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Annual report of the United Nations High Commissioner for Human Rights and report of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Secretary-General on human rights in the administration of justice, including juvenile justice*

Summary

The present report is submitted pursuant to a request by the Human Rights Council to the Secretary-General in resolution 10/2 to submit a report on the latest developments, challenges and good practices in human rights in the administration of justice, including juvenile justice and conditions for women and children in detention, as well as in the activities undertaken by the United Nations system as a whole. The report looks briefly at the long-standing United Nations engagement with the issue of human rights protection in the administration of justice, and provides a short outline of the human rights norms and standards relevant in the administration of justice. The following chapters set out a number of developments and activities undertaken by the United Nations system in the period since the last report on this topic by the Secretary-General to the Council, with a focus on juvenile justice and the conditions of women and children in detention. The report concludes with some of the current challenges in protecting human rights in the administration of justice.

* Late submission.

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I. Introduction

1. The Human Rights Council, in its resolution 10/2, human rights in the administration of justice, in particular juvenile justice, requested the Secretary-General to submit a report to the Council on the latest developments, challenges and good practices in human rights in the administration of justice, including juvenile justice and conditions for women and children in detention, and in the activities undertaken by the United Nations system as a whole. The present report responds to that request, and is the first such report requested by the Council. An earlier report on the topic (A/HRC/4/102) was presented to the Council at its fourth session on the basis of previous requests made by the Commission on Human Rights (most recently in resolution 2004/43), and decision 2/102 of the Human Rights Council.

2. The Council also has before it a report of the High Commissioner on the implementation of resolution 10/2, as requested in paragraph 19 of the resolution. The High Commissioner's report (A/HRC/14/35 and Add.1) focuses on implementation of the resolution at the national level, and is based on information received from Member States. The present report should be read in conjunction with the report of the High Commissioner to provide the most complete contemporary picture of human rights and the administration of justice.

II. Human rights in the administration of justice

3. The promotion and protection of human rights in and through the administration of justice has been a matter of concern of the United Nations since the Organization's inception. Key human rights relevant to the administration of justice were set down in the Universal Declaration of Human Rights, in particular in article 3 (the right to life, liberty and security of person), article 5 (the prohibition of torture and cruel, inhuman or degrading treatment or punishment), article 6 (the right to recognition everywhere as a person before the law), article 7 (equality before the law), article 8 (the right to an effective remedy), article 9 (prohibition on arbitrary arrest or detention), article 10 (the right to a fair trial), and article 11 (presumption of innocence and non-retroactivity).¹ These rights found legally binding expression in the subsequent human rights treaties adopted by the General Assembly, in particular the International Covenant on Civil and Political Rights, as well as a number of other texts giving detailed guidance on the implementation of human rights guarantees in the administration of justice, such as the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in 1957.

4. A consideration of the state of protection of human rights in the administration of justice has remained a preoccupation of the United Nations in the decades since, with periodic resolutions on the issue adopted by the General Assembly² and the Commission on Human Rights.³ In its most recent resolution on human rights in the administration of justice, the General Assembly invited the Human Rights Council to continue consideration of the topic. The work of the Commission on Human Rights was further developed by the

¹ See also preambular paragraphs of successive resolutions of the General Assembly, for example General Assembly resolution 60/159 of 16 December 2005.

² See for example Human Rights in the Administration of Justice, General Assembly resolution 2858 (XXVI), 20 December 1971.

³ Most recently in Commission on Human Rights resolution 2004/43 and Human Rights Council resolution 10/2.

work of its special procedures including (but not limited to) the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Working Group on Arbitrary Detention. Contributions were also made by the Subcommission on Prevention of Discrimination and Protection of Minorities, in particular through its sessional working group on the administration of justice established in 1994,⁴ and the studies and working papers produced by Subcommission members, such as a series of reports on discrimination in the criminal justice system.⁵ The United Nations human rights treaty bodies play a leading role in highlighting the general nature of human rights guarantees in the justice administration systems of the States parties to the relevant treaties, through their consideration of periodic reports, individual communications and general comments and recommendations. Other parts of the United Nations system have examined, and continue to examine, the link between human rights and the administration of justice, in particular the Commission on Crime Prevention and Criminal Justice.

