

# **Making standards work**

an international handbook on good prison practice

Penal Reform International

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## PREFACE TO FIRST EDITION

### **The reasons**

1. The **United Nations** has been concerned with the humane treatment of all human beings, including those who are imprisoned. It has created and adopted a number of international legal instruments to protect and guarantee human rights and fundamental freedoms. The application in practice, however, of these instruments falls far short in many, perhaps most, countries.
2. **Penal Reform International (PRI)** is mandated *inter alia* to seek 'to achieve penal reform, recognizing diverse cultural contexts, by promoting the development and implementation of the human rights instruments with regard to law enforcement, prison conditions and standards ...'.
3. PRI has, therefore, initiated a project, '**Making Standards Work**', which has as its aim (i) the improved implementation of internationally recognised standards of prison treatment by making them better known, (ii) strengthening international contact between those concerned with these matters and (iii) stimulating exchanges of national experience.

### **The objectives**

4. The first objective of the project has been to draw up a Handbook on good prison practice.
5. The Handbook attempts to present an overview of the UN rules on prison conditions and treatment of prisoners and explain concretely their value and meaning for prison policies and daily practice. The Handbook is meant for use by all those working with prisoners or responsible for their care and treatment in any way.

### **The process**

6. The Handbook has come into being in four stages in order that it should have an international character and relevance. In the first stage its general content and format were established at a small international conference held in The Netherlands in November 1993 by 20 experts from different parts of the world. In stage two a drafting group, consisting of eight experts, who were able to work intensively together, formulated preliminary texts based on the conclusions of the 1993 conference. In the third stage a large and world-wide conference, held in The Netherlands in November 1994, discussed these texts and made suggestions for improvements. In the final stage the drafting group finalised the texts on the basis of the proposals of the latter conference.
7. The Handbook is being made available to all participants of the two conferences, to all other persons who have shown interest in it and to

the governmental and non-governmental delegations attending the **IX<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders** (Cairo, April/May 1995).

8. A second objective in the 'Making Standards Work' project is the improvement of international co-operation. This will be pursued by **Penal Reform International** taking account of the discussions at the 1994 Handbook conference and the PRI General Meeting held immediately afterwards.

#### **Acknowledgements: the drafters**

9. Acknowledgements and thanks are gratefully extended to all experts who, by participating in the 1993 and 1994 Handbook conferences, contributed both in writing and orally to making the Handbook a practical, relevant and international document. Thanks are also due to all the volunteers who translated the original English texts into French, Russian and Spanish. Most gratitude, however, is owed to the drafting group volunteers Norman Bishop, former Head of Research of the Swedish Prison and Probation Administration, Scientific Expert of the Council of Europe; Kees Boeij, Director of Prisons, Area Alkmaar, The Netherlands; Dr. Silvia Casale, Independent Criminologist, London; Dr. Johannes Feest, Professor of Criminal Law and Criminology, University of Bremen; Chidi Anselm Odinkalu, Consultant of Interights, London; Hans Tulkens, then Chairperson of PRI, Professor of Penology, University of Groningen and Penological Adviser of the Ministry of Justice of The Netherlands; Joanna Weschler, then Director of the Prison Project, Human Rights Watch, New York; Dirk van Zyl Smit, Professor and Dean of the Faculty of Law, University of Cape Town. Many thanks moreover to Anneke van der Meij for her unflagging secretarial support.

#### **Acknowledgements: the sponsors**

10. Acknowledgements and thanks are also due to the Ministry of Justice and the Ministry of Foreign Affairs of The Netherlands, whose help, interest and generous financial support enabled the project to come into being. In addition, thanks are extended to Diakonisches Werk der Evangelischen Kirche in Deutschland, Stuttgart; the Ministry of Justice, Department of Prison Administration, Helsinki, Finland; penitentiary establishments Nieuw Vosseveld, Vught, and Toorenburgh, Heerhugowaard, The Netherlands and the Catholic Organisation for Development and Co-operation (CEBEMO), Oegstgeest, The Netherlands, whose financial assistance contributed to enabling experts from a number of countries to take part in the project.

#### **To the users**

11. Finally, a word to you, the users of this Handbook. The combined efforts of more than one hundred governmental and non-



governmental experts from more than fifty countries have led to the production of this Handbook and given it a truly international character.

The real value of the book is if it is used in practice, whether for prison administration, training or daily operations, or by organisations and persons working for the improvement of our prison systems. Users are, therefore, encouraged to have the Handbook translated and disseminated as necessary in local languages.

## **PREFACE TO THE SECOND EDITION**

It is a pleasure to introduce the second edition of *Making Standards Work*. Since it was first published in 1995, *Making Standards Work* has been used all around the world. It has been translated into over 15 languages and it is also available on the internet. Thus, more people than ever before now have access to this document.

As a tool for reform and in the battle for decent prison conditions, *Making Standards Work* has proved to be an invaluable resource to both governmental and non-governmental organisations world-wide. We, at Penal Reform International, sincerely hope that the Standards will continue to be applied and that the good work already achieved will be developed still further.

Ahmed Othmani  
Chairperson, PRI

## WHERE THE HANDBOOK STARTS FROM

### Human rights of prisoners

1. This Handbook is concerned with the human rights of people in detention or in prison. These rights are derived from universal general human rights. They apply to every individual.

They include:

the right to life and integrity of the person

the right to be free from torture or other ill-treatment

the right to health

the right to respect for human dignity

the right to due process of law

the right to freedom from discrimination of any kind

the right to freedom from slavery

the right to freedom of conscience and of thought

the right to freedom of religion

the right to respect for family life

the right to self-development

### Universal rights

2. Basic human rights are enshrined in international laws and norms. Many states in every region of the world have signed and ratified international treaties, conventions, covenants and rules confirming these rights. Among the most important are the **Universal Declaration of Human Rights**, the **International Covenant on Civil and Political Rights** and the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. States have also reaffirmed these rights in regional conventions and agreements.

### Retained rights

3. Regardless of circumstances, all human beings have fundamental human rights. They cannot be taken away without legal justification. People held in lawful detention or in prison forfeit for a time the right

to liberty. If they are in unlawful detention or imprisonment, they retain all rights including the right to liberty.

4. Some rights may be limited by the fact of detention or imprisonment. These include: the right to certain personal liberties; the right to privacy; freedom of movement; freedom of expression; freedom of assembly and freedom to vote. The important issue is whether and to what extent any further limitation of human rights is a necessary and justifiable consequence of deprivation of liberty.

### **Deprivation of liberty**

5. Dealing with control of crime in society may require the use of sanctions. Wherever possible, sanctions and measures implemented in the community should be used before deprivation of liberty. When deprivation of liberty is used, questions of human rights arise. These constitute the focus of the Handbook.

### **Deprivation of liberty and normal life**

6. Many people in prison are serving sentences. They are in prison as punishment but not for punishment. The penalty consists in loss of liberty. The circumstances of imprisonment should not therefore be used as an additional punishment. Any adverse effects of imprisonment must be minimised. Although life in prison can never be normal, conditions in prison should be as close to normal life as possible, apart from the loss of liberty.
7. There are also many people in detention who are not serving sentences, although they may be held in prison with sentenced prisoners. Some are awaiting trial; others are awaiting other decisions, for instance, about political asylum or immigration status. None are in prison either as punishment or for punishment. They are in prison as a precaution. For them, too, life in prison should be made as close to normal life as possible.
8. In addition those who are awaiting a decision on their cases have rights concerning access to the outside world (e.g. legal advice and information) so that the outcome of their cases is not prejudiced by their loss of liberty.

### **The principle of openness**

9. When deprivation of liberty occurs there is a risk of violation of human rights. It is a basic human right not to be deprived of liberty except by due process of law. In practice deprivation of liberty sometimes occurs outside of the law: people are held in custody without due regard to the proper legal procedures and protections. Therefore a basic

principle for safeguarding the human rights of people in custody is openness: prisons and other places of detention should be open to outside and independent scrutiny and people in custody should have access to the outside world.

### **The duty of care**

10. When the State deprives a person of liberty, it assumes a duty of care for that person. The primary duty of care is to maintain the safety of persons deprived of their liberty. The duty of care also embraces a duty to safeguard the welfare of the individual.
11. The human rights of people in prison or detention are established in international law by a number of conventions and covenants which have treaty status; States signing and ratifying them bind themselves to observe their provisions.
12. The implementation of these instruments is elaborated in the **United Nations Standard Minimum Rules of the Treatment of Prisoners (SMR)**<sup>1</sup>. They are one of the oldest international instruments concerning the treatment of people in custody and have gained very wide recognition for their value and influence in the development of penal policy and practice. They contain a greater level of practical detail about the duty of care for prisoners than is generally to be found in the declarations, conventions and covenants. The SMR have been used by national and international courts and other bodies to shed light on the care to which people in custody have a right. The SMR are minimum rules; they establish the standards below which provision must not fall.

### **Prisons and other places of detention**

13. Many people are held in custody in places other than prisons, for example, in police cells, in psychiatric hospitals, in detention centres not run by the prison administration and even in unofficial places of detention. The human rights of people in custody apply wherever someone is in prison or detention.

### **Special groups of prisoners**

14. The Handbook does not focus on prisoners of war, although many of the principles and rules discussed here and in the subsequent sections are applicable to them. Further, the Handbook deals only summarily with some other groups of prisoners such as juveniles, women, foreigners, mentally disturbed and addicted prisoners. Undoubtedly, their situation and conditions in prison require specific and detailed

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<sup>1</sup> In this Handbook the UN Standard Minimum Rules are indicated by 'SMR'. Where a 'Rule' is mentioned without further identification, that Rule is referring to the SMR.

provisions and measures. They could not be incorporated comprehensively into one Handbook. Wherever appropriate, however, these groups are mentioned.

**The words ‘prison’ and ‘prisoner’**

15. In this Handbook the words ‘prison’ and ‘prisoner’ are used in a general sense and refer firstly to all persons deprived of their liberty in any place whatsoever in connection with a suspected or proved criminal offence. The Handbook does not deal comprehensively with other categories of persons deprived of their liberty but where appropriate, they are mentioned in the text.

## **ABOUT THIS HANDBOOK**

1. This Handbook is neither a set of rules and prescriptions, nor a revision of existing rules.
2. It is an attempt to explain the meaning in daily practice and policy of rules about the treatment of prisoners which have been accepted world wide. Its objective is to promote further implementation of recognized international rules.
3. The Handbook is the result of broad and intense international discussion in which experts - governmental and non-governmental - representing more than 50 countries from all regions of the world have participated.
4. The Handbook is not a study for theoreticians. It is addressed to prison policy-makers, prison staff and all those - governmental and non-governmental - who are involved in work with prisoners or feel responsible for such work in one way or another.
5. The Handbook is neither perfect nor comprehensive. Nevertheless it is hoped that it will be of use everywhere in the world. For reasons of universality, regional legal instruments are not emphasised. But sometimes regional situations have been mentioned as examples.
6. It is hoped, that users of the Handbook may be stimulated to elaborate and add detail, thus making it more suitable to different categories of people in custody, in their respective prisons, countries and regions.
7. The Handbook focuses on eight areas of major concern with regard to the treatment of prisoners. They were identified in consultation with all those involved in its construction.
8. The Handbook also presents views and experience which have evolved over the years in the spirit of the SMR.
9. The Handbook does not offer summary solutions. Prison life cannot be captured in black-or-white pictures. Situations and human behaviour are complex, decisions and actions have therefore to be carefully weighed. In this way the Handbook seeks to provide a basis for the continued improvement of prison practice.





## BASIC AND GUIDING PRINCIPLES

### Opening statement

1. **The United Nations Standard Minimum Rules for the Treatment of Prisoners** (SMR) contain certain Rules which are of absolute and fundamental character. They constitute basic principles and, as such, are intended to be implemented everywhere and at all times. These fundamental rules are supported by other United Nations instruments for protecting and guaranteeing human rights (see **Section IX** for a full account).
2. Examples of the fundamental principles in the SMR include the following:
  - prisons shall be well-ordered communities, i.e. they shall be places where there is no danger to life, health and personal integrity;
  - prisons shall be places in which no discrimination is shown in the treatment of prisoners;
  - when a court sentences an offender to imprisonment, it imposes a punishment which is inherently extremely afflictive. Prison conditions shall not seek to aggravate this inherent affliction;
  - prison activities shall focus as much as possible on helping prisoners to resettle in the community after the prison sentence has been served. For this reason prison rules and regimes should not limit prisoners' freedoms, external social contacts and possibilities for personal development more than is absolutely necessary. Prison rules and regimes should be conducive to adjustment and integration in normal community life.

The following paragraphs describe the fundamental and guiding principles in greater detail.

### Intentions and fundamental principles

3. The **Preliminary Observations, Rules 1, 2, 3 and 4** contain certain basic declarations of intent and purpose. (See **Section IX**). **Rules 27 and 56** are not only rules of general application but state fundamental principles for the operation of any prison system. All of the SMR should therefore be read in the light of these initial statements of intention and fundamental principles.
4. The **Preliminary Observations**, i.e. **Rules 1, 2, 3 and 4** can be summarised as follows:  
The Rules are not intended to give a detailed description of a model

system of penal institutions, but they do seek to set out what, by general consensus, is accepted as the essential elements of good principle and practice in the treatment of prisoners and the management of prisons. Since legal, social, economic and geographical conditions in the world vary greatly, not all the Rules can be applied in all places at all times. The fact that certain Rules cannot be applied in all places at all times should stimulate a constant endeavour to overcome practical difficulties in order to achieve the minimum conditions accepted as suitable by the United Nations. The Rules do not preclude experimentation for the development of practices which are in harmony with the principles of the Rules and intended to further purposes which can be derived from the Rules as a whole.

5. Probably no prison system can be said to fulfil completely the minimum requirements laid down in the SMR and some systems fall markedly short of doing so. The need for continuous experimentation, development and improvement cannot therefore be overstated. In this respect **Rule 56** is rightly called a guiding principle. It reads as follows:

**Rule 56**

**The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.**

6. **Rule 27**, requires that “**Discipline and order be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life**”. This Rule represents a categorical imperative incumbent upon all prison administrations as the necessary condition for the implementation of all other Rules. Nothing can be more important than the necessity of ensuring that prisons are safe environments - safe for prisoners, safe for staff and safe for the community.

