included comprehensive provisions to strengthen international cooperation among parties with special emphasis on extradition, mutual legal assistance and international cooperation for purposes of confiscation, and significant progress has been made in this area. A number of practical tools have been developed by the United Nations – model treaties on extradition, mutual legal assistance and sharing of confiscated proceeds and manuals thereon, model laws on extradition and mutual legal assistance, a directory of competent national authorities, including contact details and information needed to file assistance requests, and a tool to assist writers of international cooperation requests. Under the aegis of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, a Working Group on International Cooperation was established to hold substantive discussions on practical issues pertaining to the implementation of the provisions of the Convention on extradition, mutual legal assistance and other forms of international cooperation. UNODC has also established a steering committee to provide assistance and guidelines in the implementation of the relevant decisions of the Conference of the Parties, in particular with regard to the organization of a series of regional workshops on international legal cooperation. The workshops convened so far have provided practitioners of international cooperation opportunities to discuss common problems with counterparts, strengthen their working relationships based on mutual understanding and trust, and make progress on pending cases. They have also sought to raise awareness of the potential offered by global instruments such as the above-mentioned conventions so as to provide a legal basis for international cooperation in criminal matters.

62. Asset recovery is a relatively new form of international cooperation in criminal matters. It is considered a fundamental principle of the Convention against

Corruption, with parties agreeing to afford one another the widest measure of cooperation and assistance. Chapter V of the Convention, on asset recovery, represents its most innovative part. The Convention places emphasis on effective mechanisms to prevent the laundering of the proceeds of corrupt practices and on the recovery of assets diverted through corrupt practices, and includes specific provisions on the return and disposal of assets. Chapter V is also interlinked with other parts of the Convention. For example, the provisions on the prevention and detection of transfers of proceeds of crime complement the measures to prevent money-laundering, while the provisions on international cooperation for purposes of confiscation (chapter V, arts. 54 and 55) tie in closely with the overall provisions on international cooperation, in particular mutual legal assistance. Together, these provisions provide a unique and innovative framework for asset recovery, but much will depend on their effective implementation by States parties.

63. The Conference of the States Parties to the United Nations Convention against Corruption, through its Working Group on Asset Recovery, attaches great importance to the matter and has made specific recommendations concerning the creation of fully operational systems for asset recovery. In addition, the Stolen Asset Recovery Initiative (StAR) was launched jointly by UNODC and the World Bank in 2007 with the aim of helping developing countries recover assets stolen by corrupt leaders, helping invest them in effective development programmes, combating safe havens internationally and with the developed world so as to eliminate impediments to returning looted resources.

B. Substantive focus

64. Discussion under substantive item 7 should focus on practical approaches to overcoming obstacles in the effective requesting and granting of international cooperation in criminal matters. The use of multilateral instruments such as the United Nations crime conventions as the legal basis for extradition and mutual legal assistance, including in confiscation, has been identified as a powerful means to facilitate cooperation, in particular in the absence of specific bilateral or regional arrangements. Awareness should in particular be raised on the broad scope of cooperation provided by the two crime conventions and on successful experiences of States parties in using them as the basis for cooperation in a variety of situations.

65. Other practical approaches for discussion could include experience accumulated in spontaneous transmission of information in the absence of a request; direct contacts between practitioners and the role of central authorities in facilitating such direct contacts; the advantages and disadvantages of the use of video-conferencing for the hearing of witnesses and experts; experience and practice in the use of joint investigations with regard to transnational organized criminality; experiences accumulated by regional judicial networks and role of UNODC in the promotion of and support to a global judicial network.

C. Questions for discussion

66. The regional preparatory meetings and the Twelfth Congress may wish to consider the following questions:

(a) What are the main obstacles to a more extensive use of the United Nations drug and crime conventions as the legal basis for international cooperation in criminal matters? What can be done to promote such use, especially in the absence of bilateral or regional instruments?

(b) In the area of extradition, how to make global progress towards a simplification and streamlining of the requirements and processes in areas such as dual criminality, grounds for refusal, evidentiary requirements and judicial review?

(c) What is the potential for regional models for mutual back-up of arrest warrants (e.g. the European Arrest Warrant) to be adopted in other regions?

(d) How can obstacles linked to the non-extradition of nationals be overcome? How can the use of alternatives – application of the “extradite or submit to prosecution” principle or conditional surrender – be further promoted?

(e) In the area of mutual legal assistance, what good practices are there to expedite cooperation and eliminate impediments to the full execution of requests? Especially with regard to double criminality, is there a need to encourage Member States to adopt measures enabling them to provide judicial assistance for the broadest possible range of criminal activities in the absence of such a requirement? What difficulties are encountered when applying the provisions of international legal instruments on international cooperation in criminal matters and in relation to such issues as the definition and nature of the offences involved; the system of sentences and how they are regulated; and the various rules regarding the production and admissibility of evidence? What solutions are available for addressing such difficulties?

(f) How can networks of liaison magistrates, prosecutors and police officers posted abroad be extended to facilitate communication and avoid misunderstandings between legal systems? Does experience exist with small jurisdictions with limited resources sharing common liaison personnel at the regional level?

(g) What experiences/practical cases/best practices exist in setting up joint investigative teams to combat serious crimes of a transnational nature? What legal and administrative challenges have been encountered in this regard?

(h) How can international cooperation be enhanced in tracing, freezing and confiscating proceeds of crime in order to deprive criminals of their profits? What are the difficulties encountered in practice with regard to the return and disposal of assets derived from corruption offences? What are good practices in the areas of disposal of confiscated proceeds of crime and asset recovery? How can differences in approaches to confiscation (conviction-based and non-conviction-based confiscation) be overcome to facilitate speedy and effective international cooperation?

(i) How can consultation and direct contact between authorities be promoted throughout all the stages of the process of requesting and granting extradition and mutual legal assistance?

(j) What kind of technical assistance activities are considered effective in strengthening the capacity of central and other competent authorities? What are the needs in terms of staffing, training, equipment, technology and telecommunications facilities?

(k) How can technical assistance be strengthened to efficiently combat the misuse and falsification of travel and identity documents that can be used for trans-border commission of serious crimes?

(l) What experience has there been with regional judicial networks? How can existing networks be effectively enhanced at the global level so as to allow cross-regional networking among central and other competent authorities? What facilitation role should be played by UNODC?