5. The work of the United Nations to date has clarified in some detail the links between human rights protection and the administration of justice, and has provided standards by which to assess new phenomena and challenges as they arise. At the core of the administration of justice is the formal criminal justice system. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993 stated: “Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and especially an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.”

6. The specific human rights involved in the criminal justice system are extensive. Rights on arrest and during pretrial detention include those relating to conditions of detention (including the prohibition of torture), the legal basis for the detention and judicial review thereof, and the presumption of bail. Criminal trials are assessed against fair trial guarantees laid down in human rights law, including the right to a public hearing by a competent, independent and impartial tribunal established by law and a presumption of innocence, the right to counsel, equality of arms and the right to appeal. Sanctions imposed by courts in criminal matters raise further rights issues, for example ensuring a focus on rehabilitation and reintegration of offenders, the impact of imprisonment on groups particularly vulnerable to human rights violations, and the use of the death penalty. The principle of non-discrimination forms a background to the entire criminal justice process. The administration of justice extends beyond the criminal justice system to other means of administering justice, such as military justice, administrative justice and transitional justice mechanisms. Each of these provides a means for realizing the right to a remedy and the State’s obligation to provide a means for vindicating individuals’ rights. In their application, however, they can also lead to human rights violations.

⁴ Decision 1994/104 of 2 August 1994.

⁵ See E/CN.4/Sub.2/2002/5, para 6.

III. Recent developments

7. In the time since the report of the Secretary-General to the fourth session of the Council in March 2007, there have been a significant number of developments in the field of human rights in the administration of justice, including juvenile justice. As requested by the Council, this chapter of the report sets out the most important of those developments, notably in the areas of juvenile justice and conditions for women and children in detention.

A. Developments in international law

8. In respect of international treaties, a key development was the adoption by the General Assembly in resolution 63/117 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 10 December 2008. Although 32 States parties to the Covenant have signed the Optional Protocol, there have been no ratifications to date and the instrument is thus yet to come into force. Once in force, the Committee on Economic, Social and Cultural Rights will have competence to receive and consider communications from (or on behalf of) individuals or groups of individuals claiming to be victims of a violation by a State party of any of the economic, social and cultural rights laid down in the Covenant. The Optional Protocol will thus provide a further mechanism for ensuring that the human rights of all (including, for example, detainees' right to food) are respected, protected and fulfilled.

9. The International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly in 2006, requires two further ratifications to enter into force.⁶ Once in force, States parties to the Convention will be required, *inter alia*, to ensure that enforced disappearance constitutes an offence under the national criminal law, and to take the necessary measures to hold criminally responsible all those responsible for the crime, including superiors. The Convention recognizes the continuing nature of the crime of enforced disappearance. Under article 9 of the Convention, States parties are obliged to establish competence to exercise jurisdiction over the offence of enforced disappearance not only in any territory under their jurisdiction, but also when the alleged offender or victim is one of their nationals. When the alleged offender is present in any territory under the State party's jurisdiction, the State has an obligation to either extradite or surrender the individual to another State or to an international criminal tribunal whose jurisdiction it has recognized.

10. The 50th ratification of the Optional Protocol to the Convention against Torture in 2009 allowed the membership of the Subcommittee on Prevention of Torture to be expanded. This enables the Subcommittee to broaden its range of activities, which include making unannounced visits to places of detention and providing technical advice to States on the establishment of national independent preventive bodies.

11. The international community has also taken the opportunity of the anniversaries of a number of human rights instruments to reflect on the links between human rights and the administration of justice. For the sixtieth anniversary of the Universal Declaration of Human Rights in December 2008, the High Commissioner for Human Rights designated a "Dignity and Justice for Detainees Week", calling on all partners to pay special attention to the civil, cultural, economic, political and social rights of persons deprived of their liberty in prisons and other places of detention. A number of activities were undertaken in country offices of the Office of the High Commissioner for Human Rights, some of which are

⁶ On 7 March 2010, 18 of the required 20 ratifications had been deposited. Article 39 of the Convention, General Assembly resolution 61/177.

reported in section C below. Initiatives have also marked the thirtieth anniversary of the Convention on the Elimination of All Forms of Discrimination against Women in December 2009, the twentieth anniversary of the Convention on the Rights of the Child in November 2009 and the twentieth anniversary of the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in December 2009.