**Article 3** of the **United Nations Universal Declaration of Human Rights** provides:

**Everyone has a right to life, liberty and the security of person.**

It is therefore a primary duty of every prison administration to see to it that prisons are safe for the prisoners who are compelled to reside in them and the staff who have to work in them. Both prisoners and staff should be safe from any kind of violence and threats to life and health no matter from whence they come. The community too has a right to expect that its members shall be safe from predatory activities by prisoners. Making prisons into safe environments using a minimum

of restrictive means is essential in order to uphold **Article 3** of the **Universal Declaration** and for the implementation of the SMR.

7. Finally, it should be noted that the rules of the SMR on the general management of prisons are applicable to all categories of prisoner and that the rules applicable to sentenced prisoners for the most part include the special categories of prisoner dealt with elsewhere in the SMR. This provision is strongly emphasised here since the number of prisoners on pre-trial detention or held in prison for other reasons, is very large in many prison systems. Often such prisoners are held in conditions which compare unfavourably with those of sentenced prisoners. The presumption of innocence and **Preliminary Observation 4** makes this indefensible.

#### **The spirit and scope of the SMR**

8. The intentions and fundamental principles set out in the previous paragraphs constitute a primary point of departure for the entire set of Rules. To begin with, they not only set out the purpose of the SMR but also what is not their purpose. Thus, the SMR are not to be seen as prescribing some perfect model prison system. Such an ambition would be unrealistic since it would necessarily presuppose greater knowledge and skill than is available, it would take no account of the economic, social, historical and political variation between different countries and, since no prison system can achieve and maintain permanent perfection, would deny the necessity of striving to achieve continuous positive change.
9. The key purpose of the Rules is stated in **Preliminary Observation 1**, i.e. that the Rules seek to identify “**the essential elements of the most adequate systems of today, (and) to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions**”. The reference to “essential elements” refers directly to the fact that the SMR comprise only basic and minimum requirements - the necessary conditions for a prison system to achieve minimally humane and effective standards. Indirectly, the “essential elements” also comprise the norms on basic human rights set forth in the various international instruments referred to in **Section IX**.

#### **Discrimination prohibited**

10. **Rule 6 (1)**  
**The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

### **Rule 6 (2)**

**On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which the prisoner belongs.**

The requirements of **Rule 6 (1)** are unequivocal. The SMR are to be applied “impartially”, i.e. justly and fairly. Discrimination means the imposition of detriment or disadvantage upon individual prisoners or groups of prisoners for any of the reasons given in the Rule. Any prison practice based upon bias, bigotry, fanaticism or prejudice is therefore forbidden. **Rule 6 (1)** prohibits discrimination using virtually the same wording as **Article 2** of the **United Nations Universal Declaration of Human Rights**. A similar prohibition of discrimination is reiterated in **Principle 2** of the **Basic Principles for the Treatment of Prisoners** adopted by the General Assembly at its 68th meeting as late as December 1990. **Article 7** of the **Universal Declaration of Human Rights** adopted by the General Assembly of the United Nations in 1948 affirms that:

**“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”**

11. **Rule 6 (1)** prohibits discrimination on the grounds of “other status”. One such status is currently of considerable interest and importance - that of being an identified HIV-positive prisoner. Fear and ignorance about the transmission of infection by HIV-positive prisoners often leads to their being generally discriminated against, in particular by physical and social isolation. In many cases there are neither medical reasons nor behavioural problems that warrant this. Special measures in special cases may be called for but, such situations apart, the isolation of HIV-positive prisoners in general amounts to discrimination. (On this point see also **Section IV, para. 48**).

### **Differential treatment is not discrimination**

12. The prohibition of discrimination in no way implies that important differences of religious or moral persuasion shall go unrecognized. In this context a distinction must be made between discrimination and differentiating between individuals. The former term refers to the imposition of detriment or disadvantage for unjust, usually prejudicial, reasons. The latter term recognizes the need to treat prisoners differently so as to take account of special beliefs or needs, special situations or a special disadvantaged status, e.g. being a foreign prisoner, a woman prisoner or a member of an ethnic or religious minority. Unlike discrimination, the acknowledgment of fundamental differences between human beings should not lead to the imposition of detriment or disadvantage for unjust or prejudiced reasons.

13. However, prisoners who belong to a majority group may well perceive different treatment as an unfair discrimination, especially if the minority group is considered as having inferior status. Prison staff need to be alert to this possibility and any complaints arising from it. Prison staff (see **Section VII**) should be well-informed and united in presenting rational explanations to prisoners why distinctions are made in the way in which they are treated.
14. Inevitably, occasions arise when the implementation of the prison sentence leads to restrictive conditions of imprisonment. This occurs, for example, when a prisoner who is to be expelled from the country when the end of sentence has been served, is denied prison leave because of a manifest risk that further offences will be committed during the leave. The imposition of restrictive conditions is only permissible to the extent that they are necessary consequences of implementing a prison sentence which has been legitimately imposed and is subject to just enforcement. Thus, treating prisoners differently must never be a consequence of prejudice, bias, fanaticism and bigotry. Differential treatment can be considered legitimate when it is a just and reasonable consequence of the sentence, when it is justified by well-founded knowledge and experience, when it seeks to improve the personal or social position of the prisoner and when it is informed by a high degree of tolerance and understanding. Avenues of complaint to an independent authority make it possible to test the fairness and reasonableness of restrictive conditions of imprisonment. Discrimination, on the other hand, occurs when patterns of biased behaviour have become known and yet continue to be the source of biased practice. (See further **Section II**).

**Freedom of religious belief and prohibition of religious coercion.**

15. Freedom of religious belief is one of the basic human rights guaranteed by **Article 18** of the **United Nations Declaration on Human Rights** and **Article 18** of the **International Covenant on Civil and Political Rights**. Coercion with respect to choice of religion is prohibited in the same Article of the latter instrument. **Rule 6 (2)** of the SMR asserts the necessity of respecting the religious beliefs or moral precepts of the group to which the prisoner belongs. (**Sections V** and **VI** deal with this subject).
16. What shall be practice concerning those groups whose religious beliefs and moral precepts require or lead to cruelty, violence and threats against other groups? Is any and every kind of behaviour to be tolerated because it is founded upon a group's religious beliefs or moral precepts? Certainly there is no reservation or limiting condition in **Rule 6 (2)** in connection with respecting the religious beliefs and moral precepts of particular groups. Yet not only prison management but also the life of society would be impossible if a religious belief or

moral precept were allowed to justify any kind of behaviour. In fact, the respect due to religious beliefs or moral precepts presupposes that they are not ones which demand the denial of other person's beliefs and precepts and, in particular, result in cruelty, violence or threats. In this connection it should be noted that **Article 1** of the **Universal Declaration of Human Rights** asserts that:

**“All human beings are ... equal in dignity and rights. They ... should act towards one another in a spirit of brotherhood.”**

Religious beliefs and moral precepts which involve the denial of the rights of others amount to discrimination and as such fall under the interdiction contained in **Article 7** of the **Universal Declaration of Human Rights** quoted in **para. 10**.

#### **Registration to prevent arbitrary detention**

17. **Rule 7** is a severely practical rule with an extremely important significance about a basic principle and a basic practice concerning reception of prisoners into prison.

##### **Rule 7 (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 every prisoner received:**

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

##### **Rule 7 (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.**

18. **Rule 7** should be seen in the light of the provisions of the **Articles 9** and **10** of the **Universal Declaration of Human Rights** which forbid arbitrary imprisonment. These Articles proclaim:

##### **Article 9**

**No-one shall be subjected to arbitrary arrest, detention or exile.**

##### **Article 10**

**Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.**

Similarly, the **International Covenant on Civil and Political Rights** provides in **Article 9.1**:

**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.**

It follows therefore that if these provisions are to be observed, prison staff must be satisfied that any committal to prison is properly authorized and that this is evident from a valid commitment order. The responsibility for implementing part of **Rule 7** lies with both the central administration as well as with the director and staff of individual prisons.

19. **Rule 7** is further amplified by **Principle 12** of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**. The Principle is especially relevant to prisoners in police custody or on remand. **Principle 12** requires:

**A record shall be kept of the reasons for the arrest, the time of the arrest and the taking into custody as well as that of first appearance before a judicial or other authority. Furthermore, the identity of the officials concerned and precise information about the place of custody shall be recorded.**

The registering of these details together with the registration required by **Rule 7** is an important safeguard against the phenomenon of “disappearance”, i.e. the prisoner “disappears” in the prison system and no-one knows his whereabouts.

20. The first part of **Rule 7** also requires that there shall be a record kept of the identity of every prisoner, the reason(s) for his or her commitment to prison, the date and time of the commitment and the authority authorising commitment. During the period of imprisonment a variety of situations can arise which render it essential to have clear and certain records about the identity of prisoners and when and why they were committed to prison. Such situations can relate, for example, to escapes or other misconduct, accidents, illnesses, deaths, fires and riots etc. and also to subsequent legal proceedings and investigations. The Rule’s stipulations about a bound book with numbered pages may now seem outdated when many prison administrations make use of computerised data systems. A departure from the precise method of registration described in the Rule is permissible as long as careful registration is carried out. The record must be of permanent character and always accessible for speedy use in emergency situations. Fires



and riots, for instance, can easily lead to the destruction of records at the same time as they often render them essential for checking purposes. Prison administrations should therefore give careful consideration to ways and means of ensuring the safety of these important records, particularly where large numbers of prisoners are involved.

### **Starting and helping the resettlement process**

21. **Rule 4** states that the Rules applicable to prisoners under sentence are in fact applicable to all categories of prisoner unless their provisions conflict with the Rules for special categories of prisoner. In such cases the latter Rules apply. With this reservation the following Rules are therefore applicable to unsentenced prisoners, insane and mentally abnormal prisoners, civil prisoners and persons imprisoned without charge.
22. **Rule 57**  
**Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.**

The Rule states clearly what the punishment of imprisonment consists of and points out that imprisonment is by its very nature afflictive. An aggravation of the inherently afflictive character is limited to what is incidental to justifiable segregation or the maintenance of good order in the prison. This Rule is often paraphrased by the statement that offenders are sent to prison as punishment and not for punishment.

23. Nevertheless, being sent to prison as punishment also means that prisoners inevitably undergo a range of deprivations. Prisoners are compelled to live communally with persons not of their choosing and to order their lives according to the prison regime. They are deprived of normal contact with the opposite sex with all that that implies for emotional expression and confirmation of personal identity. They are deprived of normal access to goods and services. The degree of responsibility which they are allowed to exercise over their lives is limited. Although the extent to which these effects occur will vary both within and between national prison systems, imprisonment is always inherently afflictive.
24. The deprivations and afflictions of prison life have been shown in a vast number of criminological research studies to lead to increased solidarity with criminal norms and criminal associates and to the



rejection of consensual social values. This means that even if the right to self-determination has been taken away by the fact of imprisonment, opportunities to exercise self-determination and personal responsibility should be provided to the greatest possible extent. Both justice and practical considerations require therefore that the afflictions arising in the prison situation be restricted to what unavoidably follows from the fact of imprisonment. What are seen as the unavoidable consequences of imprisonment should be subject to constant monitoring and re-appraisal with a view to their reduction.

**Safety: a basic necessity for prisoners and staff alike**

25. **Rule 57** also refers to the restrictions imposed upon self-determination and personal liberty in the maintenance of prison discipline. As has been said earlier, the maintenance of a well-ordered community life is fundamental for any prison system. It cannot be reiterated too often that prisons should be safe places for prisoners and staff alike. The fact of serving a sentence to imprisonment ought never to mean that prisoners and staff forego the right to be protected from threats of violence, murder, blackmail, sexual or other assaults or exposure to risks to their physical or mental health and personal integrity. Both prisoners and staff stand to gain when the right to a well-ordered community life is upheld.
26. A characteristic of a well-ordered community life is that essential rules for its conduct are willingly followed by its members. Other sections of this handbook deal with the many positive steps that can be taken to promote this aim. In the last resort, however, it may be necessary to curtail still further the freedom of certain prisoners in the interest of preventing destructive activities. Such curtailments, however, should also be subject to constant review and efforts should be made to restore such prisoners to the conditions of normal association as soon as possible.

**Damage reduction and constructive preparation for life after release**

27. **Rule 58**

**The purpose and justification of a sentence of imprisonment or a similar measure privative of liberty is ultimately to protect society from crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.**

**Rule 59**

**To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply**

**them according to the individual treatment needs of the prisoners.**

The Rules state that the purpose of deprivation of liberty is to protect society. This is not to assert that society can be made free of crime through the use of imprisonment. Indeed, there is much research that suggests that the use of imprisonment has relatively little to do with the level of crime in any society. The Rules correctly imply therefore that imprisonment is an ultimate sanction that should only be used where the safety of society is gravely threatened. But even then it remains a duty for prison authorities and staff to work for the future safety of society, that is after the prisoner is released. This is to be done by limiting the damaging effects of imprisonment as much as possible, by seeking to persuade the prisoner to address his or her offending behaviour and by helping the prisoner to make use of offered opportunities to prepare for a socially responsible and acceptable life after release.

28. **Rule 58** points to the fact that nearly all prisoners return to society after a shorter or longer time. In many cases the return to the community occurs before the full term of imprisonment has been served as a result of remission or early conditional release. It is clearly disadvantageous to society if prisoners return with an increased commitment to criminal life styles. An enormous amount of criminological research in all parts of the world has shown, however, that this is one of the commonest effects of imprisonment. Faced by these demonstrated negative effects of imprisonment, many governments are now seeking to limit the personal and social damage caused by imprisonment as a first step towards the goal of the improved resettlement of the prisoner in society. This involves the development of prison regimes which focus upon the prisoner's return to society. The Rule makes clear that not only should the formation of pro-social attitudes be encouraged but also that social skills, information and post-release opportunities be such as facilitate a law-abiding life after release.
29. **Rule 59** recognises that there is no single simple way to achieve programmes of betterment for prisoners. A wide variety of rehabilitative programmes is necessary if the varying conditions and problems of prisoners are to be adequately dealt with (see **Section VI**).

