

## ECOSOC Resolution 2007/24

### **International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa**

*The Economic and Social Council,*

*Recalling* the Universal Declaration of Human Rights,<sup>1</sup> which enshrines the key principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence,

*Recalling also* the International Covenant on Civil and Political Rights,<sup>2</sup> in particular article 14, which states that everyone charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and to minimum guarantees, including to be tried without undue delay,

*Bearing in mind* the Standard Minimum Rules for the Treatment of Prisoners,<sup>3</sup> approved in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, according to which an untried prisoner shall be allowed to receive visits from his legal adviser,

*Bearing in mind* also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>4</sup> principle 11 of which states that a detained person shall have the right to be assisted by counsel as prescribed by law,

*Bearing in mind further* the Basic Principles for the Treatment of Prisoners<sup>5</sup> and the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules),<sup>6</sup>

*Bearing in mind* the Basic Principles on the Role of Lawyers,<sup>7</sup> in particular principle 1, which states that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings,

*Recalling* its resolution 1997/36 of 21 July 1997, on international cooperation for the improvement of prison conditions, in which it took note of the Kampala Declaration on Prison Conditions in Africa,<sup>8</sup>

*Recalling also* its resolution 1998/23 of 28 July 1998, on international cooperation aimed at the reduction of prison overcrowding and the promotion

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<sup>1</sup> General Assembly resolution 217 A (III).

<sup>2</sup> General Assembly resolution 2200 A (XXI), annex.

<sup>3</sup> *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).

<sup>4</sup> General Assembly resolution 43/173, annex.

<sup>5</sup> General Assembly resolution 45/111, annex.

<sup>6</sup> General Assembly resolution 45/110, annex.

<sup>7</sup> *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. B.3, annex.

<sup>8</sup> Economic and Social Council resolution 1997/36, annex.

of alternative sentencing, in which it noted that the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, had adopted the Kadoma Declaration on Community Service,<sup>9</sup>

*Recalling further* its resolution 1999/27 of 28 July 1999, on penal reform, in which it took note of the Arusha Declaration on Good Prison Practice,<sup>10</sup>

*Recalling* its resolution 2004/25 of 21 July 2004, on the rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction, and its resolution 2005/21 of 22 July 2005, on strengthening the technical cooperation capacity of the United Nations Crime Prevention and Criminal Justice Programme in the area of the rule of law and criminal justice reform,

*Bearing in mind* the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,<sup>11</sup> especially paragraph 18 of the Declaration, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

*Bearing in mind also* its resolution 2006/21 of 27 July 2006, on implementation of the Programme of Action, 2006-2010, on strengthening the rule of law and the criminal justice systems in Africa, and its resolution 2006/22 of 27 July 2006, in which it welcomed the Programme of Action, 2006-2010, adopted by the Round Table for Africa, held in Abuja on 5 and 6 September 2005, in particular the actions on penal reform and alternative and restorative justice,

*Having regard* to the regional efforts in the promotion of basic rights of prisoners, as considered by the Pan-African Conference on Penal and Prison Reform in Africa, held in Ouagadougou from 18 to 20 September 2002, and the Latin American Conference on Penal Reform and Alternatives to Imprisonment, held in San José from 6 to 8 November 2002, and pursued by the African Union and the Organization of American States, as well as the Asian Conference on Prison Reform and Alternatives to Imprisonment, held in Dhaka from 12 to 14 December 2002,

*Noting* the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and Other Service Providers in Africa, held in Lilongwe from 22 to 24 November 2004,

*Noting also* the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, and the Lilongwe Plan of Action for the implementation of the Declaration,<sup>12</sup>

*Concerned* at the proportion of suspects and pretrial detainees detained for long periods of time in many African countries without being charged or sentenced and without access to legal advice or assistance,

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<sup>9</sup> Economic and Social Council resolution 1998/23, annex.

<sup>10</sup> Economic and Social Council resolution 1999/27, annex.

<sup>11</sup> General Assembly resolution 60/177, annex.

<sup>12</sup> *Official Records of the Economic and Social Council, 2007, Supplement No. 10* (E/2007/30), chap. I, sect. B, draft resolution VI, annexes I and II.

*Noting* the prolonged incarceration of suspects and pretrial detainees without their being provided with access to legal aid or to the courts, and concerned that it violates the basic principles of human rights,

*Recognizing* that providing legal aid to suspects and prisoners may reduce the length of time suspects are held at police stations and detention centres, in addition to reducing the prison population, prison overcrowding and congestion in the courts,

*Mindful* that many Member States lack the necessary resources and capacity to provide legal assistance for defendants and suspects in criminal cases,

*Recognizing* the impact of action by civil society organizations in improving access to legal aid in criminal justice and in respecting the rights of suspects and prisoners,

1. *Notes* the progress made by Member States and the recent efforts by some to provide legal assistance for defendants and suspects in criminal cases;

2. *Encourages* Member States implementing criminal justice reform to promote the participation of civil society organizations in that endeavour and to cooperate with them;

3. *Commends* the initiation by the United Nations Office on Drugs and Crime of work focused on providing long-term sustainable technical assistance in the area of criminal justice reform to Member States in post-conflict situations, in particular in Africa, in cooperation with the Department of Peacekeeping Operations of the Secretariat, and the increased synergy between the two entities;

4. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, in cooperation with relevant partners, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of penal reform, including restorative justice, alternatives to imprisonment, the development of an integrated plan for the provision of legal assistance, including para-legals and similar alternative schemes to provide legal aid for persons in communities, including victims, defendants and suspects at all critical stages in criminal cases, and legislative reforms that guarantee legal representation in accordance with international standards and norms;

5. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources and in cooperation with the African Institute for the Prevention of Crime and the Treatment of Offenders, to assist African States, upon request, in their efforts to apply the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa;<sup>13</sup>

6. *Further requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to convene an open-ended intergovernmental meeting of experts, with interpretation, to study ways and means of strengthening access to legal aid in the criminal justice system, as well as the possibility of developing an instrument such as a declaration of

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<sup>13</sup> *Official Records of the Economic and Social Council, 2007, Supplement No. 10* (E/2007/30), chap. I, sect. B, draft resolution VI, annexes I and II.

basic principles or a set of guidelines for improving access to legal aid in criminal justice systems, taking into account the Lilongwe Declaration and other relevant materials;

7. *Requests* the Commission on Crime Prevention and Criminal Justice to include the issue of penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems, as a potential thematic topic for discussion by the Commission at one of its future sessions;

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

*45th plenary meeting  
26 July 2007*