12. Following an initiative of the Government of Thailand, the United Nations Commission on Crime Prevention and Criminal Justice in April 2009 decided to establish an open-ended intergovernmental group of experts to develop rules specific to the treatment of women in detention and in custodial and non-custodial settings.⁷ Any new rules would be supplementary to and consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955. The Commission was mindful that existing rules might not adequately address the issue of female detainees.⁸ The expert group, convened by the United Nations Office on Drugs and Crime (UNODC), has prepared a draft to be submitted to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in April 2010. As part of awareness-raising on the issue, the Government of Thailand organized a side event at the twelfth session of the Human Rights Council on “Inspiring Women’s Rights in Prison”.

13. The General Assembly has recently adopted a number of resolutions which directly address the role of human rights in the administration of justice, including juvenile justice,⁹ the coordination of United Nations rule of law activities,¹⁰ and moratoriums on the use of the death penalty.¹¹ In addressing the protection of human rights and fundamental freedoms while countering terrorism, the General Assembly¹² urged States while countering terrorism to, inter alia, ensure the application of human rights law to those deprived of their liberty, to interrogation methods and to trial procedures, and to ensure that laws criminalizing acts of terrorism are non-discriminatory, non-retroactive and in accordance with international human rights law.

14. On the issue of juvenile justice and human rights, the United Nations Commission on Crime Prevention and Criminal Justice has considered reports of the Secretary-General on support of national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination,¹³ and on Implementation of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.¹⁴

⁷ Resolution 18/1, “Supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings.”

⁸ These concerns have been raised by a number of actors. For example, in June 2008, the Quaker United Nations Office in Geneva published “A commentary on the UN Standard Minimum Rules for the Treatment of Prisoners” (QUNO, Geneva, 2008), which highlighted the lack of a gender perspective in the Standard Minimum Rules.

⁹ General Assembly resolution 63/241, “Rights of the child.”

¹⁰ General Assembly resolution 63/128, “The rule of law at the national and international levels.”

¹¹ General Assembly resolution 63/168, “Moratorium on the use of the death penalty.”

¹² General Assembly resolution 64/168, “Protection of human rights and fundamental freedoms while countering terrorism.”

¹³ E/CN.15/2009/12.

¹⁴ E/CN.15/2008/11.

B. Developments in the work of the human rights treaty bodies

15. The human rights treaty bodies continue to address the human rights aspects of the administration of justice in their consideration of the periodic reports of States parties, in individual communications procedures, and in their general comments and recommendations. In 2007 the Human Rights Committee adopted a general comment on article 14 of the International Covenant on Civil and Political Rights which sets out in detail the Committee's views on the right to equality before courts and tribunals and to a fair trial.¹⁵ The Committee has more recently addressed the obligations of States parties under the Optional Protocol to the Covenant,¹⁶ including the nature of interim or provisional measures granted by the Committee when an action taken or threatened by the State party would appear likely to cause irreparable harm to the author or the victim of the alleged violation.

16. In its general comment No. 20 on non-discrimination in economic, social and cultural rights,¹⁷ the Committee on Economic, Social and Cultural Rights emphasized the desirability of States parties providing training to judges and candidates for judicial appointment on the principle of non-discrimination as a means of fulfilling obligations under article 2 of the International Covenant on Economic, Social and Cultural Rights. In its general comment No. 19 on the right to social security,¹⁸ the Committee indicated its view that any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels, and that judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to social security in the exercise of their functions.