What all such programmes have in common, however, is that they seek to increase the opportunities for prisoners to exercise responsible choice in the conduct of their lives both during and after the term of imprisonment. However, there exist prisoners who clearly state that they have no intention of living a law-abiding life on release. Prison staff have a responsibility to consistently challenge such statements

which may sometimes be no more than an expression of desired peer approval. In some cases a change of attitude may be achieved. But there may well be a small core of prisoners who really have no intention to live within the law and, in consequence, manifest little or no interest in the purposes of rehabilitative programmes. Nevertheless, to the extent that they wish to participate in constructive programmes they should be allowed to do so. The positive use of time in prison may still have some beneficial effect.

30. Offering a variety of forms of help to prisoners should not always be undertaken for the short term purpose of securing adjustment in society. Many forms of help are available to society's citizens as rights and there is frequently no reason to exclude prisoners from enjoying such rights. Thus, for example, medical intervention to cure a crippling handicap may be considered important for a prisoner's subsequent adjustment, but the treatment should be given even if this were not the case.

**Community-orientated prison life: the normalcy principle**

31. **Rule 60 (1)**

**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.**

**Rule 60 (2)**

**Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but combined with effective social aid.**

In **para. 2** of the present Section it was stated that prisoners' freedom, external contacts and possibilities for personal development should not be limited more than absolutely necessary and that prison rules and requirements should be conducive to preparation for normal life in the community after release. These precepts are sometimes embodied in a single principle referred to as the 'normalcy principle' (inter alia **Section V** elaborates on the implications of this principle in prison practice). The normalcy principle does not mean that the conditions of prison life must be exactly the same as those obtaining outside the prison - luxurious, for example, in an affluent society or deplorable and deficient in an impoverished society. **Rule 60 (1)** refers instead to differences between the conditions of prison life and those in the

community which rob prisoners of their sense of responsibility or the respect due to them as human beings.

32. **Rule 60 (1)** points out that differences between prison and ordinary life can lessen the prisoner's sense of responsibility and diminish respect for their human dignity. This is because prison regimes have traditionally focused upon the minute regulation of the prisoner's life thereby removing opportunities for the exercise of personal initiative and responsibility. If the aims of imprisonment that are described in **Rule 58** are to be achieved it is imperative that these differences between life "inside" and life "outside" be minimized. Reduction of these differences is crucial if the prisoner on release is to be able to adjust to life in the community. It should be noted that **Rule 60 (2)** speaks of the desirability of ensuring a gradual return to life in society. And in describing the steps which should be taken to achieve this gradual return to the community, **Rule 60 (2)** suggests a flexible approach. Pre-release regimes in the same or another institution are mentioned as one possibility. An example of this is where an inmate serving a sentence in a maximum security prison is transferred to an open prison or a prison near his or her home for the making of effective preparations for release.
33. Another possibility mentioned in **Rule 60 (2)** is that of releasing the prisoner on trial and under supervision. It should be noted here that such measures as conditional release from prison, remission, parole or "good time back" do not, in the absence of earlier release preparation, amount to "a gradual return to life in society". On the contrary, they usually represent an immediate and actual return to community life that often faces the prisoner with practical problems of living from the moment that he or she leaves the prison building. Particularly after long incarceration, prisoners often feel unable to handle even such simple matters as travelling by bus or train, let alone dealing with social benefits or seeking a job or housing. What **Rule 60 (2)** implies, therefore, is that there needs to be prior preparation to obtain essential social information and learn essential social skills before release from prison takes place. And **Rule 60 (2)** implies further that these skills cannot always be learned inside the prison. They require the practice in the community which can be provided by allowing trial exits from prison.
34. **Rule 60 (2)** says nothing about how prisoners shall be selected for forms of trial leave. It can be a difficult matter to decide about the degree of risk to the public where prisoners have been sentenced for very serious offences or evince signs of mental disturbance. At the same time, many, indeed most, prisoners do return to society and the question is primarily whether they do so adequately prepared and

constructively supervised. In order to guarantee that the prisoner has fair access to an important measure and that safeguards exist for the prisoner, the public and the prison administration, it is desirable that decisions on trial release in difficult cases be undertaken by an independent body. Such a procedure would be in line with the provisions of **Principle 4** of the **Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment** adopted by the General Assembly of the United Nations in December 1988 which states:

**“Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of a judicial or other authority.”**

**Principle 11 (3)** of the same instrument states:

**“A judicial or other authority shall be empowered to review as appropriate the continuance of detention.”**

35. **Rule 60 (2)** categorically excludes supervision being in the hands of the police. Instead it requires that whatever methods are used they should be such as offer the released prisoner effective social aid. This requirement follows naturally from the rehabilitative purpose of the trial leave.
36. What has been said above relates only to general principles. Other Rules, cited and commented elsewhere in the present handbook, delineate more concrete steps that can and should be taken to assist the released prisoner's adjustment in society.

### **Guiding principles concerning unsentenced prisoners**

37. Unsentenced prisoners are often in worse conditions than sentenced prisoners. Because of the 'presumption of innocence' their situation, however, should be more favourable in several respects.

#### **Rule 84 (1)**

**Persons arrested or imprisoned by reason of a criminal charge against them, who are detained in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these Rules.**

#### **Rule 84 (2)**

**Unconvicted prisoners are presumed to be innocent and shall be treated as such.**

**Rule 84 (3)**

**Without prejudice to the 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.**

**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

38. There is now a substantial body of evidence, gathered by respected intergovernmental and non-governmental bodies, which shows that in all parts of the world the conditions concerning arrest or detention pending trial are frequently open to grave criticism. These criticisms are wide-ranging. They include documented acts of torture but also detention regimes which inflict severe deprivation on persons not yet adjudged as guilty of an offence. The prohibition of torture is absolute. It is prohibited under **Article 5** of the **Universal Declaration of Human Rights**, which states:

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

The statement is confirmed in the same wording under **Article 7** of the 1966 **United Nations International Covenant on Civil and Political Rights**. It is confirmed again by the 1975 **United Nations Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, which called torture ‘**an offence to human dignity**’ and defined torture (**Article 1**). Furthermore torture is prohibited by the **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, which following on from the Declaration was adopted in 1984 by the General Assembly and entered into force in 1987. (See further **Section II**.)

39. So far as detention regimes are concerned, they often amount to keeping the prisoner in what is virtually solitary confinement for much, if not all of the day. The detention may occur in cells which are very small - this is especially likely to be so where police cells are concerned -and continue for a long period, in some cases for years. There may be little or no provision for occupation during the day. The restrictive nature of many detention regimes can be expected to have serious negative consequences for health and well-being, especially when it is remembered that detained persons are often in a state of severe stress and anxiety. The worst consequences are suicide and self-mutilation. The police and prison staff need therefore to be trained to

identify persons at risk and know what action to take. Prison management has a responsibility to see to it that a harm limitation policy is drawn up and made known to staff.

#### **Detainees in police lock-ups**

40. **Rule 84 (1)** states that the term “untried prisoners” includes not only those held in prison but also those held in police custody. The inclusion of police custody in the definition is especially meaningful since breaches of human rights often occur during the periods spent in police custody. Governments have, therefore, a responsibility to see that police administrations are aware and informed about the SMR and the other applicable international instruments concerning untried prisoners.

#### **Presumption of innocence**

41. **Rule 84 (2)** states the principle of the presumption of innocence. The same principle is also to be found in the **Universal Declaration of Human Rights, Article 11.1**, the **International Covenant on Civil and Political Rights, Article 14.2** and in the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 36**. There can be no doubt that the presumption of innocence is of fundamental importance in the administration of criminal justice. The Rule presupposes that the presumption of innocence justifies, and leads to, a treatment of prisoners which, in some respects, is intended to be more favourable than that accorded to sentenced prisoners. The broad nature of the difference is the subject of **Rule 84 (3)**.
42. The latter begins, however, with two main stipulations which concern the general conduct of a criminal investigation. These stipulations make clear that the SMR do not seek to derogate from the legal rules which are presumed to exist on conducting a criminal investigation with due regard for the protection of individual liberty. Within these limits, however, the SMR require that untried prisoners shall benefit from a special regime which is warranted by the presumption of innocence.

#### **Regimes for untried prisoners**

43. Subsequent Rules - dealt with elsewhere in this handbook - describe the essential features of such a regime. **Rule 84 (3)** emphasizes that these requirements are of minimum character. This means that governments should seek to provide even better conditions for untried prisoners than those indicated in the Rules. In fact, as mentioned above, the opposite is often the case. In many countries the situation of remanded prisoners falls far short of what might be expected from the presumption of innocence and the Rules concerning a special



regime. Special regimes could include family and official visiting, voluntary work and educational and physical activities.

44. Some prisoners openly admit their guilt and state their intention of pleading guilty to an offence. Where this is the case and it seems likely that they will be sentenced to imprisonment, there is much to be said for trying to interest them in planning for the constructive use of their time in prison.

#### **Civil prisoners**

##### 45. **Rule 94**

**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.**

**Rule 94** applies to civil prisoners, usually debtors. Common to all the persons included in the civil prisoner group is that they are in prison as a result of a non-criminal process. The Rule makes a distinction between these persons and sentenced offenders by requiring that the former shall not suffer the same deprivations as the latter. Accordingly they are to be afforded the same treatment as untried prisoners except that they may possibly be required to work.

#### **Uncharged prisoners**

##### 46. **Rule 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 C (of the Standard Minimum Rules - Editorial addition). Relevant provisions of part II A, (of the Standard Minimum Rules - Editorial addition) 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.**

**Rule 95** is applicable to persons who are neither awaiting trial nor sentenced for a criminal offence. Such persons are afforded an important series of rights and protections under **Article 9** of the **International Covenant on Civil and Political Rights**. In brief, **Article 9** provides that arrest, detention and privation of liberty shall not be arbitrary but



only be undertaken in accordance with lawful procedures. The Article further provides that arrested persons shall be promptly informed of any charges against them and shall be entitled to trial within a reasonable time or released. Moreover, arrested or detained persons shall be entitled to take proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful. None of these rights and protections is weakened or invalidated by the provisions of **Rule 95**.

47. Nothing justifies therefore unfavourable conditions of imprisonment for such persons. The absence of charges and, therewith, the absence of a sentence of imprisonment entitles them instead to the more favourable regimes to be used with persons who are arrested or awaiting trial. At the same time they shall not be subjected to measures which imply that they need re-education or rehabilitation in the same sense as those convicted of a criminal offence. In practice, the persons envisaged under **Rule 95** are frequently aliens, perhaps with families, awaiting expulsion. The special circumstances of this group often mean that appropriate help should be made available to them.



## **DUE PROCESS AND COMPLAINTS**

### **Opening statement**

1. Prisons are inhabited by human beings. This may sound obvious but it bears repeating that prisoners, as human beings, have rights and feelings. Prisons don't exist outside the law. On the contrary, they are created by law. Prisoners and prison staff are subject to law including those laws that create and protect the rights of prisoners.
2. This section deals with due process and complaints including the disciplinary system and grievance mechanisms in prisons. These refer to the related issues of discipline and punishment as well as complaints and review procedures in prisons. The ways in which these are organised and administered are crucial for the safeguarding of the rights of prisoners as well as the maintenance of peace and harmony in any prison system.
3. The purpose of the disciplinary and grievance mechanisms in prison is, of course, to maintain or restore order and safety in the institution. The system will be unable to achieve this if it relies entirely on coercion. Prison staff can and should seek to positively influence and enlist the willing co-operation of prisoners through humane leadership and good example. Very often, it will be possible to elicit good behaviour from a prisoner who appreciates that he or she is being treated as a mature human being with due respect and dignity. It is not a taboo for prison staff to maintain friendly and healthy relations with prisoners. On the contrary, that is one of the more effective means of maintaining peace in prisons and reducing reliance on the formal disciplinary system.

### **Maintaining order in prisons**

4. In addition to the informal and friendly mechanisms referred to above, it is also often possible to elicit orderly conduct and discipline in prisons by ensuring that there are relevant and logical consequences for behaviour. For example, it would be a logical consequence of waking up late for the prisoner to miss breakfast but it would be illogical if the prisoner is, for instance, given additional labour because of this. The application of consequences should never be arbitrary or irrelevant. It is neither healthy nor beneficial to dispense punishment just for the sake of punishment. The automatic and undifferentiated application of disciplinary punishment is counter-productive and should be discouraged. In applying the rules prison staff ought to

exercise professional judgment and discretion remembering always that the rules are meant for human beings and not vice-versa.

5. This, in turn, makes demands on the kind of skills that prison staff bring to the job and the nature of training they receive while on it. Prison staff require good inter-personal and social skills to be able to deal and cope confidently with the tensions and stresses of imprisonment. They need these skills to be able to manage the tremendous authority they wield over the prisoners with level-headedness, maturity and humaneness. The training and other professional requirements for prison officials are dealt with elsewhere in this Handbook.

### **How disciplinary rules affect staff**

6. It is sufficient here to note that the disciplinary rules, including complaints and review procedures regulating prison life affect the conduct of prisoners and prison staff alike in their relationship with one another. It is necessary for the disciplinary and grievance mechanisms in prisons to enjoy the confidence of prisoners, prison staff and the community by being seen to be both fair and effective.
7. Prison disturbances such as hunger strikes, jail breaks, prison mutinies, riots and even suicides, are often evidence that the prisoners feel short-changed by the way in which the applicable disciplinary rules are administered or that they do not have confidence in the grievance mechanisms available. If, on the other hand, the prison staff do not perceive the disciplinary mechanisms as effective they may take out their frustrations on the prisoners by adopting and inflicting summary and illegal punishment on the prisoners and, equally also, upset the equilibrium of the prison system.

