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**Thematic discussion on the rule of law and development:
the contribution of operational activities in crime
prevention and criminal justice**

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Note by the Secretary-General**

The mandate

1. Pursuant to Economic and Social Council resolution 1999/51 of 29 July 1999, in which the Council invited the Commission on Crime Prevention and Criminal Justice to adopt multi-year programmes of work, and as recommended by the Commission at its eleventh session, the Council decided in its decision 2002/238 of 24 July 2002 that the prominent theme for the thirteenth session of the Commission, in 2004, should be “The rule of law and development: contributions of operational activities in crime prevention and criminal justice”.

2. In paragraph 20 of its resolution 1999/51, the Council reiterated its call to the United Nations and the Bretton Woods institutions to undertake a renewed effort to coordinate policy approaches and give new impetus to collaborative and complementary actions by the organizations and agencies of the United Nations system, in particular in the area of poverty eradication. It has been repeatedly recognized in United Nations forums and reports that poor people’s livelihoods are

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** The submission of the present report was delayed because of the need for further consultations with Permanent Missions and the extended bureau of the thirteenth session of the Commission, which ended on 15 April 2004.



undermined in the absence of adequate personal safety, security for property and access to a just and effective legal system.

3. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,¹ Member States stressed that a fair, responsible, ethical and efficient criminal justice system was an important factor in the promotion of economic and social development and of human security. They undertook to strengthen international cooperation in order to create an environment conducive to the fight against organized crime, promoting growth and sustainable development and eradicating poverty and unemployment. They recognized that comprehensive crime prevention strategies had to address the root causes and risk factors related to crime and victimization through social, economic, health, education and justice policies.

4. In the United Nations Millennium Declaration,² heads of State and Government committed themselves to spare no effort to strengthen the rule of law, as well as to promote respect for all internationally recognized human rights and fundamental freedoms. They also recognized that the rule of law was essential for economic development and social justice, being also directly related to the prevention of conflicts and sustainable post-war rehabilitation. The road map towards the implementation of the United Nations Millennium Declaration specifically recommended incorporating crime prevention and criminal justice concerns into United Nations peace operations (A/56/326, para. 30).

5. In September 2003, the Security Council met at the ministerial level to consider the issue of "Justice and the rule of law: the United Nations role". The ministers reaffirmed the importance of justice and the rule of law in the context of the protection of civilians in armed conflict, in relation to peacekeeping operations and in connection with international criminal justice. The Secretary-General in his intervention at the meeting stated that it was essential to take a comprehensive approach to justice and the rule of law, which should encompass the entire criminal justice system. He emphasized the importance of United Nations standards for human rights and the administration of justice, as well as the need to tailor criminal justice mechanisms to meet the needs of victims and war-torn societies. The Security Council requested the Secretary-General to present a report on how United Nations organizations could contribute to the re-establishment of the rule of law and justice in conflict, post-conflict and transitional societies. The report will cover conceptual issues, lessons learned and transitional justice experiences. The United Nations Office on Drugs and Crime has been invited to contribute on such issues as combating organized crime, in particular in connection with its links to terrorism, trafficking, sexual exploitation and corruption, as well as victim protection, penal reform and the provision of specialized training for criminal justice officials, drawing also on existing United Nations standards and norms in crime prevention and criminal justice.

6. Development agencies have increasingly recognized the importance of fair and effective criminal justice systems. Significant achievements in terms of development unfortunately have often been undermined by lawlessness and criminal behaviour. There is a close relationship between institutional failure in the justice sector and the extent of organized crime in many countries. Where law enforcement, the administration of justice and financial systems are weak, greater opportunities exist for serious crimes and related illicit activities.

7. However, recognition of the interrelationship between the rule of law and development is not always matched by sufficient funding for justice sector projects. It would therefore be useful if representatives of development agencies and international financial institutions were to be invited to the Commission on Crime Prevention and Criminal Justice for a substantive discussion on how to increase the level of financial assistance to the rule of law sector. It would also be important to have criminal justice officials participate in the work of the Commission to focus the discussion on more effective ways and means to enhance international cooperation in the fight against new and emerging forms of criminality, with a view to strengthening the rule of law, both nationally and internationally.

Thematic areas

8. Taking into account the contributions made by the chairmen of the regional groups and drawing on the guidance received from the extended bureau of the Commission, the thematic debate could be split into two panel discussions, on the following sub-themes:

(a) International cooperation in criminal justice to strengthen the rule of law, including combating corruption and new types of crime;

(b) Strengthening the rule of law in post-conflict reconstruction, including the reform of criminal justice institutions, with emphasis on technical assistance.