17. The Committee on the Rights of the Child adopted its general comment No. 12 on the right of the child to be heard in 2009,¹⁹ in which it addressed, inter alia, the implementation of article 12 (2) of the Convention, which specifies that children must be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child. In the general comment, the Committee emphasized a number of points, including the importance of providing an environment in which the child can be heard effectively and not be intimidated (for example, through the use of overly formal court proceedings), and the Committee's recommendation that wherever possible, the child be given the opportunity to be directly heard in any proceedings rather than through a representative.

18. A general recommendation on women migrant workers adopted by the Committee on the Elimination of Discrimination against Women in 2008 addresses a number of human rights challenges faced by this group in the administration of justice, including vulnerability in detention,²⁰ and access to justice.²¹

19. In its views on individual communications under the first Optional Protocol to the Covenant, the Human Rights Committee has continued to address the functioning of justice

¹⁵ General comment No. 32 on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

¹⁶ General comment No. 33 on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33.

¹⁷ General comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2), E/C.12/GC/20.

¹⁸ E/C.12/GC/19, adopted on 23 November 2007.

¹⁹ CRC/C/GC/12.

²⁰ CEDAW/C/2009/WP.1/R, paras. 19, 22 and 26 (j).

²¹ CEDAW/C/2009/WP.1/R, paras. 21 and 26 (l).

administration systems, including recent cases involving: individuals whose names were placed on the Consolidated List of the United Nations Sanctions Committee, resulting in a freezing of their assets and limitations on their freedom of movement;²² ethnic profiling by police in stop and search;²³ failure to adequately investigate a killing;²⁴ judicial procedures for extradition of individuals involving a risk of the death penalty;²⁵ house arrest as arbitrary detention;²⁶ failure to establish procedures on the arrest of juveniles that take account of their age and the desirability of promoting their rehabilitation;²⁷ lack of reasons for dismissal of an appeal as a violation of article 14, paragraph 5, of the Covenant;²⁸ and procedural fairness in the dismissal of a judge.²⁹

C. Developments in the work of the special procedures of the Human Rights Council

20. The special procedures of the Human Rights Council address human rights and administration of justice issues from the perspective of their thematic or geographic mandates. This significant work is provided to the Council in the reports of the individual mandate holders and working groups, such as mission reports. Some developments of particular interest are set out below.

21. In 2009 the Working Group on Enforced or Involuntary Disappearances adopted a general comment in which it expressed its view that the definition of “crime against humanity” set out in article 7 (1) of the Statute of the International Criminal Court now reflects customary international law and can thus be used to interpret and apply the provisions of the Declaration for the Protection of All Persons from Enforced Disappearances. Thus enforced disappearance may amount to a crime against humanity where the criteria listed in article 7 (1) of the Statute are met, namely where it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

22. In his final report to the Human Rights Council submitted in 2009, the former Special Rapporteur on the independence of judges and lawyers explored guarantees of judicial independence (A/HRC/11/41), setting out a number of recommendations on judges’ appointment, tenure, conditions of service, freedom of expression and association, and the national budget allocated to the judiciary. He also called for the adoption of a comprehensive set of principles on the independence of the judiciary to further the Basic Principles on the Independence of the Judiciary endorsed by the General Assembly in 1985 (A/RES/40/146). The Special Rapporteur’s 2009 report to the General Assembly similarly addressed safeguards for the independence of lawyers and the legal profession (A/64/181).

23. A number of the special procedures have continued to draw attention to issues which they identify as current challenges to the protection of human rights within the context of the administration of justice. Thus the Special Rapporteur on extrajudicial, summary or arbitrary executions has recently explored the phenomenon of mob justice (A/64/187), and

²² Communication No. 1472/2006, *Sayadi v. Belgium*, Views adopted 22 October 2008.

²³ Communication No. 1493/2006, *Le Craft v. Spain*, Views adopted 27 July 2009.

²⁴ Communication No. 1447/2006, *Amirov v. Russian Federation*, Views adopted 2 April 2009.

²⁵ Communication No. 1461/2006, *Maksudov, et al. v. Krygystan*, Views adopted 16 July 2008. See also Communication No. 1442/2005, *Kwok v. Australia*, Views adopted 23 October 2009.