Substantive item 8. Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families

A. Background

67. Persons and their families choosing to live temporarily or permanently in a country in which they were not born, whether for the purposes of paid work or not, are increasingly recognized as being particularly vulnerable to acts of violence. Throughout the entire process of migration – including preparation for migration, departure, transit and the entire period of stay, including any remunerated activity in the State of employment, to the return to the State of origin or habitual residence – migrants, migrant workers and their families may be vulnerable to abuse, violence and exploitation. This may be at the hands of persons engaged in smuggling of migrants, employers or even perpetrators within the migrant family. Women migrant workers, in particular, may become victims of abuse, mistreatment and sexual violence by their employers. Smuggled migrants may find themselves in situations and be subjected to acts of violence they had not foreseen before departing from their countries of origin. Such acts of violence present a particular challenge in terms of crime prevention initiatives and the criminal justice response.

68. Understanding the nature and extent of the problem is a key first step. Two main difficulties arise. The first is the identification of such groups within States and communities. In particular, the illegality of the act of smuggling of migrants, together with the effect of national immigration and employment laws and regulations, may drive migrants, migrant workers and their families “out of sight”, either into the informal economy, into unregistered housing or into other situations not well covered by law enforcement authorities. Secondly, migrant populations are frequently believed to underreport crime, including violent crime, thus preventing adequate use of law enforcement resources in immigrant communities.

69. At the normative level, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,²² which entered into force on 1 July 2003, aims to protect the rights of all migrant workers and members of their families. The Convention seeks to prevent and eliminate the exploitation of migrant workers throughout the entire migration process by providing a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of sending and receiving States. In particular, it seeks to

²² United Nations, *Treaty Series*, vol. 2220, No. 39481.

put an end to illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation.

70. Recognizing already in its preamble the need to provide migrants with humane treatment and full protection of their rights and identifying that protection as one of its basic purposes (article 2), the Migrants Protocol (see also under substantive item 4) includes a series of provisions in this direction with a view, inter alia, to preventing the worst forms of exploitation of smuggled migrants, which often characterizes the smuggling process. Thus, when criminalizing smuggling and related offences, States parties are required to establish, as aggravating circumstances, situations that endanger, or are likely to endanger, the lives or safety of the migrants concerned or to entail inhuman or degrading treatment, including for exploitation, of such migrants (article 6, para. 3). Moreover, article 16 of the Protocol lays down specific obligations for States parties to take all appropriate measures with a view to preserving and protecting the internationally recognized rights of smuggled migrants, including, in particular, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (para. 1) and the right to be protected from violence (para. 2).

71. In its paragraph 20, the Vienna Declaration on crime and justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex) takes note of the continuation of crime associated with racism, xenophobia and related forms of intolerance. In the same paragraph, Member States also recognized the importance of taking steps to incorporate measures to prevent and combat these crimes, into crime prevention strategies and norms. Furthermore, these provisions have been included in the plans of action for the implementation of the Vienna Declaration (VIII. Action on crime prevention, para. 27 (f)).

72. The greatest challenge that competent authorities face concerning offences committed with a strong suspicion of xenophobic motive is to prove the existence of such a motive. Such crimes are mostly recorded as vandalism, which makes it difficult to keep statistics that reflect the real motives. On the other hand, victims are experiencing difficulties in taking their cases to court, because of the reluctance of lawyers to represent them. Additionally, police authorities do not always give due consideration to unveiling the real motives behind such acts of violence.

73. The Twelfth Congress could provide a good opportunity to discuss the prevalence of such crimes, as well as problems related to the collection of accurate data. Furthermore, ways and means to ensure facilitated legal assistance to migrants could also be explored. Another area to examine could be the possibility of providing better information to victims of such crimes (for example, by the operation of task forces at the local level) on the rights they can exercise. The possibility of training of law enforcement officials to specialize in this kind of crime could also be discussed.

74. The introduction of comprehensive communication strategies aimed at improving mutual understanding among all segments of society is vital. All components of society, including immigrants, would require a change of thinking in order to eliminate all kinds of barriers among different groups. Constructive dialogue and interaction between diverse groups in society can always lead to a positive synergy overall. It is in the broader interest of society to instil harmonious

relations among its members. The improvement of understanding and cooperative relations among nations and peoples across cultures and religions constitutes the aim of the Alliance of Civilizations. In that context, projects targeting youth, in particular, could be developed and supported. The role of education, the media and civil society, as well as the relevance of enhancing intercultural and interreligious dialogue, could also be discussed.

75. Sensitively designed survey instruments can be a key tool in understanding levels of victimization in migrant communities. In the European context, for example, the Agency for Fundamental Rights of the European Union has launched the first and largest Union-wide survey of its kind to collect comparable data on the experiences of migrants and minority groups in a number of respects, including their experiences of criminal victimization.²³ The results of such surveys can be used to inform policymakers about the nature and extent of violent crime experienced by migrant communities, their perceptions of the performance and accessibility of the law enforcement and criminal justice system and the impact of violent crime upon their daily lives.

B. Substantive focus

76. Discussion on this topic may focus on solutions that the criminal justice system may provide to these problems, approaches and methodology that can be used to understand acts of violence committed against migrants, migrant workers and their families, together with the identification of good practices in the design of crime prevention and criminal justice responses to address the issue. Targeting crime prevention strategies at such “hard-to-reach” populations is a particular challenge, for example, and requires innovative approaches, including social-based initiatives.

77. In addition to isolation from law enforcement and criminal justice systems, those who do report victimization to law enforcement authorities may face greater hardship during the investigation or judicial process than non-migrants. These can include language barriers, cultural differences and lack of understanding of a foreign criminal justice system. Effective criminal justice responses to violence experienced by migrants, migrant workers and their families may require the establishment of specialized law enforcement programmes, policies or practices, including multilingual assistance and police and victim support outreach in migrant communities.

C. Questions for discussion

78. The regional preparatory meetings and the Twelfth Congress, in their discussions on violence against migrants, migrant workers and their families and possible criminal justice responses thereto, may wish to address the following points:

(a) To what extent does the national legislation of Member States include provisions on criminalizing violence against migrants, migrant workers and their

²³ See http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=4864fb6b22239.

families pursuant to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families? What provisions exist in national laws to prevent violence against migrants, migrant workers and their families? What kind of measures are foreseen by domestic legislation to ensure respect and protection of migrant workers and their families? In what ways can Member States create or improve their legislative response to this phenomenon?

(b) To what extent do domestic laws guarantee rights to migrants, migrant workers and their families? What types of resource exist to help migrant workers who have been affected by violence understand and claim their rights?