A. International cooperation in criminal justice to strengthen the rule of law, including combating corruption and new types of crime

9. In paragraph 9 of the United Nations Millennium Declaration,² heads of State and Government committed themselves to intensify their efforts to fight transnational crime in all its dimensions. In paragraph 10 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,¹ Member States undertook to strengthen international cooperation in order to create a conducive environment for the fight against organized crime, promoting growth and sustainable development and eradicating poverty and unemployment.

10. It has been observed that there has been a general increase in all forms of transnational crime, including terrorism, corruption, money-laundering and white-collar crimes, which is inhibiting sustainable development and the enhancement of the rule of law. It has also been stressed that countries must cooperate in all aspects of criminal justice: from the prevention of such criminal acts to the prosecution and adjudication of such cases. In this connection, international cooperation with regard to extradition and mutual legal assistance is also essential to the rule of law.

11. High-level corruption offences tend to be crimes of the powerful, which can disrupt the basic rule of law. Corruption at lower levels can also erode the rule of law because it obstructs certainty, equality, procedural legitimacy and human rights. For these reasons, a holistic approach to criminal justice reform is required, with the existence of an independent judiciary being of paramount importance.

12. Furthermore, there is also growing concern about new types of crime that take advantage of high technology, together with the fact that individual offenders and

criminal groups are committing crimes in new and constantly evolving ways. This requires that new legislation related to such new crimes and new investigation techniques be developed. To ensure effective enforcement, it is also crucial to transfer information technology and facilitate capacity-building, especially in developing countries.

13. It would be beneficial for States to exchange information on their technical cooperation projects aimed at assisting other States to promote respect for the rule of law, with sufficient national and international resources being provided for that purpose. In this context, funds are required for decent salaries, modern equipment and infrastructure for law enforcement, the judiciary and correctional systems in order to bring them in line with international standards. Development agencies in the past have been reluctant to finance prisons, police stations and law enforcement operational costs, but these are often critical for sustainable economic and social progress. Lawlessness can destroy the best-laid development plans. In the United Nations Millennium Declaration, heads of State and Government recognized that success in meeting development objectives depended on good governance and respect for human rights. Therefore, issues such as fighting corruption, dealing with organized crime and preventing terrorism are important in that context, as is more effective cooperation, so as to ensure the full implementation of existing United Nations conventions.

B. Strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction

14. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,¹ Member States emphasized that effective action for crime prevention and criminal justice required the involvement of Governments and national, regional, interregional and international institutions; recognized that United Nations standards and norms in crime prevention and criminal justice contributed to efforts to deal with crime effectively, including in the field of juvenile justice and prison reform; acknowledged that comprehensive crime prevention strategies had to address the root causes and risk factors related to crime and victimization; and encouraged the development of restorative justice policies, procedures and programmes.

15. In that perspective, the panel discussion could focus on the prevention and control of urban violence and crime, especially among juveniles, as well as best practices in restorative justice, taking fully into account community participation and support.

16. The second sub-theme could consider the interaction and relationship between the rule of law and criminal justice systems, and how those could be developed or strengthened, particularly in failed States and post-conflict environments. Discussions could review how the Department of Peacekeeping Operations has coordinated technical assistance for peacekeeping operations and other post-conflict operations and how rule of law programmes have been and could be incorporated into the Department's planning. How operations of the United Nations Office on Drugs and Crime could be integrated into the collective efforts of the Department of

Peacekeeping Operations and other United Nations entities, other organizations and the international community in general could also be considered.

17. Organized crime, corruption and the lack of a clear legal framework have frequently hampered the restoration of criminal justice systems. There is often a need for special measures to combat trafficking in illicit drugs, human beings and other smuggled goods. Essential too is the requirement to ensure integrity in the criminal justice system, to establish systems of civilian oversight over the police and to draft relevant new legislation. In such a context, the treatment of prisoners, provisions for children in difficult circumstances and juveniles deprived of their liberty, the position of women within the criminal justice system and the establishment of victim support schemes are vital for strengthening the rule of law in protecting the most vulnerable.

18. The Commission may wish to discuss the role of the United Nations Office on Drugs and Crime in strengthening the rule of law, in coordination with the Department of Peacekeeping Operations and other United Nations entities, in developing countries and countries with economies in transition, as well as post-conflict situations, taking also into account the results of workshops to be held at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on the same theme, to be organized in cooperation with the United Nations Interregional Crime and Justice Research Institute and the other institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, which will mainly focus on best practices and evaluation findings.

Notes

¹ General Assembly resolution 55/59, annex.

² General Assembly resolution 55/2.