²⁶ Communication No. 1460/2006, *Yklymova v. Turkmenistan*, Views adopted 20 July 2009.

²⁷ Communication No. 1241/2004, *Sharifova and others v. Tadjikistan*, Views adopted 1 April 2008.

²⁸ Communication No. 1542/2007, *Aboushanif v. Norway*, Views adopted 17 July 2008.

²⁹ Communication No. 1376/2005, *Bandaranayake v. Sri Lanka*, Views adopted 24 July 2008.

the use of lethal force in the process of policing public assemblies (A/HRC/11/2). The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently addressed the use of the death penalty from the point of view of the norm prohibiting torture, together with the treatment of drug users in the criminal justice system (A/HRC/10/44), in particular the possibility that the denial of medical treatment in situations of detention may constitute cruel, inhuman or degrading treatment or punishment (para. 71). A more complete study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, has been submitted by the Special Rapporteur to the Council in 2010.³⁰

24. In 2010 the Representative of the Secretary-General on the human rights of internally displaced persons submitted to the Council a revised Framework on Durable Solutions for Internally Displaced Persons.³¹ The Framework aims to provide clarity on the concept of a durable solution for internally displaced persons (IDPs) and provides general guidance on how it can be achieved. Inter alia, the Framework recognizes effective remedies for violations linked to displacement, including access to justice and, where appropriate, reparations, as one of the key conditions determining whether a durable solution has been reached.

D. Developments in the United Nations system

25. Across the United Nations system, a number of developments since 2007 have a direct bearing on human rights protection in the administration of justice. The Rule of Law Coordination and Resource Group, created in 2007 following a decision of the Secretary-General, aims to increase coherence and minimize fragmentation across rule of law activities in the United Nations system. To date, the Group has, among other things, developed four Guidance Notes of the Secretary-General, each with an explicit foundation in international human rights norms: United Nations Assistance to Constitution-making Processes; United Nations Approach to Rule of Law Assistance; United Nations Approach to Transitional Justice; and United Nations Approach to Justice for Children.

26. The last-mentioned Guidance Note represents a major development for the United Nations system in respect of juvenile justice, providing the guiding principles and framework for United Nations work in the area of juvenile justice. In doing so it sets such activities within the United Nations mandate to promote the realization of human rights. The guiding principles and framework it adopts are grounded in relevant human rights norms, in particular the Convention on the Rights of the Child, and in the work of the Committee on the Rights of the Child and its general comment No. 10. The common United Nations approach set down in the Guidance Note is being rolled out at country level. Some of these activities are reported in section C above.

27. As part of a series of tools to support States in implementing the rule of law and the development of criminal justice reform, UNODC published a *Handbook for Prison Managers and Policymakers on Women and Imprisonment* in 2008. The Handbook draws to some extent on the international human rights norms relevant to detention and women and on the general comments of the Human Rights Committee.

28. The World Health Organization's European office, as part of its Health in Prison Project, together with UNODC, has addressed the health needs of women prisoners in a publication entitled *Women's Health in Prison: Correcting gender inequity in prison*

³⁰ A/HRC/13/39 and A/HRC/13/39/Add.5.

³¹ A/HRC/13/21/Add.4.

health.³² The publication is based on the principles and recommendations of the Kyiv Declaration on Women's Health in Prison, adopted following a conference in November 2008 co-organized by, inter alia, the World Health Organization and the United Nations Office on Drugs and Crime. The Declaration stresses that "the underlying importance of human rights should underpin all thinking and all policy development for all those in compulsory detention". Although focused on European countries, the Health in Prison Project could be replicated in other regions of the world.

