



OFFICE OF THE  
UNITED NATIONS  
HIGH COMMISSIONER  
FOR HUMAN RIGHTS

# HUMAN RIGHTS AND PRISONS

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**Manual on Human Rights Training  
for Prison Officials**

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## NOTE

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## NOTE TO USERS OF THE MANUAL

This Manual is one component of the four-part publication ***Human Rights and Prisons***—a human rights training package for prison officials. The four components are designed to complement each other and, taken together, provide all necessary elements for the conduct of human rights training programmes for prison officials, under the training approach developed by the Office of the United Nations High Commissioner for Human Rights.

This **Manual** (component one of the package) provides in-depth information on sources, systems and standards for human rights relating to the work of prison officials, practical recommendations, topics for discussion, case studies and checklists.

The **Compilation** (component two of the package) includes excerpts from and full texts of selected international human rights instruments concerning the administration of justice.

The **Trainer's Guide** (component three of the package) provides instructions and tips for trainers to be used together with the Manual in conducting training courses for prison officials.

The **Pocketbook** of international human rights standards (component four of the package) is designed to be a readily accessible and portable reference for prison officials, containing a comprehensive collection of point-form standards organized according to prison officials' duties and functions, and topics, and referenced with detailed footnotes.

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Copies of the Compilation, the Trainer's Guide, the Pocketbook and this Manual may be obtained from:

Office of the United Nations High Commissioner for Human Rights  
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The two main organizations responsible for drafting the text, under OHCHR's guidance, were Penal Reform International, a London-based international non-governmental organization concerned with prison conditions and penal reform, and the International Centre for Prison Studies (located within the School of Law at King's College, University of London), which aims at assisting Governments and relevant agencies in developing appropriate policies on prisons and the use of imprisonment.

A draft version of ***Human Rights and Prisons*** was reviewed during an experts meeting organized by OHCHR in Geneva (9-12 March 1998). Practitioners and experts in the field participating in the meeting included Mr. Andrew Coyle from the International Centre for Prison Studies (United Kingdom); Mr. Joseph Etima, Commissioner of Prisons (Uganda); Mr. Henk Greven, former Director-General of Prison Administration and Child Care Probation (the Netherlands); Mr. Yuichi Kaido from the Centre for Prisoners' Rights (Japan); Ms. Irena Kriznik, Adviser to the Government of Slovenia; Ms. Julita Lemgruber, Assistant to the Secretary of Justice of Brazil; Mr. Miroslaw Nowak from the Central Board of Prison Service (Poland); Mr. Ahmed Othmani, Chairman of Penal Reform International; Dr. Rani Shankardass from the Centre for Contemporary Studies (India); and Prof. Dirk Van Zyl Smit, Professor of Criminology at the University of Cape Town (South Africa). The Special Rapporteur on Prisons and Conditions of Detention in Africa appointed by the African Commission on Human and Peoples' Rights, Professor Victor Dankwa, also joined the group of experts.

The United Nations Centre for International Crime Prevention\* (Vienna), the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (San Jose, Costa Rica) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (Strasbourg) were also represented at the meeting and provided various suggestions.

The training package was revised on the basis of substantive comments made by the participants and was piloted through courses offered to prison staff through the OHCHR Technical Cooperation Programme in the Field of Human Rights.

Finally, OHCHR would like to thank the Inter-American Institute of Human Rights (San Jose, Costa Rica) for translating into Spanish a draft English version of the Manual.

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\* Renamed in October 2002 the Crime Programme of the United Nations Office on Drugs and Crime.

## THE TRAINING PACKAGE: OBJECTIVES AND BENEFICIARIES

Since 1955, the Office of the United Nations High Commissioner for Human Rights (OHCHR—formerly "United Nations Centre for Human Rights") has been engaged, within its Technical Cooperation Programme in the Field of Human Rights, in assisting States towards the building and strengthening of national structures that have a direct impact on the overall observance of human rights and the maintenance of the rule of law. In this context, the Office has been involved for many years in the training of personnel working in the area of administration of justice.

Among the professionals working in this sector, prison officials play an essential role in ensuring that the human rights of those who have been deprived of their liberty by imprisonment or other forms of detention are respected and upheld. In recognition of this role, the United Nations, since its inception, has developed a host of international human rights instruments (both treaties, such as the International Covenant on Civil and Political Rights, and other documents, for example the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment) containing basic standards relevant to prison officials' work. Such standards provide invaluable guidance to prison staff for the performance of their professional duties through practices that are lawful, humane and disciplined.

OHCHR's *Human Rights and Prisons*—a human rights training package for prison officials is intended to constitute a comprehensive curriculum for the training of prison officials on such international human rights standards. The main objectives of this publication, and of the training's methodological approach contained herein, can be stated as follows:

- To provide information on international human rights standards relevant to the work of prison officials;
- To encourage the development of skills necessary to transform that information into practical behaviour;
- To sensitize prison officials to their particular role in promoting and protecting human rights, and to their own potential for affecting human rights in their daily work;
- To reinforce prison officials' respect for, and faith in, human dignity and fundamental human rights;
- To encourage and reinforce an ethos of legality, and of compliance with international human rights standards, within prisons;
- To equip trainers of prison officials to provide effective human rights education and training.

The training package's principal beneficiaries are staff who work within prison administrations, particularly those who work directly with prisoners and other detained individuals. In addition, it may also assist various intergovernmental and non-governmental agencies and organizations in carrying out effective training activities for prison personnel. Since the package focuses on international human rights standards, it needs to be supplemented in the light of the particular national requirements and legal systems in which the related training programme is taking place.

## EXPLANATION OF SYMBOLS



### **OBJECTIVE**

This section highlights the main learning objective/s of the chapter.



### **ESSENTIAL PRINCIPLES**

This section sets out the main international standards relating to the subject covered by the chapter by summarizing the relevant provisions of the international instruments.



### **BASIS IN INTERNATIONAL INSTRUMENTS**

This section reproduces selected provisions of international instruments relevant to the subject covered by the chapter.



### **IMPLICATIONS**

This section highlights the implications of the international standards covered by the chapter in terms of action required by prison officials and management.



### **PRACTICAL RECOMMENDATIONS**

This section proposes practical courses of action to assist prison officials and management in applying the international standards dealt with in the chapter.



### **TOPICS FOR DISCUSSION**

This section suggests topics drawn from the issues addressed in the chapter that could be discussed with and among trainees in full classroom sessions or small working groups.



### **CASE STUDY/STUDIES**

This section suggests practical situations that could be discussed in small working groups to enable trainees to "put into practice" the knowledge they have acquired on the international standards.

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SECTION I

# INTRODUCTION



# CHAPTER 1. HUMAN RIGHTS AND PRISONS

## A. THE PURPOSES OF IMPRISONMENT

1. Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. The use of imprisonment as a direct punishment of the court was introduced to Western Europe and North America in the 18th century. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture.
2. Over the years there has been a lively debate, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety.
3. In practical terms, the purposes of imprisonment will be interpreted as a combination of some or all of these reasons. The relative importance of each one will vary according to the circumstances of individual prisoners. However, a more and more widely held opinion is that prison is an expensive last resort, which should be used only when it is clear to the court that a non-custodial sentence would not be appropriate.
4. The detention of individuals who are awaiting trial is a matter of special concern. Their situation is quite distinct from that of people who have been convicted of an offence. They have yet to be found guilty of any offence and are therefore innocent in the eyes of the law. The reality is that they are often held in the most restricted conditions, conditions that in some cases are an affront to human dignity. In a number of countries, the majority of people who are in prison are awaiting trial. The proportion sometimes is as high as 60 per cent. There are particular problems with the way pre-trial prisoners are treated and when the access that they have to lawyers and to their families is determined not by the prison authorities, but by another authority, such as the prosecutor.

## **B. HUMAN RIGHTS**

5. "Human rights" is a modern term but the principle that it invokes is as old as humanity. It is that certain rights and freedoms are fundamental to human existence. They are inherent entitlements that come to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. They are not privileges, nor gifts given at the whim of a ruler or a Government. Nor can they be taken away by any arbitrary power. They cannot be denied, nor can they be forfeited because an individual has committed any offence or broken any law.
6. Initially these rights had no legal basis. Instead they were considered to be moral claims. In due course these rights were formally recognized and protected by law. Often they came to be safeguarded in a country's constitution, frequently in the form of a Bill of Rights, which no Government could deny. In addition, independent courts were set up in which individuals whose rights had been taken away could seek redress.
7. The widespread abuses of human rights and freedoms in the 1930s, which culminated in the atrocities of the World War between 1939 and 1945, put an end to the notion that individual States should have the sole say in the treatment of their citizens. The signing of the Charter of the United Nations in June 1945 brought human rights within the sphere of international law. All Member States of the United Nations agreed to take measures to safeguard human rights. Three years later, the adoption of the Universal Declaration of Human Rights provided the world with a "common standard of achievement for all peoples and all nations", based on the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" (preamble).
8. Human rights issues and obligations are now an important feature of the day-to-day conduct of government. Over the years, since the proclamation of the Universal Declaration in 1948, States have developed a considerable number of human rights instruments at the national, regional and international levels (see chapter 2), and have undertaken obligations under international and domestic law both to promote and to protect a wide variety of human rights.

## **C. THE ROLE OF PRISON OFFICIALS**

9. Prison staff receive individuals who are lawfully deprived of their liberty. They have the responsibility to hold them safely and then, in most cases, release them back to the community. This function involves carrying out extremely demanding and stressful tasks on behalf of society; yet, in many countries, prison officials are badly trained, poorly paid and do not always enjoy public respect. While facing situations of lawful limitations of freedoms and rights, prison officials are at the forefront of human rights protection on a daily basis, experiencing them and putting them into practice; respecting them and enforcing their respect.

10. In this framework, human rights instruments ranging from the Universal Declaration of Human Rights to specific texts such as the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide a set of rules to help prison staff perform their duties through policies and practices that are lawful, humane and disciplined. Incorporating such principles into daily conduct strengthens the dignity of this profession. Human rights standards, which constitute the content of this Manual, have often been embodied in national laws and regulations; they provide invaluable guidance for the performance of a function that is vital to the good functioning of a democratic society and to the maintenance of the rule of law.
11. Human rights are not a matter under the exclusive jurisdiction of the State or its agents. Rather, they are a legitimate concern of the international community, which has been engaged for half a century in the setting of standards, the establishment of implementation mechanisms and the monitoring of compliance with the standards. Prison officials carrying out their functions in a manner that respects and protects human rights bring honour not just to themselves, but also to the Government which employs them and the nation which they serve. Those who violate human rights will, ultimately, draw the spotlight of international scrutiny and the condemnation of the international community.

## CHAPTER 2. SOURCES, SYSTEMS AND STANDARDS FOR HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE



### OBJECTIVES

The objectives of this chapter are:

- To introduce course presenters and, through them, course participants to the overall existing United Nations framework for the protection of human rights in the administration of justice.
- To provide an overview of the principal instruments, monitoring mechanisms and authoritative United Nations bodies relevant to the work of prison officials.
- To highlight selected categories of potential human rights violations which prison officials should be careful to avoid.



### ESSENTIAL PRINCIPLES

International human rights law is binding on all States and their agents, including prison officials.

Human rights are a legitimate subject for international law, and for international scrutiny.

Prison officials are obliged to know, and to apply, international standards on human rights.

### A. RELEVANCE OF INTERNATIONAL STANDARDS

12. International norms and standards have various legal effects depending on their source. Thus various levels of States' legal obligations depend on whether the international standards are derived from treaty law, from customary international law or from various bodies of principles, minimum rules and declarations. International norms and standards relating to human rights in the administration of justice have been promulgated by a number of bodies within the United Nations system. Foremost among these have been the Commission on Human Rights, its Subcommission on the Promotion and Protection of Human Rights, and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. These standards have been finally adopted by the General Assembly or the Economic and Social Council, two principal organs of the United Nations.
13. Additionally, the normative content of some of these standards, and details on their proper implementation at the national level, are to be found in the evolving practice of the United Nations treaty bodies, among others the Human Rights Committee, a treaty monitoring body established under the International Covenant on Civil and Political Rights.



14. Before looking at the various sources, systems and standards existing at the international level, a word about the legal force of these standards is in order. The collective body of standards discussed in this Manual spans the full range of international legal authority, from binding obligations set out in covenants and conventions to morally persuasive universal guidance offered through various declarations, minimum rules, and bodies of principles. Together, these instruments offer a comprehensive and detailed international legal framework for ensuring respect for human rights, freedom and dignity in the context of criminal justice.
15. In strict legal terms, formal treaties which have been ratified or acceded to by States, as well as customary international law, have the character of binding law. Such treaties include the following:
  - International Covenant on Economic, Social and Cultural Rights;
  - International Covenant on Civil and Political Rights;
  - Convention on the Rights of the Child;
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  - International Convention on the Elimination of All Forms of Racial Discrimination;
  - Convention on the Elimination of All Forms of Discrimination against Women;
  - Convention on the Prevention and Punishment of the Crime of Genocide.

Mention should also be made of the Charter of the United Nations, itself a legally binding treaty to which all Member States are parties.

16. In addition, customary international law is the term used to describe general and consistent practice followed by States deriving from a sense of legal obligation. In other words, if over a period of time States perform in a certain way because they believe that they are required to do so, that behaviour comes to be recognized as a principle of international law, binding on States, even if not written in a particular agreement.
17. Human rights standards are also enshrined in other types of instruments: declarations, recommendations, bodies of principles, codes of conduct and guidelines (such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Code of Conduct for Law Enforcement Officials; and the Guidelines on the Role of Prosecutors). These instruments are not legally binding on States in and of themselves. Nevertheless, the various declarations, guidelines and minimum rules, which are discussed in this Manual hand in hand with the relevant conventions, have moral force and provide practical guidance to States in their conduct. The value of these instruments rests on their recognition and acceptance by a large number of States and, even without binding legal effect, they may be seen as declaratory of principles that are broadly accepted within the international community. What is more, some of their provisions, particularly relevant to the purpose of this Manual, are declaratory of elements of customary international law and are thus binding.

## **B. THE BASIC SOURCES**

### **1. Charter of the United Nations**

18. The primary source of authority for the promulgation of human rights standards by United Nations bodies may be found in the Charter itself. The second paragraph of the Preamble states that one of the principal aims of the United Nations is:

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...

Article 1, paragraph 3, of the Charter states that one of the purposes of the United Nations is to achieve international cooperation in:

promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ...

19. These should not be seen merely as empty statements of principle. Rather, as already stated, the Charter is a legally binding treaty to which all Member States are parties. These provisions had the legal effect of, once and for all, putting to rest all arguments as to whether human rights and their enjoyment by individuals were subjects for international law, or merely matters of State sovereignty. Consequently, the fact that prison officials are bound by such rules is now beyond dispute.
20. The quasi-legislative activity of the United Nations has since produced dozens of instruments, each building on and adding more detail to its predecessors. Most important, for present purposes, are the Universal Declaration of Human Rights of 1948 and its two implementing and legally binding covenants of 1966, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its first Optional Protocol. Together, these instruments are commonly referred to as the International Bill of Human Rights.

### **2. Universal Declaration of Human Rights**

21. The Universal Declaration of Human Rights represents a great step forward taken by the international community in 1948. Its persuasive moral character and political authority derive from the fact that it is agreed to be a statement of generally accepted international principles. This outline of human rights objectives is drafted in broad and general terms, and its principles have inspired more than 140 human rights instruments which, taken together, constitute international human rights standards. Moreover, the Universal Declaration has spelled out the fundamental rights proclaimed in the Charter of the United Nations, recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. While the Universal Declaration is not, in itself, a binding instrument, certain provisions of the Declaration are considered to have the character of customary international law. This applies to articles 3, 5, 9, 10 and 11 of the Universal Declaration, which address, respectively, the right to life, liberty and security of person; the prohibition of torture and of cruel, inhuman and degrading treatment or punishment; the prohibition of arbitrary arrest; the right to a fair trial; the right to be presumed innocent until proved guilty; and the prohibition of retroactive penal measures. While these articles are most directly relevant to the administration of justice, the entire text of the Universal Declaration offers guidance for the work of prison officials.

### **3. *Treaties: covenants and conventions***

#### ***International Covenant on Economic, Social and Cultural Rights***

22. The International Covenant on Economic, Social and Cultural Rights entered into force in January 1976 and currently has 147 States parties.<sup>1</sup> Article 11, stating the right of everyone to an adequate standard of living, is particularly important to the rights of prisoners. This right, as stated in article 11, paragraph 1, includes the right to adequate food, clothing and housing and to the continuous improvement of living conditions. Moreover, article 11, paragraph 2, recognizes the fundamental right of everyone to be free from hunger. In addition, in articles 6, 7, 8, 9, 10, 12, 13 and 15 the Covenant details the rights to work; to reasonable conditions of employment; to organize trade unions; to social security and social insurance; to protection of families and children; to health; to education; and to take part in cultural life. The implementation of the Covenant is monitored by the Committee on Economic, Social and Cultural Rights.
23. In May 1999, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant). In November 2002, it adopted General Comment No. 15 (2002) on the right to water (arts. 11 and 12 of the Covenant). Both the right to adequate food and the right to drinking water are relevant to this Manual in relation to conditions of imprisonment and detention. The General Comments have firmly placed the rights to adequate food and drinking water into a rights-based approach to development, where countries have obligations to fulfil, respect and protect human rights.

#### ***International Covenant on Civil and Political Rights***

24. The International Covenant on Civil and Political Rights entered into force in March 1976. It currently has 149 States parties. In articles 6, 7, 8, 9, 10, 11, 14 and 15, the Covenant details the right to life; the prohibition of torture; the prohibition of slavery, servitude and forced labour; the prohibition of arbitrary arrest or detention; the rights of all persons deprived of their liberty; the prohibition of imprisonment for failure to fulfil a contractual obligation; the right to a fair trial; and the prohibition of retroactive penal measures. The Covenant is a legally binding instrument which must be respected by Governments and their institutions, including prison authorities. The implementation of the Covenant is monitored by the Human Rights Committee, which was established under the terms of the Covenant itself.

#### ***Optional Protocol to the International Covenant on Civil and Political Rights***

25. The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant and currently has 104 States parties. This additional instrument enables the Human Rights Committee to receive and consider communications from individuals under the jurisdiction of a State party claiming to be victims of a violation of any of the rights set forth in the Covenant. In considering such complaints, the Committee has developed a considerable body of practice, which provides useful guidance in interpreting the implications of the Covenant for the work of prison officials.

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<sup>1</sup> For lists of States parties to the various treaties (updated to March 2003) and for excerpts from and full texts of the instruments discussed in this Manual, see Addendum 1: *A Compilation of International Human Rights Instruments concerning the Administration of Justice*.

### *Second Optional Protocol to the International Covenant on Civil and Political Rights*

26. While the International Covenant on Civil and Political Rights does not prohibit capital punishment, it does impose strict limitations on its use. In the face of steadily growing world public opinion in favour of full abolition of capital punishment, the General Assembly, in 1989, adopted the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, which does, for States parties, prohibit use of the death penalty. It currently has 49 States parties.

### *Convention on the Prevention and Punishment of the Crime of Genocide*

27. The Convention on the Prevention and Punishment of the Crime of Genocide entered into force in January 1951. It was, like the United Nations itself, a product of the universal horror and outrage felt by the international community at the gross violations of human rights which characterized the Second World War. The Convention confirms that genocide is a crime under international law, and aims to advance international cooperation towards the abolition of this atrocity. In particular, it addresses acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group through killing, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

### *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

28. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in June 1987 and currently has 136 States parties. The Convention goes considerably further than the International Covenant on Civil and Political Rights in protecting against the international crime of torture. Article 1, paragraph 1, of the Convention defines "torture" as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

- Article 16, paragraph 1, defines "other cruel, inhuman or degrading treatment" as:

other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...

29. Of particular relevance to this Manual are articles 10, 11, 12 and 13 of the Convention, which apply to the acts defined in both articles 1 and 16. Article 10 details the necessity to include education and information regarding the prohibition of torture in the training of any persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Article 11 emphasizes that States parties shall keep under systematic review all procedures pertaining to the arrest, detention or imprisonment of individuals with a view to preventing torture. Articles 12 and 13 ensure that States parties conduct an impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed, and guarantee victims of torture a right to complain and to have their case promptly and impartially examined by competent authorities, protecting all witnesses and complainants from ill-treatment or intimidation. Additionally, under articles 2, 3, 14 and 15 of the Convention, States parties are obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture; to commit to the principle of non-refoulement when there are grounds to suspect that a returned person would be tortured; to compensate victims and their dependants; and to exclude evidence or statements obtained through torture.

#### ***Optional Protocol to the Convention against Torture***

30. On 18 December 2002, by its resolution 57/199, the General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 states the Protocol's objective, namely to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Article 2 establishes a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to carry out the functions of the Protocol. In addition, article 3 requires each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

#### ***Rome Statute of the International Criminal Court***

31. On 1 July 2002, the Rome Statute establishing a permanent International Criminal Court entered into force. The Statute has to date been ratified by 89 States. The Court has a mandate to try individuals and to hold them accountable for the most serious crimes, such as war crimes, crimes against humanity and genocide. Article 7, dealing with crimes against humanity, is particularly relevant to this Manual. It defines torture as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.

#### ***International Convention on the Elimination of All Forms of Racial Discrimination***

32. The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in January 1969, prohibiting all forms of racial discrimination in the political, economic, social and cultural spheres. It currently has 168 States parties.

Among other provisions, it requires equal treatment before all tribunals, agencies and bodies involved in the administration of justice, without distinction as to race, colour, or national or ethnic origin.

#### ***Convention on the Elimination of All Forms of Discrimination against Women***

33. Upon entry into force in September 1981, the Convention on the Elimination of All Forms of Discrimination against Women became the principal international instrument addressing discrimination against women in the political, economic, social, cultural and civil fields. The Convention currently has 173 States parties, which are required to undertake specific action in each of those fields to end discrimination against women and to allow them to exercise and enjoy human rights and fundamental freedoms on a basis of equality with men.
34. In addition, General Recommendation No. 19 on violence against women, adopted by the Committee on the Elimination of Discrimination against Women at its eleventh session, in 1992, is relevant to this Manual. It addresses gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, as discrimination within the meaning of article 1 of the Convention. Furthermore, General Recommendation No. 19 provides that gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

#### ***Convention on the Rights of the Child***

35. The Convention on the Rights of the Child entered into force in September 1990 and currently has 191 States parties. It provides for certain special rights for juvenile offenders, in recognition of their special vulnerability and society's interest in rehabilitating them. In particular, article 37 of the Convention sets out a prohibition on life imprisonment of juveniles, as well as protecting them against capital punishment. Imprisonment of juveniles must be a measure of last resort and, when imposed, must be for the shortest appropriate period of time. Article 37 further requires States parties to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. In every case, article 37 requires that juveniles in conflict with the law be treated with humanity and respect for the dignity of the human person, and in a manner which takes into account their age. In this regard, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. Detained children shall also have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances. Article 40, paragraph 1, underlines the desirability of promoting a child's reintegration and assuming a constructive role in society.

#### ***Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography***

36. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which entered into force in January 2002 and currently has 51 States parties, is also relevant to this Manual.

The Protocol obliges States parties, among other things, to criminalize sexual exploitation of children; transfer of organs of children for profit; engagement of children in forced labour; offering, obtaining, procuring or providing children for child prostitution; and producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography for the above purposes.

***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families***

37. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families currently has 21 States parties and entered into force in July 2003. It was developed by the United Nations in recognition of the great impact of flows of migrant workers on States and people concerned, and the need to develop norms which would contribute to harmonization of the attitudes of States through the acceptance of basic principles protecting migrant workers and their families. The Convention enumerates the basic rights of this particularly vulnerable group in human society and provides for the protection of those rights. Article 16 applies to migrant workers and their families many of the international standards concerning the right to liberty and security of person. Article 17 requires that migrant workers and members of their families who are deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity. Article 18 ensures that all migrant workers and their families have due process of law and equality with nationals of the State concerned before the courts, including the right to be presumed innocent until proven guilty according to law.

***International humanitarian law***

38. For the purposes of training prison officials, international humanitarian law may be defined as the subset of human rights law applicable in times of armed conflict. The basic substance of humanitarian law is set out, article by article, in the four Geneva Conventions of 1949, which protect, respectively, the wounded and sick in the field; shipwrecked persons; prisoners of war; and civilian persons. The four Geneva Conventions currently have 189 States parties.
39. Additional sources include the two Additional Protocols of 1977 to the Geneva Conventions. Protocol I reaffirms and further develops the provisions of the Geneva Conventions with regard to international armed conflicts, while Protocol II does the same for conflicts which are internal, rather than international. Protocol I currently has 161 States parties and Protocol II has 156.
40. Under these instruments, international humanitarian law is to be applied in situations of armed conflict, during which principles of humanity are to be safeguarded in all cases. They hold further that non-combatants and persons put out of action by injury, sickness, capture or other causes must be respected and protected, and that persons suffering from the effects of war must be aided and cared for without discrimination. International humanitarian law prohibits the following acts in all situations:

- Murder;
  - Torture;
  - Corporal punishment;
  - Mutilation;
  - Outrages upon personal dignity;
  - Hostage-taking;
  - Collective punishment;
  - Executions without regular trial;
  - Cruel or degrading treatment.
41. The same instruments also prohibit reprisals against the wounded, sick or shipwrecked, medical personnel and services, prisoners of war, civilians, civilian and cultural objects, the natural environment, and works containing dangerous forces. They establish that no one may renounce, or be forced to renounce, protection under humanitarian law. Finally, they provide that protected persons must at all times have resort to a protecting power (a neutral State safeguarding their interests), the International Committee of the Red Cross, or any other impartial humanitarian organization.

#### **4. Principles, minimum rules and declarations**

##### *Standard Minimum Rules for the Treatment of Prisoners*

##### *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

##### *Basic Principles for the Treatment of Prisoners*

42. These three instruments provide a comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned. The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and later approved by the Economic and Social Council. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the General Assembly in December 1988. The Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in December 1990, complete the set of safeguards, with 11 point-form standards.
43. The content of these instruments forms the basis for organizing any prison regime and the texts are frequently quoted throughout this Manual. In sum, they state that all prisoners and detainees must be treated with respect for their human dignity, with regard to the conditions of their detention. They deal with the following issues: treatment and discipline; contact with the outside world; health; classification and separation; complaints; records; work and recreation; and religion and culture.

##### *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*

##### *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*

##### *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*



44. These three instruments, together with the Convention on the Rights of the Child, form the basic standards relevant to the administration of juvenile justice. Like the Convention, these instruments (adopted by the General Assembly in December 1990, November 1985 and December 1990, respectively) require that national legal systems take into account the special status and vulnerability of juveniles who have come into conflict with the law. They deal with both prevention and treatment, on the basis of the central principle that the best interests of the child are to guide all action in the field of juvenile justice. Their content is examined in detail in chapter 31 of this Manual.

***Declaration on the Elimination of Violence against Women***

45. On 20 December 1993, by its resolution 48/104, the General Assembly proclaimed the Declaration on the Elimination of Violence against Women. The Declaration defines violence against women in detail and calls on States to condemn such violence without invoking any custom, tradition or religious consideration to avoid their obligation with respect to its elimination. The Declaration also urges States, among other things, to investigate and punish incidents of violence against women, to develop appropriate penal and civil sanctions against it and to devote adequate resources to activities related to the elimination of violence against women.

***United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)***

46. In December 1990, the General Assembly adopted the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), in order to encourage the provision by States of a wide range of non-custodial measures. Such measures increase community involvement in the management of criminal justice and support the cause of justice, while reducing the use of imprisonment, which in every case should be seen as an extreme penalty. Under the Tokyo Rules, non-custodial measures are to take into consideration the human rights and rehabilitation of the offender, the protection of society and the interests of victims. The Rules provide guidance for the use of temporary or conditional release, work release, parole, remission, pardon, community service, economic sanctions, etc.

***Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions***

47. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions were recommended to States by the Economic and Social Council in May 1989. The Principles provide guidance to law enforcement and other national authorities on preventing and investigating such crimes, and on legal proceedings to bring perpetrators to justice. They emphasize the importance of ensuring strict control, including a clear chain of command, over law enforcement agencies, as well as careful record-keeping, inspections, and notifications to families and legal representatives with regard to detention. They also require the protection of witnesses and family members of victims and the careful collection and consideration of relevant evidence. The Principles give crucial detail to the provisions of human rights treaties guaranteeing the right to life.

***Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

48. On 4 December 2000, in its resolution 55/89, the General Assembly recommended the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Istanbul Principles). The Principles outline the necessary procedures States should take in order to ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. They detail, among other things, the independence of investigators, the appropriate powers and obligations of the investigative authority, the protection of witnesses and all persons involved in the investigation, the content and scope of written investigative reports, and the role of medical experts in the examination of alleged victims.

***Declaration on the Protection of All Persons from Enforced Disappearance***

49. On 18 December 1992, by its resolution 47/133, the General Assembly proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance. The Declaration expresses the international community's concern at this atrocious global phenomenon. The text comprises 21 articles designed to prevent, as crimes against humanity, acts whereby persons are taken into custody with no trace of their fate being left behind. It requires the adoption of effective legislative, administrative, judicial and other measures to prevent and terminate such acts, and specifically provides for a number of such measures. These measures include attention to procedural guarantees, accountability, punishment and redress.

***Safeguards guaranteeing protection of the rights of those facing the death penalty***

50. The safeguards guaranteeing protection of the rights of those facing the death penalty were approved by the Economic and Social Council in May 1984. They limit the types of crimes for which capital punishment may be imposed to the most serious and prohibit the execution of persons who were minors at the time of commission of the crime, as well as of pregnant women, new mothers or the insane. In addition, the safeguards set forth certain procedural guarantees and require that, where capital punishment does occur, it must be carried out in a manner which inflicts the minimum possible suffering.

***Code of Conduct for Law Enforcement Officials***

51. In December 1979, the General Assembly adopted the Code of Conduct for Law Enforcement Officials. The Code is composed of eight fundamental articles, setting forth the specific responsibilities of law enforcement officials with regard to service to the community; protection of human rights; use of force; treatment of confidential information; prohibition of torture and cruel, inhuman or degrading treatment or punishment; protection of the health of detainees; corruption; and respect for the law and the Code itself.

***Basic Principles on the Use of Force and Firearms by Law Enforcement Officials***

52. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. The Principles take into account the often dangerous nature of law enforcement, noting that a threat to the life or safety of law enforcement officials is a threat to the stability of society as a whole. At the same time, strict standards are set forth for the use of force and firearms. The Principles emphasize that force may be used only when strictly necessary, and only to the extent required for the performance of legitimate law enforcement functions.

***Basic Principles on the Role of Lawyers***

53. The Basic Principles on the Role of Lawyers were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. Principles 5 to 8 concerning special safeguards in criminal justice matters are relevant to this Manual. These include the right to be informed of access to a lawyer upon arrest or detention or when charged with a criminal offence; the right to be provided with counsel; the right to prompt access to a lawyer after arrest or detention; and the right for arrested, detained or imprisoned persons to have adequate opportunities, time and facilities to be visited by and confidentially communicate and consult with a lawyer.

***Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power***

54. In its legislative activities, the United Nations has also dealt with the important issue of victims' rights. To this end, the General Assembly, in November 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration includes the requirements that States ensure that victims have access to justice; that they be treated by the legal system with compassion; that restitution be made where possible; that compensation be provided when restitution is not possible; and that victims receive medical, material, psychological and social aid.

***Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

55. By its resolution 37/194 of 18 December 1982, the General Assembly adopted the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles address many gross violations of medical ethics by physicians and other health personnel with regard to prisoners and detainees. These include, among other things, actively or passively engaging in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

### **C. UNITED NATIONS HUMAN RIGHTS MACHINERY**

56. The United Nations has established a complex network of mechanisms for the adoption of human rights standards, and for their implementation and monitoring.
57. Human rights standards relevant to the administration of justice have been adopted by a range of United Nations bodies, including the General Assembly, the Economic and Social Council, the Commission on Human Rights and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The standard-setting process includes the full participation of all Member States, representing all the world's cultural, legal, religious and philosophical traditions. It benefits also from the advice of non-governmental organizations (NGOs), professional associations and relevant experts.
58. The above-mentioned bodies receive substantive assistance in these activities from two departments of the United Nations Secretariat. The Office of the United Nations High Commissioner for Human Rights has principal responsibility within the Organization for all human rights issues. The Crime Programme of the United Nations Office on Drugs and Crime has principal responsibility for criminal justice matters.
59. Implementation and monitoring mechanisms may be divided into two basic types, according to the source of their mandates:
  - (a) Conventional (i.e. treaty-based) mechanisms: These include committees set up under the terms of international human rights treaties to monitor the implementation of those treaties. Six such bodies are listed below.
  - (b) Extraconventional (i.e. Charter-based) mechanisms: These are the various special rapporteurs, independent experts and working groups established by the Commission on Human Rights to monitor the human rights situations in particular countries or, alternatively, certain human rights phenomena, such as torture, arbitrary detention and disappearances. They are not based on a particular human rights treaty, but rather on the authority of the Economic and Social Council, and its functional Commission on Human Rights, under the Charter of the United Nations. Such mechanisms are listed below.

#### **1. Conventional (treaty-based) mechanisms**

60. A number of committees within the United Nations system were established under various international treaties for the purpose of monitoring the compliance of States parties with the provisions of those instruments. The seven principal human rights treaties, and the bodies set up to monitor their implementation, are the following:

<b>HUMAN RIGHTS TREATY</b>	<b>CORRESPONDING TREATY BODY</b>
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
International Covenant on Civil and Political Rights	Human Rights Committee (HRC)
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture (CAT)
Convention on the Rights of the Child	Committee on the Rights of the Child (CRC)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)

61. In the course of their work, these committees provide valuable guidance for proper administration of justice for all States parties seeking to implement the rights set out in the instruments in question. Treaty provisions are often general in character, but must be implemented by specific, detailed provisions in domestic law. For example, the rights to life, liberty and security of the person cannot be implemented by mere declaratory legal provisions. Rather, detailed criminal, civil and administrative laws and procedures must exist to provide remedies for victims and sanctions for perpetrators, together with crucial procedural guarantees.
62. The work of the treaty bodies serves to inform domestic legislative processes and agencies in their efforts to interpret and implement the rights guaranteed by the international instruments. One important function of the committees is dealing with periodic reports from all States parties to the treaties. Following the committees' guidelines, States parties submit reports on the steps they have taken to give effect to the rights spelled out in the respective treaties. The committees issue concluding observations to the States parties, based on the examination of these reports, and include those observations in their annual reports. On a number of occasions, committees have concluded that violations of the treaties had taken place, and urged States parties to desist from any further infringements of the rights in question. Within the ambit of concluding observations, the committees can make specific recommendations to the States parties to prevent further violations. Although these observations are not legally binding, States parties are expected to undertake the necessary measures to implement them in good faith. Furthermore, both CAT and HRC have recently created special rapporteurs on follow-up of concluding observations to strengthen the committees' activities in this field.
63. Perhaps the most important function of the committees in developing the system of periodic reports from States parties is the adoption of general comments or general recommendations. Regarding general comments, CESCR, HRC, CRC and CAT have adopted this practice with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, mean-

ing and content of their respective treaties. Furthermore, the general comments promote the implementation of the treaties by drawing the attention of States parties to insufficiencies disclosed by a large number of reports, and by inciting renewed attention to particular provisions of the respective treaties from States parties, United Nations agencies and NGOs with a view to progressively realizing the established rights.

64. Other treaty bodies adopt general recommendations in which they make authoritative interpretations about the concrete meaning of specific articles of their respective treaties based on the examination of reports and information received from States parties. CEDAW, CERD and CESCR issue general recommendations to all States parties. CEDAW and CERD report their general recommendations to the General Assembly and CESCR reports them to the Economic and Social Council. Both general comments and general recommendations have made a major contribution to the development of substantive human rights law.
65. In addition to the above practices, some committees are able to address individual complaints of human rights violations and make decisions on their admissibility and express views on their merits. Individuals can submit complaints under five of the above treaties: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families. In order for individuals to bring complaints, two conditions need to be satisfied. First, they must be addressed against a State party to the treaty. Secondly, the State party must have recognized the competence of the committee established under the relevant treaty to consider individual complaints (by means of an optional clause or protocol).
66. The two major stages in any individual complaints procedure are the admissibility and the merits. In order for the committee to find a complaint admissible, the complaint must satisfy the formal requirements of the procedure. In general, the complaint must be filed by the victim or his or her representative, in written form and signed. All domestic remedies should have been exhausted, unless they were unavailable or unreasonably prolonged. The merits of the case refer to its substance, where the committee states its reasons for concluding that a violation of the treaty has or has not occurred. If the committee finds a violation of an individual's rights under the particular treaty, it invites the State party to provide information within three months on the steps it has taken to deal with the committee's views. If the State party fails to take appropriate action, the committee refers the case for follow-up in order to consider further measures to be taken. For example, the Human Rights Committee established its Special Rapporteur on Follow-up of Views in order to address with concerned States parties their particular difficulties in complying with the Committee's views. According to reports submitted by this Special Rapporteur, around 30 per cent of the Committee's views are fully implemented by relevant States parties.

## **2. *Extraconventional (Charter-based) mechanisms***

67. A number of procedures have been established under the authority granted by the Charter of the United Nations to the Economic and Social Council and, through it, to its subsidiary Commission on Human Rights and Subcommission on the Promotion and Protection of Human Rights. These procedures may be either confidential or public. The so-called "1503 procedure" is the confidential one, whereas the various thematic or country-orientated special rapporteurs and working groups of the Commission on Human Rights operate publicly under the authority of Economic and Social Council resolution 1235 (XLII) of 6 June 1967. It should be noted that the confidential procedure has been rendered partially obsolete by the development of the public procedure discussed below.

### *(a) Confidential procedure*

68. The confidential procedure was established pursuant to Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 and amended by its resolution 2000/3 of 16 June 2000. Under the "1503 procedure", the Commission on Human Rights has the mandate to examine a consistent pattern of gross and reliably attested systematic violations of human rights and fundamental freedoms occurring in any country of the world.

69. The Secretariat, together with the chairperson of the Subcommission's Working Group on Communications, screen complaints from both individuals and groups. If the communication is not prima facie ill-founded and the individual has exhausted all domestic remedies, it will be acknowledged and forwarded to the Government concerned for comment in a confidential manner. After the initial screening, the Working Group on Communications meets to assess complaints and any replies received from Governments. It forwards to the Commission on Human Rights' Working Group on Situations any situation that reveals a consistent pattern of gross and reliably attested human rights violations. The Working Group on Situations decides whether, in the light of all the material from the previous stages of the process, the situation referred to it appears to reveal a situation of systematic human rights violations. In that case it may forward a situation to the Commission on Human Rights, usually with specific recommendations. Otherwise, the Working Group may decide to keep a situation pending before it or close the file.

70. The Commission on Human Rights considers in closed session the situations referred to it by its Working Group on Situations. Representatives of the Governments concerned may also be present at this point. The Commission may decide to keep a situation under review; it may appoint an independent expert on the matter to report confidentially to the Commission (in 2002 an independent expert was appointed to study the human rights situation in Liberia); it may discontinue the matter if no further consideration is warranted; or it may take up the same matter under the public procedure governed by resolution 1235 (XLII) of the Economic and Social Council. If it wishes, the Commission may also make recommendations to its parent body, the Economic and Social Council. After the Commission has considered the situations before it, the chairperson announces at a public meeting the

names of the countries examined under the procedure and those of countries no longer being dealt with under the procedure. All material provided by individuals and Governments, as well as decisions taken at the various stages of the procedure, remain confidential. The Economic and Social Council, however, sometimes decides—on its own initiative, after a study of a particular situation has been ended, on the recommendation of the Commission on Human Rights, or by the express wish of the Government concerned—that secrecy may be lifted.

(b) *Public procedure*

71. Pursuant to Economic and Social Council resolution 1235 (XLII) of 6 June 1967, the Commission on Human Rights appoints working groups or individuals (special rapporteurs or independent experts) to examine, monitor and publicly report either on the human rights situation in a specific country or territory—known as geographic mandates - or on human rights violations worldwide—known as thematic mandates. To fulfil their mandate, experts may receive individual complaints and bring them to the attention of the Governments concerned, which are asked to undertake a full investigation of the allegations, to adopt all necessary measures to prevent further violations and to report back to the experts on every step taken in that regard. Cases are made public through the experts' annual reports to the Commission on Human Rights. Discussed below are some of the 14 thematic mandates which have developed working methods to deal with individual complaints under the "1235 (public) procedure".

***Working Group on Enforced or Involuntary Disappearances***

72. In 1980, the Commission on Human Rights established the Working Group on Enforced or Involuntary Disappearances, to follow the situation, existing in a number of countries, whereby persons are "disappeared", i.e. forcibly abducted by Governments or groups with no trace of their fate being left behind. The Working Group has dealt with some 20,000 individual cases in more than 40 countries, using urgent action procedures to prevent cases from occurring, to clarify the fate of persons suspected of having been "disappeared", processing complaints, and channelling information between Governments and the families concerned.

***Special Rapporteur on extrajudicial, summary or arbitrary executions***

73. This mechanism was established in 1982 in order to allow the Commission on Human Rights to monitor the situation of arbitrary executions around the world and to respond effectively to information that comes before it, in particular when such an execution is imminent or threatened. The Special Rapporteur receives and evaluates relevant information on such cases and may communicate with the Governments concerned to avert imminent executions, or to request an official investigation and appropriate penal measures where an arbitrary execution has already occurred. The Special Rapporteur also conducts fact-finding missions to countries and reports back to the Commission on the findings.

***Special Rapporteur on torture***

74. In 1985, the Commission on Human Rights established a Special Rapporteur on torture. The mandate of the Special Rapporteur encompasses three main activities:



conducting country visits or fact-finding missions to countries where it is suspected that torture may involve more than isolated or sporadic incidents; transmitting allegations of torture (allegation letters) and communicating urgent appeals to Governments; and submitting annual reports on his activities to the Commission on Human Rights and the General Assembly. The Special Rapporteur follows up his requests with the Governments concerned in order to secure protection for the individuals in question. It should be noted that the mandate of the Special Rapporteur does not duplicate that of the Committee against Torture, set up under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the Convention applies only to States parties to that instrument, whereas the mandate of the Special Rapporteur is global.

#### ***Working Group on Arbitrary Detention***

75. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in 1991 with the mandate to investigate individual cases of arbitrary detention; to seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned and their families or representatives; and to present a comprehensive annual report to the Commission. The Working Group adopts views on the merits of individual cases of alleged arbitrary detention and makes recommendations to Governments, determines reparation measures that States should comply with, and publishes opinions in an annex to its annual report to the Commission. In addition to conducting country visits, the Working Group uses urgent action procedures to intervene in cases, among others, where it is alleged that a person has been detained arbitrarily and that person's life or health is in danger due to that detention. Finally, the Working Group has developed some follow-up measures to facilitate the implementation of its views by the States concerned.

#### ***Special Rapporteur on violence against women, its causes and consequences***

76. The Special Rapporteur on violence against women, its causes and consequences was established by the Commission on Human Rights in 1994. The working methods of the Special Rapporteur are similar to those of the Special Rapporteur on torture: transmitting allegations and urgent appeals to Governments, undertaking fact-finding or country visits and submitting annual reports to the Commission on the findings. The Special Rapporteur has focused on specific forms of violence, including military sexual slavery, trafficking and forced prostitution, rape by individuals and domestic violence.

##### ***(c) Urgent action appeals***

77. Fourteen thematic mandates are able to deal with urgent action appeals in response to individual allegations that a serious human rights violation is about to be committed. Such situations include imminent extrajudicial execution, fear that a detained individual may be subjected to torture, or a threat to the life of a human rights defender. In these cases, the particular special rapporteur or chairperson of a working group may address a message to the Minister for Foreign Affairs of the State con-

cerned by telefax, requesting the Government to clarify the particular case and to take the necessary steps to guarantee the rights of the alleged victim. The thematic mandates that deal with urgent action appeals include, among others, the Special Rapporteurs on torture; on violence against women, its causes and consequences; and on extrajudicial, summary or arbitrary executions; the Special Representative of the Secretary-General on human rights defenders; and the Working Groups on enforced or involuntary disappearances and on arbitrary detention.

#### **D. SOURCES, SYSTEMS AND STANDARDS AT THE REGIONAL LEVEL**

78. This Manual, intended to be a training tool of universal applicability, is based on the global standards produced by the United Nations. Nevertheless, trainees should also be aware of regional human rights instruments and arrangements in Europe, the Americas and Africa (no such arrangements exist yet for the Asian region).

##### **1. *The European system under the Council of Europe***

79. The main human rights instrument in the European region is the Convention for the Protection of Human Rights and Fundamental Freedoms (generally referred to as the European Convention on Human Rights), which entered into force in September 1953. Subsequently, several related Protocols have been adopted. The organs of the European system relevant to the European Convention and its Protocols are the European Court of Human Rights and the Committee of Ministers of the Council of Europe.
80. The Court is a judicial body which receives complaints from Contracting States or individuals claiming to be victims of a violation of the Convention, decides on cases, and issues binding decisions. The Court also gives advisory opinions on legal questions concerning the interpretation of the Convention or of its Protocols.
81. The Committee of Ministers is a political body whose members are appointed by member States of the Council of Europe. It supervises the implementation of judgements of the Court, issues resolutions requiring States to take necessary action in that regard, and can suspend or expel a State from the Council of Europe.
82. In addition, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into force in February 1989. This Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose function is to visit any place within the jurisdiction of States parties, both periodically and on an ad hoc basis, where persons are deprived of their liberty by a public authority, including police stations, prisons, psychiatric institutions and holding centres for asylum-seekers and other categories of foreigners. In the course of these visits the Committee examines the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment. After each visit, the Committee prepares a report on its findings which may include recommendations and other advice to create a dialogue with the State concerned. Both the report and the visit

are confidential; however, States may waive this confidentiality and allow the Committee to publish its findings. The CPT standards regarding prisoners and pre-trial custody are discussed in this Manual.

## **2. *The inter-American system under the Organization of American States***

83. Human rights at the regional level for the Americas are governed mainly by the American Convention on Human Rights, which entered into force in July 1978. The Convention created the Inter-American Court of Human Rights and defines its functions and procedures. In addition, it defines most of the functions and procedures of the Inter-American Commission on Human Rights (IACHR). Both IACHR and individual States may bring cases before the Inter-American Court.
84. The Inter-American Court of Human Rights performs three main functions: deciding contentious cases, adopting provisional measures and issuing advisory opinions. As mentioned above, both States and IACHR may bring cases before the Court on all matters relating to the interpretation and application of the American Convention and other regional human rights treaties which formally recognize the competence of the Court in that regard, which are discussed below. In order for the Court's decision to be binding, a State party to the American Convention must make a formal declaration accepting the Court's jurisdiction either unconditionally, on the condition of reciprocity, for a specified period or for specific cases. Decisions made by the Court are final and not subject to appeal. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may adopt provisional measures as it deems pertinent on matters under its consideration. With respect to a case not yet submitted to the Court, it may act at the request of IACHR. Finally, member States and competent organs of the Organization of American States (OAS) may consult with the Court in order to interpret the American Convention or other treaties formally recognizing the competence of the Court.
85. In addition, IACHR, among other things, receives, analyses and investigates individual petitions alleging human rights violations; monitors the general human rights situation in the member States of OAS and publishes special reports, when it considers it appropriate, on the situation in specific States; visits countries to engage in more in-depth analysis of the general situation and/or to investigate a specific situation; recommends to member States the adoption of measures which would contribute to human rights protection; and requests advisory opinions from the Inter-American Court regarding questions of interpretation of the American Convention.
86. Three additional treaties in the American system that are particularly relevant to this Manual are the Inter-American Convention to Prevent and Punish Torture, which has 16 States parties; the Inter-American Convention on the Forced Disappearance of Persons, which has 10 States parties; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), which has 31 States parties.
87. Only the latter two Conventions have available enforcement mechanisms through the inter-American system. Article XIII of the Inter-American Convention on the

Forced Disappearance of Persons allows the full range of mechanisms of the inter-American system to deal with violations of the Convention, including all procedures of the Inter-American Court and IACHR. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women has limited enforcement mechanisms. Article 11 of this Convention allows the Inter-American Commission of Women to request advisory opinions from the Inter-American Court. Article 12 of the Convention only allows petitions to be lodged with IACHR containing complaints of violations of article 7, dealing with the duties of States parties.

### **3. *The African system under the African Union***

88. The African Charter on Human and Peoples' Rights was adopted by the then Organization of African Unity in 1981 and entered into force in October 1986. Under the Charter, the African Commission on Human and Peoples' Rights was established to promote and protect human rights in Africa. The Commission also interprets provisions of the Charter and is empowered to receive complaints of human rights violations from States, individuals and groups. On the basis of such complaints, the Commission may seek an amicable solution, initiate studies and make recommendations.
89. In 1997 the African Commission on Human and Peoples' Rights appointed a Special Rapporteur on Prisons and Conditions of Detention in Africa to assess prison conditions and point out the major problems. The Special Rapporteur visits prisons, police and gendarmerie cells, or any other place where people are imprisoned or detained in various African countries in order to obtain information. He then prepares a report on the visit and submits it to the Government concerned. The Government is invited to make comments and to describe the measures taken to deal with the recommendations of the Special Rapporteur. The reports of the Special Rapporteur and Governments' comments are published by the African Union.
90. In addition, it is important to note the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted in 1998. Although the Court is not yet in operation, it is important to understand some of its functions. The Court may entitle relevant non-governmental organizations with observer status before the African Commission on Human and Peoples' Rights, and individuals, to introduce cases directly before it, in accordance with article 34, paragraph 6, of the Protocol. States parties must first have made a declaration, however, accepting the jurisdiction of the Court to receive individual cases concerning them. Furthermore, the Court will complement the mandate of the Commission.
91. Finally, at its 32nd session in October 2002, the African Commission adopted the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines). These Guidelines state in clear and concrete terms the measures that are recommended to African States and other actors in order to prevent torture

and ill-treatment. Paragraphs 2 and 3 of the Guidelines encourage States to cooperate with the African Commission's Special Rapporteurs on prisons and conditions of detention in Africa; on arbitrary, summary and extrajudicial executions in Africa; and on the rights of women in Africa; as well as with the United Nations human rights treaty bodies and the thematic and country-specific special procedures of the Commission on Human Rights, in particular its Special Rapporteur on torture.



SECTION II

**RIGHT TO PHYSICAL  
AND MORAL  
INTEGRITY**







## OBJECTIVE

The objective of this section is to underline the principle that individuals who are detained or who are in prison retain all their rights except those that have been lost as a specific consequence of deprivation of liberty. A universal prohibition on torture and ill-treatment stems from the inherent dignity of all people. Prisoners and detainees should be treated at all times in a humane and dignified manner.

This requirement begins at the point of admission and continues until the moment of release.



### ESSENTIAL PRINCIPLES

All human beings are born free and equal in dignity and rights.

Human rights derive from the inherent dignity of the human person.

All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.



## BASIS IN INTERNATIONAL INSTRUMENTS

The preambles to the *Universal Declaration of Human Rights* and the two *International Covenants on Human Rights* emphasize that:

**recognition of the inherent dignity and ... equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world**

Principle 1 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that:

**All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.**

This principle is confirmed in the *Basic Principles for the Treatment of Prisoners*.

Details of what constitutes humane treatment for prisoners are to be found in the *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the United Nations in 1955, which deal with the essential features of daily life in prison.<sup>2</sup>

<sup>2</sup> For a useful commentary on the Standard Minimum Rules, see Penal Reform International, *Making Standards Work: An International Handbook on Good Prison Practice* (The Hague, 1995).



## CHAPTER 3. PROHIBITION OF TORTURE AND ILL-TREATMENT



### OBJECTIVE

The objective of this chapter is to underline that torture or any other form of inhuman or degrading treatment or punishment is absolutely prohibited and can never be condoned in any circumstances. The prohibition of torture forms part of customary international law, which means that it is binding, regardless of whether a State has ratified international treaties expressly prohibiting torture.



### ESSENTIAL PRINCIPLES

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions.

Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions.

Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.

Any act of torture committed as part of a widespread or systematic attack directed against the civilian population with knowledge of the attack is a crime against humanity.

No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health.

Like torture and ill-treatment, enforced disappearances and summary executions are completely prohibited.

All law enforcement officials shall be fully informed and educated about the prohibition of torture and ill-treatment.

Any statement made as a result of torture shall not be invoked as evidence in any proceedings, except as evidence to bring the perpetrators to justice.

Orders from a superior officer may not be invoked as a justification for torture.

Law enforcement officials may use force only when it is strictly necessary.

Any individual who alleges that he or she has been subjected to torture has the right to complain and to have his or her case promptly and impartially examined by competent authorities.

All deaths in custody, incidents of torture and ill-treatment, and disappearances of prisoners shall be properly investigated.

All interrogation rules, instructions, methods and practices pertaining to detained and imprisoned persons shall be kept under systematic review with a view to preventing torture.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

Article 5 of the *Universal Declaration of Human Rights* provides that:

**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**

Article 1, paragraph 1, of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture as:

**any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.**

Article 16, paragraph 1, of the Convention defines other cruel, inhuman or degrading treatment or punishment as:

**other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...**

Article 7 of the *International Covenant on Civil and Political Rights* provides that:

**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.**

Article 2 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* confirms the absolute nature of the prohibition on torture:

**2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.**

**3. An order from a superior officer or a public authority may not be invoked as a justification of torture.**

The Convention sets out the following State obligations, equally applicable to torture and ill-treatment:

**Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. [art. 10, para. 1]**

**Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.** [art. 10, para. 2]

**Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.** [art. 11]

**Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.** [art. 12]

**Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.** [art. 13]

Moreover, the following State obligations apply to cases of torture:

**Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.** [art. 14, para. 1]

**Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.** [art. 15]

In addition to the investigation provisions included in the Convention against Torture, proper investigation and documentation of torture are outlined in the ***Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***. Both these standards should be cross-referenced with chapter 28 of this Manual, which deals with investigation procedures.

Principle 22 of the ***Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*** provides that:

**No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.**

Article 7 of the *Rome Statute of the International Criminal Court* provides that torture is a crime against humanity when it is:

**committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack** [para. 1]

The absolute prohibition of all forms of torture has consequences for the use of force and weapons by prison staff. Article 3 of the *Code of Conduct for Law Enforcement Officials* provides that:

**Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.**

Article 1 of the *Declaration on the Protection of All Persons from Enforced Disappearance* states:

**1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.**

In General Assembly resolution 47/133 of 18 December 1992, which proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance, "enforced disappearances" are defined as acts whereby:

**persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law** [third preambular paragraph]

It is essential that when someone who is in detention or prison disappears or dies there should be an independent investigation into the cause of the disappearance or death. Principle 34 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that:

**Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. ...**

If someone who is in detention or prison dies or is seriously injured, the prison authorities should inform the next of kin. This is provided for in rule 44 of the *Standard Minimum Rules for the Treatment of Prisoners*:

**(1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.**

Many of the above-mentioned universal standards are also laid down in regional instruments.

The ***Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)*** include the criminalization of torture and ill-treatment:

**11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.**

...

**13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.**

**14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.**

The following provisions of the ***Inter-American Convention to Prevent and Punish Torture*** also add to the universal standards outlined above:

**... Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.** [art. 2, first paragraph]

**The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.** [art. 2, second paragraph]

**The following shall be held guilty of the crime of torture:**

**a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.**

**b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.** [art. 3]

**Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.** [art. 5, second paragraph]

"Forced disappearance" is defined in article II of the ***Inter-American Convention on the Forced Disappearance of Persons*** as:

**the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.**

## **IMPLICATIONS**

The international instruments are unequivocal. Under no circumstances is there ever any justification for torture or cruel, inhuman or degrading treatment or punishment. The definition of torture is comprehensive. It includes any form of pain or suffering, whether physical or mental, other than that which is inherent in the fact of detention or imprisonment.

This means that:

- Prisoners must never be beaten or subjected to corporal punishment;
- Corporal punishment may not be inflicted for disciplinary offences;
- Force may be used only when it is essential to restrain a prisoner;
- Staff should be trained in non-violent methods of dealing with intransigent prisoners;
- Staff, when carrying out their duties, must always act within the law;
- Staff found guilty of torturing or inflicting unjustified violence on prisoners should be prosecuted and sanctioned in accordance with the law;
- Prisoners should be able to complain to independent persons about any ill-treatment without fear of future discrimination;
- Officials, such as judges, should be able to visit prisons to ensure that torture or inhuman treatment or punishment is not taking place.

Incidents of torture and ill-treatment might have occurred when there are acts of enforced disappearance or summary executions.



## **PRACTICAL RECOMMENDATIONS**

- Prison staff should be made aware of the international prohibition on torture and cruel, inhuman or degrading treatment or punishment. That prohibition should be incorporated into national legislation, prison rules and all training materials for prison staff.
- The use of any instrument which might be employed as a weapon by staff should be carefully regulated. In many jurisdictions individual members of staff carry some form of staff or truncheon. The circumstances in which this may be used should be specified quite clearly and should always be related to preventing physical harm to persons.
- Instruments of restraint, such as handcuffs, body belts and straitjackets, should be kept in a central location in the prison and should be issued only on the authority of a senior member of staff. The issue and use of such equipment should be carefully recorded and such records be available for future reference.
- There should be a formal and open set of procedures which prisoners may use to complain to an independent authority against any incident of torture or cruel, inhuman or degrading treatment or punishment without any fear of recrimination. Chapter 27 of this Manual deals with the right of prisoners to make complaints. If necessary, a prisoner who makes a complaint should be offered a transfer to another prison.
- Arrangements should be in place to provide regular access to prisons by a judge, non-governmental organizations or other independent persons to ensure that torture or cruel, inhuman or degrading treatment or punishment does not take place.



## **TOPICS FOR DISCUSSION**

There is an international prohibition on torture at all times and in all circumstances. What means are used to enforce this prohibition in your country?

Discuss the way in which cruel, inhuman or degrading forms of treatment and punishment are prohibited by the various instruments referred to in this chapter.

Discuss the methods of controlling and restraining prisoners that are used in your prison administration. Could any of these be considered to amount to cruel, inhuman or degrading treatment? What alternative methods might be used?

The majority of prisoners will respond positively when given legitimate orders in a reasonable manner. Staff should use physical force only as a last resort. It is also important that prisoners should know from the outset what is expected of them and which rules they must obey. How should these considerations affect the way prison staff carry out their daily work?

In many jurisdictions prison staff carry some form of staff or truncheon. Should this be held openly in the hand or kept in a pocket? Discuss the circumstances in which such an instrument might be used. When should it not be used?

How may prisoners who complain to independent persons about ill-treatment by staff be protected from retaliation or discrimination?

If a judge is inspecting a prison to ensure that torture or cruel, inhuman or degrading treatment or punishment is not taking place, what areas should he or she pay particular attention to?

Why does international law not accept unlawful superior orders as a justification for human rights violations?

Prison officials may be aware that the physical conditions in their prisons are so poor that they amount to cruel, inhuman or degrading treatment. What steps should they take in these circumstances? Who should be held accountable for the treatment that is being inflicted?

What should be the proper procedure for reporting and investigating a death in custody?



## **CASE STUDIES**

1. You are the senior officer on duty in the prison. A prisoner has punched a member of staff in the face. He has been subdued by other staff and is being taken to the punishment cells when you arrive on the scene. Staff are very annoyed on behalf of their colleague. You suspect that, once you have left, the prisoner will be beaten up. How do you convince staff that they should not do this?
2. Security staff report that they have received intelligence that prisoners have made a crude explosive device with a basic timing mechanism. It has been hidden inside the prison, probably in an area where it will cause maximum injury to staff. It will explode in 2 hours. Intelligence reports have identified two prisoners, who have a record of involvement in explosions, as the prime suspects. They have been placed in isolation but refuse to give any information. Security staff are confident that by

using a minimum amount of force they can oblige the prisoners to tell what they know. They ask the head of the prison for permission to use such force. Taking account of the relevant international instruments, how should the head of the prison respond?

3. Suppose that under the law of your country, and in the opinion of judges who have investigated recent specific complaints by prisoners, the occasional slapping of unruly prisoners is considered a justifiable use of force. An international inspection committee against torture has now stated that the use of slapping is completely unacceptable and amounts to cruel, inhuman and degrading treatment. How should the prison administration respond?

## CHAPTER 4. ADMISSION AND RELEASE



### OBJECTIVE

The objective of this chapter is to show that the requirement to treat prisoners and other people deprived of their liberty in a humane and dignified manner begins at the moment of admission to custody and continues until the moment of release.



### ESSENTIAL PRINCIPLES

Persons deprived of their liberty should be held in places which are officially recognized as places of custody.

A detailed register shall be kept of every person deprived of liberty.

All prisoners shall be provided promptly with written information about the regulations which apply to their treatment and about their rights and obligations.

The families, legal representatives and, if appropriate, diplomatic missions, of prisoners are to receive full information about the fact of their detention and where they are held.

All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission.



### BASIS IN INTERNATIONAL INSTRUMENTS

Principle 6 of the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* states that:

**Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.**

Article 10, paragraph 3, of the *Declaration on the Protection of All Persons from Enforced Disappearance* requires that in any place where a person is deprived of liberty an up-to-date register shall be kept. This requirement is confirmed in rule 7 of the *Standard Minimum Rules for the Treatment of Prisoners*:

**(1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:**

- (a) Information concerning his identity;**
- (b) The reasons for his commitment and the authority therefor;**
- (c) The day and hour of his admission and release.**

**(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.**

Rule 35 of the Standard Minimum Rules provides:

**(1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.**

**(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.**

This requirement is confirmed in principle 13 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Subsequent principles include the following provisions:

**Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.** [principle 16, para. 1]

**If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.** [principle 16, para. 2]

**If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.** [principle 16, para. 3]

**A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.** [principle 18, para. 1]

**A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.** [principle 24]

The guarantee provided in principle 16, paragraph 2, of the Body of Principles was also incorporated in the 1963 *Vienna Convention on Consular Relations* (art. 36, para. 1 (b)).

The requirement for medical examination and treatment as soon as possible after admission is confirmed by rule 24 of the ***Standard Minimum Rules for the Treatment of Prisoners***, which states that:

**The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.**

There is a specific set of rights applicable to people taken into pre-trial detention. A good source of reference on this subject is *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention*, published by the United Nations in 1994.