(c) What kind of data and information gathering exist to measure the prevalence of crimes against migrants, migrant workers and their families at the national level? Have States participated in any international, regional or sectoral research or technical assistance projects to examine the prevalence of violence against migrants, migrant workers and their families? What were the outcomes and/or lessons learned?

(d) To what extent are criminal justice officials prepared to react to cases of violence against migrants, migrant workers and their families? What kind of measures have been taken in order to prevent recidivism in crimes of this nature? In what ways do States ensure that migrants, migrant workers and their families who have been affected by violence are not revictimized by the criminal justice system? Do any practical measures exist for the protection of unaccompanied minors in particular? Have there been any programmes aimed at supporting the reunification of migrants and their families? Have any measures been adopted to decriminalize undocumented migration? What practical measures have been adopted to ensure access of migrants to justice, irrespective of their immigration status, for violations of their human and labour rights?

(e) In what ways have national authorities sought international cooperation and mutual legal assistance in their criminal justice responses to violence of this nature? Do Member States have proper mechanisms to allow for extradition and confiscation of assets where applicable?

(f) In what ways can States be supported by the international community to improve their understanding and criminal justice responses to violence against migrants, migrant workers and their families? What kinds of technical assistance are needed in order to better understand the prevalence of such violence and to ensure more respect for and provide better protection to migrants, migrant workers and their families?

III. Workshops to be organized at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Workshop 1. International criminal justice education for the rule of law

A. Scope

79. The rule of law is a principle of governance by which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (S/2004/616, para. 6).

80. In measuring the effectiveness and evaluating the impact of United Nations rule of law assistance, it is necessary to enhance endeavours geared towards improving the knowledge and understanding of rule of law development and therefore United Nations entities need to galvanize research centres and academia to sponsor applied research and scholarship on rule of law assistance (A/63/226, para. 62).

81. Since the First Congress, in 1955, the United Nations has made significant progress in developing a comprehensive and diverse body of crime prevention and criminal justice standards and norms and in helping Member States put them into practice. These standards and norms constitute building blocks of how a criminal justice system should be structured; how criminal policies and strategies should be developed; and how a fair, effective and humane crime prevention and criminal justice system should operate. They also embody the expression of the legitimacy of international action, having been agreed upon by all Member States, and, as such, they have contributed to strengthening the rule of law worldwide.

82. The “operationalization” of United Nations standards and norms in domestic legal systems has contributed to the strengthening of the notion of the rule of law at the national level, as those “soft law” instruments represent not only declarations of principles, but also best practices to be used as practical tools for criminal justice reforms at the national level, in particular in developing countries and countries emerging from conflicts, which can adapt them to meet national needs. Further, they have been utilized at the national level by fostering in-depth assessments and evaluations leading to the adoption of necessary criminal justice adjustments and improvements. Moreover, they have helped countries to develop national, regional and subregional policies and strategies aiming at enhancing the rule of law environment in those countries. They have also been used as standards of excellence and guidelines in the context of technical assistance programmes and technical cooperation activities around the world.

83. The UNODC *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*²⁴ lists no fewer than 55 instruments, all of which have been a resource for the international crime prevention and criminal justice community, including the institutes of the United Nations Crime Prevention and Criminal Justice Programme network. Over 60 years, major shifts have occurred in United Nations criminal policy: emphasis has shifted from retributive approaches to restorative justice and from repression to prevention. One of the most significant developments has also been the fact that, historically, United Nations standards and norms in crime prevention and criminal justice have helped pave the way for the adoption of United Nations normative legal instruments related to crime. Indeed, several of the principles contained in existing standards and norms have been integrated into these treaties and conventions.

84. Expanding and evolving international criminal justice education for the rule of law needs to take into account the above and to include educational and training components on both standards and norms and legally binding instruments related to crime. With regard to the latter, reference should be made to the example of the International Anti-Corruption Academy, established jointly by UNODC and INTERPOL, which is designed to be a centre of excellence in anti-corruption education and training. The Academy has a two-pronged mission: to develop curricula and training tools and to offer courses and anti-corruption education based on the provisions of the Convention against Corruption.

85. International criminal justice education should foster a three-pronged approach in teaching and training initiatives for those who are likely to be the next generation of leaders. Firstly, such education should start at the formative age, with primary-level school courses designed to instil and foster a culture of lawfulness. Secondly, it should continue through rule of law education for students at the university level, preparing them for careers in the public sector or in private sector management. Thirdly, it should involve criminal justice officials or practitioners. However, practically, in many countries – especially those in transition to democratic governance or to a market economy, or both – this intergenerational continuum may face considerable challenges.

B. Objectives

86. Workshop 1 will offer unique opportunities for the pooling of professional experience and expertise from a variety of disciplines in pursuing the following objectives:

(a) Exchanging experience concerning the curricula of educational and training establishments (schools, universities, international law enforcement academies and legal institutes, training schools for criminal justice practitioners and so on) and their alignment with United Nations crime prevention and criminal justice standards and norms;

(b) Discussing specific educational initiatives, especially those focusing on gender, children and victims, as ways to strengthen the advancement and protection of the rule of law;

²⁴ United Nations publication, Sales No. E.92.IV.1 and corrigendum.

(c) Demonstrating how new teaching and training techniques, including computer-based training and emerging virtual forums, assist in achieving the United Nations crime prevention and criminal justice objectives on the rule of law, including through field-based projects;

(d) Providing recommendations, including for a model for international criminal justice education courses, that would be a yardstick against which Member States could assess their own rule of law objectives and seek United Nations technical assistance to enhance the substantive quality of their continuous criminal justice education curricula.

C. Questions for discussion

87. Participants in Workshop 1 may wish to address the following points:

(a) What are the minimum components and standards of comprehensive criminal justice education? How can such components be incorporated into programmes at the various educational levels?

(b) What international curricula exist and how are they related to United Nations crime prevention and criminal justice standards and norms?

(c) What inputs to criminal justice education curricula have been provided by the existing international criminal tribunals and their jurisprudence?

(d) How does the establishment of international law enforcement academies, or the internationalization of national criminal justice education and training programmes, tie in with the United Nations regional and cross-regional agenda of combating transnational organized and other crime, in terms of the effectiveness of international cooperation and recommendations?

(e) What are the priorities for criminal justice education in countries emerging from conflict or with economies in transition? What contribution can the international community, including the United Nations system, provide to the development of the criminal justice education in these countries?

(f) How can new teaching and training techniques, including e-distance learning, computer-based training and virtual forums, be further promoted, especially by targeting law enforcement and criminal justice officials from developing countries and countries with economies in transition?