29. Recent years have also seen the continued rolling out of a set of 15 juvenile justice indicators (together with a manual for implementation) developed by the United Nations Children's Fund (UNICEF) and UNODC in 2006 together with a manual.³³ Roll-out took place in the South East Asia region in 2008 and the Middle East and North African regions in 2009.³⁴

30. The Interagency Panel on Juvenile Justice (IPJJ) continued to facilitate and enhance country and global level coordination in the provision of technical advice and assistance in juvenile justice in accordance with the Convention on the Rights of the Child and other relevant norms and standards.³⁵ Mandated by the Economic and Social Council,³⁶ the IPJJ has, since 2008, encouraged States to adopt a comprehensive approach to juvenile justice reform in a manner that upholds the rights of the child in contact with the justice system, in line with the Secretary-General's Guidance Note on the United Nations Approach to Justice for Children. The Panel's work includes increasing the availability of existing technical resources on juvenile justice (primarily through its website, www.juvenilejusticepanel.org) and building and maintaining a juvenile justice expert roster, a revised version of which was developed in 2008 and published online in early 2009.

31. In October 2008 the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights, held in Nairobi, focused on the role of national human rights institutions in the administration of justice. The Conference adopted a Declaration which identifies the main areas and means by which National Human Rights Institutions in exercising their mandates can work to strengthen the administration of justice

³² WHO, Geneva: 2009.

³³ "Manual for the Measurement of Juvenile Justice Indicators" (2006).

³⁴ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (UNICEF CEE/CIS), "The Development of Juvenile Justice Systems in Eastern Europe and Central Asia. Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine", July 2009; UNICEF CEE/CIS, "Regional and International Indicators on Juvenile Justice: Their Applicability and Relevance in Selected Countries of Eastern Europe and Central Asia", 2009.

³⁵ The Panel is currently composed of 14 members — 7 United Nations bodies and 7 non-governmental organizations — that work to ensure that child justice systems comply with the Convention on the Rights of the Child and other international norms and standards: the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Department of Peacekeeping Operations (DPKO), the United Nations Development Programme (UNDP), the United Nations Interregional Crime and Justice Institute (UNICRI), the United Nations Office on Drugs and Crime (UNODC), the Committee on the Rights of the Child (CRC), Defence for Children International (DCI), the International Association of Youth and Family Judges and Magistrates, the International Juvenile Justice Observatory (IJJO), Penal Reform International (PRI), Save the Children UK, Terre des hommes – Aide à l'enfance (Tdh) and the World Organisation Against Torture (OMCT). In 2007, the Panel established a permanent Secretariat to further develop, strengthen and support the work of its members, and in 2008 the Panel accepted three new members: the United Nations Interregional Crime and Justice Research Institute, the International Association of Youth and Family Judges and Magistrates and the International Juvenile Justice Observatory.

³⁶ See ECOSOC resolutions 1997/30 and 2007/23.

at the national level. The recommendations are focused on the judiciary and access to justice, legal aid, law enforcement and detention.

32. A large number of initiatives on human rights and juvenile justice have been undertaken by non-governmental and civil society actors in recent years. One example is the First World Congress on Restorative Juvenile Justice, held in Lima in November 2009. The Declaration adopted by the Congress urged the adoption of a restorative justice approach to juvenile justice, as an approach which focuses on repairing the individual, relational and social harm caused by the offence committed. Also of note are a series of papers on various aspects concerning children of prisoners published by the Quaker United Nations Office.³⁷

IV. United Nations system activities

33. As a whole, the United Nations system has undertaken a large number of activities and initiatives which have a bearing on the protection of human rights in the administration of justice. This chapter outlines some illustrative examples of these activities, with a focus on juvenile justice and on those practices identified by their implementers as promising in terms of effecting change.

34. In 2009, UNICEF further strengthened its focus on upstream policy advocacy and legal reform work, supporting new or amended pieces of legislation in Kenya, Central African Republic, Indonesia, Kyrgyzstan, Djibouti and Sri Lanka. In Ethiopia, the agency assisted in developing a National Criminal Justice Policy, designed to extend special attention to children in conflict with the law, child victims and other vulnerable groups throughout all stages of the criminal justice procedure. In Liberia and in Papua New Guinea, UNICEF has led the development of a national common approach to justice for children, with a view to leveraging the work of other United Nations entities on the issue.