Article II of the ***Inter-American Convention on the Forced Disappearance of Persons*** holds agents of the state or persons or groups of persons acting with the authorization, support or acquiescence of the state responsible if acts of enforced disappearance are perpetrated. Article XI of the Convention requires that:

**Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.**

**The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.**

## **IMPLICATIONS**

The recognition of human dignity begins when a prisoner is first received at the prison.

One of the first requirements of the reception procedure is for the prison authorities to ensure that there is a document confirming that the person involved has been deprived of liberty by an appropriate legal authority.

A register must be kept of all those who are admitted to prison:

- The register should give their personal details in a manner that will ensure that they can be identified;
- The register should include the date of admission and release for each prisoner;
- Personal property should be registered.

Such a register is particularly important in situations where there may be a danger that people can "disappear" within the system. An example of a registration form is provided in annex I to this Manual.

Imprisoned people should be allowed to let their families know where they are and to consult their legal representatives.

The right of prisoners to complain if any of these entitlements is not granted is dealt with in chapter 27 of this Manual.



## PRACTICAL RECOMMENDATIONS

- The arrangements for the admission and release of prisoners will vary according to the type of prison. In a pre-trial or remand prison there may be hundreds of prisoners being admitted or released on any one day (see chapter 36 of this Manual, which deals with pre-trial prisoners). In a prison for convicted long-term prisoners there may be only one or two admissions per week or even per month. The arrangements in each type of prison must reflect this volume of movement.
- There should be close liaison between the prison and the legal authority that has sent the person to prison. Prison officials should be aware of the need for the legal authority to provide a legally valid document which stipulates the reason for detention and the conditions of detention in the case of pre-trial prisoners, and the length of sentence in the case of convicted prisoners.
- All staff, particularly those who work in the reception area of a prison, should be specially trained to recognize prisoners who are most at risk of harming themselves or of being harmed by other prisoners.
- As soon as a person is admitted to prison, his or her next of kin, partner or legal representative should be informed where he or she is.
- Wherever possible there should be an induction period for all new prisoners during which the relevant legislation, regulations and routine of daily life in prison is explained to them and they are given the opportunity to meet people who are available to help them, such as religious representatives, teachers and others. There is a specific requirement for all prisoners to be seen on admission by a properly trained medical officer. This should be done within the first 24 hours.

## ? TOPICS FOR DISCUSSION

What methods are adopted in your prison administration to ensure that prisoners have been deprived of their liberty legally? How could the necessary liaison between prison and police or other officials who deliver prisoners be improved to ensure that the necessary legal documents always accompany the prisoner?

Identify any obstacles to record-keeping for admissions and releases.

What problems may arise if proper records are not kept?

To what extent can computers be used to assist in proper record-keeping?



## CASE STUDIES

1. Late one evening a prisoner is brought to the prison by police. The police tell prison staff that the man has just been sentenced to six months in prison. In their haste to reach the prison in time they have forgotten to bring the legal document which authorizes imprisonment. The prisoner says that he should not be in custody. Taking account of the relevant international instruments, what steps can prison staff take to satisfy themselves that the man is being delivered into their custody legally?
2. A woman is brought to the prison, having been sentenced to 12 months' imprisonment. She had not been in pre-trial detention. She did not expect to receive a prison sentence. She has left her two small children in the care of a neighbour. According to the international instruments, who should be told that she is in prison?

SECTION III

**RIGHT TO AN  
ADEQUATE  
STANDARD OF  
LIVING**







## OBJECTIVE

The objective of this section is to underline the principle that prisoners and detained individuals have the right to an adequate standard of living and appropriate conditions of detention. These rights include accommodation, food, drinking water, clothing and bedding.



### ESSENTIAL PRINCIPLES

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

All persons deprived of their liberty have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding.



## BASIS IN INTERNATIONAL INSTRUMENTS

Article 25 of the *Universal Declaration of Human Rights* provides:

**1. Everyone has the right to a standard of living adequate for [his] health and well-being ... including food, clothing, housing and medical care and necessary social services, and the right to security in the event of ... lack of livelihood in circumstances beyond his control.**

Article 10 of the *International Covenant on Civil and Political Rights* provides:

**1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.**

Article 11 of the *International Covenant on Economic, Social and Cultural Rights* provides:

**1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. ...**

Article 11, paragraph 2, of the Covenant also recognizes the fundamental right of everyone to be free from hunger.

Article 27 of the *Convention on the Rights of the Child* provides:

**1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* provide that States should:

**34. Take steps to improve conditions in places of detention which do not conform to international standards.**



## IMPLICATIONS

The deprivation of adequate food, water, clothing and proper accommodation can often result in ill-treatment of prisoners which may amount to torture in severe cases. It is important to realize that physical infliction of torture or other cruel, inhuman or degrading treatment is not the only manner of violating the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



## CHAPTER 5. ACCOMMODATION



### OBJECTIVE

Prisoners are usually required to remain in a particular location. In many instances they will have to spend extended periods in a particular building or part of a building. The objective of this chapter is to show that this accommodation must meet certain basic standards. The international rules make it clear that prisoners should have enough space to live in, with access to enough air and light to remain healthy.



### ESSENTIAL PRINCIPLES

Accommodation for prisoners shall provide adequate cubic content of air, floor space, lighting, heating and ventilation.

Prisoners required to share sleeping accommodation shall be carefully selected and supervised at night.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides:

**1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...**

The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

**9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. ...**

**(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.**

**10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.**

**11. In all places where prisoners are required to live or work,**

**(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;**

**(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.**

...

**26. (1) The medical officer shall regularly inspect and advise the director upon:**

...

**(c) The sanitation, heating, lighting and ventilation of the institution;**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* provide that States should:

**34. Take steps to improve conditions in places of detention which do not conform to international standards.**

## **IMPLICATIONS**

Overcrowding of living accommodation is one of the biggest problems in many prisons. In some countries, it means that two or three prisoners live in cells which were originally built for one person. In other countries, it means that large numbers of prisoners are crammed into small dormitories, sometimes with an insufficient number of beds or with no proper bedding.

Where people are kept for long periods of time in such overcrowded conditions, there may be a danger of violence and of the strong taking advantage of the weak. In extreme situations where not everyone has a bed, it is likely that the weaker prisoners will be required to sleep on the floor. Where prisoners are locked up for most of the day with nothing to do and no privacy, it is likely that they will turn on each other as a means of relieving tension or breaking monotony. There may be a danger of sexual as well as physical abuse.

Where overcrowding exists, there will also be a real danger of illness and the spread of disease. In many prisons, for example, tuberculosis, sexually transmitted diseases and HIV/AIDS present an increasing threat to health.

Such living conditions have serious implications and can amount to inhuman, degrading or other ill-treatment in violation of international standards.

Adequate temperature and heating are extremely important in ensuring acceptable living conditions. In this regard, all cells should be adequately heated to provide comfortable room temperatures and to cope with wintry conditions, and well ventilated. Proper ventilation also contributes to preventing disease and ensuring a healthy environment.



## **PRACTICAL RECOMMENDATIONS**

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends that the basic standard for prison cell space, for both males and females, should be not less than 6 square metres per prisoner.
- The European Committee generally considers large-scale dormitory accommodations unsatisfactory in prisons, whether overcrowded or not. Nevertheless the Committee has found that rooms of 21 square metres are acceptable for five prisoners, that rooms of 25 square meters should accommodate no more than six prisoners and that rooms of 35 and 60 square metres are suitable for no more than seven and 12 people, respectively.
- Where accommodation is overcrowded and does not meet the international standards, staff can make arrangements to reduce the time prisoners spend in their cells or dormitories.
- Corridors or landings can be used for group activities with prisoners being allowed out in rotation.
- Care should be taken when selecting prisoners for shared accommodation in the interests of health, safety and security.
- The European Committee recommends that all prisoner accommodation should have access to natural light and that prisoners should have some control over lighting and ventilation: light switches should be inside cells and prisoners should be able to open and close windows and shutters.



## **TOPICS FOR DISCUSSION**

If there are large numbers of daily admissions and releases at a prison, how can prison staff ensure that prisoners allocated to dormitories are "carefully selected", as required by the international instruments? What problems are likely to arise if there is no careful selection?

What practical steps can prison staff take to allow prisoners in overcrowded accommodation to spend more time out of their cells?

Discuss the obligation on senior prison administrators to bring levels of overcrowding to the attention of the relevant authorities.

In some cultures, holding prisoners in single cells is regarded as a form of punishment. What special considerations apply when prisoners are held in communal cells?



## **CASE STUDIES**

1. Your prison has 50 per cent overcrowding. Prisoners are confined to their living accommodation for 23 hours each day. They are allowed out only for one hour to exercise in the open air. How can you make arrangements for them to be out of their cells for longer and to take part in useful activities?

2. Consider the situation where a room is big enough to hold 20 prisoners decently. Forty-two beds bunked in tiers of three have been placed in the room. Seventy-five people are now kept in this room. The international instruments are clear that there are no circumstances in which this degree of overcrowding can be considered acceptable. What is the prison director to do?

## CHAPTER 6. RIGHT TO ADEQUATE FOOD AND DRINKING WATER



### OBJECTIVE

The objective of this chapter is to underline that prisoners must be provided with wholesome food which is adequate to safeguard their health and strength. They must also have regular access to drinking water.



### ESSENTIAL PRINCIPLES

Adequate food and drinking water are human rights.

All prisoners have the right to wholesome and adequate food at the usual hours, with drinking water available whenever needed.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 11 of the *International Covenant on Economic, Social and Cultural Rights* ensures the right to adequate food as a component of the right of everyone to an adequate standard of living. Article 11, paragraph 2, specifically provides that States parties recognize the fundamental right of everyone to be free from hunger.

The right to adequate food is further developed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12 (1999) on the subject,<sup>3</sup> which provides:

**6. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. ...**

...

**8. The Committee considers that the core content of the right to adequate food implies: (a) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; (b) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.**

<sup>3</sup> *Official Records of the Economic and Social Council, 2000, Supplement No. 2 and corrigendum (E/2000/22 and Corr.1), annex V.*

...

**10. Free from adverse substances sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.**

...

**15. ... whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. ...**

...

**17. Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. In determining which actions or omissions amount to a violation of the right to food, it is important to distinguish the inability from the unwillingness of a State party to comply. Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. This follows from article 2, paragraph 1, of the Covenant, which obliges a State party to take the necessary steps to the maximum of its available resources, as previously pointed out by the Committee in its General Comment No. 3 (1990), paragraph 10. A State claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.**

**18. Furthermore, any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.**

The right to adequate water is further developed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 15 (2002) on the right to water (arts. 11 and 12 of the Covenant).

Rule 20 of the *Standard Minimum Rules for the Treatment of Prisoners* requires:

**(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.**

**(2) Drinking water shall be available to every prisoner whenever he needs it.**

Furthermore, rule 26 of the Standard Minimum Rules requires:

**(1) The medical officer shall regularly inspect and advise the director upon:**

**(a) The quantity, quality, preparation and service of food;**

## **IMPLICATIONS**

In countries where the quality of food available to many law-abiding members of the community is inadequate, the question may be asked why prisoners should be guaranteed adequate food. The answer is rooted in a respect for the right to adequate food. If the State has taken from prisoners the opportunity to provide for their own basic needs, these must be supplied by the State.

The Special Rapporteur of the Commission on Human Rights on the right to food has stressed the inclusion of the right to adequate drinking water as part of the definition of the right to adequate food. In his report to the Commission at its fifty-eighth session, in 2002, the Special Rapporteur wrote:

drinking water is essential for healthy nutrition, so that it should be considered a public good. Both the quality and the quantity of water available are fundamental. Setting standards for water quality is extremely important, as is ensuring equitable access to water resources to protect social justice. Including drinking water in the right to food is an important way of ensuring such accountability and justiciability. [E/CN.4/2002/58, para. 130]

It should be noted that modern legal opinion holds that reduction of diet equates with corporal punishment and constitutes inhuman punishment.



## **PRACTICAL RECOMMENDATIONS**

- In many prisons there is land either inside the prison perimeter or immediately adjacent to the prison which can be used for cultivation. Wherever possible, prisoners should be encouraged to grow their own food. Any excess can be given or sold to the local community, where appropriate.
- The issue of allowing or encouraging families of prisoners to supply food is a complicated one. On the one hand, the local culture may be such that families may wish or may be expected to supply food. In some places this arrangement also applies, for example, to patients in hospital. On the other hand, families themselves may be short of food. They may live a long distance away and may be unable to bring food to prisoners on a regular basis.



- Consideration should be given to the dietary requirements of particular groups of prisoners. These include those with medical conditions, nursing or pregnant women, and juveniles. Some prisoners will require special diets for religious or cultural reasons.
- It is important that meals are taken at even intervals throughout the day. This applies particularly to the period of time between the last meal of the day and the first meal of the following day. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has suggested that a last meal at 16.00 with nothing to eat or drink until 07.30 the following day is inappropriate.
- The manner in which food is prepared and served is important to ensuring the right to adequate food. There should be proper sanitary conditions in prison kitchens and good ventilation in order to prevent infestation and to maintain culinary hygiene.

### **TOPICS FOR DISCUSSION**

If prisoners' families are allowed to bring food to the prison, it may be necessary to have the food searched for security reasons. How can this be done sensitively?

It is quite common for prisoners to be employed in the prison kitchen, preparing, cooking and distributing food. This is a good way to keep some of them employed. Discuss how best to ensure that food is not stolen by these prisoners or distributed unfairly.

Undernourished prisoners have less resistance to disease. What can be done in the case of prisoners who suffer from tuberculosis and who need special nourishment?

In what circumstances might it be possible to encourage prisoners to become self-sufficient in food production and even to contribute to the needs of the local community?

### **CASE STUDIES**

1. The prison authorities cannot supply enough food for the prisoners on a daily basis. There is a large unused compound just outside the perimeter of the prison. It would be suitable for cultivation. What are all the factors that would have to be taken into consideration so that this could happen?
2. There are people of many different nationalities and cultures in the prison. Consider how their different religious and cultural dietary requirements can be met.

## CHAPTER 7. RIGHT TO CLOTHING AND BEDDING



### OBJECTIVE

The objective of this chapter is to underline how important it is both for the general health of everyone in prison and for the self-respect of the individual that prisoners should have clean and adequate clothing and bedding.



### ESSENTIAL PRINCIPLES

Clothing, as a component of the right to an adequate standard of living, is a human right.

All prisoners not allowed to wear their own clothing shall be provided with suitable clothing.

There shall be facilities for keeping clothing clean and in proper condition.

All prisoners shall be provided with a separate bed and clean bedding, with facilities for keeping bedding clean.

There must be facilities to wash and dry clothing and bedding regularly.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 11, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* provides for the right to clothing as a component of the right of everyone to an adequate standard of living.

The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

**17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.**

**(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.**

**(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.**

**18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.**

**19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.**

...

**26. (1) The medical officer shall regularly inspect and advise the director upon:**

...

**(d) The suitability and cleanliness of the prisoners' clothing and bedding;**

## **IMPLICATIONS**

In some countries, pre-trial prisoners are allowed to wear their own clothes and convicted prisoners are required to wear prison clothing. In some countries, all prisoners are required to wear prison clothing. In other countries, all prisoners with the exception of those in the highest security category are allowed to wear their own clothes.

Whatever the arrangement, prisoners should have regular changes of personal clothing. Facilities should exist within or outside the prison for washing and drying prison clothes. If prisoners wear their own clothes their families should be allowed to provide regular changes.

Prison clothing should not be degrading or humiliating.

In some countries, the degree of prison overcrowding means that prisoners are required to share beds. Every effort should be made to avoid such a situation.

The nature of the bed and bedding may vary according to local traditions. What is provided in prisons should be similar to what is used in the community.

## **PRACTICAL RECOMMENDATIONS**

- In many countries, prisoners are able to wash their own clothing. In others there is a central laundry. If a prison does not have a laundry of its own, arrangements should be made with a local institution for laundering prisoners' personal clothing and bedding. An alternative is to allow prisoners' families to provide clean clothing.
- It is the responsibility of the prison administration to provide individual sleeping facilities for every prisoner. In many cultures, this means a separate bed. In some cultures, it may mean providing a sleeping mat.
- Each prisoner should be issued with a clean set of bedding on first admission and it should be washed at regular intervals, either by the prisoners themselves or by the appropriate prison staff.
- If the prison authorities lack the resources to maintain necessary facilities, they might consider the possibility of help from local community groups.

① **TOPICS FOR DISCUSSION**

What are the arguments for requiring prisoners to wear prison clothing? When might they wear their own clothes?

What arrangements can be made to ensure that prisoners keep their personal clothing clean?

② **CASE STUDY**

In your prison all prisoners are allowed to wear their own clothes. It has been proved that one prisoner is determined to find a way to escape. In order to make this more difficult, it has been decided that he should be made to wear clothes which identify him as an escape risk. How can this be done in a manner which is not humiliating and degrading?

SECTION IV

**HEALTH RIGHTS  
OF PRISONERS**



## **OBJECTIVE**

The objective of this section is to emphasize that proper health care is a basic right which applies to all human beings and that the conditions of health care in prisons affect public health.



## **ESSENTIAL PRINCIPLE**

The enjoyment of the highest attainable standard of physical and mental health is a human right.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

Article 12, paragraph 1, of the **International Covenant on Economic, Social and Cultural Rights** recognizes:

**the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**



## **IMPLICATIONS**

The state of health, both physical and mental, of any human being affects how he or she lives, works and behaves. This is true in the case of both prison staff and prisoners.

A person's state of health may affect other people. Sick people need special care and cannot contribute fully to the society in which they live.

Some health problems affect people's behaviour. This can affect relations with other people. This is particularly the case with mental health problems, which may affect a significant proportion of prisoners.

Some health problems can be transmitted to other people. This is particularly true of some illnesses which are prevalent in some prison systems. HIV/AIDS and tuberculosis are examples of such illnesses.

The vast majority of prisoners leave prison at some point. Staff in prisons come and go between prisons and the outside world, as do visitors to the prison. This means that health problems in prisons can become community health problems.

Thus, maintaining health in prisons is in everyone's interests. When prison staff are healthy, they are better able to do their work. When prisoners are healthy, they are more fit for work and better able to cope with imprisonment.





## CHAPTER 8. HEALTH SCREENING FOR ALL NEW PRISONERS



### OBJECTIVE

The objective of this chapter is to underline that a prisoner's right to proper health care begins at the point of admission to custody.



### ESSENTIAL PRINCIPLES

It is a basic requirement that all prisoners should be given a medical examination as soon as they have been admitted to a prison or place of detention.

Any necessary medical treatment should then be provided free of charge.

Prisoners should generally have the right to request a second medical opinion.



### BASIS IN INTERNATIONAL INSTRUMENTS

Principle 24 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, which provides that detained or imprisoned persons shall be offered a proper medical examination as soon as possible after admission and that medical care and treatment shall be provided free of charge, was referred to in chapter 4 of this Manual. The need for continuing medical supervision and treatment is confirmed in rule 24 of the **Standard Minimum Rules for the Treatment of Prisoners**, also discussed in chapter 4.

Principle 25 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** provides that:

**A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.**



### IMPLICATIONS

The purpose of screening new prisoners on admission is for the sake of the prisoners' health and not for the benefit of the prison authorities.

Having deprived a person of his or her liberty, there is an obligation on the State to care for that person. This obligation extends to health care.

A number of persons who are admitted to prison will already be suffering from some form of physical or mental illness. There is an obligation on the prison system to ensure that these illnesses are dealt with as soon as possible.

In some societies there is a great reluctance on the part of judicial authorities to send women to prison. When this is done, it is sometimes justified on the basis that the woman involved is mentally unstable. Medical officers should take particular care in respect of women prisoners that there is not an improper diagnosis of mental illness.



## PRACTICAL RECOMMENDATIONS

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that every newly arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission. Save in exceptional circumstances, that interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.
- Prison staff should be able to respond to the results of the medical screening by identifying prisoners' problems, both physical and mental, and dealing with them in a confidential manner.
- Medical staff should separate those prisoners with severe problems and plan a programme of treatment for them.
- If there is a high number of daily admissions to a prison it may be more practical for prisoners to be seen at the point of admission by a qualified nurse, who will refer urgent cases to the medical officer for immediate attention. The medical officer can then see all the other persons within 24 hours of admission.
- The prison authorities are responsible for making special arrangements to deal with prisoners who are found to be suffering from contagious or infectious diseases.
- Effective screening should include assessment of the risk of suicide or self-harm. All staff should be sensitive to such risk at the point of admission and at other times during imprisonment. Prisoners thought to be at risk may be referred to a counsellor, placed in a cell with another carefully selected prisoner or observed by staff at frequent intervals for their protection.

## ? TOPICS FOR DISCUSSION

The point of first admission to custody is likely to be a stressful time for prisoners. The medical staff in the reception area of the prison can play an important role in re-assuring prisoners that they will be treated in a decent and humane manner and that they will not be abused. What techniques can they use when doing this?

Health-care staff who work in the reception area of the prison may be the first to obtain information about a prisoner's state of health. If they suspect that a newly admitted prisoner may be mentally unstable, what should they say to the other staff who have to deal with the prisoner in the reception area? How should such a prisoner be treated?

What should health-care staff do in similar circumstances if they realize that a prisoner has a transmissible disease?

Discuss the role of the prison doctor in assessing whether prisoners are fit to undergo punishment.



## CASE STUDY

A prisoner is admitted late one evening. He gives every appearance of being suicidal. The medical officer has gone home and cannot be contacted. Bearing in mind the international instruments, what action should staff take to ensure that the prisoner does not harm himself overnight?

## CHAPTER 9. THE RIGHT OF PRISONERS TO HAVE ACCESS TO HEALTH CARE



### OBJECTIVE

International instruments protect everyone, including prisoners, against gross violations of their health and the integrity of their person. The objective of this chapter is to underline that, because people who are in custody are particularly vulnerable, there are specific international standards which protect their right to health care.



### ESSENTIAL PRINCIPLES

All prisoners and detained persons have the right to the highest attainable standard of physical and mental health.

Prisoners should have free access to the health services available in the country.

Decisions about a prisoner's health should be taken only on medical grounds by medically qualified people.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 25, paragraph 1, of the *Universal Declaration of Human Rights* guarantees to everyone, including prisoners:

**the right to a standard of living adequate for ... health and well-being ... including ... medical care and necessary social services ...**

In addition, article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes the right to health of everyone, including prisoners.

Principle 9 of the *Basic Principles for the Treatment of Prisoners* provides that:

**Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.**

Rule 22 of the *Standard Minimum Rules for the Treatment of Prisoners* requires:

**(1) ... The medical services should be organized in close relationship to the general health administration of the community or nation. ...**

Rule 23 of the Standard Minimum Rules deals with the special medical needs of women and nursing infants. This subject is dealt with in chapter 30 of this Manual.

Rule 25 of the Standard Minimum Rules provides:

**(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.**

**(2) The medical officer shall report to the director when-**

**ever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.**



## **IMPLICATIONS**

In countries where health care in the population at large is not of a high standard, there must be particular concern about health-care standards in prisons.

It is not appropriate to argue that, because a person is in prison, he or she is entitled to a lower standard of health care than that provided in the community. On the contrary, in depriving a person of his or her liberty, the State takes on a special responsibility to provide adequate health care.



## **PRACTICAL RECOMMENDATIONS**

- It is important to have a system for prisoners to have access to a doctor which is clear and understood by everyone.
- Every prisoner who asks to see a doctor should be able to see the doctor as soon as possible.
- Every prisoner who is sick must be seen daily by the doctor.
- Women in prison should have access to reproductive health services.
- There should be close links between prison medical personnel and community medical personnel.
- The best examples of prison health care often occur when it is under the control of community health-care authorities.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that the direct support of a fully equipped hospital service should be available to prisons, in either a civil or a prison hospital. Furthermore, a prison health-care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community.



## **TOPICS FOR DISCUSSION**

What are the main advantages of linking prison health care closely with that provided in the community as a means of observing the requirements of the international instruments?

Discuss how prison doctors and other health-care staff can develop links with their professional colleagues in the community.



## **CASE STUDY**

In the community in which your prison is situated there is a shortage of psychiatrists and of good health care for the mentally ill. The prison has a number of prisoners who have some form of mental disorder. How can the prison director ensure that they receive the medical care they need?

## CHAPTER 10. HEALTHY CONDITIONS IN CUSTODY



### OBJECTIVE

All prisoners are entitled to be held in conditions which are decent and humane. The objective of this chapter is to underline that one test of whether prison conditions are decent and humane is that they meet proper health requirements.



### ESSENTIAL PRINCIPLE

The medical officer has an important responsibility to ensure that proper health standards are met. He or she can do this by regularly inspecting and advising the director of the prison upon the suitability of food, water, hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing, bedding and opportunities for exercise.



### BASIS IN INTERNATIONAL INSTRUMENTS

Rule 26 of the **Standard Minimum Rules for the Treatment of Prisoners** requires:

**(1) The medical officer shall regularly inspect and advise the director upon:**

**(a) The quantity, quality, preparation and service of food;**

**(b) The hygiene and cleanliness of the institution and the prisoners;**

**(c) The sanitation, heating, lighting and ventilation of the institution;**

**(d) The suitability and cleanliness of the prisoners' clothing and bedding;**

**(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.**

Rule 24 of the Standard Minimum Rules requires that:

**The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to ... the segregation of prisoners suspected of infectious or contagious conditions; ...**



### IMPLICATIONS

A healthy environment requires the cooperation of everyone in prison. This means:

- Health training for prison staff;
- Health education for prisoners.

All prison staff need to have an understanding of basic health matters.

Additional training and education are necessary periodically to keep staff and prisoners up to date on the latest health problems, such as drug abuse, HIV/AIDS, tuberculosis and other transmissible diseases.

In some countries, the environmental health officers who have responsibility for public health matters have the right of access to prisons and can oblige the prison authorities to take necessary steps to ensure proper health standards.



## **PRACTICAL RECOMMENDATIONS**

- The conditions in which prisoners live should be inspected regularly by a doctor.
- The doctor should have regular access to the director of the prison and should be encouraged to bring any matter to his or her attention.
- If the doctor feels that his or her recommendations are being ignored, he or she should have the right of access to a higher authority within the prison system.
- All prison staff should receive training in health matters, including first aid, suicide prevention and issues relating to HIV/AIDS and other transmissible diseases.
- Special attention should be given to the health needs of women prisoners, particularly in respect of antenatal and post-natal care and for nursing mothers and their babies (see chapter 30 of this Manual).
- Staff and prisoners involved in food preparation should receive special training in food hygiene.
- Staff responsible for safety issues should be specially trained.
- Prisoners should receive health information and education when they arrive in prison, particularly in respect of concerns they may have about matters such as HIV/AIDS infection.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stressed the importance of preventive health care in prisons. Thus the task of prison health-care services should not be limited to treating sick patients, but should extend to social and preventive medicine, including supervising proper hygiene in prisons, preventing transmissible disease, suicide and violence, and limiting the disruption of social and family ties.

## **? TOPICS FOR DISCUSSION**

In an overcrowded room holding pre-trial prisoners, the doctor discovers that one prisoner is suffering from AIDS. What should be done?

What is the role of the medical officer in circumstances where very poor physical conditions in a prison present a serious and continuing threat to the health of prisoners?



## **CASE STUDY**

There is a dormitory in the prison which holds all prisoners known to have tuberculosis. There is severe overcrowding in the prison. A new batch of prisoners is admitted. The director of the prison says that two of them should be accommodated in the dormitory with the prisoners who have tuberculosis as there is no room for them anywhere else in the prison. What should the doctor do?

## CHAPTER 11. SPECIALIST HEALTH CARE



### OBJECTIVE

The objective of this chapter is to emphasize that prisoners should have access to a full range of health-care facilities and that there should be a strong link between health-care services in prisons and those in the community or nation.



### ESSENTIAL PRINCIPLES

Every prison should have proper health facilities and medical staff to provide for a range of health needs, including dental and psychiatric care. Sick prisoners who cannot be treated in the prison, such as prisoners with mental illness, should be transferred to a civil hospital or specialist prison hospital.

All prisoners shall have access to a qualified dental practitioner.

Services for psychiatric diagnosis and, if appropriate, treatment shall be available at every prison.

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.

Prisoners who are insane shall not be detained in prisons, but transferred as soon as possible to mental institutions.

Prisoners suffering from other mental diseases shall be treated in specialized institutions under medical management, or treated and supervised by prison medical services as appropriate.



### BASIS IN INTERNATIONAL INSTRUMENTS

The *Standard Minimum Rules for the Treatment of Prisoners* provide:

**22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.**

**(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.**

**(3) The services of a qualified dental officer shall be available to every prisoner.**

...

**82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.**

**(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.**

**(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.**

**(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.**

**83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.**

## **IMPLICATIONS**

In many prison systems a significant proportion of prisoners suffer from some form of mental illness. Prisoners who are insane should not be in prison. The prison authorities should make every effort to have them transferred to a psychiatric hospital. While they remain in prison they will require special care.

There should be a close relationship between the prison medical officer and health-care specialists in the community so that use can be made of community expertise.

It is particularly important in the case of prisoners who are receiving psychiatric treatment that arrangements should be made for their continuing care after they are released.



## **PRACTICAL RECOMMENDATIONS**

- Some prisoners may need specialist health care which is not available in the prison. In such cases the prisoners should be transferred to outside specialist care. If it is not possible to transfer such prisoners to outside facilities, they must be transferred to a prison with equivalent specialist facilities.
- Prison is not the right place for people who are mentally ill. Their care should be the concern of medical management. Keeping mentally ill people in prison makes prison life more difficult for everyone in the institution: staff and other prisoners, as well as the prisoner who is mentally ill.
- Screening and monitoring the mental health of prisoners helps to identify those who should not be in prison. It is important to distinguish between prisoners who intentionally disrupt the order of the prison and prisoners who are mentally disordered and whose behaviour is disruptive. Sometimes prisoners whose views do not fit with those of the establishment are treated as disruptive or mentally disordered. It is important that diagnosis of mental health should be based on medical criteria only.



- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that "a doctor qualified in psychiatry should be attached to the health-care service of each prison, and some of the nurses employed there should have had training in this field. The provision of medical and nursing staff, as well as the layout of prisons, should be such as to enable regular pharmacological, psychotherapeutic and occupational therapy programmes to be carried out."
- Special provision may have to be made for prisoners who are drug-dependent and are in the process of withdrawal.

### **TOPICS FOR DISCUSSION**

Prisons often have to deal with individuals for whom the community has run out of alternatives. A significant proportion of those who are in prison are petty offenders. They present a problem for the law-abiding members of the community but are not major criminals. Many of them suffer from some form of mental disorder. Sometimes this is a result of drug or alcohol abuse. How can prison staff be helped to cope with such people?

There is often a great deal of ignorance and uncertainty about how HIV/AIDS is transmitted and the extent to which its presence constitutes a danger to staff and other prisoners. What considerations should apply to prisoners with HIV/AIDS? To what extent do they need to be treated differently from other prisoners?

### **CASE STUDIES**

1. A prisoner has been diagnosed by the psychiatrist as mentally disordered and in need of hospital care. The local health authorities agree but say that a bed cannot be found for the prisoner for some time. How should he be treated while he is awaiting transfer to the psychiatric hospital?
2. Your prison receives its first prisoner who is known to be HIV-positive. Prison staff do not know how to manage this prisoner. They are afraid that they may contract the illness through contact with her. They are afraid that this may affect their families. Other prisoners make it clear that they will not allow this prisoner to come into contact with any of them. You are the senior medical person. You know how this prisoner should be treated. How do you go about convincing staff and prisoners that this new person poses no threat to their health if they behave appropriately?