(g) Are there any successful examples of: (i) learning techniques in the area of criminal justice education (collaborative learning, problem-based learning, service or experimental learning, learning through research)? (ii) educational curricula that draw on legal, statistical and social science components?

(h) To what extent and by what means can one ensure that implementation of United Nations crime prevention and criminal justice standards and norms takes into account inherent differences in societies, including those with strong customary law systems?

(i) Do justice and integrity issues in criminal justice work feature in criminal justice curricula, and how are they taught?

(j) How can one ensure that the educational role of United Nations crime prevention and criminal justice standards and norms is successful across the ministries of the interior/security, defence, the parliament, law-enforcement, the judiciary and so on?

(k) What mechanisms exist to encourage collaboration between criminal justice and educational authorities in the development of United Nations criminal justice and crime prevention educational curricula, and how they may be coordinated and made more operational across the world?

(l) Have there been any systemic efforts to promote and introduce into national criminal justice education the United Nations crime prevention standards and norms, including professional training?

(m) Have there been initiatives to promote and introduce into primary and secondary curricula issues related to rule of law, including criminal justice?

(n) Have there been programmes aimed at informing the public about United Nations crime prevention and criminal justice standards and norms? Are there strategies to raise awareness about the benefits of adherence to those norms?

(o) How can the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations research, education and training entities and non-governmental organizations contribute to advancing the international criminal justice education agenda for the rule of law?

(p) How can a comprehensive understanding of United Nations crime prevention and criminal justice standards and norms be made a viable tool in promoting and enhancing international criminal justice careers?

Workshop 2. Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system

A. Scope

88. Treatment of prisoners in the criminal justice system is governed by international human rights law²⁵ and standards and norms on crime prevention and criminal justice, in particular the Standard Minimum Rules for the Treatment of Prisoners (1955, as amended in 1977);²⁶ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988);²⁷ the Basic Principles for the Treatment of Prisoners (1990);²⁸ the status of foreign citizens in criminal proceedings (1998);²⁹ and, in the field of international cooperation in

²⁵ The Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and its Optional Protocol (2002).

²⁶ *Human Rights: a Compilation of International Instruments*, Volume I (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

²⁷ General Assembly resolution 43/173, annex.

²⁸ Resolution 45/111, annex.

²⁹ Economic and Social Council resolution 1998/22.

criminal matters, the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners (1985).^{30, 31} These standards set out the internationally accepted good principles and practices in the treatment of prisoners and the management of penal institutions. In addition, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985)³² and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)³³ provide guidance on the treatment of children in conflict with the law, including the treatment of juveniles in custody.

89. However, there are no international standards and norms concerning the treatment of women in prisons. Even though women constitute a small proportion of the general prison population worldwide, their numbers are growing in many countries at a faster rate than that of male prisoners.³⁴ Female prisoners constitute a vulnerable group of prisoners and they have special needs, which need to be met both during imprisonment and after their release.

90. The key issues to be addressed regarding the treatment of prisoners in the criminal justice system relate to rehabilitation and social reintegration of prisoners; prison leadership and management; the prison regime, including individualized treatment; prison health issues; and treatment of particular categories of prisoners (women, children, foreigners, the mentally and physically ill, the elderly, prisoners serving long-term and life sentences, and prisoners facing the death penalty). The treatment of prisoners needs to be considered from the moment of arrest to the stage of post-release.

B. Objectives

91. The objectives of Workshop 2 will be:

(a) To identify good practices in the treatment of prisoners, including on issues related to professional management, individual rehabilitation and post-release, and the needs of vulnerable groups;

(b) To review best practices in ensuring lawful detention and imprisonment and enhancing prisoners' access to justice;

³⁰ *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I.

³¹ Other relevant standards and norms are the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975); the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (1984); the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules, 1990); the Kampala Declaration on Prison Conditions in Africa (1997); the Kadoma Declaration on Community Service and related recommendations on prison overcrowding (1998); the Arusha Declaration on Good Prison Practice (1999); and the basic principles on the use of restorative justice programmes in criminal matters (2002).

³² General Assembly resolution 40/33, annex.

³³ Resolution 45/113, annex.

³⁴ See UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment* (United Nations publication, Sales No. E.08.IV.4), pp. 2-3. On the numbers of female prisoners, see *The World Prison Brief* (http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_female).

- (c) To discuss good practices and experiences in prison oversight, accountability and inspections;
- (d) To present best practices in mobilizing civil society to engage in penal reform and the appropriate treatment of prisoners;
- (e) To identify good practices in mobilizing human and financial resources, including within national budget processes, for penal and penitentiary reform;
- (f) To identify good practices in the treatment of prisoners in post-conflict countries;
- (g) To discuss the need for specific standards and norms concerning vulnerable groups of prisoners, especially women.

C. Questions for discussion

92. Participants in Workshop 2 may wish to consider the following questions:

- (a) What good practices can be drawn from penal and penitentiary reforms carried out in the last five years with regard to the human rights of prisoners? Can evidence-based lessons be learned from reforms to prison management and training of criminal justice professionals as to their impact on the rights of prisoners? What impact does the size of prison and correctional facilities have on the treatment of prisoners?
- (b) What are the main challenges with regard to the treatment of prisoners in countries emerging from conflict? In the case of post-conflict societies, what strategies have been deployed to address prison overcrowding while also addressing other priority needs for reconstruction and peace?
- (c) What impact have regular inspections of penal institutions and services had on the treatment of prisoners? Have systems for responding to prisoners' complaints proved efficient? What measures have been effective in reducing corruption among prison staff and management?
- (d) What checks and balances exist to ensure the lawfulness of detention and due process? What measures are in place to enhance prisoners' access to justice and legal aid?
- (e) What measures or programmes have improved respect for the basic human rights of prisoners? In particular, are there any good practices with regard to access to health care, individualized treatment of prisoners, education, vocational training, family visits and religious rights?
- (f) Do existing standards and norms appropriately cover the rights of vulnerable groups of prisoners? How can possible gaps be addressed? Are there any examples of comprehensive management strategies that effectively respond to the needs of such groups?
- (g) Are there any good practices in the treatment of women in the prison system? What successful measures have been taken with regard to pregnant women, women with babies and children in prison, custody and care of children of

imprisoned mothers (outside prison), particular health issues concerning women in prison and protection from sexual and other violence?

(h) Have any good practices been identified with regard to mentally ill prisoners? What are the lessons learned regarding the impact of imprisonment on mentally challenged prisoners? Are there any successful alternative programmes?