### **Disciplinary process includes complaints procedure**

8. Prisoners should only be punished if and after the disciplinary process duly established has been observed. If they are dissatisfied with either the punishment or the process followed in handing it down, the prisoner may complain to have the punishment reviewed. In addition, the prisoners may complain about any other aspects of prison life with which they are not happy. The requirements, safeguards and limits of these processes are the subject of this section.

### **International standards regulating due process and complaints**

9. The provisions of the United Nations' **Standard Minimum Rules for the Treatment of Prisoners** (SMR) governing these aspects of prison life and administration are not very extensive. Although the SMR contain provisions concerning prison discipline, they say relatively little about complaints and almost nothing about review.

10. In explaining the applicable standards and rules, this section, therefore, relies considerably on the relevant provisions of the SMR as well as on other international standards including the **Universal Declaration on Human Rights**, the **International Covenant on Civil and Political Rights**, the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment**, the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, **Basic Principles for the Treatment of Prisoners**, the regional **human rights treaties of Africa, Europe and The Americas** as well as precedents and opinions of the **Human Rights Committee of the United Nations** and of other regional and national institutions. More importantly, in this area, perhaps more than in any other, this intricate web of legal rules and human rights standards is supplemented by two other very important considerations, namely humaneness and commonsense.

## **Complaints and review**

### **Nature of obligation to have complaints machinery**

11. **Rules 35 and 36** of the SMR contain some guidelines about prisoner complaints. These Rules provide as follows:

#### **Rule 35 (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 to adapt himself to the life of the institution.**

#### **Rule 35 (2)**

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

#### **Rule 36 (1)**

**Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.**

#### **Rule 36 (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 staff being present**

**Rule 36 (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.**

**Rule 36 (4)**

**Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.**

12. **Rule 35** obliges prison authorities to educate and inform prisoners about their rights as well as the applicable rules and regulations in prison. This is a very vital tool in maintaining ordered life in prisons. Significantly, the **Rule** requires that this should be done at the time the prisoner is admitted into the institution so as to facilitate his or her adaptation into prison life. Prison staff also need to know about the rules and regulations. This can be imparted to them through suitable training programmes.

The words 'frivolous' and 'groundless' in **Rule 36 (4)** are undefined and therefore, arbitrary as is further explained in **para. 17** below.

**Educating prisoners and staff about complaints machinery**

13. A practical way of doing this is to have the relevant provisions of the prison rules and regulations concerning prison discipline reduced into handbills which can be given to the prisoners immediately they come into prison. Suitable illustrations of the rules and regulations can also be prepared and posted at strategic locations around the prison compound. In several institutions there may be prisoners with sufficient skills to help in translating into suitable graphics in this way. In countries with several languages, it will be necessary to also make these posters and handbills in the local languages. In countries or prisons with significant populations of foreign prisoners, such bills, posters and information materials should also take account of the language difficulties of the foreign prisoners. In cases where it is not reasonable to produce the rules in other languages - as for instance where the number of foreign language speakers is very marginal - the prison administration should make provision for translating the rules to the prisoners concerned when they are admitted into the prison. For this purpose, each prison should have an induction unit which should be responsible for receiving new prisoners into the prison and introducing them to the rules.
14. **Rule 36** encourages prisoners to complain and communicate to the prison administration about their problems in prison and requires

prison directors and heads to make themselves available for this purpose, at least, once every week. The utility of healthy communication in any human institution cannot be over-emphasised. Prisoners should be encouraged to communicate with the prison administration about any difficulties they have, assured that their complaints will be treated seriously. In practice, it would be useful to establish a participatory system in which prisoners are involved in generating ideas for running the prison. This has the advantage of enhancing routine communication between staff and prisoners.

15. If prisoners are for any reason deprived of the confidence to channel their communications to the prison authorities, this may result in frustration and helplessness which may, in turn, lead to prison disturbance. Prisoners should never be intimidated from filing any complaints they may have about the prison system and staff have a duty to make the atmosphere in which complaints are heard as friendly and relaxed as possible.

#### **Easy access to complaints procedures**

16. Often prisoners are also discouraged from complaining against prison staff and administration for fear of reprisals from the staff. **Rule 36 (3)** of the SMR as well as **Principle 33 (3)** of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment**, therefore, encourage prison authorities to provide prisoners with confidential avenues for making their complaints and to respect any requests the prisoners may make for confidentiality in the handling of their complaints. In order to safeguard the confidence of prisoners in the disciplinary process it is essential that a procedure should be established by which prisoners can make confidential written complaints to a person or institution independent of the prison administration such as a prison ombudsman or a judge or magistrate.
17. It is even more damaging to the integrity of the grievance mechanism in the prisons and to the confidence of the prisoners in it, if prison officials disregard some complaints as “**evidently frivolous or groundless**” (**Rule 36 (4)**) before the complaints are investigated. The prison administration should look into all complaints that are made by prisoners and prison officials should regard this as part of their primary responsibility. Because the words frivolous and groundless are vague and ambiguous it is particularly important that all complaints be investigated by an independent complaints body and it would be for that body to decide whether any complaint is frivolous or groundless.

#### **Complaints by relatives and interested parties**

18. In addition, the families of prisoners, their lawyers as well as voluntary or non-governmental organisation visitors to the prisons can also lodge

complaints on behalf of prisoners after due discussions with the prisoner(s) concerned. **Principle 33** of the **Body of Principles for the Protection of All Persons Under Any Form of Detention** explains this in detail thus:

**Principle 33 (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 or 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.**

**Principle 33 (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.**

**Complaints against other professionals**

19. Prisoners should also be made aware of their entitlement to complain against professionals. Professionals, especially lawyers and health professionals, who deal with prisoners sometimes fail to observe the appropriate standards of ethical practice and application because, very often, their services are rendered on a humanitarian, voluntary basis. Prison authorities and the regulating bodies for these professions have a duty to educate prisoners on the applicable standards and channels for complaint. (For the ethical responsibility of health professionals see **Section IV**).

**Internal and external mechanisms for handling complaints**

20. It is not every complaint by prisoners that will require formal consideration and response. In practice, prison staff will be able to listen and respond to most complaints by prisoners in the normal course of their routine duties without the need to defer the complaint for formal consideration. More serious complaints may be channelled to the head of the prison institution for his personal attention.
21. The prison administration will also benefit from enabling prisoners to channel to outside voluntary and non-governmental agencies requests and complaints concerning matters in respect of which the prison is unable to offer any immediate assistance. For instance, the prison administration can refer foreign prisoners to local charities and humanitarian organisations which may be able to provide counselling and support through visits and similar forms of contact.



22. In addition to this internal mechanism, **Rule 36 (2)** also acknowledges the role of external inspectors in dealing with complaints by prisoners. Prison inspection is the subject of **Section VIII** of this Handbook but it is essential to note for immediate purposes that **Principle 29** of the **Body of Principles for the Protection of All Persons Under Any Form of Detention** requires Governments to establish organs to oversee, supervise and inspect the administration of prisons.

**Principle 29 (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 place of detention or imprisonment.**

**Principle 29 (2)**

**A detained person shall have the right to communicate freely and in full confidence 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.**

23. Public confidence in the system will be enhanced if such bodies are composed of reputable persons drawn from a broad range of interests including prison staff, legal and health professionals as well as non-governmental organizations working in the area of prisons. Among other things, it is appropriate for such bodies to have power to review punishments and other disciplinary measures imposed by prison staff on prisoners. Without power to review, any complaints procedure and complaints body is without purpose.
24. It is not desirable for the power to impose punishment to be combined with the power to receive complaints, because this would amount to authorising the body to sit on appeal in order to review its own decision. Naturally, a review decision given in such circumstances will not be trusted. It is therefore essential that these powers should be conferred on different bodies.

### **Due process rights of unconvicted and other prisoners**

25. Due process in prisons has different implications for different categories of prisoners. Among these are persons awaiting trial, foreign prisoners and other groups of marginalised prisoners and detainees including the mentally ill and infirm, illiterates and members of ethnic minorities.

### **Unconvicted prisoners**

26. Prisoners awaiting trial are a special category of prisoners because, being unconvicted, they are presumed by law to be innocent. For these prisoners, the overriding objective is, very often, to fight off conviction. Thus **Rule 93** of the SMR requires that:

**For the purpose 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.**

27. **Rule 93** is designed to ensure that prisoners awaiting trial, as accused persons in a pending criminal cases, have a fair chance of fighting the charges against themselves. For this purpose prison staff have a duty to facilitate contact and communication between awaiting trial prisoners and their lawyers by, among other things, allowing the lawyer to visit the prisoner for consultations and providing facilities to ensure adequate contact through writing and, where possible, tele-communications between the prisoner and the lawyer.

### **Foreign prisoners**

28. Foreign prisoners are a particularly vulnerable group because they do not have access to the kinship and support network that is available to other prisoners. This is even more so in cases where the foreign prisoner does not speak the language of the country in which he or she is imprisoned. For these reasons foreign prisoners may be reluctant to complain against bad treatment in prison. Those foreign prisoners detained for immigration reasons may show even more marked reluctance for fear of deportation. Prison officials should be made aware of the need to support this category of prisoners by listening compassionately to any complaints that they may have.

### **Other vulnerable or disadvantaged groups**

29. In addition to foreign prisoners and prisoners awaiting trial, other categories of prisoners including the mentally ill, illiterates and ethnic minorities may need greater support than other prisoners in order to be able to make use of the grievance mechanism in prisons. Prison staff have a duty to be responsive to this need. For instance, prison staff may help to translate the communications of illiterate prisoners if the prisoner consents freely to this.
30. Prison staff need to be reminded in training and on the job that all communication between prisoners and their lawyers is confidential.

This is a basic entitlement of all categories of prisoners including prisoners awaiting trial.

## **Discipline**

31. The disciplinary system is one method of maintaining control in prisons. It is most effective when it is used to restore a grievous breach of discipline in prison order and when other means prove unsuitable for achieving the objective of restoring control and discipline. **Rules 27-30** of the SMR define the framework for discipline in prisons as follows:

### **Rule 27**

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

### **Rule 28 (1)**

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

### **Rule 28 (2)**

**This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed for the purpose of treatment.**

### **Rule 29**

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

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

### **Rule 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.**

### **Rule 30 (2)**

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

### **Rule 30 (3)**

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

#### **Applicable human rights standards**

32. **Article 9** of the **Universal Declaration of Human Rights** and **Article 9 (1)** of the **International Covenant on Civil and Political Rights**, respectively, firmly prohibit arbitrary detention and, in so doing, state the legal principle that governs the maintenance or enforcement of discipline in prison. It is essential that the rules and processes by which discipline is maintained in prison are not arbitrary. This prohibition against arbitrariness extends not only to the content of the applicable rules but also to the processes by which they are enforced.
33. **Rule 27** encourages prison authorities to maintain discipline in prisons “**with firmness but with no more restriction than is necessary for safe custody and well-ordered community life**”. In order to discourage arbitrariness, **Rule 29 (1)** makes it mandatory for “**conduct constituting a disciplinary offence**” to be “**determined by the law or by the regulation of the competent authority**”. The SMR further lay down the essential safeguards against arbitrariness in the administration of prison discipline in **Rule 30**.

#### **Other relevant instruments**

34. The prohibition of arbitrariness in the maintenance of discipline in prison is also recognised in **Article 6** of the **African Charter on Human and Peoples Rights**, **Articles 7 (2) and (3)** of the **American Convention on Human Rights**, **Article 5 (1)** of the **European Convention on Human Rights** as well as numerous national constitutions.

#### **Institutional implications**

35. The provisions of the SMR concerning discipline in prisons as well as the other legal and human rights standards against arbitrary imprisonment have very important implications for the way in which prisons are organised and run. The more significant of these implications will now be discussed in turn.

#### **Written prison rules or regulations**

36. It is vital that the rules governing discipline in prisons should be written down. This is usually done in the prison regulations or some other rules governing penal administration. **Principle 30 (1)** of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment** requires that such regulations should specify the following:

**Principle 30 (1)**

**(i) the types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment;**

**(ii) the description and duration of disciplinary punishment that may be inflicted; and**

**(iii) the authorities competent to impose such punishment.**

37. In addition, in order to regulate the exercise of the power to discipline prisoners, it is essential that the exercise of the power to discipline prisoners should be exercised by a defined category of senior prison personnel. The prison administration should maintain a written minute of any occasion in which the disciplinary power is invoked against any prisoner. It is also essential for the rules to identify and state the channels of appeal or review open to a prisoner who may wish to challenge the disciplinary procedure.

**Periodic review of prison rules and regulations**

38. Arbitrariness exists not just in the absence of rules but also in the presence of rules which are out of date. In many countries, prison rules and regulations, as with many other aspects of the prison system, are in dire need of review and updating. To prevent this, prison rules and regulations need to be reviewed and updated periodically in order to harmonise them with current legal standards.

**Information and publicity about the rules**

39. It is no use having rules and regulations if nobody knows about them. Prison authorities therefore have an obligation to acquaint and provide prisoners as well as prison staff with the applicable disciplinary rules at the point of first contact with the prison system. This has been dealt with earlier in **paragraphs 11 and 12** of this section under “**Complaints and Review**”.

**Through what means is discipline enforced?**

40. A breach of disciplinary rules in prison may be dealt with in one of two ways, namely, by the prison administration internally or, where the breach is also a crime under the law, by the formal sanction of normal criminal prosecution. It is neither practicable nor desirable for every breach of prison rules to attract formal disciplinary action. Very often, an informal caution, friendly advice and encouragement or an appropriate expression of disapproval will be enough to keep an offending prisoner under control. It is only when these fail or are inadequate or considered inappropriate that the formal disciplinary sanctions should be employed.