35. UNICEF continues to focus its efforts on the reduction of the number of children in detention, for example through the setting up of mechanisms for diversion from judicial proceedings and alternatives to deprivation of liberty. In Togo the work of the UNICEF country office in promoting diversion has resulted in an increase of 83 per cent in alternatives to detention sentences. Building the capacity of justice for children professionals (including ministry staff, the police, judges, lawyers, paralegals and social workers) also remains a major strategy in UNICEF justice interventions, through both pre- and in-service training and the inclusion of justice for children issues in regular professional curricula. The agency has also emphasized a shift from juvenile justice to justice for children, implying a focus beyond children in conflict with the law to also include child victims and witnesses of crime. New tools for policymakers and professionals working with child victims and witnesses of crime, such as a model law and an implementation handbook, have been developed with UNODC. At country level, UNICEF offices have also further strengthened their support to child victims and witnesses of crime, through the establishment of child-friendly courts and police procedures, victim support units, toll-free telephone lines, legal support and counselling. With UNICEF's assistance, Swaziland has established its first child-friendly court.

³⁷ Oliver Robertson: *Children Imprisoned by Circumstance* (QUNO, Geneva, 2008); Jennifer Rosenberg: *Children Need Dads Too – Children with Fathers in Prison* (QUNO, Geneva, 2009); Jean Tomkins: *Orphans of Justice – In search of the best interests of the child when a parent is imprisoned: A legal analysis* (QUNO, Geneva, 2009).

36. In the Philippines UNICEF supports a comprehensive approach to juvenile justice which has resulted in a drastic reduction in the number of children in detention, from more than 2,000 in 2006 to 387 in 2008. This result has been achieved through a systemic approach to the issue, encompassing the development of a Juvenile Justice and Welfare Act, assistance to the National Police Commission in developing a police manual on handling of children in conflict with the law focused on diversion, and development of community-based diversion programmes for children in conflict with the law in 298 barangays, small administrative divisions.

37. In promoting a comprehensive approach to juvenile justice, UNICEF has worked in Indonesia to incorporate into the National Strategy on Access to Justice provisions on children in contact with the law. In Liberia, UNICEF has led the development of a national common approach to child justice in Liberia that was endorsed by the Rule of Law Group in the context of the United Nations Development Assistance Framework (2008–2012) and led to the establishment of a child justice forum chaired by the Ministry of Justice.

38. In 2008, UNODC implemented programmes on juvenile justice in Egypt, Jordan and the Libyan Arab Jamahiriya. A programme that started in Egypt in 2003 is now focusing on the vocational training and social reintegration of boys, including pre-release and post-release preparation, and provides for specific action targeting girls in conflict with the law. The programme in the Libyan Arab Jamahiriya has led to the adoption and implementation of a national strategy on juvenile justice.

39. At the request of the Economic and Social Council,³⁸ UNODC is preparing an intergovernmental meeting of experts to study ways and means of strengthening access to legal aid in the criminal justice system, together with the possibility of developing an instrument such as a declaration of basic principles or a set of guidelines for improving access to legal aid in criminal justice systems.

40. As noted above, a number of events were held in country offices of the Office of the United Nations High Commissioner for Human Rights (OHCHR) within the context of the Dignity and Justice for Detainees Week to commemorate the sixtieth anniversary of the Universal Declaration of Human Rights. For example, the United Nations Assistance Mission in Afghanistan (UNAMA), in partnership with UNODC and the United Nations Development Fund for Women (UNIFEM), organized a series of events in Afghanistan aimed at raising awareness of the findings and recommendations of a report produced by UNAMA on arbitrary detention in the country. Activities included a joint UNAMA-UNODC press conference on detention; the broadcast of a round-table discussion on national television on the rights of detainees; and two joint UNAMA-UNODC-UNIFEM workshops on arbitrary detention and impunity and arbitrary detention and women.

41. The High Commissioner for Human Rights has submitted *amicus curiae* briefs before national and international tribunals in cases where the provision of her expertise under her mandate may assist the court in dealing with human rights issues. Most recently, briefs related to the administration of justice were submitted in two jurisdictions. In June 2008 a brief was filed in proceedings before the Supreme Court of Cambodia addressing fair trial issues under article 14 of the International Covenant on Civil and Political Rights. A second brief was filed in August 2008 in proceedings before the Constitutional Court of Guatemala addressing the crime of enforced disappearance and its characteristics under international human rights law.