## CHAPTER 12. RESPONSIBILITIES AND DUTIES OF HEALTH-CARE PERSONNEL



### OBJECTIVE

The objective of this chapter is to underline that the primary responsibility of doctors, nurses and all other health-care personnel working in prisons and other places of detention is to look after the health care of the prisoners.



### ESSENTIAL PRINCIPLES

It is important that health care for prisoners be provided by at least one qualified medical officer.

Medical personnel have a duty to provide prisoners and detainees with health care equal to that which is afforded to those who are not imprisoned or detained.

The primary responsibility of all health-care personnel is to look after the health of all prisoners.

Health personnel shall not commit or give their permission for any acts which may adversely affect the health of prisoners.



### BASIS IN INTERNATIONAL INSTRUMENTS

The most important international provisions dealing with the responsibilities and role of prison health-care personnel are the *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Principles read as follows:

**Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.** [principle 1]

**It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.** [principle 2]

**It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.** [principle 3]

**It is a contravention of medical ethics for health personnel, particularly physicians:**

**(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;**

**(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.** [principle 4]

**It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.** [principle 5]

**There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.** [principle 6]

Rule 22 of the *Standard Minimum Rules for the Treatment of Prisoners* provides:

**(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. ...**

## **IMPLICATIONS**

The role of the medical officer in a prison or place of detention is extremely sensitive. The medical officer is the one person in the institution whom the director cannot tell what to do in respect of his or her professional duties.

The primary relationship of the medical officer with the prisoner is that of doctor to patient. This means that issues of medical confidentiality between doctor and patient must be respected.

The medical officer must be particularly careful not to be involved in any way in the disciplining or punishment of prisoners or in restraining a prisoner for any reason other than a medical one.



## **PRACTICAL RECOMMENDATIONS**

- Consideration should be given to an arrangement whereby the medical officer is employed by the local health authority rather than by the prison authorities.
- All prisoners should have regular access to a medical officer if they are unwell. Such access should always be covered by the requirements of medical confidentiality. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stressed that "Freedom of consent and respect for confidentiality are fundamental rights of the individual. They are also essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship, especially in prisons, where a prisoner cannot freely choose his own doctor."
- The medical officer must always carry final responsibility for clinical decision-making in individual cases.
- The medical officer should be supported by nursing staff who have recognized health-care qualifications.
- Medical staff should never take part in any forced treatment of prisoners. This prohibition extends to the treatment of prisoners who are on hunger strike.
- From time to time, medical officers may be required to certify causes of death which have occurred in custody. In such cases, the doctor should be careful to apply only clinical judgement and should not be influenced by any other external considerations, such as those of the management of the prison.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that "Patients should be provided with all relevant information (if necessary in the form of a medical report) concerning their condition, the course of their treatment and the medication prescribed for them. Preferably, patients should have the right to consult the contents of their prison medical files, unless this is inadvisable from a therapeutic standpoint."
- The European Committee has also stressed the professional independence of the medical staff. It has recommended as follows: "The health-care staff in any prison is potentially a staff at risk. Their duty to care for their patients (sick prisoners) may often enter into conflict with considerations of prison management and security. This can give rise to difficult ethical questions and choices. In order to guarantee their independence in health-care matters, the [Committee] considers it important that such personnel should be aligned as closely as possible with the mainstream of health-care provision in the community at large."



## **TOPICS FOR DISCUSSION**

Discuss the relationship between the prison doctor and the director of the prison. Are there occasions when the medical officer can overrule the director?

Discuss the role of the prison doctor in assessing whether prisoners are fit to undergo punishment. In some countries, the medical officer has to certify that a prisoner is fit to undergo any disciplinary measure. It can be argued that this amounts to an authorization for the punishment itself. An alternative arrangement would be for the doctor regularly to see any prisoner who is undergoing punishment and to advise the prison director if the prisoner becomes unfit.



## CASE STUDIES

1. A prisoner refuses to obey the legitimate orders of staff. The doctor assesses him and concludes that he is not mentally disordered or unstable. The man continues to assault staff and to act in an impossible manner. The director of the prison asks the doctor to give the prisoner an injection for his own safety and that of the staff who are dealing with him. Bearing in mind the international instruments, what should the doctor do?
2. In the course of a medical examination, the medical officer finds marks on a prisoner's body which are consistent with beating. The prisoner alleges that he has been beaten by staff but says that he does not wish to make any complaint for fear of reprisal. What should the doctor do?
3. A prisoner claims that she has been wrongfully convicted. She says that she will not eat or drink until her case is reopened. Her health quickly deteriorates. The director of the prison asks the doctor to intervene to save her life. How should the doctor respond?

## CHAPTER 13. HYGIENE



### OBJECTIVE

The objective of this chapter is to underline the need for adequate sanitary installations and washing and bathing facilities in prisons and other places of detention.



### ESSENTIAL PRINCIPLE

All prisoners shall be provided with facilities to meet the needs of nature in a clean and decent manner and to maintain adequately their own cleanliness and good appearance.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes everyone's right to physical and mental health.

The *Standard Minimum Rules for the Treatment of Prisoners* require:

**12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.**

**13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.**

**14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.**

**15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.**

**16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.**

...

**26. (1) The medical officer shall regularly inspect and advise the director upon:**

...

**(b) The hygiene and cleanliness of the institution and the prisoners;**



## IMPLICATIONS

In many prisons large groups of people have to live close together for long periods of time. This is particularly true of prisons where there is dormitory accommodation holding a large number of prisoners. It is essential for health as well as personal dignity that prisoners should be given every opportunity to attend to their most basic bodily functions with a proper degree of privacy and also that special attention should be paid to the requirements of personal hygiene.

It is important for the health of the staff who work in a prison, as well as for prisoners, that there should be proper arrangements for hygiene and cleanliness.



## PRACTICAL RECOMMENDATIONS

- Staff should ensure that all available lavatory and washing facilities are in working order and should arrange for groups of prisoners to keep them clean.
- Dormitories may have insufficient sanitary and hygiene facilities for the numbers held in them. In such circumstances it may be possible to allow prisoners to use alternative facilities outside the dormitories.
- All prisoners should be given soap, clean towels and toilet facilities. Female prisoners should have ready access to sanitary supplies for menstruation. Male prisoners should have personal shaving materials.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment takes the view that sanitary arrangements should permit inmates to comply with the needs of nature when necessary in clean and decent conditions. Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or there should be means for prisoners who need to use a lavatory to be released from their cells without undue delay at all times, including at night.
- Prisoners carrying out work which makes them dirty and those preparing or serving food should be given the opportunity to wash more regularly.
- Care should be taken that the requirements of hygiene are not used as a cloak for imposing discipline. For example, rule 16 of the Standard Minimum Rules for the Treatment of Prisoners should not be used as an excuse to shave the heads of prisoners.



## TOPICS FOR DISCUSSION

Sometimes staff are reluctant to issue prisoners with personal razors for shaving in case they harm themselves or use the blades as weapons. What alternative arrangements can be made to meet hygiene requirements?

Discuss what consideration needs to be given to the requirements in some religions about washing and cutting hair such as facial hair.



## CASE STUDIES

1. There are no washing facilities in individual cells. A group of prisoners approach you to say that their religion requires them to wash at specific times each day. What arrangements can be made for them?
2. Consider how local voluntary groups or non-governmental organizations might be involved in helping to improve hygiene provision in a prison where facilities are very poor.

## CHAPTER 14. EXERCISE



### OBJECTIVE

The objective of this chapter is to underline that people's health should not suffer as a direct consequence of being deprived of their liberty. Many prisoners spend the majority of their days in conditions of relatively close confinement, usually indoors. In these circumstances it is essential that they be given an adequate amount of time each day in the open air and be allowed to walk about or to take other exercise.



### ESSENTIAL PRINCIPLE

All prisoners shall have at least one hour's daily exercise in the open air if the weather permits.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes everyone's right to physical and mental health.

Rule 21 of the *Standard Minimum Rules for the Treatment of Prisoners* requires:

**(1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.**

**(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.**



### IMPLICATIONS

Exercise is important for prisoners' physical health and also gives an opportunity for the release of mental tension.

In many prison systems, pre-trial prisoners spend most of the time in their cells or dormitories. It is particularly important that they should have as much access to fresh air and exercise as possible.

Physical exercise is particularly important for younger prisoners.



### PRACTICAL RECOMMENDATIONS

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment believes that all prisoners, including those undergoing cellular confinement as punishment, should have at least one hour of exercise outside every day, where there is enough space to exert themselves physically.



- An exercise area should be identified within the prison which is secure and easy for staff to observe. Ideally, it should be provided with a lavatory and drinking water. The route to it from the prisoners' accommodation should be secure and easy for staff to supervise.
- Young prisoners tend to be more volatile and impulsive. They may need more organized exercise, possibly in the form of physical exercise or competitive games to channel their surplus energy into constructive activity.
- It may be possible to have a small number of personnel who are qualified physical trainers and can organize activities in the fresh air for prisoners.

### **TOPICS FOR DISCUSSION**

Some prisons, especially older ones, are in built-up urban areas with very little outdoor space. What steps can be taken to make the best use of the space which is available?

Other prisons have a lot of available space, but prisoners are not given access to it for security reasons. How can this matter be dealt with so that the best use is made of the space without compromising security?

### **CASE STUDIES**

1. Imagine that you work in a prison where prisoners are taken each day from their accommodation blocks to have one hour's exercise walking round a large yard. Your task is to redesign the exercise yard in such a way that prisoners can be more active while they are exercising. You must also work out a system which allows them to use the yard for much longer periods each day.
2. You are a senior prison administrator. The director of the local higher training college contacts you to say that some students would like to help by supervising exercise for the prisoners. How would you react to such an offer?



SECTION V

**MAKING PRISONS  
SAFE PLACES**



## IMPORTANCE OF REGULATING SECURITY AND PUNISHMENT AND PRESERVING GOOD ORDER

Prisons are part of the criminal justice system. Behind their high walls and fences one group of human beings, acting on behalf of the judicial authority, deprives another group of human beings of their liberty. Given a choice, the vast majority of people in the second group, the prisoners, would leave prison. The first group of people, the staff, therefore have to impose **security** restrictions to prevent them from escaping.

Some prisoners are violent individuals who pose a danger to themselves or to others. In the final analysis, staff can impose **control** over prisoners by coercive means. But this should not be the norm. **Good order** involves much more than control. It presumes the existence of a set of rules and regulations which govern the daily lives of those who are in prison in order to ensure that everyone—staff, prisoners and visitors—can go about their business without fear for their personal safety. Both staff and prisoners have to operate within the context of these rules and regulations. Staff should demonstrate that they carry out their duties decently and humanely within the context of the law. If they do so, the vast majority of prisoners will respond positively.

From time to time, some prisoners will break the rules and regulations of the prison. When this happens, there has to be a clearly laid down legal procedure for **disciplin-**  
**ing** and **punishing** them.

Prison staff should give a high priority to helping prisoners to rehabilitate themselves.

Insofar as they are imposed on prisoners by the prison authority, **security, discipline** and **punishment** can be described as the coercive aspects of imprisonment. It is important that they should be regulated by agreed principles and standards.



### OBJECTIVE

The objective of this section is to demonstrate that there are three main elements in ensuring that prisons are safe places:

**SECURITY:** appropriate security means that the prison authorities safeguard the public by carrying out the judgement of the court to deprive certain people of their liberty.

**GOOD ORDER AND CONTROL:** this means that staff and prisoners are safeguarded by the fact that prisons are places where there is order and control, rather than anarchy and chaos.

**DISCIPLINE AND PUNISHMENT:** from time to time good order will break down and breaches of discipline will have to be punished.



## CHAPTER 15. SECURITY



### OBJECTIVE

The judicial authorities should send to prison only those men and women who have committed such serious offences that imprisonment is the only reasonable punishment or those from whom the public needs to be protected. The objective of this chapter is to show that, within that context, prison staff have a clear responsibility to protect the public by ensuring that prisoners do not escape from lawful custody.



### ESSENTIAL PRINCIPLES

Use of force, including use of firearms, to prevent escape should be employed only when less extreme means are insufficient to prevent the escape.

Restraints may be used as a precaution against escape during transfer for no longer than strictly necessary, provided that they are removed when the prisoner appears before a judge or administrative authority, or on medical grounds.

Instruments of restraint shall never be applied as a punishment.

Chains and irons shall not be used as restraints.



### BASIS IN INTERNATIONAL INSTRUMENTS

Principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* requires that:

**Law enforcement officials shall not use firearms against persons except ... to prevent his or her escape, and only when less extreme means are insufficient to achieve [this objective]. ...**

Rule 33 of the *Standard Minimum Rules for the Treatment of Prisoners* provides that:

**Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:**

**(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;**

## **IMPLICATIONS**

The level of security which is necessary will vary according to the threat of escape posed by individual prisoners. Some prisoners would present a high degree of risk to public safety if they were to escape. For these prisoners, escape must be made extremely difficult, if not impossible. Such prisoners will be held in high-security prisons. Some prisoners would present no threat to public safety if they were to escape. They should be held in low-security prisons.

The majority of prisoners stand between these two groups. Their escape would pose a limited degree of risk to the public. They need to be held in conditions of medium security.

If the general security of a prison is at medium level but it is required to hold prisoners whose escape would present a grave threat to the public, those individuals may be subjected to particular security requirements. These may include:

- The type of accommodation in which they are held;
- The arrangements made whenever they move about inside the prison or have to be escorted outside the prison.

The concept of security involves much more than physical barriers to escape. Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who ensure that prisoners are kept active in a positive way. This is often described as "dynamic security".

An officer in a watchtower on the perimeter is likely to see an escape attempt only after it has begun. An officer who works closely with prisoners and knows what they are doing will be much more aware of possible threats to security before they occur.

Dynamic security is not just about preventing prisoners from escaping. It is also about maintaining good relationships with prisoners and being aware of their moods and temperament.



## **PRACTICAL RECOMMENDATIONS**

- Individual prisoners should be assessed in respect of:
  - The degree of threat which they would present to the public if they were to escape;
  - The likelihood that they may attempt to escape;
  - The external resources on which they can call to help them to escape.
- Prisoners should be held at the lowest appropriate level of security.
- Staff should be taught that security is not merely a matter of walls, fences and electronic surveillance.
- Security is strengthened when staff know the prisoners for whom they are responsible and mix with them on a daily basis.



## ? TOPICS FOR DISCUSSION

What are the main factors to be considered when deciding what level of security is necessary for a prisoner?

One element of security is provided by physical means such as walls, fences, bars and locked doors. Another element, which is often described as dynamic security, comes from staff moving among prisoners, getting to know them and assessing risk. Discuss how these two elements can complement each other.

The international instruments make clear that some instruments of restraint should never be used and others should only be used in certain circumstances, including the prevention of escape during transfer. Discuss the circumstances in which it is appropriate to use restraints to prevent escape.

How can prison staff inform the public that not all prisoners pose a high risk to public safety and that, in any event, there are less restrictive methods of ensuring public safety than installing physical barriers, but which are equally important and effective?

There is a tendency in many prison systems to hold prisoners at a higher level of security than is necessary. What procedures can be put in place to ensure that this does not happen?



## CASE STUDIES

1. The following prisoners have just been admitted to prison. Consider what level of security they require:
  - A man who murdered his neighbour in a drunken brawl and has just been sentenced to life imprisonment. He has no previous criminal record.
  - A man who burgled a house in order to feed his drug habit. He has been sentenced to 4 years' imprisonment. This is his eighth offence.
  - A man who embezzled a large sum of money from a company and was part of an international syndicate. He has been sentenced to 3 years in prison.

Justify your decisions in terms of the international instruments.

2. A junior member of staff reports that he has heard two prisoners discussing the possibility of escape. One of the prisoners is due to be released within a few days. The other is a high-security prisoner who has powerful connections outside the prison. He is due to receive a visit from his wife in a few days. How should the prison authorities react?
3. You are in charge of a high-security unit which holds a number of prisoners whose escape must be prevented at all costs because of the threat they pose to public safety. These prisoners generally obey the rules of the prison and are not a threat to internal order. But they all have strong personalities. Junior staff prefer to leave them to their own devices within the unit and depend on physical means to prevent their escape. They want to observe the prisoners from a distance. How can you convince staff that security would be improved if they moved among the prisoners regularly and got to know them as individuals? How would you build in safeguards to ensure that the prisoners did not impose their personalities and wishes on the staff?

## CHAPTER 16. GOOD ORDER AND CONTROL



### OBJECTIVE

Prison authorities have a responsibility to ensure the physical safety of prisoners, staff and visitors. This means that prisons should be places where there is good order. The objective of this chapter is to underline that good order involves much more than control and is best achieved by positive means.



### ESSENTIAL PRINCIPLES

Prisons should be safe environments for all who live and work in them, i.e. for prisoners, for staff and for visitors.

No one in a prison should fear for his or her physical safety.

Chains and irons shall not be used as restraints.

Discipline and order shall be maintained with firmness but with no more restriction than is necessary for safe custody and well-ordered community life.



### BASIS IN INTERNATIONAL INSTRUMENTS

Articles 1 and 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, discussed in chapter 3 of this Manual, are relevant when instruments of restraint and other control techniques are abused by prison staff.

Rule 27 of the *Standard Minimum Rules for the Treatment of Prisoners* provides that:

**Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.**

The Standard Minimum Rules further provide:

**33. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:**

...

**(b) On medical grounds by direction of the medical officer;**

**(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.**

**34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.**



## **IMPLICATIONS**

Men and women who break the law, or who are accused of having done so, are likely to be frightened and to feel personally threatened by being in prison alongside other people who are accused of having broken the law.

There must be a balance between positive encouragement and discipline. The vast majority of prisoners will respond positively to being treated in a decent and humane manner.

Prisons are living places. It is possible to have an environment which is relaxed while at the same time ensuring that security and good order are not sacrificed.

The experienced prison officer is aware that coercive control is not sufficient to ensure good order.

Prison authorities should not place any prisoner in a position which allows him or her to impose discipline on other prisoners.



## **PRACTICAL RECOMMENDATIONS**

- If prisoners are kept occupied and are given the opportunity to use their time positively they will respond to the reasonable and justifiable rules and regulations which are necessary in any large group of people in order to ensure that good order is maintained.
- A sensitive balance has to be struck between encouraging prisoners to take responsibility for their own actions individually and as a group, and ensuring that individual prisoners are not placed in positions of authority over others. Prisoners should not be used to make up for a shortage of staff.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment advises that the best guarantee against the ill-treatment of prisoners is the presence of a properly trained and thoroughly professional staff whose interpersonal skills are such that they are able to carry out their duties successfully without having recourse to ill-treatment.
- Staff should be trained in control and restraint techniques. The European Committee advises that these techniques enhance staff confidence, enable them to choose the most appropriate response when confronted by difficult situations and have an important part to play in minimizing the risk of injury to prisoners.



## **TOPICS FOR DISCUSSION**

The choice for good prison management is not between excessive strictness and excessive liberality. What is needed is consistency in the application of rules and regulations. The certainty of this consistency is important for both staff and prisoners. Discuss the best way for staff to be consistent in their management of prisoners.

The majority of prisoners will respond to clear directions from staff. If staff are not in charge of the prison a vacuum will be created. That vacuum will be filled by the strongest prisoners. That would be a bad development for the majority of prisoners. Consider how staff can create an environment in which the majority of prisoners will not be intimidated by a minority who want to dominate.

In the coercive environment of the prison it may be impossible to eliminate harassment and bullying. What steps can be taken to reduce these and to make prisons safe places for prisoners and staff?

Experienced members of prison staff know that prisoners will respond to firm, consistent instructions. Discuss how experienced staff can reassure junior staff that they can interact positively with prisoners while still maintaining good discipline.

Staff will sometimes feel threatened and intimidated by prisoners as they go about their work. If this is the case, they themselves may adopt a domineering attitude and resort to unnecessary discipline. How can they be encouraged to understand that such an attitude may be counterproductive?

The Standard Minimum Rules for the Treatment of Prisoners state that no prisoner should be employed in any disciplinary capacity (rule 28 (1)). Where there is a shortage of staff there may be a tendency to use well-behaved prisoners to ensure that other prisoners observe the rules of the prison. Discuss how this can be done without breaching the international instruments.

One way of ensuring that instruments of restraint such as handcuffs and straitjackets are not used improperly by junior staff is to keep them in a central location to which only senior staff have access. Discuss how this could best be done.



## CASE STUDIES

1. You have just been given charge of a unit in the prison. Until now it has been managed in a very repressive manner. It is clear that prisoners obey the rules only because they fear the consequences of not doing so. Junior staff think that good order can only be imposed by coercion. They are afraid that anything else will result in disorder. Your task is to create an environment in which prisoners will obey the rules because it is in their interests to do so and in which staff feel confident enough to give prisoners a reasonable amount of personal responsibility. How can that be done?
2. The regime in the prison is relaxed but not lax. Prisoners are allowed freedom of movement within defined limits. They are encouraged to keep themselves occupied. Staff treat them with respect. The vast majority of prisoners respond positively. Two or three prisoners take advantage of the situation. They bully other prisoners and constantly provoke staff. Some staff want to respond by cracking down on all prisoners and exercising much tighter control over everyone. Other staff feel that this would antagonize the vast majority of prisoners who are well-behaved. Bearing in mind the international instruments, what is to be done?
3. A prisoner who is usually well-behaved suddenly goes berserk. He clearly presents a risk to himself, to other prisoners and to any member of staff who tries to approach him. Taking account of the relevant international instruments, what steps should be taken before deciding to use instruments of restraint?

## CHAPTER 17. DISCIPLINE AND PUNISHMENT



### OBJECTIVE

From time to time some prisoners will refuse to observe the legitimate rules of the prison. When this happens there has to be a formal disciplinary procedure to establish guilt and impose appropriate punishment. The objective of this chapter is to underline that this procedure should observe the principles of natural justice.



### ESSENTIAL PRINCIPLES

All disciplinary offences and punishments must be specified by law or by published legal regulations.

No prisoner shall be punished before being informed of the alleged offence and before being given the opportunity to present a proper defence.

No prisoner shall be employed in any disciplinary capacity.

All cruel, inhuman or degrading punishments are completely prohibited, including corporal punishment or placing the prisoner in a dark cell.

Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it.

Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment.

Prisoners who are subject to disciplinary action should have the right of appeal to a higher authority.



### BASIS IN INTERNATIONAL INSTRUMENTS

The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

**28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.**

...

**29. The following shall always be determined by the law or by the regulation of the competent administrative authority:**

- (a) Conduct constituting a disciplinary offence;**
- (b) The types and duration of punishment which may be inflicted;**
- (c) The authority competent to impose such punishment.**

**30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.**

**(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.**

**(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.**

**31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.**

**32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.**

**(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.**

**(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment is necessary on grounds of physical or mental health.**

**33. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. ...**

Principle 30, paragraph 2, of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that a detained or imprisoned person who has been subject to disciplinary action

**shall have the right to bring such action to higher authorities for review.**

Principle 3 of the *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* underlines the need for doctors to maintain independence in matters of punishment:

**It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.**

Principle 7 of the *Basic Principles for the Treatment of Prisoners* refers to the use of solitary confinement as a punishment:

**Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.**

The *International Covenant on Civil and Political Rights*, in article 8, paragraph 3, makes one further restriction on the type of punishment which may be imposed:

**(a) No one shall be required to perform forced or compulsory labour;**

**(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard**

**labour in pursuance of a sentence to such punishment by a competent court;**

**(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:**

**(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;**

## **IMPLICATIONS**

It is important that prisoners be made aware of all the rules and regulations which affect them in prison. If a prisoner then commits a breach of prison discipline, his or her case should be heard under a set of procedures which have been publicized in advance. If found guilty, the prisoner may be subjected to a range of punishments which will be laid down in the same set of procedures.

The principles of natural justice must be applied to disciplinary procedures in the prison setting. These include the rights to know the charge which one is facing and who is making the charge, to present one's defence and to question witnesses.

The involvement of medical officers (doctors) in certifying that prisoners are fit for punishment is a sensitive issue. Their primary relationship with any prisoner is that of doctor to patient. They should not play any role which could be interpreted as taking a part in the imposition of punishment.



## **PRACTICAL RECOMMENDATIONS**

- In each prison or place of detention there should be a published list of acts which constitute breaches of discipline. All prisoners should have access to this list.
- It is important that the system of punishment in prisons is formalized and is understood by both staff and prisoners. This system should usually include each of the following elements:
  - The head of the prison should hear the case in the presence of the prisoner and the member of staff who is making the charge.
  - The prisoner should be told in advance what the charge is.
  - The prisoner should be given time to prepare his or her defence and be given the opportunity to present it at the hearing.
  - The prisoner should be allowed to question the officer presenting the case and to call his or her own witnesses.
  - In complex cases, the prisoner should be allowed legal representation.
  - The prisoner should have the right to appeal to a higher authority.
- Staff should not be permitted to exercise any form of informal punishment.

## **TOPICS FOR DISCUSSION**

What measures should be taken to ensure that all prisoners, even those who are in prison for a short time, are fully aware of the disciplinary procedures in the prison?

In extreme circumstances a prisoner who is accused of an offence may refuse to attend the disciplinary hearing. The director of the prison, who is to hear the case, wishes to allow the prisoner to present his defence. The prisoner refuses to appear. What should the director do?



### **CASE STUDY**

Taking account of the international instruments, prepare and present a role-play in which a prisoner has been accused of a breach of discipline and the disciplinary procedures are invoked. The various roles are those of the adjudicating officer, the prisoner, the charging officer and whichever witnesses are to be called. A possible scenario might be one in which a prisoner is accused of trying to smuggle drugs into the prison in the course of a visit. The officer says that he clearly saw the prisoner take drugs from his visitor and put them in his mouth. There is no evidence of drugs. The prisoner asks to call his visitor as a witness. Because of the seriousness of the charge, the prisoner asks for legal representation. The director of the prison is concerned about the incidence of drug abuse in the prison. The director wishes to support staff in this difficult situation but also has to take account of natural justice.



SECTION VI

**MAKING THE BEST  
USE OF PRISONS**





## OBJECTIVE

Deprivation of liberty is a punishment in itself. The objective of this section is to underline that it is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves and to prepare for eventual release.



### ESSENTIAL PRINCIPLES

The main aim of the prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation.

The purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release.



## BASIS IN INTERNATIONAL INSTRUMENTS

Article 10 of the *International Covenant on Civil and Political Rights* provides:

**3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. ...**

According to the *Standard Minimum Rules for the Treatment of Prisoners*:

**65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.**

**66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.**



## IMPLICATIONS

Prison authorities are entitled to take all necessary steps to ensure that prisoners do not escape from lawful custody and that there is good order in prisons. In addition, however, they have an obligation to give prisoners opportunities to make good use of the time they are in custody. This means that there should be a full programme of activities, including education, skills training, work and physical education.

Prisoners should not spend all day locked in a cell or dormitory or sitting in a yard. They should be kept occupied.

Providing a full range of constructive activities for prisoners plays an important part in what was described in chapter 15 of this Manual as the "dynamic security" of the prison. This means that, if prisoners are fully and productively engaged in constructive activities, the prison is likely to be safer and more secure.

The activities in which prisoners are involved should have a purpose and should equip them with skills which they can use after their release from prison.

Prisoners should also be given opportunities for personal development. These opportunities should deal with personal, emotional, religious and cultural needs. All of these taken together are sometimes referred to as "rehabilitation".

Prisoners should also be prepared to live a crime-free and useful life after they are released.



### **PRACTICAL RECOMMENDATIONS**

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment suggests that long-term imprisonment can have a number of desocializing effects on inmates. Long-term prisoners become institutionalized, experience a range of psychological problems and have a tendency to become detached from society to which almost all of them will return. The Committee recommends that the prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; etc.) and that prisoners should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility.

## CHAPTER 18. WORK



### OBJECTIVE

The objective of this chapter is to underline the requirement for prisoners to be involved in a range of work activities which are useful and which will equip them with skills which they can use after their release.



### ESSENTIAL PRINCIPLES

All sentenced prisoners who are medically fit shall be required to work. As far as possible, this work should give them skills so that they can earn an honest living after their release.

National legislation regarding health and safety at work shall apply in prisons in the same way as it does in the community.

Vocational training shall be provided, especially for young prisoners.

Prisoners should be remunerated for the work they do.

Prisoners should be allowed to spend at least part of their earnings, to send a part to their families and to save a part.



### BASIS IN INTERNATIONAL INSTRUMENTS

The right of all people to work is enshrined in article 23 of the *Universal Declaration of Human Rights*:

1. Everyone has the right to work ...
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 8 of the *International Covenant on Civil and Political Rights* provides:

3. (a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

Principle 8 of the *Basic Principles for the Treatment of Prisoners* requires that:

**Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.**

The *Standard Minimum Rules for the Treatment of Prisoners* provide as follows:

**71. (1) Prison labour must not be of an afflictive nature.**

**(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.**

**(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.**

**(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.**

**(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.**

**(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.**

**72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.**

**(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.**

**73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.**

**(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.**

**74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.**

**(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on**

**terms not less favourable than those extended by law to free workmen.**

**75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.**

**(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.**

**76. (1) There shall be a system of equitable remuneration of the work of prisoners.**

**(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.**

**(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.**



## **IMPLICATIONS**

The international instruments make a distinction between "hard labour", which may be imposed as part of a court sentence, and "forced or compulsory labour", which is prohibited.

Prisoners should be paid a fair wage for their work. The principle underlined is that the work of prisoners should not be subordinated merely to making a profit either for the prison authorities or for a private contractor.

Prisoners should be allowed:

- To spend part of their wages in prison;
- To send a part to their families;
- To save a part for their release.

Work in prison should be subject to the same laws on health, safety, industrial injury and occupational disease as is work among the general public.

No distinction should be made between women and men as regards the type of work they are offered, and the same wage for equal work should be paid to men and women.

If prisoners have no work and become accustomed to idleness, they may lose their sense of responsibility for themselves and their families. This may make it more difficult for them to live law-abiding lives after they are released.



## **PRACTICAL RECOMMENDATIONS**

- In some countries, other government ministries are required to offer certain types of work to the prison administration. This might be for internal government contracts, for example furniture for government offices. It might be for external work, for example making vehicle registration plates. This can be a useful source of work for prisoners.

- Where there is no work for prisoners, prison staff must be creative and find other ways of keeping them busy. For example:
  - The prison administration can obtain paint and other materials and give the prisoners work painting and repairing the buildings of the institution.
  - Where the prison has land, prisoners can cultivate it to provide food for themselves and others.
  - Where the prison is near a town, prison staff can make contact with non-governmental organizations there to find ways in which the prisoners could help the organizations' work with disadvantaged people, for example by making furniture for a homeless persons' hostel or toys for a children's home.

Prison authorities should be aware of national legislation regarding health and safety at work. This legislation should also apply in prisons.

There may be opportunities to involve private commercial and industrial companies in providing work for prisoners. Where this happens, the prison authorities must ensure that prisoners are not used merely as a source of cheap labour or in order to undercut the wages of local workers. In these cases, prisoners should be paid the full rate for the work they do.

### **TOPICS FOR DISCUSSION**

Sometimes people who are in prison have had no experience of employment. They do not think that they should be required to work while they are in prison. How can they be motivated to work?