41. It will also be most unhealthy for every other breach of the prison rules which qualified as a crime under general criminal law to be prosecuted as such. For instance, it is inconceivable that a prisoner who steals a tablet of soap in order to shower properly would be prosecuted for theft in a court. Only the most serious cases deserve to be submitted to the criminal prosecution. Again, prison staff will be responsible for deciding when to surrender a case to criminal prosecution. Prison authorities should make prison staff aware of relevant guidelines and principles governing staff discretion in deciding when and when not to submit breaches of person rules for criminal prosecution. Where no such rules presently exist, they should be prepared and circulated to the staff.
42. It is desirable that the safeguards laid down by the SMR are observed in internal disciplinary proceedings. One such safeguard is the requirement of **Rule 30 (2)** that prisoners should be given an opportunity to know and to defend the charges against themselves before being disciplined. Prisoners must not be punished on the basis of unsubstantiated rumours supplied by informants. Prisoners have a right to an opportunity to respond to any adverse reports made about them especially where such reports can form the basis of possible disciplinary action and prison authorities have a corresponding duty to notify the prisoners of such reports when they are received. This is even more vital in cases where the prisoner faces a potentially substantial penalty at the conclusion of the proceedings such as loss of remission. For instance, in the case of Campbell & Fell v. United Kingdom, 5 EHRR, 207 (1982), the **European Commission of Human Rights** decided that prisoners who were liable to suffer unlimited loss of remission and, in this case, actually received up to 570 days loss of remission for offences of mutiny and assault in internal disciplinary proceedings, were entitled to all the safeguards required in a criminal trial including representation by a lawyer.
43. In cases where the breach of discipline is dealt with internally by the prison administration, the prisoner is entitled to ask for a review of the decision of the prison administration before a higher body. This is recognised in **Principle 30 (2)** of the **Body of Principles for the protection of All Persons Under Any Form of Detention or Imprisonment**. The institutional requirements of this right are dealt with below in **paragraphs 84-92**.
44. If the breach of discipline is prosecuted as a crime, the prisoner is entitled to all the legal safeguards and facilities necessary to defend himself or herself in the case. In particular, he or she is entitled for this purpose to unimpeded access to his or her lawyer or to any other legal representative or relative. In such cases and until the criminal trial is

over, the prisoner, even if he or she is already serving a term of imprisonment for another offence, is regarded, for the purpose of the new trial, as a prisoner awaiting trial and is therefore entitled to all the rights already mentioned in **paragraphs 26 and 27** of this section.

### **Legal representation**

45. The requirement that prisoners should be heard before any disciplinary penalties are imposed on them does not necessarily imply that they must be accompanied or represented by a lawyer at such hearings. Prison administration would be rendered impossible if this were the case irrespective of the nature of the charge. Frequently, it would be sufficient if the prison administration were to give the prisoner the opportunity to tell his or her own side of the story and to call any witnesses in support of the story. More importantly, the testimonies of the prisoners and their witnesses should be carefully considered and reflected (upon) in the decision.
46. It is very important that prisoners who are testifying before formal, internal, disciplinary or inspection proceedings should not be subjected to intimidation or harassment. This would not only hamper the fairness of the process but also undermine confidence in the grievance mechanisms in the prison, with possible adverse consequences on security. The prison administration has an obligation to discourage and punish similar practises which have the effect of intimidating prisoners appearing before disciplinary or inspection panels.
47. However, in very serious cases involving a potentially heavy penalty or complicated points of law, the prison authorities may favourably consider granting the prisoner legal representation. To avoid arbitrariness in the exercise of this discretion, the conditions under which legal representation may be granted in disciplinary hearings should be clearly defined in the prison regulations or manual. This should also be drawn to the attention of the prisoners.
48. In many countries, scarce resources make it difficult for the government or, even less so, prison authorities to afford legal representation to prisoners for disciplinary hearings in prisons. Prison and governmental authorities can respond to this reality by encouraging non-governmental organisations and other volunteers and charities who work with prisoners to respond to the legal needs of the prisoners through properly targeted programmes of legal aid and assistance. The prisons authorities can facilitate this process by allowing and encouraging access and communication between the prisoners and non-governmental organizations.



### **Who administers discipline in prison?**

49. Only prison staff can exercise disciplinary powers over prisoners. **Rule 28 (1)** of the SMR clearly prohibits conferring disciplinary powers on certain categories and classes of prisoners. This **Rule**, obliges prison administration to discourage the widespread practice in many countries of having structured cell leadership organised under prisoners variously identified as ‘president’, ‘provost’, ‘general’, ‘marshall’ etc. and, by one means or another, having the possibility of exercising disciplinary powers over fellow prisoners.

### **Punishment**

50. Punishment should be the consequence and culmination of the disciplinary process in prison imposed after a complaint or allegation against a prisoner is established. In practice, many prison systems maintain order not through such formal disciplinary sanctions but through the fear prisoners have of the unregulated measures which may be used by the prison staff against prisoners that they may regard as recalcitrant. The disciplinary rules established under the SMR and other relevant international standards do not permit this practice. The general framework for the administration of punishment in prisons is contained in **Rules 31** and **32** of the SMR which provide that:

#### **Rule 31**

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

#### **Rule 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.**

#### **Rule 32 (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.**

#### **Rule 32 (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 necessary on grounds of physical or mental health.**



51. According to contemporary standards of humaneness, **Rule 32** contradicts **Rule 31** and can no longer be regarded as consistent with the developing body of international standards regulating the treatment of prisoners. Reduction of diet is an unjustifiable punitive measure that adversely affects the health of prisoners. **Rule 32** also fails to define what ‘close confinement’ means and offers no guidance as to how long it can be inflicted on a prisoner as punishment. But it is clear that ‘close confinement’ does adversely affect the health of prisoners in a way that the applicable general standards of human rights do not permit.
52. Also noteworthy is the fact that some of the punishment measures mentioned in **Rule 32** are sometimes inflicted on prisoners as “punishment” as a means of preventing prison disorders, i.e. before any actual breach of discipline has occurred. In addition to the point about the incompatibility of **Rule 32** with evolving human norms of decency, it needs also to be emphasised that the SMR require that any form of punishment should be preceded by proper disciplinary process.
53. The Rules of the SMR regulating complaints discussed earlier in this section apply with equal force to punishment. Prisoners have a right to complain about forms and prescriptions of punishment that they are dissatisfied with. Prison authorities should ensure that there are appropriate safeguards against the abuse of the power of punishment. These safeguards should include the provision of regular, frequent and independent review of punishment prescriptions.

#### **Applicable human rights standards**

54. **Articles 5 and 7** respectively of the **Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights** prohibit torture and other forms of cruel, inhuman and degrading treatment or punishment and reinforce the rules of the SMR concerning punishment in prisons. Concerning prisons particularly, **Article 10** of the **International Covenant on Civil and Political Rights** requires, among other things, that:

##### **Article 10 (1)**

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

##### **Article 10 (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;**

##### **Article 10 (2) (b)**

**Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.**

**Article 10 (3)**

**The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.**

55. In its General Comment 21(44) of 6 April, 1992, the **Human Rights Committee** of the **United Nations** declared that this requires States to treat prisoners and detainees with respect for their dignity. The Committee explained that this is a “fundamental and universally applicable rule” whose application as a minimum, cannot be dependent on the material resources available to States.

**Torture, cruel, inhuman and degrading treatment or punishment**

56. Torture and cruel, inhuman and degrading treatment or punishment are also prohibited by **Article 5** of the **African Charter on Human and Peoples Rights**, **Article 5** of the **American Convention on Human Rights** and **Article 3** of the **European Convention on Human Rights**.

57. **Article 5** of the **Inter-American Convention to Prevent and Punish Torture** further requires that:

**Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.**

58. The prohibition against torture or cruel, inhuman and degrading treatment or punishment is contained either directly or by implication in the national constitutions of all countries of the world. To reinforce the global acceptance of this principle, the **United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** obliges States and governments to investigate and punish such acts and to compensate victims of torture and cruel, inhuman and degrading treatment and punishment.
59. The most important principle which governs punishment (for disciplinary purposes) in prisons is that prisoners shall not be tortured or be subjected to any other form of cruel, inhuman or degrading treatment or punishment. The **Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment** (1984), in **Article 1.1**, describes torture as follows:

**For the purpose of this convention, the term ‘torture’ means 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 the 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 official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.**

**When is treatment or punishment torturous, cruel, inhuman or degrading?**

60. Through several cases concerning torture and cruel, inhuman and degrading treatment or punishment in prisons which have been dealt with both nationally and internationally, a body of general principles of practice has developed. According to these principles, punishment is very likely to be cruel, inhuman or degrading treatment or punishment (and therefore unacceptable) if it is:
- (a) disproportionate to the act committed or to the objective of ensuring discipline and ordered community life; or
  - (b) unreasonable; or
  - (c) unnecessary; or
  - (d) arbitrary; and
  - (e) produces undue pain and/or suffering.
61. In order to determine whether the punishment violates any of these principles, the following factors need to be taken in to consideration, namely:
- (i) the nature and duration of the punishment;
  - (ii) the frequency of repetition and possible accumulated consequences having regard to the gender, age and other relevant physical characteristics of the prisoner;
  - (iii) the state of physical and/or mental health of the prisoner;
  - (iv) any opportunity for qualified and competent medical verification of consequences of the punishment on the physical and mental health of the prisoner; and,
  - (v) compliance with the applicable laws.

62. It is not open to prison officials to justify cruel treatment of prisoners by recourse to law or to the defence of superior orders. On this, **Article 5** of the **United Nations Code of Conduct for Law Enforcement Officials** provides that:

**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 official invoke superior orders or exceptional circumstances such as a state of war, or threat of war, a threat to national security, internal political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment.**

#### **Proportionality of punishment**

63. The applicable human rights standards governing punishment in prison emphasise a principle of proportionality so that punishment must never in any event be disproportionate to the breach committed. In this connection, **Article 3** of the **United Nations Code of Conduct for Law Enforcement Officials** prohibits the use of force by law enforcement officials except “**when strictly necessary and to the extent required for the performance of their duty.**” In addition, **Principle 16** of the **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** admonishes that:

**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.**

(The danger referred to in **Principle 9** is the danger of ‘a particularly serious crime involving grave threat to life.’)

#### **Forms of punishment in prison**

64. **Rule 29 (b)** of the SMR together with **Principle 30 (1)** of the **UN Body of Principles for the Protection of All Person Under Any Form of Detention or Imprisonment** require that their form and duration shall be defined in written law or regulations. In practice, the forms of punishment which may be imposed for breach of prison discipline are many and varied. Some of these forms of punishment will now be discussed.

### **Solitary Confinement**

65. Of all the forms of punishment, solitary confinement, perhaps more than any other, is the best known. **Rule 32 (1)** of the SMR prohibits “**punishment by close confinement or reduction of diet**” unless the “**medical officer has examined the prisoner and certified in writing that he is fit to sustain it.**”
66. Although the SMR do not expressly prohibit solitary confinement, they clearly make it a form of punishment that should be used infrequently and exceptionally. In its General Comment No. 20 (44) of 3 April, 1992, the **Human Rights Committee** of the United Nations noted that “**prolonged solitary confinement**” may violate the prohibition against torture. **Principle 7** of the **United Nations Basic Principles for the Treatment of Prisoners** requires that:

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

67. From the numerous views and decisions of the Human Rights Committee of the United Nations as well as other national and international bodies on the issue of solitary confinement, rules of good practice on solitary confinement can be summarised as follows:

### **Prolonged solitary confinement**

68. Prolonged solitary confinement is not lawful: In its General Comment no. 20/44 on **Article 7** of the **International Covenant on Civil and Political Rights**, the **Human Rights Committee of the United Nations** specifically observed that “**prolonged solitary confinement of the detained or imprisoned may amount to prohibited acts of torture**”. For example, in the case of *Larrosa v. Uruguay*, (Communication no. 88/1981), the **Human Rights Committee** decided that solitary confinement for over one month was prolonged and violated the rights of the prisoner to be treated with dignity.

### **Indeterminate solitary confinement**

69. Solitary confinement should not, under any circumstances be imposed on any prisoner for an indeterminate period. In the case of *Dave Marais v. Madagascar*, (communication no. 49/1979), Dave Marais, was a South African national serving a term of imprisonment in Madagascar. After he attempted a jail break, he was held incommunicado for a period of over three years in a cell measuring one metre by two metres. During this period, he was released briefly on two occasions to attend trial proceedings in the capital of the country, Antananarivo. The **Human Rights Committee of the United Nations** held this to be inhuman treatment.

### **Repeated solitary confinement**

70. Repeated solitary confinement is also not lawful. Very often, solitary confinement is perceived and used by prison officials as a handy and effective way of dealing with prisoners who have a reputation, irrespective of what the prisoner has been accused of in any particular case. The tendency seems to be that once a prisoner has been in solitary confinement before, it becomes much easier to send or keep him or her back there without substantial justification or excuse. Because of the potentially harmful effects that solitary confinement may have on the physical and mental health of the prisoner, the prison administration has a legal duty to discourage this tendency.

### **Solitary confinement combined with other punishment**

71. Solitary confinement should not be combined with any other forms of punishment. This is in keeping with the principle in **Rule 30 (1)** that no prisoner should be punished twice for one offence. Thus, in a case that happened in Zimbabwe, while sentencing a prisoner to a term of three years for housebreaking, a Magistrate brought into effect a relevant suspended sentence of three years with hard labour and ordered that the first and last fortnights of his sentence should be spent in solitary confinement and on spare diet. The Supreme Court of Zimbabwe held that the punishments of solitary confinement with spare diet were inhuman and degrading and therefore unconstitutional. The court explained that “**these forms of punishment are reminiscent of the Dark Ages.**” [S v. Masitere, 1991 (1) SA 804].