(i) Have any good practices been identified with regard to elderly prisoners?

(j) Are there any measures or good practices with regard to the treatment of prisoners serving long-term and life sentences and those facing the death penalty?

(k) If children³⁵ are imprisoned, what measures have been successful in ensuring that detention or imprisonment of children is used only as a measure of last resort and for the shortest appropriate period of time? What measures have been used to ensure the separation of children from adults and the treatment of children in detention according to a child-centred approach?

(l) Which programmes have proved successful in providing prevention and treatment to drug users in prisons? Are there any lessons to be learned here, including with regard to legal reform and sentencing practices? Have any lessons been learned on the most effective public policies to fight trafficking in, and consumption of, drugs by young prisoners?

(m) Have any programmes for HIV/AIDS prevention and care in prison settings proved successful?

(n) Are there any lessons to be learned regarding the treatment of foreigners in prison?

(o) What are the key elements of successful practice in facilitating the social reintegration of prisoners? Which programmes for preparation for release have been successful? Have there been any follow-up programmes where ex-prisoners who have been successfully rehabilitated and reintegrated into society could share their experiences with young people with a view to preventing them from committing crimes?

(p) What good practices have been identified in promoting civil society involvement in prison reform? How can such involvement benefit prisoners and their families?

(q) Have good practices been identified in mobilizing financial and human resources for prison reform and treatment of prisoners? How can such mobilization be sustained?

(r) Are there any good practices for the collection and analysis of data on prisoners, their characteristics and the treatment they receive? Are there any examples of use of data to monitor the impact of treatment on different sub-groups of the prison population?

³⁵ Defined in the Convention on the Rights of the Child as “every human being below the age of eighteen years”.

Workshop 3. Practical approaches to preventing urban crime

A. Scope

93. Urban crime is universal, but research suggests that patterns of urban crime are affected by the nature of cities and the social, economic and geographical environments in which they exist. There are many relationships between the patterns of urban life and the patterns of crime. Economic crimes, for example, are usually more common in cities because economic activities, and thus criminal opportunities, occur there. Violent crimes may occur more often in cities because contributing factors, such as adverse social environments, drug addiction and the availability of firearms or other weapons, tend to be more common there.

94. In addition, it may be that only a portion of a criminal act is committed in an urban setting: trafficking in persons, for example, often exploits the desire of rural victims to move to cities, where markets for prostitution and other forms of exploitation exist. Similarly, trafficking in narcotic drugs tends to seek out lucrative markets in large cities, which increases the availability of drugs there. Most other forms of transnational organized crime also occur largely in cities, where organized criminal groups exploit the same infrastructure as legitimate commerce and use the cities and their populations to conceal their activities. In such cases, crime and its after-effects in the city are only part of a bigger picture, making it necessary to coordinate municipal strategies with those followed at the national and international levels.

95. In 2008, for the first time, the majority of the world's population was living in cities. Rapid urbanization further demonstrates the increasing need to ensure the safety of urban citizens as crime and violence continue to be major concerns in urban areas.

96. By 2005, Europe, Latin America and the Caribbean, North America and Oceania were already highly urbanized, with more than 70 per cent of their total population living in cities. Africa and Asia are the least urbanized areas in the world, but are expected to reach the 50 per cent mark by 2030, and nearly all future population growth worldwide is expected to take place in urban areas in developing countries. Not only are most people now living in cities, but there are also increasing numbers of mega-cities in developing countries with populations of 10 million or more. This trend includes 15 of the 20 cities with 10 million or more inhabitants, and the figure is expected to rise to 18 out of 22 such cities by 2015. Much of this growth comes from migration, making it increasingly important for Governments to pay particular attention to migration patterns, diasporas and ethnic networks.

97. The escalating demand for services often exceeds the tax base and resources, not to mention the substantive capacity of municipal authorities and even national Governments. Internationally, attention needs to be given to the specific case of mega-cities and the issues they face in terms of developing strategic crime prevention approaches. Advanced telecommunications systems facilitate the transfer of information and money and cities act as transportation hubs for the hinterland. Thus, while most cities have become engines for economic growth and centres of

diversity and change, they also pose formidable challenges for Governments in ensuring the safety and security of citizens. The anonymity provided by cities can allow organized crime to flourish, while law enforcement “no-go” areas in some districts also facilitate local and organized crime.

98. Urban crime is unevenly distributed. It affects the lives of the most disadvantaged, especially those living in slums and informal settlements, the homeless. It also affects specific populations much more than others. Ethnic and cultural minorities, migrant communities and women in particular are especially vulnerable to victimization. Responses to urban crime have often been selective, reactive and repressive, as with the use of hard-handed responses to youth violence. Fear of crime affects peoples’ lives. There has also been an increasing tendency in some regions to criminalize behaviours seen as uncivil or anti-social, to use exclusionary measures and to privatize public space.

99. Another parameter that needs further consideration is the ongoing impact of both internal migration and immigration to cities, in which the resulting crime issues are linked to the level of inclusion of new arrivals, the ability of cities to provide needed services and the extent to which those groups are trusted and participate in the governance of the city.

100. Increasingly, also, urban crime patterns influence, and in turn are influenced by, transnational organized crime, so that fighting urban crime increasingly requires solutions that can be drawn from the experience of cities that have faced this new type of criminality. Accordingly, fighting crime at the local level should involve the municipality and a broad range of actors, including law enforcement authorities and agencies involved in social services, education, health, urban management and urban planning, as well as communities, civil society and the private sector. Some of the tools that support crime prevention strategies include victim surveys and local safety audits, geo-coding and mapping techniques, and observatories on crime and social problems. Effective and sustainable crime prevention and access to justice in urban areas require a coordinated approach by all those involved.

101. In this context, the police need to develop strong partnerships with the community in urban areas in order to build trust in governance and the rule of law and to improve their ability to investigate crime and protect the community. As with law enforcement in other settings, urban law enforcement services build trust and confidence by consistently demonstrating integrity and competence. Perhaps even more particularly in urban settings, training, policy and practice for law enforcement authorities should include cultural competence with multiple sub-communities. In many countries, the legislative and governance frameworks that apply to law enforcement agencies are matters for the central Government, but governance and accountability at the local level are also critical to ensuring that governance is balanced and that the police are responsive to local concerns and needs.

