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Agenda item 4

World crime trends and responses: integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice

South Africa: revised draft resolution

Strengthening the rule of law through improved integrity and capacity of prosecution services

The Commission on Crime Prevention and Criminal Justice,

Recalling the Charter of the United Nations, the Universal Declaration of Human Rights¹ and the International Covenant on Civil and Political Rights,² which enshrine, in particular, the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Recalling also the International Covenant on Economic, Social and Cultural Rights,³

Recalling further the United Nations Convention against Corruption,⁴ in particular its article 11, on measures relating to the judiciary and prosecution services,

Convinced that corruption of members of prosecution services undermines the rule of law and adversely affects public confidence in the justice system and that the integrity, independence and impartiality of prosecutors are essential prerequisites for the effective protection of human rights and economic development,

¹ General Assembly resolution 217 A (III).

² General Assembly resolution 2200 A (XXI), annex.

³ General Assembly resolution 2200 A (XXI), annex.

⁴ General Assembly resolution 58/4, annex.



Recalling the Guidelines on the Role of Prosecutors,⁵ adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990,

Recalling also Economic and Social Council resolution 2007/22 of 26 July 2007, on strengthening basic principles of judicial conduct, in which the Council requested the United Nations Office on Drugs and Crime, inter alia, to explore the development of technical cooperation projects and activities aimed at strengthening the integrity and capacity of other criminal justice institutions, in particular prosecution services and the police, in cooperation with the initiatives of States and relevant international organizations,

Welcoming the report of the Secretary-General on strengthening justice, integrity and the rule of law through technical assistance in developing, transitional and post-conflict societies, with a focus on Africa,⁶ and the progress made by the United Nations Office on Drugs and Crime in implementing General Assembly resolution 2007/22, as described in that report,

Acknowledging the important work carried out by international and regional forums, including the International Association of Prosecutors, in the development and dissemination of standards and measures to strengthen the conduct of prosecution services,

Convinced that the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, developed by the International Association of Prosecutors, are complementary to the Guidelines on the Role of Prosecutors,

1. *Requests* the United Nations Office on Drugs and Crime to circulate the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, annexed to the present resolution, to Member States for their consideration and comments;

2. *Also requests* the United Nations Office on Drugs and Crime to prepare by the third quarter of 2008, a structured, verbatim compilation of the comments received from Member States, as an addendum to the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors;

3. *Invites* Member States, consistent with their domestic legal systems, to encourage their prosecution services to take into consideration the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, and the above-mentioned addendum when reviewing or developing rules with respect to the professional and ethical conduct of members of prosecution services;

4. *Requests* the United Nations Office on Drugs and Crime to continue to provide, upon request by Member States, technical assistance, including, as appropriate, material and tools, such as the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors and the

⁵ *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex.

⁶ E/CN.15/2008/12.

above-mentioned addendum, to allow such Member States to strengthen the integrity and capacity of their prosecution services;

5. *Invites* Member States and other donors to provide extrabudgetary contributions for the above-mentioned purposes in accordance with the rules and procedures of the United Nations;

6. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twentieth session on the implementation of the present resolution.

Annex*

Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

WHEREAS the objects of the International Association of Prosecutors are set out in Article 2.3 of its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

WHEREAS the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

WHEREAS the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

WHEREAS the public need to have confidence in the integrity of the criminal justice system;

WHEREAS all prosecutors play a crucial role in the administration of criminal justice;

WHEREAS the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;

WHEREAS the exercise of prosecutorial discretion is a grave and serious responsibility;

AND WHEREAS such exercise should be as open as possible, consistent with personal rights, sensitive to the need not to re-victimise victims and should be conducted in an objective and impartial manner;

THEREFORE the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

* The present annex is reproduced in the form in which it was received.

1. PROFESSIONAL CONDUCT

Prosecutors shall:

- a) at all times maintain the honour and dignity of their profession;
- b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- c) at all times exercise the highest standards of integrity and care;
- d) keep themselves well-informed and abreast of relevant legal developments;
- e) strive to be, and to be seen to be, consistent, independent and impartial;
- f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- g) always serve and protect the public interest;
- h) respect, protect and uphold the universal concept of human dignity and human rights.

2. INDEPENDENCE

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

transparent;

consistent with lawful authority;

subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- a) carry out their functions impartially;
- b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- c) act with objectivity;

- d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

- a) where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
- b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
- c) when giving advice, they will take care to remain impartial and objective;
- d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;
- e) throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
- f) when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore:

- a) preserve professional confidentiality;
- b) in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;
- c) safeguard the rights of the accused in co-operation with the court and other relevant agencies;

- d) disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- e) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- f) refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- g) seek to ensure that appropriate action is taken against those responsible for using such methods;
- h) in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

- a) co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and
- b) render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- b) together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;

- d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
 - e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
 - f) to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
 - g) to objective evaluation and decisions in disciplinary hearings;
 - h) to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status; and
 - i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.
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