### **Physician not to be involved in punishment**

72. In any case, it is essential that a medical doctor or other qualified medical personnel should be available to attend to the medical needs of prisoners under any form of punishment but not for the purpose of supporting the prisoner's capacity to sustain the punishment. The participation of medical personnel in the administration of punishment in prisons raises considerable ethical problems for medical professionals and is discussed elsewhere in greater detail in **Section IV** of this Handbook. This is particularly so in relation to the provisions of **Rule 32 (1)** which requires a medical officer to examine and certify that a prisoner is fit to receive punishments like solitary confinement before they are administered. **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** adopted by the United Nations General Assembly in December 1982 asserts that:

**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.** (Emphasis added.)

73. A medical officer who certifies that a prisoner is fit to stand solitary confinement violates this principle. But there is nothing wrong with medical officers attending to the medical needs of prisoners under solitary confinement or similar punishment. Medical officers also have a duty to advise prison officials to discontinue solitary confinement or other punishment which may endanger the health of prisoners and prison officials are encouraged to respect such professional opinions. For instance, in one case decided by the **European Commission for Human Rights**, Krocher and Moller, suspected by Swiss authorities of being terrorists, were kept in solitary confinement under severe sensory deprivation. They were placed under medical and psychiatric supervision. In response to medical advice, the conditions of their detention were eased progressively and they were removed from solitary confinement after two months. While the European Commission of Human Rights did not necessarily validate the action of the State in this case, it did not find a violation of any of the provisions of the European Convention on Human Rights. Krocher & Moller v. Switzerland, Application No. 8463/ 78 (1983).
74. It is, of course, the duty of the medical personnel concerned to advise the prison administration about any ethical objections they may have to the role asked of them by the prison administration.

**Rules on solitary confinement must be spelled out clearly**

75. It is, therefore, essential that the prison regulations should spell out very clearly the conditions under which solitary confinement may be administered. In places where the prisons are not or cannot be staffed with suitably qualified medical personnel (due to scarcity of resources), the prison administration can invite volunteer medical personnel from non-governmental organizations, religious and charitable organizations to assist in attending to the health-care needs of prisoners in solitary confinement. The medical and ethical duties of health-care personnel towards prisoners is discussed in greater detail in **Section IV** of this Handbook.

**Manacles, leg irons and instruments of restraint**

76. **Rule 33** of the SMR completely prohibit the use of instruments of restraint as punishment thus:

**Instruments of restraint, such as handcuffs, chains and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.**



77. But **Rule 33** permits the use of restraints in very limited circumstances for the following purposes:

**Rule 33**

- (i) **as precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;**
- (ii) **on medical grounds by direction of the medical officer;** and
- (iii) **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.**

Against this background, **Rule 34** of the SMR requires that:

**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 than is strictly necessary.**

78. Read together, **Rules 33** and **34** mean that prison officials cannot use physical restraints except in order to prevent prisoners from inflicting injury on themselves or from inflicting injury on other persons. The circumstances in which medical care may justify the use of physical restraints are dealt within **Section IV** of this Handbook which deals with the healthcare needs of prisoners. Noteworthy, however, is the fact that these rules prohibit the use of restraints on prisoners because they are being taken before a judicial or administrative authority. Very often, prisoners are taken into court in chains and manacles. This is prohibited by the SMR.

**Corporal punishment**

79. This is also expressly prohibited by **Rule 31** which puts it in the class of cruel, inhuman or degrading punishment. Therefore it is not lawful to beat up or flog prisoners as part of punishment for a breach of prison discipline.

**Loss of opportunity for early release**

80. In many places, loss of opportunity for early release, including loss of remission, is the most frequently used form of punishment. Though a suitable and popular form of punishment for breach of prison discipline, it is essential, in order to avoid arbitrariness, that this form of punishment in prison be limited to the most serious or repeated



offences. It is also desirable that the extent of loss of opportunity for early release be strictly defined so as not to make it indefinite.

81. For example, until 1983, the power of prison authorities in the United Kingdom of Great Britain and Northern Ireland was indefinite. In a case arising out of Britain, the **European Commission of Human Rights** held in 1984 that it was not proper for prison authorities to impose a loss of remission for 570 days on prisoners without giving the prisoners an opportunity to obtain legal assistance in their defence. The Commission disapproved of the length of the loss of remission [Campbell & Fell v. United Kingdom, (1984) 7 EHRR 165].

#### **Sensory deprivation**

82. Under **Rule 31**, it is not permitted for prison authorities to lock up prisoners in cells with artificial light and inadequate ventilation as punishment for breach of prison discipline or, indeed, for any other reason. For instance, in one Zimbabwean case, the punishment for a prisoner under sentence of death included placement in solitary confinement in a cell in which electric light burned 24 hours daily and controlled from a switch outside the cell. The cell was windowless and he was allowed only 30 minutes of exercise daily. This was held to be inhuman and degrading treatment. [Conjwayo v. Minister of Justice and Legal and Parliamentary Affairs, 1991, (1) ZLR 105 (SC)].

#### **Reduced diet**

83. **Rule 32 (1)** prohibits spare diet as a form of punishment except in cases where a medical officer has examined the prisoner and certified in writing that he or she is fit to sustain it. As demonstrated in **paragraph 50** of this section and illustrated above in **paragraph 69** in the case of Masitere from Zimbabwe, the tendency is now to regard spare diet as an improper form of punishment.

#### **Combined or double punishment for single breach**

84. **Rule 30 (1)** prohibits punishing a prisoner twice for a single disciplinary infraction. Very often, for instance, prisoners are transferred from their cell or from one prison to another after serving punishment for breach of prison discipline. This rule makes it unacceptable to combine punitive transfers with one or more other forms of prison punishment. However this does not cover cases where transfer is implied in the form of punishment chosen. For example, if, as a form of punishment, the prisoner is reclassified into a higher security category, this would, in a majority of cases, entail moving the prisoner to another prison that falls within the new security category. It is therefore necessary that in imposing punishment, prison officials should carefully take into account the consequences which arise or which are likely to arise from the form of punishment chosen. In all

cases, additional disciplinary measures other than those logically and directly related to the form of punishment chosen should be avoided and care should be taken to minimise any additional consequences of the punishment on other rights or entitlements of the prisoners.

### **Review of disciplinary punishment**

85. It is essential for the maintenance of orderly community life in prisons that prisoners who are dissatisfied with the ways in which the powers and procedures for maintaining discipline in prison have been administered or exercised in relation to them should have avenues for complaint. Review is, therefore, needed for two reasons, namely to ensure that prison staff do not abuse the powers and procedures through which they exercise disciplinary control over prisoners and, secondly, to rectify any abuses or injustices that occur in the administration of discipline in prisons. The prisoners deserve to be made aware of the avenues for review that exist and be encouraged to use them.

### **Applicable human rights standards**

86. The SMR do not contain any rules or provisions concerning the review of disciplinary punishments in prisons. However, the need for some form of official review of the exercise of the disciplinary and related powers over prisoners is contained in **Article 8** of the **Universal Declaration of Human Rights** which states that:

**Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.**

87. This need is reinforced and reaffirmed in **Article 2 (3)** of the **International Covenant on Civil and Political Rights**, in which States undertake an obligation to:

#### **Article 2 (3) (a)**

**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.**

#### **Article 2 (3) (b)**

**ensure that any person claiming such a remedy shall have his right thereto determined by a 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.**

#### **Article 2 (3) (c)**

**ensure that the competent authorities shall enforce such**

**remedies when granted.**

88. Also, under **Articles 2 and 12 - 16** of the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, States assume an obligation to prevent, investigate, punish and redress acts of torture or of cruel, inhuman and degrading treatment or punishment committed within their territories. As they affect the rights of prisoners, these obligations entail the establishment of an efficient prison review system for dealing with prisoner complaints.

**Other legal instruments**

89. The obligation to provide effective remedies - such as a functional complaints and review mechanism - for violations of the rights of prisoners through the abuse or improper exercise of the powers of discipline and punishment is also contained in **Article 1** of the **African Charter on Human and Peoples' Rights**, **Articles 2 and 25** of the **American Convention on Human Rights** as well as **Article 6** of the **Inter-American Convention to Prevent and Punish the Crime of Torture**.

**The nature of the review mechanism**

90. The prison administration is naturally responsible for establishing and administering an internal review process. Ordinarily, this would be part of the complaints mechanism which was explained earlier in this section. The head of the prison institution should have responsibility for administering and monitoring the process of internal review of disciplinary punishments.
91. Within national prison systems, a central review structure may be established to which prisoners may go for further review of their punishment(s) in case they remain dissatisfied with the internal review undertaken within the prison where they are held. The advantage of such a central review mechanism lies in its potential to considerably reduce the fear and intimidation factor which prisoners may feel in questioning (through review) a decision taken within the same prison in which they are held.
92. If it is to enjoy the confidence of the prisoners, the review mechanism must avoid undue bureaucracy and delay. The applications of the prisoners for review will have to be dealt with speedily and promptly. Applications for review as well as the decisions on them should be properly recorded and documented. In addition the review panel should give reasons for its decision(s) in every case that it reviews.
93. In addition to the internal review mechanisms established within the prison system, prisoners ought also to be made aware of the

independent, external review procedures that exist. Some of these have already been highlighted earlier in this section under “**Complaints**”. **Section VIII** on “**Inspection**” later in this Handbook also discusses the organization of independent, administrative mechanisms.

#### **Judicial review**

94. The courts also have an inherent power and a duty to undertake judicial review over the administration of discipline and punishment in prisons in order to ensure that they conform with the law and are not arbitrary or unfair.
95. The major drawback of judicial review is that it requires a lot of money in legal fees and for lawyers’ time. Most prisoners cannot afford the resources to make this possible and are, therefore, unable to challenge in court or some other suitable form disciplinary and other measures which result in violations of their rights. The job of watching over violations of the rights of prisoners and bringing complaints about such violations to court, is therefore largely that of volunteers and non-governmental organisations acting in the public interest and in the interests of the prisoner. Most advances in the protection of the prisoner have been won through the intervention of non-governmental organizations in this way.
96. Despite the difficulties and constraints that may exist, governments have a duty to establish facilities through which prisoners may receive legal assistance in pursuing judicial oversight over the conduct of prison administrations. Legal aid should be available to prisoners for this purpose.

## PHYSICAL CONDITIONS - BASIC NECESSITIES

### Opening statement

1. Living conditions in a prison are among the chief factors determining a prisoner's sense of self-esteem and dignity. Where he or she sleeps, what he or she is allowed to wear, what, how and where he or she eats, whether he or she has a bed with sheets and blankets or sleeps on the floor, covered only with rags, whether or not he or she is allowed to wash and with what frequency, whether he or she has on-going access to a toilet or has to ask (or sometimes plead with) the guard each time, all this has tremendous influence on his or her physical and mental wellbeing.
2. All chief human rights documents emphasize the right to human dignity. In fact, the **Universal Declaration on Human Rights** reaffirms this right in its first Article. **Article 10** of the **International Covenant on Civil and Political Rights** mandates:

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

The **Basic Principles for the Treatment of Prisoners** and the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** contain similar provisions in their first Principle.

3. But extremely poor physical conditions, in addition to violating a prisoner's right to dignity, may also amount to cruel and unusual punishment, may be dangerous to an inmate's health or even life, and as such, violate his or her right to be free from "**torture and cruel, inhuman or degrading treatment or punishment,**" as specified by the **Universal Declaration on Human Rights (Article 5)**; the **International Covenant on Civil and Political Rights (Article 7)**; the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** and again, in even more precise terms, by the **Body of Principles (Principle 6)**. In some cases, these conditions may be applied on purpose, to break a prisoner down, to intimidate him or her, to force him or her to testify, confess, etc., in some they result from neglect. In either event, they constitute a severe violation of one of the basic human rights.
4. The **U.N. Standard Minimum Rules for the Treatment of Prisoners (SMR)** contain several detailed articles concerning the issues related to

the material side of prison conditions and they will be discussed below.

### **Good prison conditions by creativity no less than by money**

5. As in most aspects of prison conditions, in those related to accommodation and prisoners' basic necessities, a lot depends on and can be improved through policy changes as well as creativity of the staff and not only through huge financial expenditures.
6. For the staff members in charge of setting up accommodation for inmates or making decisions about the numbers of prisoners that can be admitted to a particular institution it may be helpful to always remember that a cell is for a prisoner what a home is for themselves. They might try to picture themselves living in a particular cell and think what would matter most to them under the circumstances, what changes could be made at a relatively low cost, or, conversely, what would be the most unpleasant feature for them. With this frame of mind, they would be able to make decisions that would make the best use of the existing infrastructure and, at the same time, they would know when to draw the line.
7. Even if it is difficult to achieve meaningful improvements in the physical conditions of incarceration without investing significant sums of money, it is no excuse to subject prisoners to conditions, that violate human rights and dignity. (On this point see **'Where the Handbook starts from' paragraphs 9 and 10**).

Moreover the prison is the working environment for prison staff, who also have a right to expect reasonable conditions. In the interest of both prisoners and staff it is important that professional associations, non-governmental organizations, concerned individuals, including prison staff, and other individuals who work in prisons should draw the attention of country's political leaders to these problems and make clear that anyhow prison systems should not be burdened beyond their resources.

### **Accommodation**

#### **Cells and dormitories**

8. **Rule 9 (1)**  
**Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.**

Whilst single cells desirably should be used for single prisoners, experience has shown that it is not necessarily undesirable to forbid allowing two prisoners to occupy a single cell, provided that its space, ventilation, furnishing, sanitation etc. are up to standard. In this respect **Rule 9 (1)** is outdated. If, for special reasons, cells are to be occupied by more than one prisoner, the prison administration, however, must take all reasonable care to ensure that coercive homosexuality and any other forms of abuse do not occur.

9. A further responsibility for the prison administration is to ensure that minimum physical standards are met with respect to:
  - per capita floor space and ceiling height;
  - lighting and ventilation;
  - access to private and hygienic sanitation within the cell, or adequate opportunities to use external sanitation;
  - bedding and furniture, allowing inter alia personal effects to be stored privately.
10. **Rule 9 (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.**

Dormitory housing brings about a whole range of safety concerns. High numbers of people with criminal and sometimes violent backgrounds housed together are likely to single out some vulnerable inmates for abuse or are prone to other types of dangerous behaviour, such as gang-related activities. Per capita requirements should apply in dormitory housing. (See **paragraph 9.**)

11. For these and similar reasons extreme caution on the part of the prison staff must be exercised in particularly when using dormitory types of housing. Inmates with a history of violent behavior, either within prisons or outside, should never be housed in dormitories. Prisoners should not be housed in dormitories unless prison staff know enough about them to be able to assess their suitability to be housed together, as mandated by the Rule.
12. In order to be able to supervise a dormitory at night, a guard must inspect it at regular intervals, not longer than one hour. In addition, he or she needs to be stationed within earshot of the dormitory and be able to hear what is going on inside at all times (so that help can be summoned immediately). Inspections however should not be intrusive. They should be carried out in such a way as not to wake prisoners who are sleeping.