102. The challenges posed by urban crime and the methods to counteract it have long been an issue on the United Nations crime prevention and criminal justice agenda. In 1995, in the guidelines for cooperation and technical assistance in the field of urban crime prevention (resolution 1995/9, annex), the Economic and Social Council recommended that a multi-agency approach and a coordinated response at the local level, in accordance with an integrated crime prevention action plan, would

be conducive to finding solutions. In the Guidelines for the Prevention of Crime of 2002, the Council also noted that significant reductions in crime and victimization could be made by addressing specific problems, such as the safety and security of individuals and property, at the local level in community-based prevention efforts. Moreover, the Bangkok Declaration (para. 34) stressed the need to consider measures to prevent the expansion of urban crime, including by improving international cooperation and capacity-building for law enforcement and the judiciary in that area and by promoting the involvement of local authorities and civil society. Last but not least, the issue of crime prevention and criminal justice responses to urban crime, including gang-related activities, was the subject of the thematic discussion at the sixteenth session of the Commission on Crime Prevention and Criminal Justice, in 2007.

103. Within the above analytical and operational framework, Workshop 3 will also focus on examples of recent initiatives and practical tools that have been developed to support urban crime prevention.

B. Objectives

104. The objectives of Workshop 3 will be:

(a) To identify and disseminate the increasing range of innovative practical tools being used by cities and urban communities to respond to and prevent urban crime;

(b) To promote United Nations standards and norms in urban crime prevention, including the guidelines for cooperation and technical assistance in the field of urban crime prevention, as well as international lessons learned from research and experience;

(c) To identify good practices in coordinated national and municipal action to prevent urban crime, including short- and long-term planning and initiatives, and to emphasize the growing role and capacities of local partners involved in urban safety;

(d) To foster improved training and capacity-building for the range of urban managers, planners and other professionals involved in crime prevention;

(e) To enable Member States to critically examine their own urban strategies in relation to crime prevention, and to encourage the development and implementation of global urban crime prevention strategies.

C. Questions for discussion

105. Participants in Workshop 3 are encouraged to bring examples of specific projects or strategies that have been successful, or from which lessons can be learned, identifying the key factors of success or failure, and how they have been applied or overcome:

(a) What are the elements or conditions of urban societies that influence crime patterns? In addition to information about crime, criminal patterns and

criminal justice elements, what information about broader social, economic and other environmental circumstances is needed?

(b) What best practices exist at the central, regional or local level, including the involvement of civil society, to prevent urban crime?

(c) What are the challenges involved in including marginalized groups and groups exposed to high levels of violence in effective crime prevention strategies and policy? What good practices can be identified for the inclusion of migrant and immigrant populations and ethno-cultural minorities?

(d) How can greater coordination and integration be achieved between cities and national Governments in their crime prevention and urban planning strategies? How can effective crime prevention strategies be developed and integrated into the governance and management of a city as a whole? How can these strategies be sustained over time?

(e) What are the specific experiences of mega-cities in developing crime prevention strategies to ensure the safety of all their communities?

(f) What kinds of measures have been adopted with a view to preventing urban crime committed by groups of minors?

(g) Are there good examples of policy use of data on the assessment of urban trends, including victim surveys to develop crime prevention strategies? Are there good examples of data collection and analysis on recruitment, training, management and accountability of police forces collected and analysed in relation to crime trends, to improve the effectiveness of proactive local policing?

(h) What are successful approaches to capacity-building in crime prevention for the various key professions and groups involved in comprehensive crime prevention strategies (e.g. policymakers, police, social workers, the judiciary, prison staff, civil society associations and faith groups)?

(i) Are there any successful models of syllabuses for comprehensive and multisectoral teaching and training in urban crime prevention?

(j) What community-based initiatives, such as community houses of justice or social service programmes, have been shown to be successful in preventing urban crime? Are there any good examples of projects aimed at building up esprit de corps and increasing respect for security sector professions such as the police?

(k) How can the different and sometimes competing needs of different communities of interest in urban crime prevention strategies and action be reconciled? What kinds of monitoring and evaluation tools can be used?

(l) What kind of local law enforcement programmes or policies have been successful in dealing with specific issues seen as contributing to urban crime, such as narcotic drugs, the proliferation of firearms or other weapons, and organized criminal groups or gangs? What best practices have been identified from these programmes?

Workshop 4. Links between drug trafficking and other forms of organized crime: international coordinated response

A. Scope

106. While drug trafficking remains one of the most lucrative criminal activities, some organized criminal groups simultaneously engage in other forms of crime. Thus, drug-trafficking channels are used for other types of trafficking, while such activities are increasingly conducted by networks of criminal groups linked to each other. Drug trafficking, by its nature, frequently involves the corruption of public officials, money-laundering and related racketeering. There are examples of the transnational trade of one illicit commodity for another, the best known being the exchange of drugs for guns, stolen property and natural resources. It has been argued that drug trafficking could provide the seed money for even more harmful crimes, including terrorism, but the extent to which this is true today is disputed. In particular, the concept of “narco-terrorism” has been sharply criticized, but there is clear evidence that violent armed groups around the world derive income from the drug trade, as well as other forms of organized crime. There is a need to examine the precise risks involved in all these instances and to develop a coordinated international response rooted in the available evidence.

107. At the normative level, the international community has recognized that the fight against drug trafficking should be pursued from the standpoint of the fight against transnational organized crime. As a result, the international legal framework on drug trafficking, the 1988 Convention, has been reinforced by the adoption and entry into force of additional legal instruments, the United Nations Convention against Transnational Organized Crime, together with its three supplementary Protocols, against trafficking in persons, smuggling of migrants and illicit manufacture of and trafficking in firearms, respectively, and the United Nations Convention against Corruption, dealing either with transnational organized crime in general and other modalities of it, or with corruption, which, as mentioned above, can be used for facilitating drug trafficking. The implementation of those instruments, of which UNODC is the guardian, is the prerequisite for the provision of a tangible basis for international cooperation and for effective law enforcement action to deal in an integrated manner with all interrelated aspects of trafficking or other issues/challenges linked to it.

108. UNODC also produces regional studies that examine the links between crime, organized crime and drugs. Past studies have been concerned with crime and development in Africa; crime and development in Central America; crime, violence and development in the Caribbean; organized crime and irregular migration from Africa to Europe; crime and its impact on the Balkans; and the opium economy in Afghanistan. A study of transnational trafficking and the rule of law in West Africa is due for publication shortly.