What are the human rights considerations if a private company is allowed to set up a factory in a prison and employs prisoners to work in it?

There is a high level of unemployment in the local community. People ask why prisoners can be given work when so many law-abiding people cannot find work. What is the answer?

The international instruments indicate that prisoners should not be required to perform forced or compulsory labour, yet they also indicate that sentenced prisoners should be required to work. What limitations should be put on the work which prisoners have to do? What entitlements should prisoners have in respect of the work they do?



### **CASE STUDIES**

1. You are given charge of a prison where the prisoners are locked in their cells for 23 hours each day. There is no industrial activity available. There are extensive grounds within the prison perimeter which are uncultivated. There is a small town close by where the social facilities for the community are very poor. The school and the hospital are run down. Your superiors have told you to work out a plan to provide activity which will keep the prisoners busy and which will be of some help to the local community. How would you go about this?
2. You are in charge of a prison where there is a shortage of work for the prisoners. A local businessman comes to you and says he wishes to set up a workshop within the prison. He will provide all necessary machinery. He needs a commitment that all prisoners will work for 40 hours each week. He promises to give you 10 per cent of all profits. How should you respond? What are the factors that you need to consider?



## CHAPTER 19. EDUCATION AND CULTURAL ACTIVITIES



### OBJECTIVE

The objective of this chapter is to stress that all prisoners have the right to take part in education and cultural activities aimed at the full development of the human personality.



### ESSENTIAL PRINCIPLES

Education and cultural activities shall be provided and encouraged, including access to an adequate library.

Education in prisons should be aimed at developing the whole person, taking account of prisoners' social, economic and cultural background.

Education shall be compulsory for young prisoners and illiterate prisoners. The prison authorities should give this aspect of education a high priority.

The outside community should be involved as much as possible in educational and cultural activities in prisons.



### BASIS IN INTERNATIONAL INSTRUMENTS

The right of all people to education and to participation in cultural life is enshrined in the *Universal Declaration of Human Rights*:

**Everyone has the right to education. ...** [art. 26, para. 1]

**Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. ...** [art. 26, para. 2]

**Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.** [art. 27, para. 1]

These rights are confirmed in article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

The right of prisoners to cultural activities and education is also laid down in principle 6 of the *Basic Principles for the Treatment of Prisoners*:

**All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.**

The *Standard Minimum Rules for the Treatment of Prisoners* provide:

**77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.**

**(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.**

**78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.**

The Standard Minimum Rules also refer to the provision of books for prisoners:

**40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.**

Education in prisons is dealt with in *Economic and Social Council resolution 1990/20* of 24 May 1990. In paragraph 3 of the resolution, the Council:

**Further recommends that Member States, in developing educational policies, should take into account the following principles:**

**(a) Education in prisons should aim at developing the whole person, bearing in mind the prisoner's social, economic and cultural background;**

**(b) All prisoners should have access to education, including literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sports, social education, higher education and library facilities;**

**(c) Every effort should be made to encourage prisoners to participate actively in all aspects of education;**

**(d) All those involved in prison administration and management should facilitate and support education as much as possible;**

**(e) Education should be an essential element in the prison regime; disincentives to prisoners who participate in approved formal educational programmes should be avoided;**

**(f) Vocational education should aim at the greater development of the individual and be sensitive to trends in the labour market;**

**(g) Creative and cultural activities should be given a significant role since they have a special potential for enabling prisoners to develop and express themselves;**

**(h) Wherever possible, prisoners should be allowed to participate in education outside the prison;**

**(i) Where education has to take place within the prison, the outside community should be involved as fully as possible;**

**(j) The necessary funds, equipment and teaching staff should be made available to enable prisoners to receive appropriate education;**

The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* underline the particular importance of education in juvenile custodial institutions.

A useful reference document dealing with these issues is *Basic Education in Prisons: Final Report*, published jointly by the United Nations Crime Prevention and Criminal Justice Branch and the Institute for Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1995 (ISBN 92-1-130-164-5).



## IMPLICATIONS

The high levels of unemployment affecting people in many States make it difficult to find enough employment for prisoners. Education in prisons therefore becomes even more important.

Many men and women in prison are poorly educated. Many are illiterate. Their time in prison can be used to teach them to read and write and to become involved in cultural activities. Such training can serve to make them more confident in their abilities and more inclined to live in a law-abiding manner after they are released.

The international instruments make it clear that prisoners have the right to pursue education if they so wish, within the available resources.

In order, at the very least, to prevent mental deterioration and, at best, to improve their level of education and develop their understanding, prisoners should have access to books, classes and cultural activities such as music, drama, art and recreation.

Education is also seen as an aid to social reintegration. Links between prison education and education in the general community are to be encouraged.

No distinction should be made between women and men as regards the types of education and training activities made available to them.

In some countries, comparisons are sometimes made between the level of education available in prisons and that which is available for law-abiding citizens in the community. It is sometimes suggested that the level of education in prisons should not be equivalent to that in the community. This is a sensitive subject. There are many arguments in favour of providing good education for prisoners. They have to be properly explained.



## PRACTICAL RECOMMENDATIONS

- Providing education alongside other legitimate activities in prison is not easy to organize or manage. Some prisoners will require full-time educational courses during the day. Others may benefit from evening classes at the end of the working day. The needs of others may be met through correspondence courses.
- Where prisoners choose education rather than work they should not be significantly penalized in terms of their pay, or in other ways.
- Prisoners often benefit greatly when their teachers are not direct employees of the prison administration but teachers normally working for the local education authorities.
- As far as possible, education provided in prisons should be integrated with the educational system in the community. This will make it more likely that prisoners will continue with education after they are released from prison.
- In many countries, industrial work, education, skills training, physical education, recreational exercise and cultural activities are being seen as a balanced programme of prison activities. All need to be provided in some degree in all institutions, but the exact balance may vary from one institution to another depending on the age, abilities and needs of prisoners.

- Where there are insufficient resources, educational programmes can be provided by inviting prisoners with academic ability to teach other prisoners free of charge and under supervision.
- Where there is little money to spend on activities, local cultural organizations can be invited to visit the prison and provide cultural activities for prisoners.
- Provision should be made in cultural activities for the needs of ethnic minorities. This may best be done by involving outside groups representative of the ethnic minorities in the institution.

### **TOPICS FOR DISCUSSION**

In any prison there is a great deal of untapped potential and unrealized talent. How can prisoners be encouraged to be more creative in the work that they do?

What steps can be taken to integrate education in prisons with the education system in the local community?

A prisoner who has been following a specialized educational course at one prison is transferred at short notice to another prison where there are no suitable facilities available. What should be done to help him or her to continue the course?

In many prison systems, minority groups are overrepresented. How can one ensure that the cultural needs of such groups are satisfied?

How can prison authorities encourage local cultural groups to come into prisons on a regular basis?

### **CASE STUDIES**

1. You are in charge of a prison which is in a remote location. It is difficult to find teachers from the locality to teach in the prison. A number of prisoners, who are well educated, ask if they may organize education for other prisoners. What would be your reaction? What are the various considerations? How would you go about setting up such a scheme?
2. A local community group ask the director of the prison if they may work with the prisoners to produce a play. They suggest that members of the local community can then be invited into the prison to see the play. How should the director respond to this suggestion?

## CHAPTER 20. RELIGION



### OBJECTIVE

The objective of this chapter is to underline that prisoners have the right to freedom of religious belief and to observe the requirements of their religion. This chapter should be cross-referenced with chapter 29 of the Manual, dealing with the principle of non-discrimination.



### ESSENTIAL PRINCIPLES

All prisoners have the right to observe the tenets of their religion and to have access to a minister of that religion.

Prisoners shall be allowed access to qualified representatives of any religion.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 18 of the *Universal Declaration of Human Rights* provides that:

**Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.**

Article 18 of the *International Covenant on Civil and Political Rights* also provides for the right to freedom of religion. In paragraph 2, it specifically provides that:

**No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.**

The opportunity to practise one's religion, either in private or in public, might be restricted by the fact of imprisonment. For this reason, the *Standard Minimum Rules for the Treatment of Prisoners* make specific reference to the need for prison authorities to allow prisoners to observe their religion and to have access to a minister of that religion:

**41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.**

**(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.**

**(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.**

**42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.**



## **IMPLICATIONS**

The status of religious representatives within prison systems can vary from country to country. In some jurisdictions, such representatives may not be allowed any access to prisons. In other jurisdictions, the religious representative or chaplain is second in authority only to the director within the prison. The international instruments make it clear that all prisoners are entitled to have access to a qualified religious representative.

In some systems, only representatives of the main religion in the country are allowed access to prisons. Prisoners of minority religions are not allowed to observe the requirements of their faith. This is in breach of the international instruments.

Prisoners should not be obliged to consult a minister of religion if they do not wish to do so.



## **PRACTICAL RECOMMENDATIONS**

- Ministers of religion should have access to all prisoners who wish to consult them.
- Ideally, ministers of religion should not be members of the prison staff, but should come from the local community.
- Prisoners should be given the opportunity to observe the requirements of their religion. This may mean making special arrangements for clothing, for diet or to provide food at different times, for prayers or for washing.
- Prisoners who are under any form of segregation or punishment should still be given access to their religious representative.



## **TOPICS FOR DISCUSSION**

Religious observance sometimes means wearing special clothing, observing a special diet or washing at particular times of the day. Discuss how the prison authorities can ensure that these needs are met.

A large number of prisoners in a long-term prison begin converting from one religion to another. The minister of the former religion who was employed full-time at the prison now has little to do and is very angry. What steps should be taken?



## **CASE STUDIES**

1. A visiting representative of a particular religion begins to encourage the prisoners who follow that religion to question prison rules and regulations at every opportunity. Staff find these prisoners increasingly difficult to manage. What should the director of the prison do?
2. A group of foreign prisoners are admitted to the prison. They say that their religion will not permit them to eat the food which is prepared in the prison kitchen. Bearing in mind the international instruments, what is to be done?

## CHAPTER 21. PREPARATION FOR RELEASE



### OBJECTIVE

The objective of this chapter is to underline that prisoners should be prepared for reintegration into society and provided with adequate social support when they are released.



### ESSENTIAL PRINCIPLES

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and prisoners shall be assisted in ensuring their future reintegration into society.

All agencies and services responsible for the reintegration of prisoners into society shall ensure that all prisoners have means and available resources to maintain themselves in the period immediately following their release.



### BASIS IN INTERNATIONAL INSTRUMENTS

Principle 10 of the *Basic Principles for the Treatment of Prisoners* provides that:

**With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.**

The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

**80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.**

**81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.**

**(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.**

**(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.**

## **IMPLICATIONS**

Prisoners are sent to prison to be punished by being deprived of their liberty for a period of time. The vast majority of them will return to the community once they have completed their sentences. An important task of prison staff is to prepare prisoners to live within the law after they are released from prison.

In most prison systems, the majority of prisoners are serving short sentences and will return to the community quite quickly. There is a temptation for prison authorities to concentrate on the needs of prisoners who are coming to the end of long sentences and to overlook those who are serving short sentences. If this happens, there is a real danger that prisoners serving short sentences will return to prison again and again.

Special arrangements need to be made to prepare prisoners who have served very long sentences for release because their support structures within the community may have broken down or disappeared.

Prison staff cannot work in isolation. They should encourage governmental and non-governmental organizations which work with former offenders in the community to come into the prison to build relationships with prisoners before they are released.

## **PRACTICAL RECOMMENDATIONS**

- Prison staff should motivate prisoners to change their behaviour and to help them to live a different lifestyle when they leave the prison.
- Prisoners will benefit from a pre-release programme. This might include helping them to improve their confidence and self-esteem and giving them a sense of responsibility. A pre-release programme might also be helpful to them in finding jobs or accommodation when they leave prison. The longer they have spent in custody, the more important such programmes will be.
- Specific programmes aimed, for example, at sex offenders, or anger-control programmes for violent offenders, can play an important part in helping prisoners to be more law-abiding on release.
- Other programmes can be directed against habits which are often associated with criminality, such as excessive drinking or gambling or dependence on drugs. Sometimes, where such programmes already exist in the community, it is possible to introduce them into prisons.
- Prisoners should be made aware that the community in general, and their former victims in particular, may be concerned at the prospect of their release.
- Agencies which help unemployed people or homeless people could be involved in the pre-release programmes for prisoners. These might include probation and social services, religious groups and other non-governmental organizations.
- Some prisoners, such as those who have served long sentences or those who are still considered to be a danger to the public, might be given conditional release or parole. This means that they will be subject to formal supervision in the community.



## ② TOPICS FOR DISCUSSION

What are likely to be the most important issues for a prisoner immediately after release?

What would be the key features of a pre-release programme for prisoners who have served between two and five years?

Consider how community agencies could be involved in helping prisoners to prepare for release.

In some countries, prison staff or social workers go to the community from which the prisoner has come to discuss the implications of his or her return. What are the advantages and disadvantages of involving the community in this sort of discussion?

In some instances, it may not be possible for a prisoner to return to his or her community on release. What needs to be done in cases such as these?



## CASE STUDIES

1. The prison has a well-developed scheme to help prisoners who have been in custody for many years to prepare for release. However, the majority of prisoners are serving short sentences. They are not given any preparation for release because they are not in prison long enough. Many of them are likely to be repeat offenders who return to prison many times. What can be done during the short time they are in prison to prepare them to lead law-abiding lives?
2. A person from a small community committed a serious offence which shocked the community. He is just about to complete 5 years in prison. He wishes to return to his family in the same small community once he is released. The prisoner director asks that someone from the social service agency should go to meet the leaders of the community to discuss arrangements. What are the main issues which will have to be considered?



SECTION VII

**PRISONERS'  
CONTACT WITH THE  
OUTSIDE WORLD**





## OBJECTIVE

The objective of this section is to emphasize that, despite being deprived of liberty, prisoners retain a right to have contact with their family and friends and the outside world. The principles described in this section should be cross-referenced with those in chapter 4 of this Manual which refer to the right of family, legal representatives and consular officials to be informed of a prisoner's admission to custody or subsequent transfer.



### ESSENTIAL PRINCIPLES

No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence.

All prisoners shall have the right to communicate with the outside world, especially with their families.

Foreign prisoners shall be allowed to communicate with their diplomatic representatives.

A prisoner's request to be held in a prison near his or her home shall be granted as far as possible.

Prisoners shall be kept informed of important items of news.



## BASIS IN INTERNATIONAL INSTRUMENTS

Article 12 of the *Universal Declaration of Human Rights* provides that:

**No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ...**

Article 17 of the *International Covenant on Civil and Political Rights* states:

**1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence ...**

**2. Everyone has the right to the protection of the law against such interference or attacks.**

The *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides:

**A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.** [principle 19]

**If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.** [principle 20]

The *Standard Minimum Rules for the Treatment of Prisoners* provide:

**37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.**

**38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.**

**(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.**

**39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration....**

**79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.**

## **IMPLICATIONS**

Imprisonment will often break up family relationships and break down links with the community.

If men and women can maintain links with family, friends and the community while in prison, this will reduce the harmful effects of imprisonment and make it more likely that they will be reintegrated into the community when they are released.

It is in everyone's best interests to help maintain such contact:

- **Prisoners** will be able to take more responsibility for their own behaviour, as well as their domestic affairs, and prepare themselves for release.
- **Prison staff** will have a more varied and satisfying job and a less anxious prison population in their care.
- **Prisoners' families** will be able to give and receive valuable support, both immediately and later, instead of progressively losing touch.
- **The community** will be less likely to suffer further crimes if prisoners retain their family links and if plans for what they will do when they leave prison are developed in advance.

Mothers who are in prison have special needs as regards contact with their families. The rights of the children of such mothers must always be kept in mind.

Family contact is especially important for young prisoners.

There are five basic mechanisms for maintaining contact with the outside world:

- Letters;
- Visits;
- Telephone;
- Home leave or temporary conditional release;
- Books, newspapers and broadcast media.

The most important lesson for a prison system is that all mechanisms for maintaining contact will be more easily applied if the prison system is organized so that prisoners can be kept in institutions close to home.

Any contact with the outside world is likely to raise some security considerations. It is important, therefore, to find ways in which appropriate levels of contact can be maintained without jeopardizing security. This will usually be possible, provided that staff understand that both security and contact with the outside world are equally important elements in their difficult task.

Prison authorities should consider the consequences for relationships between the prisoner and his or her family before imposing any disciplinary punishment which would restrict family contact. The basic right to family contact should not be removed. The implication of this is that deprivation of the right to send and receive letters should not form part of a disciplinary punishment. Similarly, the right to receive visits should not be removed. If the disciplinary offence committed related in some way to visits, for example receiving drugs, the authorities may limit the conditions in which visits can be received. It is generally accepted that home leave and temporary conditional release are privileges which can be forfeited if the prisoner breaks prison rules or regulations.





## CHAPTER 22. LETTERS

The most practical, and the cheapest, way of maintaining contact when people are apart is usually through the writing and receiving of letters.



### PRACTICAL RECOMMENDATIONS

- Until recently, most prison administrations have felt it necessary to read or restrict incoming and outgoing letters. This has usually been justified for several reasons:
  - As a means of detecting escape plans or the passage of forbidden materials;
  - So that the authorities can have prior warning if a prisoner receives bad news in a letter;
  - As a method of gaining criminal intelligence about prisoners, their crimes and their accomplices;
  - As a method of preventing prisoners telling the outside world about conditions in prison or the actions of staff.
- Experience has shown, however, that some of these justifications are unnecessary, while others are undesirable or inappropriate in a system committed to the protection of human rights.
- This is particularly important in respect of correspondence between prisoners and their legal representatives. Prisoners should be able to have confidential communication by letter with their legal advisers.
- With the exception of a small group of very high-security-risk prisoners, there is little need for any reading or censoring of mail.
- It may be appropriate to open incoming mail—in the presence of prisoners—to ensure that no forbidden items are enclosed.
- Although letters and postage may be relatively cheap, the cost may be more than many prisoners can afford. It may be necessary to supply them with writing materials and postage stamps at public cost.
- Prisoners should be allowed to retain a reasonable number of family photographs.

### TOPICS FOR DISCUSSION

The international instruments confirm the right to privacy. On what grounds can the censoring of prisoners' mail be justified? When is it not necessary?

The prison authorities may have decided that there is no need to censor prisoners' mail. However, there is a concern that attempts will be made to smuggle items, such as money or drugs, into the prison in correspondence. How can this problem be dealt with?

What special arrangements need to be made for prisoners who cannot read or write?



## CASE STUDIES

1. The regulations in a prison allow prisoners to receive and send letters without censoring. The police or prosecutor approaches the prison director to ask that the letters of a particular prisoner be censored because they have reason to believe that one of his correspondents is planning to commit a crime. What should the director do?
2. A prisoner who is a foreign national is serving a long sentence for drug offences. She can write only in her own language. No one in the prison understands this language. The woman wants to write to and receive letters from her family. What arrangements should the prison authorities make to allow her to do so without threatening the security of the prison?
3. Prisoners are allowed to send letters without censoring. The husband of a prisoner contacts the prison director to say that neither he nor their children wish to receive any further letters from the prisoner. The husband asks the director to ensure that she does not send them any letters. What should the director do?

## CHAPTER 23. VISITS

Another important method of maintaining contact between prisoners and the outside world, especially with their families, is through regular visits.

The international instruments make it clear that contact with family is a right, not a privilege to be earned.



### **PRACTICAL RECOMMENDATIONS**

- If visits are to play a real part in maintaining a prisoner's connection with the community and in his or her eventual rehabilitation, then they need to be sufficiently frequent and of reasonable length. They should take place in decent conditions of sufficient privacy to permit meaningful and constructive communication to take place.
- It is important for staff to remember that visitors are not criminals. They should be greeted with courtesy and civility by staff. It may be necessary for staff to search visitors before a visit takes place. Such searches should be carried out in a sensitive manner.
- In general, visits should take place in surroundings which are as relaxed as possible and with no more supervision than is necessary.
- Prisoners and their visitors are often anxious about visits. It will be helpful if staff can put visitors at ease, and if there is someone to whom prisoners and visitors can speak about any problems.
- Visits between a prisoner and his or her family can be quite stressful. Tension can be reduced if the visiting rooms are made as pleasant as possible.
- It is important that prisoners and their visitors can touch, and that children can be held.
- Special care and thought needs to be given to visiting arrangements for women prisoners, particularly as regards contact with their children.
- The maintenance of family ties through visits is especially important for young prisoners.
- In some countries, for prisoners serving longer sentences or those not eligible for home leave or parole, arrangements are made for family visits lasting perhaps two or more days. This should be encouraged, especially if it is not possible for the prisoner to have home leave.
- Some prisoners and their friends or families may abuse visiting facilities, for example by attempting to smuggle in drugs or other forbidden items. For prisoners who have demonstrated that they cannot be trusted in normal visiting conditions, it may be necessary for visits to take place under close supervision.
- Proper visiting arrangements are beneficial not only to prisoners, but also to staff. Prisoners will be more contented and reassured, and staff will learn more about the prisoners in their custody and care.
- Visitors will often have to travel long distances to visit prisoners. They may need:
  - Assistance in paying their travel costs;

- A place where they can wash and wait until the visit takes place and where there is something to occupy any children with them;
- A place to stay overnight.
- The right of a prisoner to be visited by his or her family should not be removed for disciplinary reasons. It may sometimes be necessary, however, to limit the conditions in which visits take place. For example, if there is proof of a previous attempt to smuggle goods into the prison during a visit, the prisoner or visitor involved may be required to have future visits without physical contact.
- There are major differences between jurisdictions in the way in which untried prisoners are dealt with. In legal systems which stress the presumption of innocence and use an adversarial process to determine guilt, untried prisoners usually have more frequent visiting rights than sentenced prisoners. In legal systems in which guilt or innocence is determined through an inquisitorial process, visiting is often at the discretion of the investigating magistrate or procurator. In such systems, it is important to be satisfied that there really are grounds for withholding visits on the basis of the administration of justice and not as a means of pressure designed to elicit a confession or evidence against co-accused.
- Arrangements for prisoners to be seen by their legal representatives are particularly important. Such visits should normally take place within the sight but not within the hearing of prison staff.

### **TOPICS FOR DISCUSSION**

Discuss the visiting arrangements in a prison for people serving long sentences which would best promote the maintenance of family ties.

In a number of jurisdictions, prisoners are allowed to receive conjugal or partner visits.

- What are the arguments for and against such visits?
- If they are allowed, in what conditions should they take place?
- What special considerations apply to conjugal visits for women prisoners?

Prison staff are convinced that a prisoner is being harmed psychologically by visits from a particular individual, although the prisoner insists that he wishes the visits to continue. There are no other security objections. What measures should be taken?



### **CASE STUDIES**

1. A prisoner is not entitled to receive a visit for another month. His mother arrives at the prison gate with the news that his father has just died. She wishes to tell him herself. Should the prisoner be given a special visit and, if so, should there be any special conditions?
2. It has just been decided that prisoners in your country will be entitled to receive conjugal or partner visits. You have been asked to find out what happens in other countries and to prepare a report for your Government with recommendations. You discover that in some countries such visits last for three hours and take place in a small room. The visitors do not have to be spouses or long-term partners but they do have to have regular medical checks. You find that, in other jurisdictions, such visits last for 72 hours and take place in small apartments within the prison. The lead visitor must be a spouse or a long-term partner. Children and other close members of family may also be included. On the basis of this knowledge, prepare a report for your Government with recommendations about the model to be followed.

## CHAPTER 24. TELEPHONES

The telephone provides a useful means of maintaining contact with the outside world, particularly when matters need to be dealt with urgently.

The international instruments make no specific reference to the use of the telephone. In the words of the "preliminary observations" to the ***Standard Minimum Rules for the Treatment of Prisoners***, which were adopted in 1955, the rules "cover a field in which thought is constantly developing" and "are not intended to preclude experiment and practices, provided these are in harmony with the principles" (rule 3).



### PRACTICAL RECOMMENDATIONS

- A telephone call can serve as a substitute for a letter or a visit, or can clear the way to make a visit or letter more productive.
- Telephone contact may be especially important:
  - In the case of foreign nationals for whom visits may be virtually impossible;
  - For a prisoner to communicate with his or her legal representative.
- In cases of emergency, prisoners should be allowed to use official telephones under the appropriate supervision.
- As with letters and visits, there can be security considerations in allowing telephone calls. It may be necessary for some prisoners to make and receive calls from an office under the supervision of a member of staff. Where telephones operated with coins or cards are provided, it may be necessary for staff to monitor or record some calls if there are good reasons for doing so.



### TOPICS FOR DISCUSSION

Many people are more at ease with oral rather than written communication. The sense of isolation which a prisoner and his or her family may feel can be reduced if regular communication by telephone is possible. At the same time, many prisoners cope with imprisonment by restricting topics for conversation with their correspondents or visitors. It is more difficult to do this if there is regular conversation by telephone. Staff should be aware of the complexities of this issue.



### CASE STUDY

The prison is holding a foreign prisoner who speaks only his own language. He neither sends nor receives letters. Through an interpreter he asks if he may make a monthly telephone call to his family abroad. He is willing to pay from his own resources. Bearing in mind the right to contact with family, what decision should be taken?

## CHAPTER 25. HOME LEAVE AND TEMPORARY CONDITIONAL RELEASE

Almost all prisoners will be released back into the community at the end of their sentences. Home leave and arrangements for temporary release on parole offer ways in which prisoners may begin to get used to the outside world again and start rebuilding their personal and work relationships. Such procedures also provide a way of testing a prisoner's response to life in society before final release is granted.



### PRACTICAL RECOMMENDATIONS

- The appropriate authorities must exercise good judgement in deciding who may go on home leave or temporary conditional release. There should be a proper procedure to assess the risk posed by any prisoner.
- Provided a proper assessment is made of those who are granted home leave or temporary conditional release, there will be considerable benefit in encouraging prisoners to develop personal responsibility for their actions.
- There must be clearly stipulated penalties for any prisoner who abuses the trust shown in him or her.
- Prisoners can be granted temporary conditional release to work with local firms or to go to college or a training centre to acquire additional skills.

### ? TOPICS FOR DISCUSSION

Prisoners should be encouraged to begin to prepare for release from the very start of their sentence. Discuss what specific preparation they need before leaving the prison for home leave or temporary release.

It would be wrong to suggest that there are no risks involved in allowing prisoners temporary release. No matter how effective the assessment procedures are, it is likely that a small number of prisoners may commit offences while on leave. How can the risk of this happening be minimized?

A few prisoners may not return at the end of their leave and others may come back late or drunk. Some may attempt to smuggle goods back inside the prison. What should happen to these prisoners?

How may a prison director make best use of the work opportunities available in the local community? What safeguards should be put in place when considering which prisoners should be encouraged to undertake work locally on day release from the prison?



### CASE STUDIES

1. A prisoner receives word that her child is extremely ill at home. She requests conditional release to visit him. The prisoner is serving a short sentence and is not regarded as a threat to the public. However, she has been a disciplinary problem during her sentence. If she were to be given temporary conditional release this would convey the wrong impression to other prisoners. On the other hand, this might be an opportunity to encourage her to mend her ways. What should be done?
2. How can a prison director convince the local community leaders that prisoners who come out to work on temporary release will not be a threat to the local community? What arguments can be used to convince them that involving prisoners in this way might benefit the community?

## CHAPTER 26. BOOKS, NEWSPAPERS, BROADCAST MEDIA AND THE WORLD WIDE WEB

Books, newspapers, the broadcast media and the World Wide Web are important means through which prisoners can keep in touch with the outside world.



### PRACTICAL RECOMMENDATIONS

- Prisoners should be able to purchase their own books and newspapers.
- Consideration should also be given to allowing them to purchase or rent a personal radio or television, if living conditions make this appropriate.
- There should also be communal access to radio and television provided at public expense. Newspapers should also be available in prison libraries.
- Access to the World Wide Web for the purpose of gathering information and keeping up to date with the news should be available to prisoners.



### TOPICS FOR DISCUSSION

In many prisons there are insufficient resources to provide a prison library. Discuss how books might be made available, either by involving local library services or, if they do not exist, by encouraging non-governmental organizations to contribute books.

If prisoners are allowed to purchase or rent radios or televisions with their own money, there will be considerations of equity where some have enough money and others do not. Discuss the implications of this problem and how it could be dealt with.

Should any restrictions be placed on the newspapers, magazines and books to which prisoners have access? If so, what would be the justification?



### CASE STUDIES

1. It has been decided that prisoners will be allowed to order newspapers, magazines and books from local publishers and shops. You have been asked to draw up a set of regulations to cover this arrangement. What are the factors which you would have to take into account?
2. A local newspaper report makes reference to the case of a sentenced prisoner and names him. The prisoner insists that what has been written is untrue. He wishes to write to the editor to set the record straight. Should he be allowed to do so?





SECTION VIII

**COMPLAINTS  
AND INSPECTION  
PROCEDURES**



## CHAPTER 27. THE GENERAL RIGHT TO MAKE COMPLAINTS



### OBJECTIVE

The objective of this chapter is to underline that complaints procedures must be drawn up in such a way that they can be understood and accepted both by prisoners and by those responsible for the administration of prisons.



### ESSENTIAL PRINCIPLES

Anyone whose rights or freedoms have been violated has the right to an effective remedy, determined by a competent court.

Every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family.

Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language which he or she understands. If necessary, these regulations should be explained orally.

If a complaint is rejected or not responded to in a timely manner, the complainant shall be entitled to bring it before a judicial or other authority.



### BASIS IN INTERNATIONAL INSTRUMENTS

The general principles relating to remedies are laid down in article 2 of the *International Covenant on Civil and Political Rights*:

**3. Each State Party to the present Covenant undertakes:**

**(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;**

**(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;**

**(c) To ensure that the competent authorities shall enforce such remedies when granted.**

In accordance with these provisions, prisoners should have effective remedies when their rights have been violated.

Article 13 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* requires that:

**Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. ...**

Under article 16, paragraph 1, of the Convention against Torture, the same principle applies to allegations of acts of cruel, inhuman or degrading treatment or punishment.

The right to challenge conditions of imprisonment or treatment while in detention is also contained in principle 33 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*:

**1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.**

**2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.**

**3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.**

**4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected, or in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.**

In order to know whether there are grounds for making a request or complaint about treatment, prisoners need to have access to the written procedures which govern their daily lives. This right is laid down in rule 35 of the *Standard Minimum Rules for the Treatment of Prisoners*, which was referred to in chapter 4 of this Manual.

In addition, rule 36 of the Standard Minimum Rules provides:

**(1) Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.**

**(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.**

**(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.**

**(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* require that States should:

**17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.**

## **IMPLICATIONS**

It is of fundamental importance that all prison systems should be administered in a manner which is fair and just, and which is seen to be so. One way of ensuring this is that there should be a clearly defined set of procedures which allow a prisoner to make a request or complaint, or to air a grievance, without fear of reprisal.

The prisoner must have some confidence that such a request, complaint or grievance will be considered fairly and objectively. The procedures for dealing with these issues must be drawn up in such a way that they can be understood and accepted both by prisoners and by those who are responsible for the administration of prisons.

Any system of complaints and redress for grievances must be based on the principles of fairness and justice.

It is in the interest of all concerned that the system for dealing with requests, complaints and grievances should include certain characteristics. These include accessibility, credibility, openness, reasonableness, objectivity, sensitivity, flexibility, efficiency and speed.