13. To emphasize, that accommodating prisoners in single cells according to the SMR clearly is considered to be the general rule, attention may be drawn to **Rule 86** of the SMR, stating that:

**“Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.”**

This Rule underscores the point that untried prisoners, who are considered innocent until their guilt is proven in the court of law, should be afforded conditions that are at least as good as those for sentenced prisoners. (See also **Section I paras. 41-43**).

14. It is desirable that there should be a full programme of daily communal activities. Under these circumstances prisoners spend much time in association with others. The opportunity to enjoy privacy as well as personal space becomes, therefore, important. The form of accommodation provided - single cells or dormitories - is relevant in this connection. When prisons are built or taken into use, careful consideration should be given to this aspect.

#### **Space**

##### **15. Rule 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.**

Many national prison regulations are much more specific than the SMR when it comes to the actual size, temperature or ventilation of cells. The vagueness of SMR is intentional in this place: a cell located in an extremely cold climate needs to be different from a cell located in a tropical one. The key part of **Rule 10** is that accommodation must meet all requirements of health. In other words, the administrators must take care to assure that conditions are not harmful to an inmate's health. Sleeping in extremely stuffy, or cold, or damp rooms leads to a number of ailments. Spending long hours in extremely crowded rooms, especially in those cases when prisoners don't work and do not leave the cells except for short recreation periods, may lead to muscle atrophy. Where prisoners are required to work in their cells, the work materials often crowd the place even further, while work in the cell may lead to additional health problems.

There are some ways of alleviating the effects of overcrowding using the existing resources, and any creative prison administrator will be able to come up with them. Here are a few examples:



16. In a prison where some inmates work outside of their cells and some spend the whole day in the cells, those in the latter category should be given preference in alleviating the overcrowding, because due to spending the whole day locked in, they feel the overcrowding more than the others.
17. When cell overcrowding is a big problem, prison administrators and cellblock staff should devise a plan for letting the inmates spend as much time as possible each day out of the cells (in the hallways, in gyms, in the patios, etc.) to provide additional recreation in order to ease tensions related to overcrowding.
18. Staff members should also examine inmates' distribution within the existing space. Very often they may discover that cells are not used in the best possible way or, more rarely, that some cells are empty while other ones are extremely crowded.

#### **Light and ventilation**

##### **19. Rule 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.**

Spending an extended number of hours in a badly lit area may cause permanent damage to the eyesight. Efforts should be made to assure sufficient light. Prolonged exposure to artificial light only may also be harmful both to a prisoner's vision as well as to his or her mental wellbeing. For that reason all windowless cells that currently exist (in clear violation of SMR) must be eliminated and all other cells should have sufficient artificial light, in addition to the source of natural light. Prisons that might use so called "blinds" covering the cell windows, in order to prevent visual communication between prisoners and the outside world, clearly are not acceptable.

20. Every cell should have an electric switch inside the cell, not being able to make a decision about turning the light on or off unnecessarily adds to the feeling of powerlessness and frustration on the part of the prisoner. To assess the adequacy of the lighting in each cell prison staff

members may conduct a very simple test by inspecting all cells with a book at hand and trying to read a few lines in each cell.

## Hygiene

### Sanitation and cleanliness

#### 21. Rule 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.**

Being able to take care of one's physical necessities in private and in a decent manner is extremely important to everyone but especially to prisoners whose sense of self-esteem and dignity may have already been shaken by other factors related to incarceration.

22. It is particularly important that prisoners have access to a toilet at all times. Nobody should be put in a position when one's ability to take care of the most basic physical needs depends on a guard and his or her availability or willingness to open the door and lead a prisoner to a bathroom.

23. Toilets located in or adjacent to the cells should have covers and should be separated from the living area by a wall or at the very least, a partition. This is particularly important in prisons where prisoners eat in the cell because eating in the presence of an open toilet is extremely unpleasant. Efforts should be made to provide all cells with flushable toilets; if this is impossible, containers used need to be emptied several times a day. Toilet paper should be kept in constant supply.

24. In dormitory-type cells, if supervision of toilet areas is needed for security reasons, such supervision should always be done by staff members of the same sex as the inmates.

#### 25. Rule 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.**

Being able to stay clean is one of the key factors helping prisoners to maintain their dignity. Efforts should be made to allow any prisoner the use of a shower every time he or she wants to use it. When this is impossible because of the shortcomings of the infrastructure, there

should be a schedule for showering, adjusted to the temperature and the climate of the location.

26. Ready access to hot and cold running water would obviously be the ideal situation and should be the goal of every prison; intermediate steps may be taken, however, when this is not possible. In tropical climates, prisoners may use cold water to wash themselves. If running hot water is not available often enough, arrangements may be made to be able to heat water and prisoners should be provided with wash basins.
27. Prisoners employed in very strenuous or dirty jobs should be able to take a shower at the end of each shift.

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

Prisoners should be required to keep their cells clean, the prison needs to provide the necessary supplies to do so, such as buckets, soap, mops, brooms, etc. Each prison should also devise a routine for maintaining the cleanliness of common areas of the prison, using prisoners as labor force and devising a system of remuneration or rewards for work performed. (See also **Section VI** under '**Prison Labour**').

#### **Personal hygiene and care**

29. **Rule 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.**

As stressed under **Rule 13**, prisoners' ability to maintain their personal hygiene determines to a large extent their capacity to keep up their self-respect. For this to be possible, in addition to water the prison needs to supply inmates with soap, toothbrushes, toothpaste and towels, as a minimum. When inmates are allowed to receive or buy such items from outside, the prison still has the responsibility to have these items available, since some inmates will not be able to afford them. If a prison has difficulties in providing articles to all prisoners, they should be in the first place assigned to indigent prisoners. Cellblock staff are best able to identify prisoners in most need of these items.

30. One additional thing to remember when arranging for prisoners' access to toilet articles, is to provide them with a place in which to keep toilet

articles of personal use (such as toothbrushes, for example) and the articles that are not kept in constant supply in the common areas. This needs to be done to avoid theft and fights among prisoners, but also to provide them with a sense of privacy.

31. That prisoners keep their body clean, and thus free of odor or insects, is also important to the health and wellbeing of everyone forced to spend extended amounts of time in the cell blocks, that is chiefly the prisoners, but their guards as well. Staff members should strive to make this possible, while avoiding the use of coercion.
32. Though most prisoners will eagerly take advantage of every opportunity offered to use a shower, some may not. All prisoners should be required to keep their bodies as clean as possible. This is particularly important where sleeping accommodation other than single cells are in use.
33. Special arrangements need to be made for menstruating women. They should be able to wash themselves and their undergarments as often as they need to. In addition, they should be provided with sanitary material typically used by menstruating women in the country (such as pads, tampons, cotton, cloths). It is important that these arrangements be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). In those prisons where women live with their children, provisions should be made for adequate hygienic conditions and facilities for infants.
34. It should be noticed, that personal hygiene and washing can include a religious dimension. **Rule 6** is the basic principle about no discrimination, among other things on grounds of religion. This means that prisoners should be able to undertake personal hygiene in accordance with their religious beliefs.
35. **Rule 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.**

This Rule expands the preceding one and essentially does not require further explaining. An important note, however, is due on the issue of hair, including beards and shaving.

36. Prisoners heads should never be shaved against their will, except for demonstrable medical reasons. They should also be allowed to wear facial hair if they wish so. As mandated by the rule, men who do not have beards, should be enabled to shave regularly. Obviously, access to blades or other shaving instruments may for security reasons have to be closely supervised. In addition, staff members must make absolutely sure that no shaving instruments are shared by two or more inmates. Because of the spread of AIDS (which within prison populations tends to be more severe than in the nation as a whole and thus can be quite pronounced even in countries that do not perceive themselves as “having an AIDS problem”) sharing of a shaving instrument may lead to contamination with the HIV virus and consequently, to death. Thus, in situations where, for example due to temporary shortages or other reasons, it is impossible to provide all prisoners with their own shaving instrument, inmates should wear beards rather than shave. Also, when inmates are issued or can purchase their own razors or blades, if these are not of the disposable kind, they should be stored in such a way as to avoid an accidental or intentional use by another person. Short of issuing every prisoner with a locker and a key, a guard may keep all blades in a locked cabinet, in separate containers, clearly marked with each prisoner’s name.
37. In countries where women traditionally wear make up, they should be allowed to do so in prison as well. This is a measure that does not involve security considerations nor does it require additional expenditures (it is about allowing not providing make up) yet it often can make a big difference in the way inmates feel about themselves.

### **Clothing and bedding**

38. **Rule 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.**

This Rule emphasizes two major aspects of clothing, its protective function and its social and psychological function. Clothing should therefore be appropriate for weather extremes as well as for special working conditions. But adequate and decent clothing, in addition to affecting in an obvious way prisoners’ health, also affects their morale.

This is especially true of a prisoner’s own clothing, or at least clothing, which is not a uniform. To wear one’s own clothing is a part of one’s identity and therefore increases one’s self-respect and individuality. Prison uniforms have the opposite effect. If prisoners are to be provided with clothing, civilian clothing therefore is far preferable to prison

uniforms. Whilst overalls may often be used for work it is advisable to allow prisoners to wear their own, or civilian clothing after work.

39. **Rule 88** deals particularly with clothing of untried prisoners.

**Rule 88 (1)**

**An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.**

**Rule 88 (2)**

**If he wears prison dress, it shall be different from that supplied to convicted prisoners.**

The fundamental principle of **Rule 88** is that untried prisoners shall wear their own clothing. If, however, they wear prison dress - which presumably meant a prison uniform at the time when the Rules were drafted - it is said to be different from that of convicted prisoners. The distinction in clothing was no doubt meant to avoid stigmatisation of the untried prisoner. However, if an untried prisoner is not able to wear his or her own clothing, the next step, logically, is to provide him or her with substitute civilian clothing. This should, therefore, be provided either by the prison authorities or from some other appropriate source. The second part of the Rule then becomes unnecessary so far as untried prisoners are concerned.

By implication, however, convicted prisoners wear a prison dress or uniform which can be perceived as stigmatising. This is undesirable and, indeed, already in a number of countries even convicted prisoners wear their own, or civilian clothing (jeans, for example) or a prison dress which closely approximates to civilian clothing. This is a development which is to be welcomed and means that making a distinction between the clothing of unconvicted and convicted prisoners is no longer necessary.

40. Where uniforms are still in use, or civilian clothing is provided, those should be available in different sizes, so that no inmate is required to wear inadequate size clothing making him or her look and feel embarrassed or uncomfortable. Staff members need to take care to match each prisoner with an appropriate size of clothing. For inmates with unusual body size, there may be a need to do alterations. This can be usually done by prisoners themselves, as long as they have access to sewing materials, something a guard should easily be able to facilitate. Sometimes, however, for security reasons, for example, he or she will not want to issue scissors and other sharp objects to a particular inmate or a cell. In such situations, they may arrange for other means of making size adjustments (other prisoners, or by sending the clothes outside).

41. It is also important that uniforms comply with the general clothing style of the imprisoned individuals, so that, for example, women from countries where females normally do not wear pants, are not forced to wear them.

42. **Rule 17 (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.**

Some of the issues related to this rule were discussed above, under **Rules 13** and **15**. It is worth pointing out that there is a lot that staff can do to make the keeping of prisoners' clothes clean easier. In most places, with the exception of locations with tropical climates and institutions equipped with clothes dryers, the most significant problem is the drying of the clothes. Cellblock staff, through their intimate knowledge of the institution and of its inmates, are best positioned to come up with a system for drying inmates' clothes and underwear, by designating special area or areas, providing rope to hang the clothes on, etc. Important aspects to also take into consideration while doing so are the fire safety and the safety of the garments (where theft among inmates is a problem).

43. Where clothing - this includes underwear - is issued by the prison, it should nevertheless be a personal issue to each prisoner for use during the serving of a sentence, e.g. after laundering and repair.

44. **Rule 17 (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.**

This rule is meant to protect the self-esteem and privacy of the prisoner, that is to prevent him or her from calling attention to their person when in public. Thus, when outside of the institution, prisoners could either be allowed to wear their own clothing or an inconspicuous-looking type of clothing, rather than a uniform readily identifiable as prison garb, such as for example a striped jumper or suit, or a jumper in a very bright uniform color.

45. **Rule 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.**

Where prisoners are allowed to wear their own clothing and shoes, in addition to devising a system for admission of these items from outside, it is important to remember that some prisoners may not be able to afford clothes to be brought to the prison for them or they may have no one to do it for them. This is particularly true for poor and foreign inmates. Thus, even if wearing civilian clothes is allowed, the prison still has the responsibility to provide clothing for those in need. It is important for staff members also to be attentive to the fact that some prisoners may initially not need any prison-issue clothing or shoes but when the ones the inmates had been brought into prison wear out, there will be a need for replacement.

46. **Rule 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.**

Individual, clean beds (or mats in countries where it is customary to sleep on mats) with clean bedding should obviously be the goal at every prison. Practice, however, is sometimes different. When a prison is unable to provide sufficient bedding but allows families to bring those items from outside, it is again important, as in **Rule 18**, that staff members be sensitive to the needs of prisoners without the means to secure these necessities from outside. When a limited number of such items is available in the prison, staff members should strive to allocate them to those in most need based on the above factor.

## **Food**

47. **Rule 20 (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.**

As stressed under **Rules 18** and **19**, also with food, when it can be brought or purchased from outside, it is important to make sure that those without a support system on the outside receive adequate food from the prison.

48. Any prison professional will readily admit that complaints about quality and/or quantity of food are among the most common he or she receives. One very simple, though seldom applied way, for prison staff members to assess the validity of these complaints is - on regular basis or occasionally - eat the food served to the prisoners themselves and make sure that this practice is common throughout the institution.