B. Objectives

109. The objectives of Workshop 4 will be:

(a) To identify and further examine the links between drug trafficking and other forms of organized crime, especially trafficking in persons and firearms, and to determine the ways and means by which drug trafficking and corruption are interrelated;

(b) To strengthen the role of the United Nations in designing an internationally coordinated approach to the regulatory, jurisdictional, law enforcement and judicial problems faced by Member States as a result of the growing association of drug trafficking with other forms of transnational organized crime;

(c) To identify, disseminate and promote good practices in coordinated national, regional and international approaches to combating the consequences of the association of drug trafficking with other forms of transnational organized crime;

(d) To promote training and capacity-building for legislators, policymakers, the judiciary and law enforcement agencies, including customs, responsible for preventing, combating, investigating and prosecuting the offences associated with the linkages between drug trafficking and other forms of organized crime;

(e) To facilitate a critical review by Member States of their own strategies, as well as regional and international approaches that may already exist, and to encourage the development and implementation of internationally coordinated prevention and combating strategies.

C. Questions for discussion

110. Participants in Workshop 4 are encouraged to provide examples of national, regional and international strategies, laws and other legal instruments that have proved to be effective, with a view to identifying lessons learned, the key factors for their success or failure, and how implementation hurdles may be overcome:

(a) What advances have been made in addressing effectively the links between drug trafficking and other forms of organized crime through the ratification and implementation of the relevant United Nations legal instruments?

(b) What is good practice and appropriate procedure in analysing the modus operandi of organized criminal groups (examples of studies and methodologies for collecting data)?

(c) What examples can be shared of the use of assessments of organized crime and evaluation of the threat posed by it in the development of policy responses?

(d) What trends have been identified in different regions of the world in links between drug trafficking and other illicit trafficking activities, such as trafficking in human beings, firearms and natural resources?

(e) Are the good practices adopted by law enforcement authorities to counter drug trafficking sufficient to target other organized criminal activities linked to it?

(f) What good practices have been adopted nationally and regionally in the arrest, investigation and prosecution of significant international drug traffickers,

including through streamlined legislation, encouragement of cooperation with law enforcement authorities and witness protection programmes?

(g) What good practices are followed in the field of international cooperation in criminal matters, including extradition, mutual legal assistance and law enforcement cooperation, to combat drug trafficking and its links to other forms of organized crime?

(h) Have there been any experiences, and lessons learned, in the use of special investigative techniques, including electronic surveillance, undercover operations and controlled deliveries?

(i) Have Member States developed policies to coordinate and exchange information among law enforcement and intelligence agencies? What is their experience in this area?

Workshop 5. Strategies and best practices against overcrowding in correctional facilities

A. Scope

111. According to the *World Prison Population List*,³⁶ more than 9.8 million people are held in penal institutions throughout the world and the prison population has been growing in many countries in the last decade. Almost every third prisoner is in pre-trial detention. There are many problems created by overcrowding in prisons and other correctional facilities. However, there is no single solution to resolving this issue, which permeates all regions in the world. Therefore, each society needs to select a strategy or combination of strategies that best respond to the challenges presented by overcrowded correctional facilities. Various measures need to be considered, among them alternatives to imprisonment at every stage of the criminal procedure, diversion, restorative justice, management of prisons and measures targeted at specific types of offender.

112. United Nations standards and norms addressing aspects related to the problem of overcrowding in prisons and other correctional facilities include:

(a) Standard Minimum Rules for the Treatment of Prisoners (1955, as amended in 1977);

(b) Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (1984);

(c) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985);

(d) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988);

(e) Basic Principles for the Treatment of Prisoners (1990);

³⁶ London, International Centre for Prisons Studies, King's College, 8th ed., 2009.

- (f) United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990);
- (g) United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules, 1990);
- (h) Kampala Declaration on Prison Conditions in Africa (1997);
- (i) Kadoma Declaration on Community Service and related recommendations on prison overcrowding (1998);
- (j) Arusha Declaration on Good Prison Practice (1999);
- (k) Basic principles on the use of restorative justice programmes in criminal matters (2002).³⁷

113. The Bangkok Declaration called for a review of the adequacy of such standards and norms in relation to prison management and prisoners, and recognized the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution, thereby avoiding the possible adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice systems, as appropriate (paras. 30 and 32).

B. Objectives

114. The objectives of Workshop 5 will be:

- (a) To exchange best practices for addressing overcrowding in correctional facilities;
- (b) To review good practices in diversion, alternatives to imprisonment at all stages of the proceeding and restorative justice, and their impact on prison overcrowding, including with regard to pre-trial detention;
- (c) To examine possible strategies to expand the use of early release measures for prisoners;
- (d) To identify effective programmes for the prevention of recidivism as a means to reduce prison overcrowding;
- (e) To exchange information on effective administration of correctional institutions and its effect on overcrowding, and on the possibilities of strategic planning involving all the actors at the national level.

C. Questions for discussion

115. Participants in Workshop 5 may wish to consider the following points:

³⁷ The following international human rights normative instruments are also of relevance: the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

- (a) What legislative policies (for example, decriminalization of certain crimes) have been shown to be effective in reducing overcrowding in prisons?
- (b) What diversionary measures (such as house arrest or bail) are commonly used to avoid pre-trial detention? Under what conditions are they used? What measures to strengthen access to justice and legal aid have been successful in reducing the number of prisoners on remand? What lessons can be learned from the use of technology, such as electronic tagging devices, as alternatives to pre-trial detention? What safeguards are necessary?
- (c) What non-custodial measures are available at the sentencing stage? Do they have an effect on the size of the prison population? Have any measures been taken to address the limited use of such provisions by the judiciary? Again, what lessons can be learned from the use of electronic tagging devices, as alternatives to imprisonment and what safeguards are necessary?
- (d) What kind of alternatives to imprisonment exist for drug-related or mentally challenged offenders or specific types of offender? How effective are they in reducing the prison population?
- (e) What programmes, including community-based programmes, are available for the prevention of recidivism? Are they effective and do they indeed reduce the prison population?
- (f) What early release measures can be used to reduce the prison population, including use of electronic devices? What indicators of success can be used for such programmes?
- (g) What institutional and community-based treatment programmes are available to promote early release of prisoners? What coordinating programmes are available for the transition between institutional and community-based measures to enhance early release of prisoners?
- (h) How can prosecutors, judges, magistrates and probation service staff and other key actors in the criminal justice system be successfully involved in the administration of alternative sanctions and measures?
- (i) Have amnesties and pardons proved successful in reducing prison overcrowding, in particular in the long term?
- (j) How can effective prison administration help cope with the growth in the prison population, ensuring at the same time respect for prisoners' human rights? Have there been any negative effects of building more prisons or increasing space to cope with the growth of the prison population? What good practices can be applied in strategic planning involving all the actors at the national level, from the ministries to the social services and local authorities? What lessons can be learned from the privatization of prisons with regard to the human rights of prisoners and the effects on overcrowding? Are there any good practices for collection and analysis of data on prison overcrowding and use of non-custodial sanctions? Are there any examples of using such data to assess the cost-effectiveness of different correctional solutions?
- (k) At which stages of the process is restorative justice used? Does it work effectively to reduce the prison population within the criminal justice system? What are the reasons for its effectiveness or otherwise?