There are at least five main possible areas for complaint by a prisoner:

- **Allegations of criminal behaviour:** Sometimes prisoners will allege that either members of staff or other prisoners have engaged in activities that contravene criminal law. Although prison officials typically have powers to investigate and punish disciplinary offences by both staff and prisoners, they do not normally have any powers in the field of criminal investigation or prosecution. Nor do they have powers to decide whether there should be an investigation into or a prosecution of allegations of behaviour which is contrary to the criminal law. Any allegation of such behaviour should be referred immediately to the responsible authorities.
- **Claims for civil damages:** There are a variety of circumstances in which prisoners may claim that officials have exercised inadequate care in managing prisons and that, as a consequence, they have a legitimate claim to civil damages. In some countries, claims have been lodged by prisoners in respect of health and safety regulations, hygiene legislation, health care and the protection of prisoners from assault by other prisoners known to be dangerous. Prisoners who wish to pursue such claims should be allowed free and confidential access to the courts.
- **Complaints of poor practice:** Complaints which do not amount to claims for damages can arise from many areas of prison activity. Meals can be badly cooked or

cold; prison staff can be rude or insensitive; property can be lost; there can be delays in visits or correspondence; and so on. Very often, all that is sought by the prisoner is the recognition by someone in authority that things have gone wrong and an apology. Prison officials need to ensure that such complaints are given proper consideration and that investigations which arise out of them are thorough and frank. Inadequate investigation of minor but justified complaints often leads to a far greater level of grievance than that which arose from the original complaint. While it is often the case that judicial investigation of such complaints will not be merited, the underlying principle is that prison authorities should not seek to prejudge the issue and should allow unhindered access to legal advice.

- **Appeals against the content of decisions:** Not surprisingly, prisoners are liable frequently to seek recourse to a more senior authority when the content of an official response to a request or complaint is not the one they wanted. The same conditions apply to such appeals as to complaints about poor practice.
- **Appeals against disciplinary findings:** The procedure for disciplinary hearings and punishment was dealt with in chapter 17 of this Manual. Prisoners who feel that the proper procedures were not followed in their case or who feel that they have been punished unjustly should have the right of appeal to a higher authority.



## **PRACTICAL RECOMMENDATIONS**

- It is always better to develop good decision-making procedures than to concentrate on elaborate mechanisms for managing the consequences of inadequate decision-making procedures.
- At the heart of any system of remedies there must be a desire and a willingness on the part of all concerned to tackle issues positively.
- The aim should be to develop a culture which is based on prevention rather than cure; which seeks to avoid requests becoming complaints and to prevent complaints developing into deep-seated grievances.
- If prisoners are given proper reasons for any decision which materially and adversely affects them there will be fewer complaints and deep-seated grievances.
- It is inevitable in the coercive environment of a prison that there will be complaints. These should not be discouraged but should be welcomed as positive contributions to the discharge of responsibility by the prison authorities.
- Decision-making processes should be accompanied by effective processes for hearing appeals, complaints, allegations and grievances against the decisions made by the prison administration.
- Requests and complaints should be resolved as close as possible to the point at which they originate, rather than being passed up the administrative chain.
- It is always preferable that the group of staff with responsibility for reaching decisions on complaints be given the opportunity to reconsider or to explain those decisions to the individuals they affect before any complaint is considered elsewhere.
- Prisoners should have regular access to senior members of staff who, in turn, should have the opportunity to satisfy themselves that decisions taken by junior members of staff are in accordance with the rules and regulations and the spirit of the rules and regulations.
- Where prisoners feel that the objectives of senior management are not being implemented by first-line staff, they should be able to discuss this with senior prison

managers. Similarly, senior managers should satisfy themselves that prisoners are being treated in the way which they intend.

- Where prisoners feel that the prison system is failing to meet its obligations, they should have access to a body which is independent of the prison system. In some countries, prisoners may complain to a general ombudsman. In other countries, there is a prisons ombudsman. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends that systems for airing grievances should have two levels, one within the prison and one outside it.
- The prison authorities should maintain comprehensive records of all complaints.

### ② **TOPICS FOR DISCUSSION**

How may a prison director ensure that prisoners who make complaints to the director about staff conduct are not then harassed by staff?

If first-line prison staff are bypassed in the complaints procedure they may lose confidence in their own authority and may develop irresponsibility in taking decisions. How can the director ensure that the authority of these staff is not undermined by the complaints procedure?

If a large number of complaints are received from prisoners about the allocation of prisoners' work, what steps should the prison director take?

### ② **CASE STUDIES**

1. A prisoner complains to the prison director that a member of staff has been illegally bringing goods into the prison and selling them to prisoners. The complaint is investigated by a senior member of staff, who can find no evidence. The prisoner wishes to take his complaint further. According to the international instruments, what should he be able to do?
2. The prison director instructs you to draw up a procedure to ensure that all complaints made by prisoners are properly recorded. What would you include in such a procedure?
3. A prisoner is delivered to the prison by the police with obvious bruising. The prisoner complains that he has been beaten by police. What action should prison staff take?

## CHAPTER 28. ARRANGEMENTS FOR INVESTIGATIONS AND INSPECTIONS

### OBJECTIVE

The objective of this chapter is to underline the importance of investigation procedures to deal with allegations of human rights violations and the importance of both internal and independent forms of inspection and how they should be arranged. This chapter should be cross-referenced with chapter 3 of the Manual, dealing with torture and ill-treatment.



### ESSENTIAL PRINCIPLES

Each State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall ensure a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed.

There shall be thorough, prompt and impartial investigation of all suspected cases of extralegal, arbitrary or summary execution, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.

Prisons shall be inspected regularly by qualified and experienced inspectors from a competent authority separate from the prison administration.

Every prisoner shall have the right to communicate freely and confidentially with inspectors, subject only to the demands of good order and discipline in the institution.



### BASIS IN INTERNATIONAL INSTRUMENTS

As pointed out in chapter 3 of this Manual, independent inspection is particularly important where there is any allegation of torture or inhuman treatment. Article 11 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides that:

**Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.**

Article 12 of the Convention provides that:

**Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.**

Under article 16, paragraph 1, of the Convention against Torture, the same obligation applies to acts of cruel, inhuman or degrading treatment or punishment.



The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides:

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. [art. 1]

A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol. [art. 2, para. 1]

The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty. [art. 2, para. 2]

Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. [art. 2, para. 3]

The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol. [art. 2, para. 4]

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism). [art. 3]

The *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provide:

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. ...

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. ...

**(b) ... Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and ... those conducting the investigation.**

**4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.**

**5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. ...**

Principle 29 *of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides:

**1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.**

**2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.**

Rule 55 of the *Standard Minimum Rules for the Treatment of Prisoners* requires that:

**There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.**

The *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* provide:

**7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.**

...

**9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. ...**

The *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* provides:

**There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment. [art. 1]**

**Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority. [art. 2]**

**In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall cooperate with each other. [art. 3]**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* require that States should:

**18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.**

The Guidelines also provide:

**19. Investigations into all allegations of torture or ill-treatment shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).**

## **IMPLICATIONS**

There should be appropriate mechanisms in place to investigate all complaints of human rights violations mentioned in chapter 27 of this Manual. It is vital that such mechanisms have access to all the facts and information in order to inquire adequately into the alleged complaints. In addition, there should be investigations of human rights violations in the absence of express complaints, if it is reasonable to believe that any such violation has occurred. The international standards are comprehensive in detailing the appropriate requirements of an investigation.

Prisons are by their nature closed institutions and should therefore be subject to regular inspection. In most countries, there is some form of internal inspection process. The

inspectors who carry out this work should be knowledgeable about prisons and prison management. They should have unlimited access to all places and people within prisons and places of detention. They should also carry out unannounced inspections. They should report to the head of the prison administration.

Internal inspection is not in itself sufficient. It is therefore essential that there should also be a form of inspection which is independent of the prison system. At least some members of the independent inspection team should have knowledge of prisons and prison administration. There should also be specialist inspectors in subjects such as health care and mental health, education, buildings and minority issues. The independence of the inspection is more likely to be safeguarded if its report is submitted to an authority beyond the prison administration. One model for this is that the inspectors should report to the government minister who has parliamentary accountability for prisons.

The independent inspection team should also have the right to carry out inspections following any serious incident or riot.

Independent inspections can be of benefit to staff, particularly where there is an allegation of improper behaviour.

In some countries, the judiciary exerts some form of control or influence over prison administrations because prisoners and others have the right to raise issues where they consider there has been maladministration.



## **PRACTICAL RECOMMENDATIONS**

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends that those responsible for prison inspections and investigations should visit regularly, preferably weekly or at least monthly. Furthermore, if the investigation is conducted by a lay visiting body, it is desirable that the investigators receive appropriate training and that they be recruited so as to reflect the different elements in the community.
- The European Committee further recommends that investigators should make themselves visible, not restricting their contact to persons who have expressly requested to meet them, but taking the initiative by visiting the prison's detention areas and entering into contact with inmates. In addition, prisoners should have confidential access to investigators.
- In most cases, prison authorities do their best to administer prisons decently and humanely. Many of the problems which they face are beyond their control. It is in their interest that there should be independent inspection of prisons which can confirm that this is the case.
- There is a danger that the work done by independent inspection teams is subsequently ignored. One way of ensuring that attention is paid to independent inspections is by publishing their reports.
- Local non-governmental organizations can play an important part in independent inspection of prisons, both through direct action and by bringing matters to the attention of governmental and intergovernmental inspectors.
- The best safeguard of human rights in a prison setting is when the prison is open to

reasonable public scrutiny and when the local community is encouraged to become involved in the activities of the prison.

- A checklist which might be used by independent prison inspectors is contained in annex II to this Manual.

### **TOPICS FOR DISCUSSION**

A prison inspector makes a report on a prison with numerous criticisms, some of which, such as overcrowding, are outside the control of the prison director. The media publish very negative accounts of the prison. How is the prison director to maintain staff morale? What further steps might the director take?

Under what circumstances might a prison director actively seek an independent inspection? Are there any circumstances in which an independent inspection is likely to be unhelpful?



### **CASE STUDY**

The international instruments require that there should be experienced prison inspectors who report to a competent authority separate from the prison administration. Describe how such an arrangement might be set up.



SECTION IX

**SPECIAL  
CATEGORIES OF  
PRISONERS**







## **OBJECTIVE**

Everything in the preceding sections applies to all prisoners in general terms. In addition, there are certain categories of prisoners who are entitled to specific consideration because of their gender, age, race, culture or legal status. The objective of this section is to underline what these considerations are.

Special categories of prisoners include:

- Women;
- Juveniles in detention;
- Prisoners under sentence of death;
- Life and long-term prisoners.



## CHAPTER 29. NON-DISCRIMINATION



### OBJECTIVE

Discrimination on the grounds of race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status is prohibited by all the global and regional instruments on human rights. In addition, there should be specific protection for the rights of minorities as groups, as a safeguard for their identity and culture. The objective of this chapter is to emphasize that these provisions apply also to prisoners. This chapter should be cross-referenced with chapter 20 of this Manual, dealing with religion.



### ESSENTIAL PRINCIPLES

All persons are equal before the law and are entitled, without discrimination, to equal protection of the law.

Everyone has the right to freedom of thought, conscience and religion, and persons from ethnic, religious or linguistic minorities have the right to their own culture, religion and language.

A prisoner who does not adequately understand or speak the language used by the authorities is entitled to receive relevant information promptly in a language which he understands.

Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with appropriate diplomatic representatives.

Prisoners who are refugees or stateless persons shall be allowed reasonable facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 2 of the *Universal Declaration of Human Rights* confirms that these rights apply to all human beings without exception:

**Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ...**

The same principle of non-discrimination is enshrined in article 2, paragraph 1, and article 26 of the *International Covenant on Civil and Political Rights*.

Article 18 of the *Universal Declaration of Human Rights* also provides that:

**Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.**

Similar language is used in article 18 of the *International Covenant on Civil and Political Rights*.

In addition, article 27 of the Covenant provides that:

**In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.**

In most prison systems, minority groups are significantly overrepresented. For that reason, the provisions of the *International Convention on the Elimination of All Forms of Racial Discrimination* are of particular relevance in the prison setting. Article 5 of the Convention provides that:

**In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:**

**(a) The right to equal treatment before the tribunals and all other organs administering justice;**

**(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;**

The principle of equal rights without discrimination is confirmed in principle 5, paragraph 1, of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*:

**These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.**

The *Standard Minimum Rules for the Treatment of Prisoners* include the following provisions:

**38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.**

**(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.**

...

**41. ...**

**(3) Access to a qualified representative of any religion shall not be refused to any prisoner. ...**

There are many other international instruments which deal with issues of discrimination. Their provisions also apply to prisoners. They include:

- **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;**
- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;**
- **Convention on the Elimination of All Forms of Discrimination against Women;**
- **Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.**

## **IMPLICATIONS**

Society regards each of its citizens as equal and it is the duty of the State to safeguard the equal rights of all individuals, regardless of their differences. Because people are different from each other, some individuals need special protection to ensure their equal treatment.

Prison populations may reflect the ethnic, linguistic and religious prejudices of society. In particular, people from ethnic minorities tend to be overrepresented in prison populations in many countries.

Imprisonment makes people vulnerable to discrimination. If prisons are to be just and humane places, protection against discrimination is vital.

Prisons are designed and run for the majority of prisoners, so the needs of minorities risk being overlooked.

Minority status should not be used as an excuse for unfair treatment. Prisoners from minority groups may have special needs which should be recognized and provided for.

Many features of prison life give scope for the practice of discrimination. Facilities and resources may be scarce. Prison staff have substantial discretion to allocate desirable locations, work, privileges and access to activities. In some prison systems, staff are required to write reports about individual prisoners which can affect their chance of early or conditional release or parole.



## **PRACTICAL RECOMMENDATIONS**

- Minority prisoners can be discriminated against in a variety of ways. Their cultural identity may involve differences in appearance, language, behaviour, food, religious beliefs and practices. These differences must be recognized as legitimate.
- It must be recognized, too, that these differences can create tensions among prisoners and between prisoners and staff.
- Prisons are hierarchical places. Prisoners from minority groups may be at the bottom of the hierarchy and so become the victims of ill-treatment and abuse.
- Prisons can be confusing places at the best of times. If the rules of the prison are not available in languages which all prisoners can understand, some may be penalised for breaking a rule which they did not know existed. Prisoners who do not speak the main language of the prison need information in a language which they understand about prison regulations, what is expected of them and what their rights are. Ultimately, it is in everyone's interest to see that these needs are met.
- Foreign prisoners should be allowed to talk during visits, and to correspond, in their own language.
- Convenience or lack of resources are often cited as reasons for not providing for the needs of minorities or for inequitable treatment in custody. These are excuses for discrimination.
- Most religions have specific practices which have to be observed. These requirements may involve:
  - Ensuring that prisoners have the opportunity to pray at set times and under certain conditions;
  - Dietary restrictions, such as not eating meat, not eating particular meat, or eating only food prepared under specific conditions;
  - Dress requirements or customs about hair length.
- The best safeguard against discrimination is a just and impartial attitude on the part of all staff, starting at the top. One way to promote this is to have minority members of staff at all levels.
- Every effort should be made to recruit prison staff from ethnic and religious minorities.
- Staff should be given training to help them understand differences between cultures.
- Persons who have been imprisoned for their political or religious beliefs or activities should have access to humanitarian and diplomatic agencies to expedite their claims for release on the basis of unlawful imprisonment.
- In a number of countries, there has been an increasing tendency for courts to impose very long or indeterminate sentences. As a result, old people are emerging as a new minority group in some prisons. They have particular needs, which should be catered for.
- Each prison should have a formal statement of non-discrimination which should be prominently displayed in a public place.
- Representatives of minority groups in the community should be invited to visit prisons.

## **TOPICS FOR DISCUSSION**

What are the arguments for and against holding prisoners from minority groups in separate accommodation blocks?

What practical steps should be taken to ensure that prisoners who do not speak the national language are aware of the prison rules and of their rights?

The International Covenant on Civil and Political Rights (art. 20, para. 2) requires advocacy of racial hatred to be prohibited by law. There is also a right to freedom of opinion and expression. Sometimes there can be tension between these two rights. How can they be reconciled? Which is the most important?

List the areas of prison life where any discriminatory attitudes among staff might lead to particularly adverse effects on prisoners from minority groups. What measures might be taken to monitor the treatment being received by prisoners from minority groups?

Outline a programme that might be delivered by educational or other staff, designed to promote better understanding between prisoners from different racial groups.



## **CASE STUDIES**

1. The local media make an allegation that there is racial discrimination in the prison. There is a suspicion that the allegation is well-founded. How should the prison administration investigate the allegation; how should it deal with the facts once they are established; and what steps should be taken to ensure that the prison is free of racial discrimination in the future?
2. In many countries, minority groups are overrepresented in prison populations. This may be associated with a particularly negative view of criminal justice agencies being held by members of these minority groups. This being the case, prison services are finding great difficulty in recruiting prison staff from minority groups. What steps should be taken to promote such recruitment?

## CHAPTER 30. WOMEN IN PRISON



### OBJECTIVE

In all prison systems, women make up a small minority of the prison population. All chapters of this Manual should be read from a perspective which takes account of gender issues. The objective of this chapter is to identify specific issues which must be borne in mind when women are imprisoned. In most societies, women have particular family responsibilities in respect of childcare and related issues. This means that, when a mother is taken into custody, there are likely to be special consequences for other members of her family. In general terms, prison is a male-dominated society. Particular care should therefore be taken that the rights and needs of women are not ignored.



### ESSENTIAL PRINCIPLES

Women are entitled to equal enjoyment and protection of all human rights in the political, economic, social, cultural, civil and all other fields.

Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation.

Women prisoners shall be detained separately from male prisoners.

Women prisoners shall be supervised and searched by female officers and staff.

Pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition.

Whenever practical, women prisoners should be taken to outside hospitals to give birth.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 2 of the *Universal Declaration of Human Rights* states:

**Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ...**

Article 2, paragraph 1, of the *International Covenant on Civil and Political Rights* and article 2, paragraph 2, of the *International Covenant on Economic, Social and Cultural Rights* contain a similar provision. Article 3 of both Covenants provides that States parties "undertake to ensure the equal right of men and women to the enjoyment of all" civil and political rights, and economic, social and cultural rights, respectively, set forth in the Covenants.

The situation of women in prison does not receive a great deal of attention in the international instruments. However, the general requirements of non-discrimination and equal treatment are set out clearly in the *Convention on the Elimination of All Forms of Discrimination against Women*. The Convention prohibits any discrimina-



tion which denies to women the same protections and fundamental freedoms in all fields—political, economic, social, cultural and civil—as are accorded to men. The following are the most relevant provisions:

**For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. [art. 1]**

**States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:**

**(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;**

**(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;**

**(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;**

**(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;**

**(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;**

**(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;**

**(g) To repeal all national penal provisions which constitute discrimination against women. [art. 2]**

**States Parties shall accord to women equality with men before the law. [art. 15, para. 1]**

In its **General Recommendation No. 19 (11th session, 1992)**, the Committee on the Elimination of Discrimination against Women stated:

**6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may**

**breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.**

The *Declaration on the Elimination of Violence against Women* provides:

**For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. [art. 1]**

**Violence against women shall be understood to encompass, but not be limited to, the following:**

...

**(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. [art. 2]**

The Declaration goes on to require that States should:

**Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women. [art. 4, para. (i)]**

The *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* contains no special principles about women. Principle 5, however, requires that the whole Body of Principles be applied without discrimination, and that:

**Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. ... [para. 2]**

The *Standard Minimum Rules for the Treatment of Prisoners* apply to all prisoners, whatever their gender. However, they include special requirements regarding women. First, the Rules require that men and women should be kept separate:

**8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,**

**(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;**

The Standard Minimum Rules also include special requirements covering pregnancy, childbirth and childcare:

**23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institu-**

**tion. If a child is born in prison, this fact shall not be mentioned in the birth certificate.**

**(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.**

Measures necessary for preventing abuse of women prisoners by male prisoners or prison officials are clearly spelt out in rule 53 of the Standard Minimum Rules:

**(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.**

**(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.**

**(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* provide that States should:

**36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.**

The *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")* reiterates many of the standards set out in the Declaration on the Elimination of Violence against Women, discussed above.

## **IMPLICATIONS**

All around the world women prisoners form a small minority of those imprisoned. The proportion is generally around 5 per cent, i.e. one in 20 of all prisoners, although a feature of the past decade has been a steeper rise in the number of women in prison than in the number of men.

The small numbers of women prisoners pose specific problems for prison administrators. Since the vast majority of prisoners are men, prison systems tend to be run with men in mind as the norm. Accommodating women poses difficulties because the numbers coming from each town or region are too small to require a special prison building. Women tend, therefore, to be located in makeshift buildings or in annexes to men's prisons. The alternative is to place them in special women's prisons, but this usually means placing them far from their homes and families.

Women face particular problems in prison because of their role in the family. In the community, women often take responsibility for the family and children. Imprisonment therefore poses particularly severe problems for them and for their families outside.

In the coercive environment of a prison women are particularly vulnerable. They require special safeguards to ensure that they are not harassed or abused in any way.

Women who come into prison pregnant or as nursing mothers face great problems. To bring up a baby in prison is far from ideal, even if the prison conditions are hygienic and suitable. To separate a small baby from its mother is a serious decision to take.

## PRACTICAL RECOMMENDATIONS



- **Mixed gender staffing:** Ideally, women prisoners should be supervised exclusively by women staff. They should never be supervised exclusively by male staff. Women are particularly vulnerable in the closed environment of a prison. They should never be placed in a situation where they are at risk of abuse or harassment by male members of staff. When male staff deal with women prisoners, there should always be a female member of staff present.
- **Security searches:** Chapter 15 of this Manual refers to the international instruments which deal with searching and other security issues. These instruments have a particular relevance to women when questions of searching arise. Male members of staff should never search women prisoners. Requiring women to remove all their clothes to be searched for security reasons, with onlookers present, has implications for respect for human dignity even when measures are taken to ensure that men are nowhere in the vicinity. The carrying out of internal body searches of women is even more problematic and can cause enormous distress and feelings of humiliation to women prisoners.
- **Separation:** All the international standards clearly require that imprisoned women must be protected from sexual harassment and exploitation by men. This requirement is given added force by the weight of evidence which shows that many women in prison have already been victims of physical or sexual abuse by men or have committed their offences in response to brutality or exploitation by men.
- **Accommodation:** Because of their small numbers, women prisoners are often disadvantaged either by being kept in hastily adapted, makeshift, unsuitable buildings or by being placed many miles from their homes. This makes visits from their families more difficult and more expensive. Arrangements can be made to compensate for this, by allowing prisoners' families and children to visit for a whole day or a whole weekend.
- **Access to education, training and work:** Because of their small numbers and inadequate accommodation, or because of the requirement for separation from men, women prisoners rarely have access to the same level of facilities for education and training as men do. Women prisoners often find themselves restricted to work such as sewing or cleaning, childcare and other limited vocational opportunities. Women prisoners should have access to facilities which are equal to those available for men. As far as possible, they should be able to select the sort of work and training from which they can benefit. Some women prisoners are likely to be single mothers and will need special support and training. Help can sometimes be provided by local non-governmental organizations.
- **Pregnancy, childbirth and antenatal care:** The international instruments make it clear that pregnant women should receive as high a level of care as is accorded in

society outside. The preference is for babies to be born in an outside hospital. If babies remain with their mothers in prison, proper care has to be provided. Jurisdictions vary in the rules they make about women prisoners' babies. Some countries allow mothers to keep their babies with them until they reach a certain age—nine months, 18 months, two or three years—and then the babies are taken away and cared for elsewhere. Whatever the arrangements, it is highly likely that the mother's relationship with the child will be damaged by the fact that she is a prisoner. In each case, thought should be given to the best interests of the child and whether he or she should remain with the mother or be taken care of by other members of the family. A pregnant or nursing mother should be sent to prison only after all other alternatives have been considered. Special arrangements need to be in place to support mothers who have babies with them when the time comes for release.

- **Health care and hygiene:** The specific health-care needs of women prisoners should be recognized by prison authorities. Wherever possible, women doctors should be available for consultation. Women prisoners should also have access to specialists in women's health care (in particular, reproductive care). Women have specific hygiene needs which should be addressed, including safe disposal arrangements for bloodstained articles and access to items such as sanitary towels and tampons.
- **Special needs of women and involvement of non-governmental organizations:** Because of the limitations on treatment of women prisoners caused by their small numbers, prison authorities can benefit greatly from involving outside organizations in helping women both in prison and on release.
- **Preparation for release:** Women prisoners face special problems on release from prison. The stigma which faces many prisoners on release is likely to be experienced even more acutely by women. One example is the difficulty which some women face in obtaining permission from the authorities for their children to be returned to them, since they may be regarded as "unfit mothers".

## TOPICS FOR DISCUSSION

⑦ In your country, what are the differences (if any) in the treatment of female and male prisoners?

In your country, what is the maximum age at which a child is allowed to stay in prison with his or her mother? What would be the advantages of raising or lowering this age?

What facilities should be provided for mothers in prison to encourage the maintenance of their relationships with older children visiting them?

What additional support from outside the prison can be made available to women who have their children with them in prison?

What special arrangements need to be made in the unusual circumstance that a woman with an infant child has to be held in solitary confinement?

What are the questions raised by employing female staff in prisons for men? How does this situation differ from using male staff in prisons for women?

In many prisons for women and women's units in men's prisons, the only educational and leisure activities provided are related to domestic pursuits such as handicrafts.

Should anything be done to change this? What other activities could be introduced?

What does your prison service provide by way of sanitary protection for women?

### **CASE STUDIES**

(2018)

1. In a large prison there is a separate unit for women prisoners. The main work which they have is washing and repairing clothes for male prisoners. The international instruments require that they should have equal opportunity of access to education and work facilities. How could this be arranged?
2. In a women's prison, mothers are allowed to keep children up to three years of age with them, but they are required to leave their children in a nursery and perform prison work for eight hours per day after the child is six months old. Many women become extremely distressed about leaving their children in the nursery. What might be done to improve the situation?
3. In a women's prison, a considerable number of prisoners begin deliberately to injure themselves, sometimes seriously. What should be done?

## CHAPTER 31. JUVENILES IN DETENTION



### OBJECTIVE

The definition of who is a juvenile or a child may vary from country to country. Similarly, the distinction in law between a child and a juvenile is not always clear. For the purposes of this Manual, we use the definition contained in article 1 of the ***Convention on the Rights of the Child***:

**a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.**

and that contained in rule 11 (a) of the ***United Nations Rules for the Protection of Juveniles Deprived of their Liberty***:

**A juvenile is every person under the age of 18. ...**

The fundamental consideration is that the imprisonment of young people should be avoided whenever possible, and the younger the person, the greater should be the determination to avoid detention. Young people are in their formative years, learning and developing into adults. If these years are spent in an institution for those who have broken the law, there is a danger that the young person will absorb a criminal identity and grow up expecting to lead a criminal way of life. When it is necessary to deprive a young person of his or her liberty, certain special considerations apply. The objective of this chapter is to describe these considerations.



### ESSENTIAL PRINCIPLES

Children are to benefit from all the human rights guarantees available to adults. The following principles shall also be applied to children:

Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects the best interests of the child and takes their needs into account.

Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without chance of release.

Children who are detained shall be separated from adult prisoners. Accused juveniles shall be separated from adults and brought for trial as speedily as possible.

Special efforts shall be made to allow detained children to receive visits and correspondence from family members.

The privacy of a detained child shall be respected, and complete and secure records are to be maintained and kept confidential.

Juveniles of compulsory school age have the right to education and to vocational training.

Weapons shall not be carried in institutions which hold juveniles.

Disciplinary procedures shall respect the child's dignity, and shall instil in the child a sense of justice, self-respect and respect for human rights.

Parents are to be notified of the admission, transfer, release, sickness, injury or death of a juvenile.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

The *Convention on the Rights of the Child* emphasizes the fact that children do have rights. All the protections accorded to adults under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights apply to children. The Convention also contains a range of safeguards related to children and juveniles being dealt with under penal law. The provisions of specific relevance to detention and imprisonment are:

**States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:**

...

**(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education ...**

**(c) Make higher education accessible to all on the basis of capacity by every appropriate means;**

**(d) Make educational and vocational information and guidance available and accessible to all children;** [art. 28, para. 1]

**States Parties shall ensure that:**

...

**(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;**

**(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;**

**(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.** [art. 37]

Article 10, paragraph 2 (b), of the *International Covenant on Civil and Political Rights* provides that:



**Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.**

The ***United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*** do not suggest specific ages at which criminal responsibility should be recognized or at which persons should be considered as adults. They do indicate, however, that efforts should be made to extend the principles of juvenile justice to young adults. The rules most pertinent to juveniles deprived of their liberty are as follows:

### **13. *Detention pending trial***

**13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.**

**13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.**

**13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.**

**13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.**

**13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.**

...

### **19. *Least possible use of institutionalization***

**19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.**

...

### **21. *Records***

**21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.**

...

### **26. *Objectives of institutional treatment***

**26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education**

and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance—social, educational, vocational, psychological, medical and physical—that they may require because of their age, sex and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

**27. *Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations***

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

...

**29. *Semi-institutional arrangements***

29.1 Efforts shall be made to provide semi-institutional arrangements, such as halfway houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* are specific in their definitions:

11. For the purposes of the Rules, the following definitions should apply:

**(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;**

**(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.**

These Rules also provide:

**56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. ...**

**57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.**

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty include all the requirements set out in the ***Standard Minimum Rules for the Treatment of Prisoners*** and other instruments applying to adults; however, they place greater emphasis on treatment, education and rehabilitation, within the context of protecting rights, as well as on safeguards against stigmatization.

Paragraph 36 of the ***Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)*** requires States to provide appropriate and separate detention facilities for juveniles.

A useful reference text on these topics is *The Child Criminal Justice Manual*, prepared by Geraldine Van Bueren, to be published shortly by the Crime Programme of the United Nations Office on Drugs and Crime in Vienna.

## **IMPLICATIONS**

Juveniles suspected or convicted of breaking the law should be treated differently from adults in a similar position. There are several reasons for this:

- Children are regarded as having less responsibility for their actions, and the level of responsibility attributed to them increases as they grow older.
- Children who have committed crimes are regarded as being more amenable to change and to learning different ways of behaving than adults.
- Children and young people in prison or pre-trial detention institutions are likely to be vulnerable to abuse and ill-treatment and unlikely to be able to protect themselves.

Most jurisdictions have a minimum age of criminal responsibility. Children below that age who commit a crime are not subjected to the criminal law but are deemed to need social help.

Some jurisdictions have special courts (juvenile courts or youth courts) with special legislation. A separate branch of the judiciary presides in those courts.

Many jurisdictions have special, separate custodial institutions for juveniles and for young adults.

The emphasis in legislation on juveniles should be on the welfare of the young person and on a rehabilitative rather than a punitive approach.

Special considerations arise when female juveniles are imprisoned.

Special consideration should be given to the design and layout of prisons and institutions which hold juveniles.

Attempts should be made to involve the community in institutions for juveniles.