42. In 2008 OHCHR published an addendum to its joint publication *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and*

³⁸ Resolution 2007/24.

Lawyers, which was first published in 2003. The addendum covered major developments on human rights in the administration of justice from 2003 to 2007. The OHCHR series of rule-of-law tools for post-conflict States expanded to include publications on reparations programmes, the legacy of hybrid courts, amnesties, and national consultations on transitional justice.

43. OHCHR has conducted a number of activities at the national level including training of judges, prosecutors, police, and lawyers on human rights in the administration of justice. In Timor-Leste, the Human Rights and Transitional Justice Section of the United Nations Integrated Mission in Timor-Leste (UNMIT) supported a week-long training course on the protection of human rights in the judicial process for 14 future judges, prosecutors and public defenders. The training included material on fair trial guarantees and the rights of victims. In Colombia, OHCHR assisted the Supreme Court of Justice in the organization of national events to support the independence of the judiciary and visits by Colombian judges to other high courts in the Latin American region with a view to exchanging experiences on judicial investigations of human rights violations by armed groups.

44. The protection of human rights in the administration of justice requires a sound legislative basis. OHCHR is regularly involved in providing support and advice to national law reform efforts with a view to improving compliance with international human rights standards. Following the ratification by Lebanon of the Optional Protocol to the Convention against Torture (OPCAT) in late 2008, OHCHR assisted the Government in the formation of a Steering Committee of the Lebanese Ministry of Justice to draft a law to establish a national preventive mechanism as provided for under OPCAT. OHCHR, as a member of the Committee with consultative status, has been involved in the drafting of the proposed law. Similar assistance was provided in Kyrgyzstan and Georgia.

45. OHCHR works with a range of other actors, including judges, governments, civil society and United Nations agencies, to promote a jurisprudence of national courts which is in line with international human rights standards. In Cambodia, OHCHR has worked with UNICEF in the area of juvenile justice, particularly with the aim of reducing custodial sentences for persons under the age of 18, in accordance with the Convention on the Rights of the Child. A landmark ruling by the country's Constitutional Council in July 2007 reaffirmed that courts should take into account the age of the perpetrator in order to impose lesser sentences.

46. A further means of promoting human rights protection is through the monitoring of the criminal justice system and the development of indicators to assess gaps in protection. With regard to the former, OHCHR regularly monitors places of detention and criminal trials at the national level. Systematic monitoring of the legal system in the context of United Nations Peace Operations is undertaken in partnership with the Rule of Law Units of the Department of Peacekeeping Operations, on the basis of the OHCHR *Rule of Law Tools for Post-Conflict States: Monitoring legal systems*.

V. Conclusions

47. **The developments and activities set out in this report illustrate the crucial role human rights protection plays in ensuring a fair and efficient system of administration of justice and the key role justice mechanisms play in ensuring respect for human rights. The long-standing interest of the United Nations and its Members in the role of human rights in the administration of justice continues and deepens, with the development of more detailed normative guidance, and a greater focus on implementation at the country level of existing human rights standards.**

48. A number of challenges however remain, and new challenges arise. Implementation of the existing standards remains one of the greatest concerns. For example, the detention of children continues to be used as a routine response rather than as an option of last resort, leaving children exposed to a number of human rights violations including physical and sexual violence. The need for alternative solutions to the detention of children was one of the priority issues identified by the Interagency Panel on Juvenile Justice at its annual meeting in 2009, the other two being gender issues and social reintegration. The specific vulnerability of women in detention to human rights abuse has been highlighted in a number of forums, including the Human Rights Council, as being a challenge requiring urgent action.

49. The work of the treaty bodies and the special procedures also underscore ongoing lack of implementation of State obligations to ensure the independence of the judiciary, the complete prohibition on torture, the right to legal representation in criminal matters and the presumption of bail over the use of pretrial detention.