IV. Concluding remarks

116. In adopting the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme (General Assembly resolution 46/152, annex), Member States stated the following:

“We recognize that the world is experiencing very important changes resulting in a political climate conducive to democracy, to international cooperation, to more widespread enjoyment of basic human rights and fundamental freedoms, and to the realization of the aspirations of all nations to economic development and social welfare. Notwithstanding these developments, the world today is still beset by violence and other forms of serious crime. These phenomena, wherever they occur, constitute a threat to the maintenance of the rule of law.

“We also recognize that democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security.”

This statement echoed what had already been laid down in the Charter of the United Nations as the core values and principles of the Organization.

117. In today’s world, probably more than ever before, it is recognized that the rule of law, development, peace and security are interlinked and their mutual reinforcement is key to addressing the huge challenges faced by the world in the twenty-first century.

118. Further, it is broadly accepted that promoting the rule of law in a country fosters its overall development. This is especially the case in post-conflict societies, as strengthening the rule of law in the wake of conflict is not only an investment in the recovery of the country, but addressing the grave injustices of war and the root causes of conflict can also help to obviate the return of hostilities in the future.

119. Besides the traditional threats to international peace and security, new threats have emerged on a global scale, such as transnational organized crime, corruption and terrorism. The international community has realized that no State, no matter how powerful, can successfully fight these threats alone. Issues that were previously considered exclusively domestic are increasingly being addressed at the international level.

120. These new threats can only be successfully tackled if the rule of law prevails and if countries in need, in particular countries emerging from conflict and those with economies in transition, are given assistance in building or reinforcing their capacity to promote and respect the rule of law. Fostering respect for the rule of law becomes an investment not only in the development of countries, but also in peace and security for the international community as a whole.

121. It has taken the international community some time to comprehend and appreciate the key role that the criminal justice system has in establishing, maintaining and strengthening the rule of law and to realize that a well-functioning criminal justice system is the soft underbelly of the rule of law. Unless the central

role of the criminal justice system is recognized and accepted as a main pillar of the entire edifice, there is a great risk that the measures proposed and attempted will not produce the desired results. Moreover, effective international cooperation among States will suffer. Investing in building and strengthening national crime prevention and criminal justice systems should be seen as part and parcel of both the development and the security agendas of the international community.

122. Understanding is growing within the United Nations, as reflected in the 2008 guidance note of the Secretary-General on a United Nations approach to rule of law assistance, that due attention should be given, in order to strengthen the rule of law, to the development of a domestic legal framework, including penal and procedural laws, consistent with international norms and standards, and to the functioning of national crime prevention and criminal justice institutions, including the police and law enforcement services, the judiciary, corrections services, legal and paralegal assistance services and services assisting victims and witnesses, that are well-structured and financed, trained and equipped to make, promulgate, enforce and adjudicate the law in a manner that ensures the equal enjoyment of all human rights for all.

123. Over the past 60 years, the United Nations has been active in the development and promotion of internationally recognized principles in crime prevention and criminal justice. The United Nations congresses on crime prevention and criminal justice have proved to be an invaluable source and driving force in this process. As a result, a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged, covering a wide variety of issues, such as juvenile justice, the treatment of offenders, international cooperation, good governance, victim protection and violence against women. The standards and norms in crime prevention and criminal justice have also paved the way for the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto and of the United Nations Convention against Corruption.

124. The United Nations standards and norms were developed to respond to contemporary challenges facing States and the international community and to reflect the conceptual approaches and consensus view prevailing at the time of their development. The attention devoted to their development and the quality of the work carried out at the time of such development are reflected in the continued relevance of most standards and norms. However, the world has changed significantly since the development of many standards and norms and that change continues at an unprecedentedly rapid pace. New and sophisticated forms of crime in an evolving social, cultural and economic environment create novel challenges or change dramatically the approach to and impact of traditional and conventional criminality. Evaluation of scientific thinking and deeper knowledge, coupled with giant steps forward in technology, offer new opportunities. And the appreciation of the role of the criminal justice system as a crucial pillar of the rule of law opens new horizons. The focus is sharpened further by the realization of the developmental dimension of the criminal justice system.

125. A key challenge is to make sure that a comprehensive and consistent body of standards and norms in crime prevention and criminal justice is readily available and fully used. Specific domestic action, as well as technical assistance and capacity-building in this area, has been hampered somewhat by the fragmented

approach that has been taken in international standard-setting, inherent in law-making at the multilateral level. However, as reflected in the guidance note on a United Nations approach to rule of law assistance, it is now time to seek to ensure a coherent and comprehensive strategic approach that captures and supports all aspects of an effective and efficient criminal justice system, including legislation, processes and criminal justice institutions, as well as their management and oversight.

126. The Twelfth United Nations Congress on Crime Prevention and Criminal Justice provides the international community with an ideal opportunity to take stock of the work undertaken in the area of crime prevention and criminal justice and to chart the way forward. The Twelfth Congress offers an opportunity to set in motion a critical review of the body of standards and norms developed over the past 60 years and to reflect on how those standards and norms have worked, and in so doing to examine the specific challenges posed by new global criminal threats and sophisticated forms of crime. This approach has the potential to identify possible gaps and practical obstacles, and to explore ways to overcome them. Such efforts could pave the way for a more coherent and comprehensive strategic approach in establishing, re-establishing or strengthening crime prevention and criminal justice systems that could serve as a basic framework and provide a solid basis for the delivery of technical assistance and criminal justice education. Such an approach could strengthen the nexus between normative and operational work and help ensure effective enforcement and enjoyment of a just national and international order.

127. The task of the regional preparatory meetings is to provide well focused recommendations, which will be taken into consideration in the development of the single declaration of the Twelfth Congress. The declaration will also be based on the deliberations of the high-level segment, the round tables and the recommendations of the workshops, and will be submitted to the Commission on Crime Prevention and Criminal Justice at its nineteenth session, in 2010.