## **PRACTICAL RECOMMENDATIONS**

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty make it clear that the punitive element in the imprisonment of juveniles should be minimized as much as possible. When it is necessary to deprive a young person of his or her liberty, the negative aspects of institutions should also be minimized as much as possible. Instead, the opportunity should be taken to give juveniles the tools they need to succeed in life outside the institution and to remedy defects in their education and vocational training levels.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment warns against the danger of long-term social maladjustment. Thus it recommends a multidisciplinary approach to juvenile rehabilitation, drawing on the skills of a range of professionals, including teachers, trainers and psychologists. In this regard, administrations should offer a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of the programme.
- The European Committee recommends that a juvenile detention centre should provide positive and personalized conditions of detention for young persons deprived of their liberty. It should be of adequate size, well lit and ventilated, well furnished with regard to sleeping and living areas, well decorated and offer appropriate visual stimuli. Unless there are compelling security reasons, juveniles should be allowed to keep a reasonable quantity of personal items.
- The international instruments also make it clear that the treatment philosophy enshrined in them must be linked to a respect for the individual rights of each

juvenile. Treatment plans and programmes cannot override a juvenile's entitlement to be treated fairly.

- Contact with the family is regarded as very important and as a key element in rehabilitation.
- Efforts must be made to avoid stigmatizing a juvenile as someone with a criminal background, as this can seriously hinder social reintegration. Thus educational certificates, for example, must not show that they were gained in an institution. After an appropriate period of time, criminal records must be deleted.
- There should be a special selection procedure for staff who are to work with juveniles. They also need to be given special training. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends that juvenile detention centres should have mixed-gender staffing. The presence of both male and female staff can have a beneficial effect in terms of the custodial ethos and in fostering a degree of normality in a place of detention. In addition, it allows for appropriate staff to carry out gender-sensitive searches. Furthermore, the Committee discourages the carrying of batons by staff and recommends that, at the very least, they should not be carried openly. This practice does not foster a positive relationship between inmates and staff.
- There should be close links between the part of the prison administration which is responsible for juveniles and other government departments responsible for juvenile welfare and education.

### **TOPICS FOR DISCUSSION**

In some countries, as many as 80 per cent of imprisoned juveniles are convicted again within two years of their release. This suggests that imprisonment is failing to help these children to lead a law-abiding life. Is it possible to do something about this situation? If so, how?

Many children in prison come from children's homes or other institutions. How can the needs of these children for family relationships best be met while they are in prison?

A child arrives in prison and claims he is below the minimum age for imprisonment, but he has no birth certificate. What should be done?

What methods of discipline might be used in prison with very unruly juveniles with histories of repeated serious offending? How might they be encouraged to undertake education?

Women's units in men's prisons often hold very few prisoners. There are sometimes only one or two young female prisoners from the vicinity of a particular prison. How can the need to separate juveniles from adults be met without resorting to solitary confinement and very limited regimes?

Special efforts should be made to maintain links between juveniles in custody and their families and local communities. What factors should be taken into account in this regard?

Bullying and intimidation can often be a major problem in institutions where young people are held. What are the best ways to prevent this problem?



## **CASE STUDY**

You are in charge of a large adult male prison with one unit for 50 convicted juveniles aged 16-18, many of whom are drug offenders or ex-drug addicts. At present, the juveniles are supervised by the same staff and receive the same treatment as the other prisoners. You have been asked to design a programme to provide more appropriate treatment for the juveniles in the juvenile wing. How would you go about doing this in a manner which would conform to the international instruments?

## CHAPTER 32. PRISONERS UNDER SENTENCE OF DEATH



### OBJECTIVE

Many countries have now abolished the death penalty and the international community encourages this development. However, capital punishment still remains on the statute book in several countries.

Prison administrations have no responsibility for the imposition of the death penalty, but they sometimes have to deal with its consequences and implementation, i.e. holding prisoners under sentence of death, sometimes for many years when there are lengthy appeal procedures or when a State has suspended executions but has not abolished the death penalty or commuted existing sentences. Prison administrations are sometimes also responsible for carrying out executions. These tasks place a heavy burden on the staff who are involved. The objective of this chapter is to define how prisoners who are under sentence of death should be treated according to the international instruments.



### ESSENTIAL PRINCIPLES

Every human being has the inherent right to life, which shall be protected by law.

In countries which have not abolished the death penalty, it shall be imposed only for the most serious crimes and after a final judgement rendered by a competent court.

The death penalty shall not be imposed for crimes committed by persons below the age of 18 and shall not be carried out on pregnant women, nor on new mothers or persons who have become insane.

Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

Abolition of the death penalty is encouraged.



### BASIS IN INTERNATIONAL INSTRUMENTS

The international human rights instruments assert the right to life while making an exception for the death penalty. However, abolition is encouraged. The ***Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*** states that:

**abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights** [preamble]

Paragraph 6 of article 6 of the ***International Covenant on Civil and Political Rights***, which concerns the right to life, provides that:

**Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.**

For those countries where the death penalty still applies, paragraph 2 of article 6 requires that it be imposed:

**only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.**

Paragraph 5 of article 6 provides that:

**Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.**

The *Safeguards guaranteeing protection of the rights of those facing the death penalty* reinforce the limitations set out in article 6 of the International Covenant on Civil and Political Rights and add that the death penalty shall not be imposed on "new mothers" or "persons who have become insane". They also require:

**9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.**



## IMPLICATIONS

The international instruments encourage abolition of the death penalty in countries where it is still in force.

Prison staff must be particularly sensitive when supervising prisoners who are under sentence of death. This sensitivity must be extended first to the prisoner who is awaiting death, but also to his or her family and to the family of the victim if they have any contact with the prison.

Supervising a prisoner who has been sentenced to death is a stressful responsibility, especially once a date for execution has been set.

In some countries, prison staff are required to carry out executions.

The knowledge that a prisoner is awaiting execution is likely to have an adverse effect on other prisoners.



## PRACTICAL RECOMMENDATIONS

- Prisoners should not be held in unduly restrictive circumstances purely on the grounds that they have been sentenced to death. The period for legal appeal against a sentence of death can sometimes be lengthy. There is no justification for holding such prisoners in solitary confinement or in an excessively restricted environment simply because they have been sentenced to death.
- Prisoners under sentence of death must be given every reasonable facility to prepare grounds for an appeal against sentence.
- Prisoners under sentence of death should be allowed to maintain contact with their family and friends, particularly by means of visits under appropriate conditions.
- Prisoners under sentence of death and their families should be notified in advance of the exact time of execution. Such notification should allow adequate time to seek legal remedy.



- Staff who are in charge of prisoners under sentence of death should be carefully selected. They should be given special training and support.

### ② **TOPICS FOR DISCUSSION**

Bearing in mind the universal nature of many of the international instruments, what special treatment should be given to prisoners who are under sentence of death?

Prisoners are often held under sentence of death for many years. What factors involved in this long wait might constitute cruel, inhuman or degrading treatment? How can this be prevented? What facilities should be provided for prisoners who are awaiting execution?

Medical personnel should not be involved in the act of execution. Refer to chapter 12 of this Manual.

Discuss the issues involved in deciding who should witness executions.

### ③ **CASE STUDIES**

1. A prisoner under sentence of death tells staff supervising him about new evidence which was not raised at the time of his trial. This evidence might, in the view of prison staff, lead a court to deduce that he was innocent of the crime for which he is to be executed. What steps should the prison director take?
2. It is alleged in the national media that the method of execution used at a particular prison causes considerable suffering to those being executed by prison staff. What measures should be taken to respond to such allegations?

## CHAPTER 33. LIFE AND LONG-TERM PRISONERS



### OBJECTIVE

The term "life sentence" has divergent meanings in various countries. States impose life sentences for different ranges of offences. Moreover, States which release life-sentence prisoners do so in a variety of ways.

Although, in certain countries, degrees of legislated determinacy are attached to life sentences, in general such sentences are, by their very nature, indeterminate. Only in exceptional cases, however, does a life sentence mean that a person must spend the rest of his or her natural life in prison.

Life imprisonment is the most severe penal sanction that can be imposed in those jurisdictions which either do not have, or choose not to apply, the death penalty. In the absence of the death penalty, life imprisonment takes on a symbolic significance and may be seen as the ultimate retributive sentence.

Some long-term and life-sentence prisoners are likely to be highly dangerous. Some of them will have committed horrendous crimes and would be a real threat to the safety of the public if they were to escape. It is the responsibility of prison administrations to ensure that these prisoners do not escape and also that they do not present a threat to staff and other prisoners. Managing these prisoners in a manner which is decent and humane while at the same time ensuring the safety of other people is a great challenge to professional prison management.

The most important issues in the management of life and long-term prisoners, however, stem from the potential damage to the prisoners' mental well-being caused by the length of sentence or the uncertainty of the release date. Prison administrators must help prisoners to plan their sentences in such a way as to maintain their sense of self-worth and avoid the dangers of institutionalization.



### ESSENTIAL PRINCIPLES

The essential aim of the treatment of prisoners shall be their reformation and social rehabilitation.

Life imprisonment without possibility of release shall not be imposed for offences committed by persons below the age of 18.

The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of prisoners or the respect due to their dignity as human beings.

The treatment of prisoners shall be such as will encourage their self-respect and develop their sense of responsibility.

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

The overall objective of the management of life-sentence prisoners is their safe release into society once they have served a sufficient period in custody to mark the seriousness of their offences.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

Article 10, paragraph 3, of the *International Covenant on Civil and Political Rights* provides that:

**The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. ...**

The question of life imprisonment for juvenile offenders is expressly dealt with by the *Convention on the Rights of the Child*, article 37 (a) of which provides:

**... Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age**

Although the possibility of release is not excluded, it remains a source of concern that in many countries, including western Europe (for example, Belgium, France, Ireland and the United Kingdom), life sentences may be imposed on children under eighteen years of age.

Rule 60 (1) of the *Standard Minimum Rules for the Treatment of Prisoners* provides that:

**The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.**

According to rules 65 and 66 (1) of the Standard Minimum Rules, the treatment of prisoners shall be such as will encourage their self-respect and develop their sense of responsibility, using all appropriate means, including:

**education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner ...**

The need for prisoners to maintain contact with the outside world is recognized in rule 37 of the Standard Minimum Rules:

**Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.**

This rule is of particular importance to life-sentence prisoners, as the longer the period of imprisonment, the greater the strain on a prisoner's relationships in the outside world.

In its **resolution (76) 2 of 17 February 1976 on the treatment of long-term prisoners**, the **Committee of Ministers of the Council of Europe** recommended that considerations of general prevention alone should not justify refusal of conditional release. Accordingly, the overall objective of the management of life-sentence prisoners is their safe release into society once they have served a sufficient period in custody to mark the seriousness of their offences.



## IMPLICATIONS

The particular difficulties raised by life imprisonment are recognized in the constitutions of a number of countries. While the use of life imprisonment varies widely, its application is not peculiar to any particular culture. Some countries, such as Brazil, Colombia, Norway, Portugal and Spain, have replaced life or indeterminate sentences with fixed-term sentences. Article 5, XLVII (b), of the Constitution of Brazil, article 34 of the Constitution of Colombia and article 30, paragraph 1, of the Constitution of Portugal, for example, expressly prohibit life imprisonment.

In general, however, life sentences are being retained.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has emphasized that "Long-term imprisonment can have a number of desocialising effects upon inmates". The prisoners concerned should "have access to a wide range of purposeful activities of a varied nature ... [and] be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment ..."

Education may range from physical education to academic studies at advanced levels. If a life-sentence prisoner is moved from prison to prison, his or her education may lack continuity. It is therefore essential to develop treatment programmes that offer consistent care. Long-term prisoners should be able to continue academic courses irrespective of any transfers that they may have to undergo while serving their sentences.



## PRACTICAL RECOMMENDATIONS

- All prisoners are individuals and prison authorities should treat them as such.
- All prisoners should be treated equally, including prisoners serving life or other long sentences.
- In a number of jurisdictions, prisoners serving very long sentences are taken first to an induction unit, the objective being to facilitate their entry into ordinary prison life, to which they are transferred after a few months.
- There is no reason why the provision of work, education and other activities should not apply to prisoners serving long, including life, sentences. These prisoners are more likely to become dislocated from their family and community and will therefore need more support in the rehabilitation process.
- There is no operational justification for keeping prisoners in isolation, either as individuals or in a group, simply because of the length of their sentence. On the contrary, it is good management practice to keep prisoners fully occupied, in their own interests and those of the smooth running of the prison.
- If a person who has been sentenced to a long term of imprisonment is to maintain emotional and physical health while in prison and eventually return safely to the community, he or she needs to be able to maintain and develop family links and contact.
- Several years before the anticipated date of release, most long-term prisoners will be suitable for transfer to a low-security prison or hostel. There they can have the

opportunity to leave the institution from time to time, sometimes for several days, as part of their final preparation for return to the community.

- According to a 1994 study on life imprisonment by the United Nations Crime Prevention and Criminal Justice Branch, individuals sentenced to life imprisonment may suffer from psychological and sociological problems that can cause desocialization and dependence, which are harmful to the health of the individual prisoner and therefore to the entire society, if and when release is granted.
- The solution to many of these problems can be found in specific treatment programmes which might include physical education, academic studies, positions in prison industries or greater contact with the outside world. Such programmes not only motivate prisoners, but also help them to confront previous or current problems. Additionally, prison staff benefit by having another means of assessing the progress of individual prisoners.
- Drawing on the main conclusions of the 1994 United Nations study, a number of practical recommendations may be made:
  - (a) Regarding penal policy, States should:
    - Ensure that life imprisonment is imposed only when strictly necessary to protect society and to ensure justice and, in countries where the death penalty has been abolished, only on offenders who have committed the most serious crimes;
    - Ensure that life imprisonment without the possibility of release is not imposed on juveniles under 18 years of age;
    - Guarantee that any individual sentenced to life imprisonment has the right to appeal to a court of higher jurisdiction and to seek a pardon or commutation of sentence.
  - (b) Regarding prison conditions, training and treatment, prison institutions should:
    - Ensure that the actual conditions for life-sentence prisoners are compatible with human dignity and accepted minimal prison standards for all prisoners, in accordance with the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations;
    - Provide an assessment of the personality and needs of each life-sentence prisoner as soon as possible after admission, with a view to establishing appropriate optional training and treatment programmes;
    - Adopt procedures for establishing, implementing and reviewing individualized programmes for life-sentence prisoners, with special emphasis on the following:
      - Training and treatment programmes that take into account changes in the prisoners' behaviour, interpersonal relations and motivation regarding work and educational goals;
      - Educational training programmes aimed at helping life-sentence prisoners to preserve or revive their personal abilities;
      - Provide opportunities for work with remuneration, study, and religious, cultural, sports and other leisure activities, to be utilized in accordance with the individual treatment needs of each life-sentence prisoner;
      - Encourage a sense of responsibility in life-sentence prisoners by fostering their participation in all appropriate aspects of prison life;

- Provide life-sentence prisoners with opportunities for communication and social interaction with the outside community and, in particular, allow them to receive regular visits from relatives and other persons that would promote the best interests of the prisoners and their families, utilizing community agencies, social workers and volunteers to assist prison staff in maintaining and improving those relationships;
- Reinforce contacts with the outside community by creating conditions in which life-sentence prisoners may participate in educational programmes and work outside their institutions; be granted periods of leave for medical, educational, family or social reasons; and take part in outside activities as an integral part of their training and treatment programmes, where necessary under supervision.

### ⑦ TOPICS FOR DISCUSSION

One consequence of longer sentences in some jurisdictions is that prison administrators must respond to the needs of growing numbers of elderly prisoners. The recent trend towards mandatory life or long sentences has led to a significant increase in the number of prisoners who will become old in prison. This may require the provision of a range of specialist facilities to deal with problems arising from loss of mobility or the onset of mental deterioration. How can this situation be dealt with? What facilities should be provided for elderly prisoners?

Discuss the particular consideration that prison administrators should give to social and medical problems related to elderly prisoners.

Another set of difficulties arises when prison systems are required to deal with prisoners defined as terrorists or enemies of the State. Unlike the vast majority of prisoners, these prisoners often do not accept the fact that they should be in prison, nor do they accept the legitimacy of the prison administration's authority. Their management is complicated by the fact that they often have high political and public profiles, and both the way they are treated and the manner in which they respond to imprisonment are matters of great media interest, which can have negative repercussions in civil society. The hands of prison administrators are frequently tied by the demands of political convenience. How can prison administrators cope with this problem?

Discuss the way in which prison administrators respond to the pressures created by having to manage such prisoners in a decent and humane manner.

What are the most relevant criteria for classifying long-term prisoners (length of sentence, assumed degree of danger, specific needs in terms of psychosocial interventions and treatment, etc.)?

How can prison administrators ensure that the negative effects of imprisonment on long-term prisoners do not make their positive readjustment to the community impossible?

How can the risk of long-term prisoners reoffending be assessed before their release?

How can pre-release preparation be made as effective as possible while ensuring an appropriate level of comfort for long-term prisoners?

SECTION X

**PERSONS  
UNDER DETENTION  
WITHOUT SENTENCE**





## CHAPTER 34. LEGAL STATUS OF PERSONS UNDER DETENTION WITHOUT SENTENCE



### OBJECTIVE

People who are detained without sentence<sup>4</sup> are entitled to specific legal safeguards. The objective of this chapter is to underline this fact and to describe the basic legal safeguards.



### ESSENTIAL PRINCIPLES

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty.

Everyone has the right to liberty and security. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his or her arrest and of his or her rights. Anyone who is arrested shall be promptly informed of any charges.

Anyone who is arrested shall be brought promptly before a judicial authority for the purpose of having the legality of his or her arrest or detention reviewed and shall be released if the detention is found to be unlawful.

Anyone who is arrested has the right to trial within a reasonable time, or to release.

Comprehensive written records of all interrogations must be kept, including the identity of all persons present during the interrogation.



### BASIS IN INTERNATIONAL INSTRUMENTS

The most important consideration about the status of pre-trial prisoners is that they should be considered innocent. Article 11, paragraph 1, of the *Universal Declaration of Human Rights* states:

**Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.**

Article 3 of the Universal Declaration states:

<sup>4</sup> The term "pre-trial prisoners" is used in this section to denote all persons held in custody who have not yet been brought to trial. The **Standard Minimum Rules for the Treatment of Prisoners** use the term "untried prisoners" (rule 84 (1)) and the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** uses the term "detained person". The principles in this section refer to all persons who are detained without sentence, whether they are legally referred to as detained, pre-trial, under arrest, awaiting trial, untried, remand or unconvicted, or by any other similar description. A useful reference guide on this subject is *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention*, Professional Training Series No. 3, published by the United Nations in 1994.

**Everyone has the right to life, liberty and security of person.**

This overriding principle has several important consequences. They are to do with the right of a detained person to know why he or she has been arrested and to be brought before a court of law at the earliest possible opportunity. These rights are described in article 9 of the *International Covenant on Civil and Political Rights*:

**1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

**2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.**

**3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.**

**4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**

**5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.**

Article 14 of the Covenant also provides:

**1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...**

**2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.**

**3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:**

**(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;**

...

**(c) To be tried without undue delay;**

These rights are confirmed in the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*:

**A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.**

[principle 36, para. 1]

**The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.** [principle 36, para. 2]

**A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.** [principle 37]

**A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.** [principle 38]

Rule 84 (2) of the *Standard Minimum Rules for the Treatment of Prisoners* reaffirms the special status of prisoners who have not been tried:

**Unconvicted prisoners are presumed to be innocent and shall be treated as such.**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* outline a number of safeguards for those deprived of their liberty.

Paragraph 20 states:

**All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:**

- a) The right that a relative or other appropriate third person is notified of the detention;
- b) The right to an independent medical examination;
- c) The right of access to a lawyer;
- d) Notification of the above rights in a language which the person deprived of their liberty understands.

In addition, the Robben Island Guidelines contain a number of safeguards for detainees during the pre-trial process, requiring that States should:

**23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.**

...

**25. Ensure that all detained persons are informed immediately of the reasons for their detention.**

**26. Ensure that all persons arrested are promptly informed of any charges against them.**

...

**28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation, and consider the feasibility of the use of video and/or audio-taped recordings of interrogations.**

...

**32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.**



## **IMPLICATIONS**

It is important that prison staff should recognize the distinction between those who have been convicted and those who have been detained awaiting trial. It is not acceptable that prison staff should take the view that all prisoners, whatever their legal status, are subject to the same regime.



## **PRACTICAL RECOMMENDATIONS**

- It is essential when a prisoner is first received into a prison that staff should satisfy themselves that there is proper legal authority for the detention. This matter is dealt with in chapter 4 of this Manual.
- In the case of a person who is detained without sentence, the written legal authority should stipulate the date when the person will next appear before a legal authority.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has reaffirmed that all persons taken into police custody should be informed, without delay and in a language which they understand, of all their rights. It recommends that "a form setting out those rights in a straightforward manner be systematically given to persons detained by the police, at the very outset of their custody. The form should be available in an appropriate range of languages." The form should include all the rights.



## **TOPIC FOR DISCUSSION**

Prisons which hold prisoners without sentence are very often large, busy institutions. There will frequently be large numbers of prisoners admitted over a short space of time.

In these circumstances, it may be difficult for staff to satisfy themselves that every prisoner who is newly admitted is aware of his or her legal rights. What procedures can be put in place to ensure that this happens?



### **CASE STUDY**

Very often the police will bring all new prisoners to the prison in the early evening. They will make no distinction in travel arrangements between those who have been convicted and those who have been detained without sentence. You are in charge of the reception area of the prison. You have to set up a system which recognizes the special position of those prisoners who have not been sentenced. How might you do this, and what factors must be taken into account?

## CHAPTER 35. ACCESS TO LAWYERS AND THE OUTSIDE WORLD



### OBJECTIVE

In order to receive a fair trial it is particularly important that pre-trial prisoners are able to keep in contact with legal advisers, family and friends so as to prepare their defence properly and without undue hindrance. The objective of this chapter is to underline this fact.



### ESSENTIAL PRINCIPLES

All arrested or detained persons shall have access to a lawyer or other legal representative and adequate opportunity to communicate with that representative.

Untried prisoners shall be allowed immediately to inform their families of their detention and shall be given all reasonable facilities for communicating with their families and friends.



### BASIS IN INTERNATIONAL INSTRUMENTS

Article 14 of the *International Covenant on Civil and Political Rights* provides:

**3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:**

...

**(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;**

...

**(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;**

These principles are confirmed in the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*:

**A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.** [principle 17, para. 1]

**If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.** [principle 17, para. 2]

**A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.** [principle 18, para. 1]

**A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.** [principle 18, para. 2]

**The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.** [principle 18, para. 3]

**Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.** [principle 18, para. 4]

**Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.** [principle 18, para. 5]

**The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.** [principle 23, para. 1]

**A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.** [principle 23, para. 2]

The *Standard Minimum Rules for the Treatment of Prisoners* contain similar provisions:

**92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.**

**93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.**

The right of access by detained persons to a lawyer is confirmed in the *Basic Principles on the Role of Lawyers*, principle 7 of which requires that this access be provided not later than 48 hours from the time of arrest or detention. Principle 8 specifies the conditions for communication with a lawyer:

**All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.**

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* stress the rights of pre-trial detainees to have access to legal counsel and medical services and to contact their families. They require States to:

**24. Prohibit the use of incommunicado detention.**

...

**31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.**

## **IMPLICATIONS**

There should be a clear distinction between the prison authorities, who are responsible for detaining an accused person, and the police or prosecuting authority, whose task is to investigate the alleged offence or crime. The prison authorities should determine the conditions in which an accused person is held without interference from the police or prosecuting authority.

The investigating authority should not be able to dictate restrictions on the treatment of an accused person while in detention.

In addition to contact with their lawyers, pre-trial prisoners should be able to maintain contact with judicial authorities, with their families and friends, with their doctors, with religious representatives and with external inspecting agencies.

## **PRACTICAL RECOMMENDATIONS**

- When prisoners are first received into prison their families should be informed where they are detained. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends a maximum period of



48 hours before persons in police custody are allowed to notify their next of kin or another third party of their choice. Any delay beyond this period should be recorded in writing, together with the reasons for the delay, and should require the approval of a senior officer or public prosecutor.

- Prisoners should be allowed to apply for free legal aid in all cases where the interests of justice so require.
- Prisoners should be able to contact and receive visits from their legal advisers to discuss their defence.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that detained persons "should also be entitled to have a lawyer present during any questioning conducted by the police (whether this be during or after the initial period of custody). Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the police from beginning to question him on urgent matters before the lawyer arrives."
- Prisoners should be supplied with writing materials if they so wish.
- Prisoners should be able to be interviewed by their legal advisers within sight, but not within the hearing, of officials. They should also be able to have confidential communication by letter or telephone with their legal advisers.

### **TOPICS FOR DISCUSSION**

Most prisoners will be admitted to prison from the custody of the police or prosecuting authority. What arrangements can the prison administration make to ensure that such prisoners understand their entitlement to legal representation?

What arrangements should the prison administration make to ensure that prisoners can notify their next of kin of where they are?

To what extent do the international instruments permit prison authorities to restrict contact between pre-trial prisoners and their friends and families?



### **CASE STUDIES**

1. A prisoner has been held in pre-trial detention for 18 months. No date has been set for her trial. The prison authorities realize that the offence with which she is charged carries a maximum sentence of 12 months' imprisonment. Bearing in mind the international instruments, what should they do?
2. Police who deliver a man to prison to await trial inform the prison authorities that he is well known to them as a drug dealer and they recommend that he is given no access to telephones and that all his visitors are personally searched. What should be done?
3. You are in charge of the visiting area of the prison. The director of the prison instructs you to make arrangements to allow prisoners to speak to their lawyers in conditions which meet the requirements of the international instruments. How would you go about this?

## CHAPTER 36. TREATMENT OF PRE-TRIAL PRISONERS



### OBJECTIVE

The objective of this chapter is to stress that men and women in pre-trial detention have the right to different treatment in some respects from convicted prisoners because they have not been found guilty of any offence and are by law presumed to be innocent of the offence with which they have been charged.



### ESSENTIAL PRINCIPLES

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment.

Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

Untried prisoners may, if they so desire, have their food procured at their own expense from outside.

Untried prisoners shall be allowed to wear their own clothing if it is clean and suitable.

If an untried prisoner wears prison clothing, it shall be different from that supplied to convicted prisoners.

Untried prisoners shall always be offered the opportunity to work, but shall not be required to work.

Untried prisoners shall generally be allowed to procure at their own expense books, newspapers and writing materials.

Untried prisoners shall generally be allowed visits from their own doctor or dentist.



### BASIS IN INTERNATIONAL INSTRUMENTS

The need to separate pre-trial prisoners, who by definition have not yet been found guilty of any offence, from convicted prisoners is emphasized in several international instruments.

Article 10 of the *International Covenant on Civil and Political Rights* requires:

**2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;**

These provisions are confirmed in principle 8 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and rules 8 and 85 of the *Standard Minimum Rules for the Treatment of Prisoners*.

The Standard Minimum Rules also contain a number of other provisions concerning the treatment of pre-trial prisoners:

**84. ...**

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

...

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* contain several provisions on the need to give special protection to juveniles remanded in custody, as do the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. See chapter 31 of this Manual for more information on the treatment of juveniles.

## IMPLICATIONS

It is clear from the international instruments that form the basis for the detention of pre-trial prisoners is different from that of the detention of sentenced prisoners, and certain requirements flow from this.

The first is the need for separation from convicted prisoners. The reason for this separation is to ensure that the treatment of pre-trial prisoners is appropriate to the presumption of innocence. They are not convicted persons and should not be kept in a place where the ethos is that of containing people who have been given a prison sentence.

There are also practical reasons. Pre-trial prisoners have a number of rights—to see lawyers, to have food brought in, to wear their own clothes, not to be required to work—which do not apply in the same way to convicted prisoners, and mixing the two categories of prisoners would cause difficulties.

The main preoccupation of pre-trial prisoners would normally be their impending trial and making adequate preparations for it. Different expectations would apply to the daily routine and regime for convicted prisoners.

In addition, pre-trial prisoners are entitled to all the protections which apply to all prisoners.



### **PRACTICAL RECOMMENDATIONS**

- In many prison systems, no distinction is made between pre-trial prisoners according to the type of offence of which they have been accused. This means that prisoners who may be facing relatively minor charges are held in the same conditions of security as though facing serious charges. Consideration should be given to the appropriate degree of security for different groups of pre-trial prisoners.
- If pre-trial prisoners are allowed to wear their own clothes, appropriate washing arrangements should be made. If this cannot be done inside the prison, another option is to allow prisoners to exchange personal clothing at visits.
- In some prison systems, the reality is that the conditions in which pre-trial prisoners are held are much worse than those for convicted prisoners. Their accommodation is often more likely to be overcrowded; they may be confined to their cells for most of the day; there may be restrictions on their contact with the outside world. Prison authorities should do everything possible to ensure that conditions for pre-trial prisoners are at least no worse than those for convicted prisoners.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends that pre-trial prisoners should be provided with a satisfactory programme of activities, including work, education and sport, in which they can positively spend their time during the eight hours or more each day which the Committee recommends they should spend outside their cells. Pre-trial prisoners should not be ignored because of the possibly transient nature of their detention.
- The European Committee also recommends that restrictions on contact with other prisoners and the outside world should be strictly limited. The Committee condemns the practice in some countries whereby police and prosecutors use custodial restrictions in order to exert psychological pressure on suspects to confess or provide information. The Committee has recommended a number of procedural safeguards in cases where custodial restrictions are placed on pre-trial detainees. These include the authorization of any such restrictions by a court, the reasons being recorded in writing, and a regular review by the court of any restrictions imposed on a pre-trial detainee.

## ② TOPICS FOR DISCUSSION

The reality in some prison systems is that conditions for pre-trial prisoners are often worse than those for convicted prisoners. Why should this be so and, taking account of the international instruments, what can be done to change this?

Why is it important that pre-trial prisoners should be separated from convicted prisoners?

What special measures should be taken to ensure that the experience of young pre-trial prisoners is as positive as possible?

What key factors should be considered in organizing educational classes for pre-trial prisoners?

## ③ CASE STUDIES

1. In your prison system, all pre-trial prisoners are held in high-security conditions. The head of the prison administration asks you to draw up a set of procedures which will divide pre-trial prisoners into different security categories. What factors should you take into account?
2. You are responsible for providing work for prisoners. There is not sufficient work to employ all the convicted prisoners. Some untried prisoners indicate that they would like to work. Taking account of the international instruments, how would you deal with this request?
3. A pre-trial prisoner has a brother in the prison who has been convicted in an unrelated case. Both prisoners ask if they can be accommodated together. How would you respond?

## CHAPTER 37. RELEASE ON BAIL



### OBJECTIVE

The international instruments make it clear that, whenever possible, accused persons should not be detained in custody while awaiting trial. One method of achieving this is by allowing them to continue to live in their communities but requiring them to provide a guarantee, financial or otherwise, that they will not abscond and will be available when needed for investigation and for trial. This arrangement is usually called "bail".

In many countries, a substantial number of people are kept in pre-trial detention who could be given bail. The objective of this chapter is to emphasize that persons awaiting trial should not be detained in custody as a general rule. Prison authorities have a role in providing assistance to pre-trial detainees to apply for release on bail.



### ESSENTIAL PRINCIPLES

Persons awaiting trial shall not be detained in custody as a general rule.

Release pending trial shall be envisaged as early as possible.

A pre-trial prisoner shall have the right to appeal to a judicial or other independent authority against his or her detention.



### BASIS IN INTERNATIONAL INSTRUMENTS

The principle in the international instruments is that a person accused of a crime will be held in custody only if absolutely necessary. Article 9, paragraph 3, of the *International Covenant on Civil and Political Rights* states:

**... It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial ...**

Article 9, paragraph 4, of the Covenant further states:

**Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**

This provision is confirmed in principle 39 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*:

**Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.**

Rule 6 of the *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* amplifies this principle, which should be cross-referenced with section 11 of this Manual on non-custodial measures:

**6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.**

**6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.**

**6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.**



## **IMPLICATIONS**

On first admission into custody, pre-trial prisoners are often confused and distressed, particularly if they have no experience of imprisonment. Prison staff have an obligation to ensure that such prisoners are aware of their legal situation and of their rights as unconvicted prisoners.



## **PRACTICAL RECOMMENDATIONS**

- Staff in the admission area of the prison should be specially trained to help prisoners understand their legal situation.
- In some countries, specially trained staff examine each case to discover whether there are any grounds for release on bail and to prepare reports for the person's next court appearance.



## **TOPICS FOR DISCUSSION**

How can arrangements be made to train a group of staff to give advice to prisoners about meeting conditions for release while they are awaiting trial?

Discuss what advice and documentation should be made available to prisoners on first admission to help them to know whether they might be eligible for release on bail or under some other conditions.



## **CASE STUDY**

A pre-trial prisoner speaks to a member of the prison staff the day after he has been admitted. He says that in court he was told he could be released on bail provided he could give surety for a certain amount of money. At the time he was unable to do so, but he has now remembered that he has a friend who might be able to provide the surety. What should be done?

## CHAPTER 38. CIVIL PRISONERS AND PERSONS ARRESTED OR DETAINED WITHOUT CHARGE



### OBJECTIVE

In some countries, people may be detained because they are facing a civil charge or for other administrative reasons. The objective of this chapter is to underline that such persons should be treated in the same manner as all other prisoners who have not been convicted.



### ESSENTIAL PRINCIPLE

Persons arrested or imprisoned without charge shall be accorded the same protection and facilities as pre-trial prisoners.



### BASIS IN INTERNATIONAL INSTRUMENTS

Rule 94 of the *Standard Minimum Rules for the Treatment of Prisoners* refers to the treatment of civil prisoners as follows:

**In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.**

In 1977, the Economic and Social Council approved the addition of a new rule, rule 95, to the Standard Minimum Rules for the Treatment of Prisoners. In essence, the new rule provides that persons arrested or imprisoned without charge, for example those in administrative detention, are to be accorded the same protection as persons under arrest or awaiting trial and prisoners under sentence:

**95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.**





## **IMPLICATIONS**

Persons who have been detained for non-criminal reasons should not be treated as if they were convicted prisoners.

Such persons are entitled to the same protection and facilities as all other non-convicted prisoners.



## **TOPICS FOR DISCUSSION**

What arrangements should be made for civil prisoners as regards visits from family members and access to lawyers?

What disciplinary procedures should be applied to prisoners who are not facing any criminal charge?



## **CASE STUDY**

You are the director of a prison. The authorities have instructed you that your prison is to be converted into a centre for detaining illegal immigrants until a decision is made about their applications for asylum. None of these prisoners will be facing any criminal charge. What sort of regime should you prepare for these prisoners?



SECTION XI

**NON-CUSTODIAL  
MEASURES**





## OBJECTIVE

When deciding what to do with a person who is accused of committing an offence, a court may choose, if it is empowered to do so, to allow that person to remain in the community without restriction, or it may impose some restrictions on freedom of movement, or it may order that the person be detained in custody. In the case of a person who has been convicted of committing an offence, the court may be able to order one of a variety of penalties which the convicted person can serve while still remaining in the community, or it may order that the person be deprived of liberty.

The international instruments emphasize that detention or imprisonment should be imposed only when there is no alternative. In all other cases, the use of non-custodial measures is recommended. In some countries, the same authority is responsible for prisons and also for the care and supervision of offenders who are sentenced to non-custodial penalties. It may also happen that a person who has completed part of his or her sentence in prison will be eligible to complete the sentence under some form of conditional release in the community. The objective of this section is to describe how such offenders should be treated.



### ESSENTIAL PRINCIPLES

The use of non-custodial measures should be recommended and encouraged.

Non-custodial measures should be applied without discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

Consideration should be given, where possible, to dealing with offenders in the community without resort to the courts.

Non-custodial measures should be used in accordance with the principle of minimum intervention.

Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

There should be suitable mechanisms to facilitate linkages between services responsible for non-custodial measures and other relevant agencies in the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

The criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions, in order to avoid the unnecessary use of imprisonment.

Pre-trial detention shall be used as a means of last resort in criminal proceedings, and alternatives to pre-trial detention should be employed as early as possible.

The number and types of non-custodial measures available should be determined in such a way, inter alia by law, that consistent sentencing remains possible.

Sentencing authorities, when considering non-custodial measures, should take into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

The primary international instrument in this matter is the *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*.

Rule 2 underlines the comprehensive scope of the Tokyo Rules:

**2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.**

**2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.**

**2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.**

**2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.**

**2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.**

**2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.**

**2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.**

The Rules go on to specify the need for legal safeguards for an offender who is subject to non-custodial sanctions (rule 3). As emphasized in chapter 37 of this Manual, whenever possible non-custodial measures should be preferred to pre-trial detention (rules 5 and 6).

Rule 8.1 sets out the considerations which a judicial authority should have in mind when imposing a sentence:

**The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.**

Rule 8.2 lists possible non-custodial sentences open to a court:

**Sentencing authorities may dispose of cases in the following ways:**

- (a) Verbal sanctions, such as admonition, reprimand and warning;**
- (b) Conditional discharge;**
- (c) Status penalties;**
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;**
- (e) Confiscation or an expropriation order;**
- (f) Restitution to the victim or a compensation order;**
- (g) Suspended or deferred sentence;**
- (h) Probation and judicial supervision;**
- (i) A community service order;**
- (j) Referral to an attendance centre;**
- (k) House arrest;**
- (l) Any other mode of non-institutional treatment;**
- (m) Some combination of the measures listed above.**

Rule 9 provides that, even when a custodial sentence has been passed, the competent authority should consider the possibility of conditional or temporary release:

**9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.**

**9.2 Post-sentencing dispositions may include:**

- (a) Furlough and halfway houses;**
- (b) Work or education release;**
- (c) Various forms of parole;**
- (d) Remission;**
- (e) Pardon.**

**9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.**

**9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.**

Subsequent rules deal with supervision (rule 10), the duration of non-custodial measures (rule 11), the conditions to be observed by the offender (rule 12), the treatment aspect (rule 13), action to be taken when conditions are breached (rule 14), staff recruitment and training (rules 15 and 16) and the part to be played by volunteers and other members of the public (rules 17,18 and 19).

Rule 22 makes an important statement about the need for linkages with other public agencies:

**Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.**

## **IMPLICATIONS**

The Tokyo Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders. In addition, they stress the importance of empowering the legal system to apply non-custodial measures, as they are prevalent throughout various traditional communities.

The Rules are also meant to encourage offenders to have a sense of responsibility towards society.

When considering non-custodial measures, a proper balance must be maintained between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

Non-custodial measures are appropriate as a means of reducing the use of imprisonment while, at the same time, meeting the needs of justice for the offender, the victim and the community.

Conditional and temporary release, if they form part of a plan and are properly supervised, can be a very important part of the process of reintegrating an offender into the community at the end of a prison sentence.

## **PRACTICAL RECOMMENDATIONS**

- It is important that the judiciary be empowered to administer a wide array of non-custodial measures representing the practice and traditions of all communities within society.
- Information should be available to legal authorities having the power to detain or imprison about the possibilities for imposing non-custodial measures as an alternative to detention or imprisonment.
- The public need to be reassured that the use of non-custodial measures will not put their safety at risk. People often support imprisonment of offenders on the basis of fear that is not necessarily justified. They can be reassured of their safety by use of the mass media to explain the benefits of non-custodial measures. There should also be close contact with groups representing victims.
- Non-custodial measures should be applied to those who would otherwise have gone to prison and not as a means of expanding the use of the criminal justice system.
- Prison authorities and related agencies have an important role to play in preparing comprehensive reports on prisoners being considered for parole or conditional release.



## ? TOPICS FOR DISCUSSION

In your country, what non-custodial measures are available? Is there a need for other kinds of non-custodial measures?

In many prison systems, a large proportion of prisoners have been convicted of petty offences. Discuss which of these prisoners in your prison system might be considered for non-custodial measures.

In many countries, offenders who have not paid fines imposed by the courts are sent to prison. In the light of the international instruments, is this an acceptable practice? What alternatives might there be?

What key features of a new non-custodial measure should be monitored?

In some countries, prison staff are responsible for administering some non-custodial measures, including halfway houses and community service. Discuss the advantages and disadvantages of this arrangement.

There is often a problem in considering community measures for offenders who do not have a fixed address or for those who are foreign nationals. What can be done in such cases?



## CASE STUDIES

1. A young man has been found guilty of stealing goods for his own use. It is his third such offence. The judge has asked the prison authorities to prepare a report indicating whether he should receive a prison sentence or whether a non-custodial measure should be preferred. You have access to all the details of the young man's background. Bearing in mind the international instruments, in what circumstances could a non-custodial disposal be recommended?
2. A woman has been given a three-year prison sentence. She can be considered for conditional release after two years. What are the arguments for approving conditional release? What issues must be considered before a decision is made?
3. Community service has recently been introduced in a particular country as an alternative to custody. In one case an inexperienced magistrate sentences a rapist to community service. The media publish details of the case and make demands for community service to be stopped. What should be done, and by whom?
4. There is a proposal to introduce community service in a particular country. Prison staff become anxious that their jobs will be at risk if the number of prisoners is reduced. What arguments should the prison administration present?
5. A woman has been convicted for the second time of a number of shoplifting offences. The court wishes to pass a non-custodial sentence but is concerned that she has no fixed address. The prison authorities are asked to prepare a report for the court. Taking into consideration rule 22 of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), what action could the prison authorities take before preparing that report?



SECTION XII

**THE  
ADMINISTRATION  
OF PRISONS  
AND PRISON STAFF**





## OBJECTIVE

In a democratic society a prison is primarily a servant of the judiciary which acts on behalf of the community. The main task of the prison administration is to hold in decent and humane conditions those men and women who are sent to it by a properly constituted court. This task is carried out by prison staff. However, it is important to recognize that prison staff also have important human rights which should be upheld by the State. The objective of this section is to discuss the implications of this principle and examine the interplay between staff rights and staff obligations and duties. Many of these standards are discussed throughout this Manual.



## ESSENTIAL PRINCIPLES

All law enforcement officials, including prison staff, shall respect and protect human dignity and maintain and uphold the human rights of all persons.

The administration of the prison system should be in civilian hands. It should not be part of a military structure.

Personnel shall be carefully selected for their integrity, humanity, professional capacity and personal suitability.

The prison administration should be diligent in informing the personnel and the public that prison work is a social service of great importance.

Personnel shall be appointed as full-time prison officers, with civilian status, salaries adequate to attract and retain suitable men and women, and favourable employment benefits and conditions of service.

Both law enforcement agencies and prison authorities shall not discriminate against women in recruitment, hiring, training, assignment, promotion, salary and other career and administrative matters.

Both law enforcement agencies and prison authorities shall recruit sufficient numbers of women to ensure fair community representation and the protection of the rights of women prisoners.

Personnel shall have an adequate standard of education and intelligence and shall be trained before entering on duty and while they are in service.

Personnel shall conduct themselves in a manner which commands the respect of prisoners.

Personnel shall include, as far as possible, sufficient numbers of specialists such as psychiatrists and psychologists, as well as social workers, teachers and trade instructors.

The director of an institution should be adequately qualified for his or her task, appointed on a full-time basis and resident on the premises or in the immediate vicinity.

The director, his or her deputy and the majority of the other personnel shall be able to speak the language of the majority of the prisoners.

There shall be adequate medical personnel resident close to the institution.

In an institution for both men and women, the part of the institution set aside for women should be under the authority of a responsible woman officer and women prisoners shall be attended and supervised only by women officers.

Prison officers shall not use force, except in self-defence or in cases of attempted escape or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use only minimum force and must report the incident immediately to the prison director.

Staff in direct contact with prisoners should not usually be armed.

Law enforcement officials shall respect the confidentiality of information in their possession unless the performance of their duty or the needs of justice strictly require otherwise.

Law enforcement officials shall ensure the full protection of the health of persons in their custody.

Firearms shall not be used against persons in custody or detention except in the following circumstances:

- In self-defence or defence of others against imminent threat of death or serious injury;
- When strictly necessary to prevent the escape of a person presenting a grave threat to life.

Intentional lethal use of force or firearms shall be permitted only when strictly unavoidable in order to protect human life.



## **BASIS IN INTERNATIONAL INSTRUMENTS**

At the most basic level, a prison is an institution in which one group of human beings deprives another group of human beings of their liberty. The manner in which the second group, the prisoners, is treated depends primarily on the attitude of the first group, the staff. One of the first important statements on the role of staff was made by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and was published as Recommendations on the Selection and Training of Personnel for Penal and Correctional Institutions.

Article 11 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* states the need to keep under review all rules pertaining to detained and imprisoned individuals:

**Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.**

The key role to be played by staff is reflected in the *Standard Minimum Rules for the Treatment of Prisoners*, which provide as follows:

**46. (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.**

**(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and**

of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least

one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

One of the most important international instruments affecting prison staff is the **Code of Conduct for Law Enforcement Officials**, article 2 of which provides that:

**In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.**

Other articles which are particularly relevant for prison officials provide as follows:

**Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.** [art. 3]

**Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.** [art. 4]

**No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement offi-**



cial invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment. [art. 5]

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required. [art. 6]

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. [art. 8, first paragraph]

For prison staff, the presumption is that physical force should be used only when absolutely necessary and that firearms should not be used except in very specific circumstances. These principles are incorporated in the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*:

**4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.**

...

**9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.**

...

**15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.**

**16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.**

...

**18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by**

**proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.**

Specific provisions apply to particular groups of prison staff. One of the most important of these applies to medical staff, referred to in detail in chapter 12 of this Manual. Principle 1 of the *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* requires that:

**Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.**

Reference should also be made to the particular problems faced by female staff. The prison environment is primarily male-oriented. Female staff are liable to be subjected to personal pressure by male staff or by male prisoners because of their gender.

Article 2 of the *Convention on the Elimination of All Forms of Discrimination against Women*, discussed in chapter 30 of this Manual, provides for the elimination of discrimination against women. Article 10 of the *Declaration on the Elimination of Discrimination against Women* specifically requires:

**1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:**

**(a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;**

**(b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;**

**(c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;**

**(d) The right to receive family allowances on equal terms with men.**

**2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.**

**3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.**

Rules 81 to 87 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* emphasize the crucial importance of having properly qualified, trained and remunerated staff to take care of juveniles deprived of their liberty. In particular, they provide:

**82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.**

...

**85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. ...**

Rule 22 of the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* also emphasizes the need for professionalism and training:

**22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.**

**22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.**

## **IMPLICATIONS**

Prison administrations should be separate from the police, who are responsible for detecting crime and arresting criminals. In addition, prison administrations should be separate from the military structure.

The key to a decent and humane prison is the quality of the relationship between staff and prisoners. The staff who run the prison on a day-to-day basis must be aware of all the principles discussed in this Manual and be convinced of the need to implement them.

Prison staff also have important needs and human rights that must be upheld by prison administrations. These range from the recruitment process to the working conditions of prison staff.

A prison is not only a place where prisoners live. It is also a place where staff work. The living conditions for prisoners are the working conditions for staff.

In many countries, prison staff have little respect from the public. They are poorly paid and badly trained. If this is the case, it is unrealistic to expect that they can instil any sense of self-respect in the prisoners in their care.

If staff are poorly paid and badly trained, there is a danger that they will be open to corruption.

There are strong arguments in terms of the international instruments for encouraging women to take up work in the prison field. Where this happens, there have to be safeguards to ensure that they are not discriminated against in their work.



## **PRACTICAL RECOMMENDATIONS**

The Committee of Ministers of the Council of Europe makes a number of important and useful recommendations concerning prison staff and the administration of prisons in its ***Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures***, adopted on 10 September 1997. The recommendations may be summarized under the following headings:

### ***General principles***

- An explicit policy concerning the staff responsible for the implementation of sanctions and measures should be laid down in a formal document or documents covering all aspects of recruitment and selection, training, status, management responsibilities, conditions of work and mobility. To the extent that staff policy is influenced by changes concerning the implementation of sanctions and measures and, more generally, by administrative, professional and social developments, the principles of the policy should be reviewed and, if necessary, modified.

### ***Recruitment and selection***

- In addition to having the required level of educational attainment, good character and suitable qualifying experience, applicants should have a flexible and stable personality, be manifestly motivated for the work they are seeking, have the qualities necessary for forming good human relationships and be possessed of a willingness to learn.
- Recruitment and selection procedures should be explicit, clear, scrupulously fair and non-discriminatory.
- Staff recruitment and selection should be undertaken taking account of the desirability of ensuring an adequate representation of men and women staff members and ethnic minorities in order to meet the needs of the suspected or sentenced offenders dealt with.
- In order to avoid wastage of manpower through dissatisfaction leading to early resignation, and establish a solid basis for subsequent training, arrangements should be made to orient recruits on entry and give them a realistic perception of their work.

### ***Training***

- Continued training should seek to enable staff to achieve continuous improvement and thereby promote increased professionalism. This training should ordinarily lead to a nationally recognized qualification in a particular subject or subjects.
- Where special forms of continued training are considered to be of special importance for promotion, the service(s) concerned with the implementation of sanctions and measures should make efforts to provide such training to interested individuals.
- The members of staff exercising a specialist function, whether employed full- or part-time, should be given the opportunity to undertake training designed to facilitate their adjustment to a new environment for the exercise of their particular function. This includes medical staff.

### ***Conditions of work and management responsibilities***

- Effectiveness requires that the staff should be aware of the fundamental principles that provide the framework for their work. To that end a policy statement should be published and updated as necessary that defines the general aims, principles, values and methods of the service(s) concerned. The preparation of such a policy statement should be undertaken in broad consultation with the staff in order to secure interest and involvement from the outset.
- The conditions of work and pay should be such as to permit an effective staff to be recruited and retained, and enable its members correctly to carry out their functions and develop their awareness of professional responsibilities.
- Efforts should be made to ensure that the work of staff implementing sanctions and measures receives the social recognition which it merits.
- Management at all levels should strive to prevent working conditions likely to give rise to stress among the staff by suitable arrangements for physical safety, reasonable working hours, decision latitude, open communication and a psychologically supportive climate in each work unit.
- Where staff have been exposed to traumatic incidents in the course of duty, they should be offered immediate assistance in the form of debriefing sessions followed, if necessary, by personal counselling and any other necessary long-term measures.
- Realistic information about promotion possibilities should be made available to staff. Promotion need not be the only form of recognition of competence. Other forms of recognition of competence should be sought and used when appropriate.

### ***Mobility***

- In order to enhance effective working within and between the prison and probation services, the possibility for those working in one service to be seconded to undertake training in the other service should be encouraged. Such a secondment should only take place with the consent of the individual concerned, should be provisional and should not entail any change in the formal status of the individual member of staff.

## **TOPICS FOR DISCUSSION**

Why should there be a clear organizational distinction between the police and prison staff?

Why do the international instruments emphasize that prison officers should have civilian status? Why is this so important?

Draw up an action plan for a prison director seeking to improve the standing with the local community of the staff of the prison.

Discuss the factors involved in deciding how long members of staff should serve in one particular institution.

Most prison staff spend longer in prisons than most prisoners. How may a prison director encourage prison staff to maintain an outward-looking approach in order to promote the eventual reintegration of prisoners in the community?

Article 22 of the International Covenant on Civil and Political Rights gives everyone the right to form and join a trade union. What are the implications of this for prison staff?



## **CASE STUDIES**

1. You are in charge of a large pre-trial prison. There have always been close links between staff in the prison and the local police. The police have been allowed to come and go in the prison at will and have been allowed to interview pre-trial prisoners whenever they want without any prison staff being present. There have been frequent allegations that the police physically abuse prisoners in order to obtain evidence. You have been told by your superiors that this must stop. How do you go about implementing the international instruments in this regard?
2. Until now in your prison system there has been a clear distinction between staff who are guards, responsible solely for security matters, and staff, such as psychologists, teachers and social workers, who work directly with prisoners. It has now been proposed that all staff should be integrated into one structure, with a shared responsibility for security, good order and care. What arguments should be presented to the two existing groups of staff to encourage them to support this plan?
3. Until now, new guards have simply learned about their duties by experience and by working alongside other staff. With the new plan described above, they will have to be given proper training to enable them to carry out their duties. A training plan needs to be prepared. What should be included in such a training plan?
4. Until now, staff have lived in separate accommodation close to the prison. They have had little or no contact with the local community. They now want to build up links with the community. How could they go about doing this?
5. You are in charge of a large prison. Prison staff are drawn mainly from the local community. They are poorly paid. They are unable to feed their families. A number of prisoners are wealthy. You suspect that they are bribing staff to do them favours and to bring goods into the prison for them. What can you do to stop this?

# ANNEXES





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## **Annex 1: Essential information to be recorded for each person admitted into a prison or place of detention**

### **Personal information**

Name, date of birth, gender, identifying features, address, nationality, language.

### **Legal authority for detention or imprisonment**

Signed and dated by a person with competent authority.

Giving the grounds for detention or imprisonment.

Giving the date of next appearance before the competent legal authority if a pre-trial detainee.

Giving the date of release if a convicted prisoner.

### **Details of next of kin**

Name and address of person to be informed of admission to prison and who will be informed in the event of transfer or illness. In respect of adult prisoners this information should be recorded only if the prisoner agrees. For juveniles and children, it should be obligatory.

### **Personal property**

A list of all property, distinguishing between that which the person can keep in his or her possession and that which is stored by the authorities.

### **Signatures**

Of the member of staff who completed the forms.

Of the detainee or prisoner to confirm that he or she has been given details of his or her rights.

### ***There should be a separate medical record:***

#### **Medical condition**

A signed confirmation of examination by a qualified medical person.

A record of any marks, bruises or complaints of ill-treatment.

A record of the person's fitness for activities, including work if appropriate.

### **NOTE**

All of this information should be recorded on the day of admission.

The books containing this information should be continuous; that is to say, it should not be possible to remove or add pages at a later date.

There should be one continuous record for each person held in a prison or place of detention.

Copies of all these records should be available for the legal representative of the prisoner or detained person.



## **Annex 2: Checklist for independent prison inspectors**

One useful way of ensuring that all areas of concern are inspected is to deal with subjects thematically, as has been done in this Manual. On that basis, an inspection should cover the following areas (NB: All issues in this annex must be considered from a gender perspective):

### **Forms of inspection and arrangements for inspection**

Formal inspections are generally announced well in advance. It may be useful for inspectors to indicate areas of specific interest or concern so as to receive full answers to their queries.

It is also useful to have an arrangement for making unannounced inspections, particularly when there is cause for concern.

There should be specialist inspectors for matters such as health care—including mental health—education, security, building matters and the interests of minorities.

The leaders of the local community should be given the opportunity to put their views to the inspectors.

Inspectors should meet privately with prisoners and with members of staff.

### **Torture and ill-treatment**

One can sense in a prison whether there is an atmosphere of intimidation or not. If there is, inspectors should be particularly vigilant in investigating this matter.

It will be particularly important to speak to prisoners confidentially and out of the presence of staff. It may also be necessary to speak confidentially to individual members of staff. If a prisoner has made an allegation of torture or ill-treatment, the inspectors should consider whether it is necessary to seek his or her transfer to another prison.

It is unlikely that physical evidence of torture or ill-treatment will be made available. The inspectors should obtain a map of the layout of the prison and compare it with the rooms they are shown in order to ensure that they are not being kept away from any area.

Inspectors should visit the cells which are used for punishment or segregation.

Inspectors should investigate what inquiries are made into allegations of torture or ill-treatment by staff and what action is taken against staff who have been found guilty of torture or ill-treatment.

Inspectors should visit prisons in the evening, at night and during weekends.

The inspection team should include a medically qualified person who can have access to prisoners' medical files.

### **Maintaining human dignity**

Arrangements for admission and release.

Are prisoners and detainees given written information in a language which they can understand on the rules of the prison?

### **Right to an adequate standard of living**

The state of the living accommodation and its size relative to the number of prisoners. The use made of space near the living accommodation. The capacity of the prison and the actual number of prisoners which it holds.

The quality and quantity of food and the times at which it is served. Where is it prepared?

Does each prisoner have his or her own bed? Is there sufficient clothing and bedding? What are the arrangements for washing the clothing and bedding?

The general physical state of the prison and its maintenance.

### **Health rights of prisoners**

Prisoners' access to health care. How often is a doctor available? What happens if prisoners need hospital treatment?

Links with community health-care services.

Healthy conditions in custody. What part does the doctor play in ensuring that conditions meet health and safety requirements?

What special attention is paid to the danger of infectious or contagious diseases, particularly tuberculosis, sexually transmitted diseases and HIV/AIDS? Is there a testing and counselling programme?

Health education and prevention of illness and disease, particularly in respect of sexually transmitted diseases and HIV/AIDS.

The number of trained health-care staff. Their qualifications.

Medical screening of prisoners on admission.

Specialist health care, including dentists.

Access to reproductive health care.

Mental health.

The storing and dispensing of medicines.

The recording of illnesses, injuries and deaths.

Medical confidentiality.

Hygiene and arrangements for washing, bathing and sanitary provisions.

Arrangements for exercise and taking fresh air, including frequency.

### **Making prisons safe places**

The physical security of the prison. What does it consist of, both as regards the perimeter and internally? Is it adequate for the kind of prisoners present? It may be insufficient for high-risk prisoners. It may be oppressive for low-risk prisoners. Is there a proper balance between public safety and the rights of prisoners?

How are decisions made about the relative threat to security posed by individual prisoners?

Is there a proper balance between "physical security" and "dynamic security", which comes from staff knowing prisoners as individuals?

How are good order and control maintained?

Is there an atmosphere of tension and fear? Does this stem from a fear of violence among prisoners? Are prisoners afraid of staff?

Is the prison safe for prisoners, staff and visitors?

What happens to prisoners who are being threatened by other prisoners?

Do the prisoners know the rules and regulations?

What happens when a prisoner breaks the rules or regulations?

What is the formal disciplinary procedure? Does it meet the needs of natural justice?

What are the punishments which can be imposed for breaches of discipline?

Is there any evidence of informal disciplinary structures? Are prisoners ever used to enforce discipline?

When are instruments of restraint used?

Does the medical officer have any role in the disciplinary process?

Record-keeping for incidents, riots and suicides.

### **Making the best use of prisons**

What arrangements are there to keep prisoners engaged in useful activity?

Do prisoners perform industrial work? If so, what sort of skills will they learn? What hours do they work and in what conditions? Do they receive payment? How does this payment relate to local minimum wages? Do the working conditions meet health and safety regulations? Is any work done for commercial companies? If so, under what conditions? Who profits?

Do prisoners perform work for staff? If so, under what conditions?

What vocational or skills training is available to prisoners?

If a prisoner takes part in work or education, does it affect his or her length of time in prison?

The provision of basic and further education opportunities. Links with education in the community.

Physical training.

Cultural activities.

Religious observance and access for representatives of different religious faiths.

Preparation for release and reintegration into the community.

### **Prisoners' contact with the outside world**

What are the arrangements for detainees and prisoners to maintain contact with their families and friends?

How many letters are they allowed to send and receive? Do they have to pay postage? What are the arrangements for censoring correspondence?

Arrangements for family and friends to visit. How frequently is this allowed and for what length of time? What are the conditions? Is there reasonable privacy? Are any special arrangements made for children? Are visitors searched before or after visits? Under what conditions are prisoners searched before or after visits?

Are conjugal visits allowed? If so, under what conditions?

What arrangements exist for prisoners to visit close family members who are also in prison?

Do prisoners have access to telephones? If so, what are the monitoring arrangements?

What are the arrangements for home leave? Who is eligible for it and how do they qualify for it?

What access do prisoners have to a library, newspapers, books and the broadcast media?

### **Complaints procedures**

What arrangements are there for prisoners to make a request or complaint or to air a grievance?

Are complaints made in person or in writing? Who investigates complaints? Is the prisoner told the outcome of the investigation?

What access do prisoners have to the director or head of the prison?

Is there a procedure for making a complaint to an external authority?

Do prisoners feel free to complain without any danger of formal or informal retribution?

Record-keeping for the number and content of complaints.

### **Women**

Are women held in separate accommodation? Are they supervised by female staff?

What arrangements are made for their physical safety?

What facilities do they have access to?

What arrangements are made for them to maintain contact with their children?

What arrangements are made for pregnant women or women with infants?

What reproductive health services are provided to women?

(NB: As mentioned above, all issues in this annex must be considered from a gender perspective.)

### **Children and juveniles**

What is the minimum age?

Are they kept separate from adult prisoners?

What facilities do they have access to? What educational provision is there?

What are the arrangements for maintaining contact with their families?

Are the staff who supervise them specially trained?

### **Non-discrimination**

What records are kept of minority groups in the prison?

Is there any evidence of discrimination on grounds of race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status?

What arrangements are made for foreign national prisoners, for example in respect of access to embassies or consulates?

What arrangements are made for their cultural, religious, dietary and dress needs?

Are the rules of the prison available in languages which all prisoners can understand?

### **Prisoners under sentence of death**

Do they have sufficient access to lawyers? Are they given the facilities necessary to prepare an appeal against sentence?

Are they kept in separate accommodation? What access do they have to the facilities of the prison? What is their daily regime? What support mechanisms exist for them?

What contact do they have with their families and friends?

What arrangements are made to notify the date and time of execution and for final contact with family?

### **Persons under detention without sentence**

Is the fact that they are unconvicted recognized?

What is the average length of detention for prisoners who are awaiting trial and other unconvicted prisoners?

What arrangements are made for prisoners who have the possibility of release on bail and, for example, those who have to purge contempt of court?

What access do unconvicted prisoners have to their legal representatives? In what conditions may they discuss their defence? Do they have privacy to do so?

Are they kept separate from convicted prisoners? If so, how do their conditions compare?

Who is responsible for the management of these prisoners? What contact is there with police, investigators and the prosecuting authorities?

What regime are they subject to? Do they wear their own clothes? What are the arrangements for contact with their families and friends? Do they have access to the facilities and activities of the prison?

Are there any prisoners who have not been charged with a criminal offence? If so, what is their status and how are they treated?

### **Non-custodial measures**

Inspectors may not have authority to review these matters in general.

They should pay specific attention to arrangements for temporary and conditional release.

Liaison with other agencies responsible for conditional release. Collection of relevant information. How are decisions reached? What non-custodial measures exist?

### **Administration and prison staff**

What is the management structure in the prison? Is it efficient? What is the relationship between management and staff?

Recruitment, selection and training of different levels of staff. Pay particular attention to the director.

Is staff training purely internal or are there arrangements for staff, particularly those with specialties, to obtain external qualifications?

What is the position of staff with specialist qualifications?

Is there a proper career structure for staff?

What are the salary levels compared with those of other public servants? Is there a danger of corruption? How is professional integrity safeguarded?

What are the working conditions for staff?

What is the staff/prisoner ratio?

What are the levels of absence due to sickness? Are there other stress indicators?

Do staff have special accommodation beside the prison? If so, what is it like?

What is the turnover of staff?

Are staff allowed to be members of a trade union or staff association?

Records of incidents, of staff activities, of procedures, of how duties are to be carried out.