Other important nutrition-related factors, in addition to the quality and quantity of the food, are where, when and how often the meals are taken and with what utensils. Prison staff members should make all efforts to assure that the utensils are clean and in accordance with local customs of eating. In institutions without dining halls it is also important to arrange things in such a way that prisoners do not have to eat near badly smelling toilets.

49. Notice that **Rule 87** also deals with food. This Rule is frequently not implemented, because of practical difficulties, some of them being explained below under **para. 51**. It reads:

**Rule 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.**

50. **Rule 20 (2)**  
**Drinking water shall be available to every prisoner whenever he needs it.**

Drinking water should be available to prisoners at all times, both during the day and at night. When cells are not equipped with faucets carrying drinkable water staff members are in a position to devise a system for keeping drinkable water in constant supply. Such a system may consist of issuing prisoners with clean plastic soda bottles or other safe containers to keep the water in or a number of other arrangements, always making sure that the water is clean and that it is always in the cell, without the need for the prisoners to ask for it.

### **Outside support for basic necessities**

51. A frequent theme in the above discussion of rules relating to basic necessities has been the necessity to pay particular attention to the needs of prisoners without a support system on the outside of the prison. Even though the rules mandate that a prison system takes care of all the basic necessities of its inmates, in practice prison administrations often allow for certain goods to be delivered to the prison by relatives or to be purchased on the outside by inmates themselves. This is done to make a prisoner's life a little more tolerable, but sometimes it is also done because the prison system is unable to provide enough of clothing, food, bedding or toilets articles to all the inmates. In effect, family members are thus asked to replace what should be taken care of by the state. However, to insist on a rigid ban

of the system might unnecessarily penalize prisoners. But use of the system does not absolve the state from seeking to fulfil its responsibilities.

52. Moreover there are dangers involved in the use of this system. When some prisoners receive many more coveted objects than others, a system of hierarchy between inmates is invariably set up: a division between the “haves” and the “have-nots”. This is especially pronounced in the systems where deliveries from outside virtually replace the government as provider of the basic necessities, either due to an acute crisis or to negligence, or a combination of both. In such cases, prisoners who have no outside support are forced into virtual slavery with their more fortunate fellow inmates and perform a variety of tasks for items such as food or blankets simply in order to survive. It is very important for staff members to be attentive to a possibility of such arrangements and to prevent them, as well as to pay particular attention to the most vulnerable prisoners, i.e. foreigners and the poorest ones.

## PRISONERS' PHYSICAL AND MENTAL HEALTH

### Opening statement

1. Physical and mental health of prisoners is the most vital as well as the most vulnerable aspect of life in prison.

The **Universal declaration of Human Rights** states that:

#### **Article 3**

**Everyone has the right to life, liberty and security of person**  
and that:

#### **Article 5**

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

The **Body of Principles (Principle 6)**, the **International Covenant on Civil and Political Rights (Articles 6.1 and 7)** claim the same rights, as well as the **U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** in its preamble. The **Body of Principles** moreover explains in a note added to **Article 6** "The term cruel, inhuman or degrading treatment or punishment should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight of hearing, or of his awareness of place and the passing of time".

2. Health care consequently is of most prominent importance and prisoners' health has to be a priority of treatment in prison. The level of health care in prison and medication should be at least equivalent to that in the outside community. It is a consequence of the government's responsibility for people, deprived of their liberty and thus fully dependent on the state authority.

According to **Rule 57** of the SMR referred to in **Section I, paragraph 22**, imprisonment is afflictive by its very nature and shall not be aggravated. The Rule states that deprivation of liberty implies deprivation of the right of self-determination. When that right has been lost not only in principle, but also is impeded in daily practice by the rules governing prison regime, it will be difficult for a prisoner to take measures which he or she would consider necessary or desirable for his or her health. It is then an obvious responsibility of the government to ensure prisoners' right to life, good health standards in prison and

to guarantee healthy living and working conditions, activities and treatment which do not harm health of prisoners, and efficient and sufficient medical and nursing provisions and procedures.

### **Health care for prisoners and detainees: a matter of priority**

3. Too much emphasis can never be put on the fact that a fair trial, including a well-founded indictment, information about legal procedures and legal aid and about prison rules and facilities are essential preconditions to prisoners' mental as well as physical health. Moreover long prison sentences as such are damaging to a person's well-being. They should be imposed as sparingly as possible. Sentencing being beyond the competence of prison administrations, they nevertheless could contribute to shortening long imprisonment where appropriate and possible by making use or recommending to make use of release, parole, remission or grace. In general, seriously ill prisoners without a prospect of recovery should be released and outside care and housing with family, friends or appropriate bodies should be ensured.
4. SMR summarily mention health care for pre-trial prisoners (see **Rule 91, para. 22** of this Section). As has been pointed out in the opening chapter "**Where the Handbook starts from**", **para. 13**, the SMR should also be applied to people detained in remand centres, in police stations and other establishments. Therefore the rules about health and health care in prison and what they imply in practice, are to be followed at all places where people are detained.
5. Being imprisoned means being made powerless and dependent and often without knowledge of what will happen and how to get some hold of one's situation. It creates bitterness, aggressiveness, nervousness, stress. The frequency of visits to a doctor, excessive use of sleeping pills, tranquilizers, drugs, even efforts of suicide particularly during pre-trial detention prove it.

Mental health affects physical health and vice versa. Therefore humane living conditions, psychologically and socially stimulating treatment of prisoners are also matters of health. Likewise confidence of prisoners in the health care of the prison is a remedial factor as such. This can only be obtained if it is known to everyone in prison that for a prison physician, nurse or health worker the patient always has to have and indeed has priority over order, discipline or any other interest of the prison.

### **Health care and health care functions**

6. In order to ensure the physical and mental health of prisoners, the SMR contain rules which point at necessary provisions. Prisoners should be

informed properly about them and about procedures to make them obtainable, about the exact purpose of prescribed medicines and about the contents of their medical reports and files. There should be more openness towards prisoners about their personal state of health and about medical treatment.

### **Right to health**

7. The SMR do not look at the well-being of prisoners from the viewpoint of the prisoners. Nor are they formulated as rights of prisoners. In contrast, the **Universal Declaration of Human Rights** refer to the physical and mental well-being of prisoners as a right where they declare that **'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family ...'** (Article 25).

8. About restriction of these rights the **Declaration** provides, that:

**"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"** (Article 29. 2).

These restrictions in no way injure the right of health.

9. Both Rules mentioned in **paragraphs 7 and 8** speak about rights and thus imply a certain responsibility of prisoners for their own well-being. While deprived of some opportunities to take care of their own health, they are not deprived of their own responsibility to do so. Staff should remind prisoners of this and encourage them to exercise that responsibility, for example concerning taking exercise, washing and shaving, cleaning their teeth, smoking, keeping their living space clean. If prisoners do not accept responsibility for their state of well-being however, they should not be punished. They should be informed about health and hygiene risks, prevention of risks, first aid measures etc. Furthermore if prisoners behave irresponsibly so as to create a general health hazard to others, it may be necessary to impose measures of hygiene.

However if there are no proper provisions and opportunities to actively care for their health and hygiene, nor for timely consultation of a physician or other health officer, prisoners cannot be held responsible.

10. SMR claim that the medical service in prison **'should be organized in close relationship to the general health administration of the community or nation'** (Rule 22).

Therefore access of medical provisions in the local community to the prison and prisoners requesting medical advice from or being treated by outside services should be permitted as much as reasonable. Prison doctors themselves in particular should not scruple to refer to outside medical services, nor consider this an insult of their professional skills.

### **Quality of medical services**

11. It is often asked what the standard of health care should be. In many countries or parts of countries the medical services in the community leave much to be desired. Their actual availability may be insufficient; their accessibility, e.g. for financial reasons, may be bad. Should medical care in prisons then be better than in the outside community?
12. Neither the SMR nor any other international regulations give the impression that poor health care in prison is acceptable, if it is poor in the community. The government has full responsibility for imprisoned people, who are placed under its total authority. It is not tolerable for imprisonment to add sickness, physical or mental suffering to the punishment. Health is therefore a prime responsibility. That responsibility is even bigger, since the situation of imprisonment in itself to a greater or less extent is damaging to people's physical and mental health. Moreover and perhaps in contrast to the situation outside, but consistent with **Rule 57** (see **paragraph 2**), medical care has to be provided free of charge, as is required by **Principle 24** of the **Body of Principles** (see **paragraph. 31**).

### **Prisoners' health: a responsibility of all staff members**

13. It can be concluded from the preceding rules, that the physical and mental health of prisoners is a responsibility not only of the government and the prison administration, nor of health officers only, but also of prison staff, managerial as well as executive staff and others engaged in treatment of prisoners. Every staff member in prison should ensure that these prisoners' rights and entitlements are enforced and he or she has to contribute to it.

Mention has to be made of psychologists and social workers, who also have come to play an important role in matters of health, mental health in particular. Their profession and position in prison should be respected and supported similarly as those of health officials.

14. Attention may be drawn to the **U.N. Code of Conduct for Law Enforcement Officials**. It states in **Article 6** that:

**“law enforcement officials shall ensure the full protection of health of persons in their custody and, in particular shall take immediate action to secure medical attention whenever required.”**

This code includes prison staff, and therefore the quoted **Article 6** should be applied conscientiously by prison staff as well. Every request of a prisoner to see a doctor should be taken very seriously, answered and agreed to promptly, unless if misuse is patent. In case of doubt a request should be granted. If afterwards willful misuse is established, appropriate disciplinary sanctions may be taken, but a new request to see a doctor should never be refused by referring to a former misuse.

15. Mention may be made of Amnesty International's publication of '**Ethical Codes and Declarations relevant to the Health Professions.**' It is a compilation of selected ethical texts and comprises of statements of international professional associations of physicians, psychiatrists, nurses and psychologists, for example.

**Physician's functions: the patient is the priority**

16. The SMR, analyzed closely, distinguish three functions and related duties of prison doctors;
  1. the doctor as a **private doctor** of a prisoner;
  2. the doctor as an **adviser to the prison director** for specific matters with respect to prisoners' treatment (e.g. prison labour, regime);
  3. the doctor as a **social health and hygiene officer**, supervising and reporting about the general situation of health and hygiene in the prison.

Notwithstanding these distinctions, it should be abundantly clear, that doctors work in prison because they are doctors. They are to act like doctors, i.e. only in the interests of their prisoners/patients and without interference by others or other interests.

17. As a private doctor the prison doctor acts on request of a prisoner and on behalf of the prisoner's health. **Rules 22, 23, 25 (1) and 91** (see below) for example presuppose such function, where provisions are mentioned to ensure qualified medical care for prisoners. In **Rule 26** (see below) a general responsibility of a prison doctor is mentioned, namely that of a social health and hygiene officer. It is a preventive function, according to which a prison doctor has to see that prison conditions and provisions do not endanger prisoners' health. Other rules (see below) define a further function of a prison doctor. It is derived from the prison director's responsibility for the health of prisoners. This includes not only the arrangements for a well functioning medical service, but also the need to ensure that regime's provisions do not damage prisoners' health. To undertake that responsibility properly, a director may often ask a doctor's advice.

18. The SMR do not claim that the three medical functions should be fulfilled by different physicians, nor do they say the opposite. However desirable separate functions for separate doctors may be, it will not always be possible, so it is essential to be on the alert for conflicting situations which may arise. It should always be taken in mind however, that the first and most essential function of a doctor in prison is that of a private doctor, acting at the request and on behalf of the prisoner. Whatever further function the doctor may perform, it should never be to the detriment of the prisoner's health. For a prison doctor and any doctor the health interest of the patient comes first. The prisoner-patient has absolute priority.
19. A prison doctor's responsibility for his or her patients has a particular dimension, because a sound state of mind and physical health may improve prisoners' capacities to work at their rehabilitation. **Rule 62**, a guiding principle, is of particular relevance in this respect. It reads:

**Rule 62**

**The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.**

Undesirable and bad prison conditions not only affect insane and mentally abnormal prisoners. They exert influence on all prisoners. Therefore **Rule 62** mentions an overall responsibility of the medical services of a prison. This principle, though explicitly addressed to prisoners under sentence, is as compelling with regard to all prisoners and detained persons.

**Oath of Athens**

20. The great responsibility of a prison doctor is clearly underscored by the **International Council of Prison Medical Services** in the so-called **Oath of Athens**, which is quoted here:

**"We, the health professionals who are working in prison settings, meeting in Athens on September 10, 1979 hereby pledge, in keeping with the spirit of the Oath of Hippocrates, that we shall endeavour to provide the best possible health care for those who are incarcerated in prison for whatever reasons, without prejudice and within our respective professional ethics. We recognize the right of the incarcerated individuals to receive the best possible health care.**

**We undertake**

1. **To abstain from authorising or approving any physical punishment.**



2. **To abstain from participating in any form of torture.**
  3. **Not to engage any form of human experimentation amongst incarcerated individuals without their informed consent.**
  4. **To respect the confidentiality of any information obtained in the course of our professional relationships with incarcerated patients.**
  5. **That our medical judgements be based in the needs of our patients and take priority over any non-medical matters”.**
21. In order to improve the effectiveness of the Oath of Athens, prison directors and prison physicians should ensure that the Oath of Athens is known to all health staff, regularly or incidentally engaged in health care of prisoners. Resources and procedures are needed to ensure prompt and adequate medical help and to publicize ethical codes for physicians and nurses.

It should be a government’s duty to provide health staff in prisons with information (names, addresses etc.) about bodies responsible for medical ethics.

### **Necessary provision of services**

22. The following rules refer to necessary medical provisions as preconditions for effective medical service and health care:

#### **Rule 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.**

#### **Rule 22 (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 suitably trained officers.**

#### **Rule 22(3)**

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

23. It is obviously the first requirement of health care that a physician is available and accessible. It will not always be possible nor necessary -

depending on the size of prison - to have a physician available full time. But then it is the more necessary to ensure permanent links with outside health services of the community, as it is stated in **Rule 22 (1)**. The **U.N. Basic Principles for the Treatment of Prisoners** go as far as stating that:

**“Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9).**

As far as untried prisoners are concerned **Rule 91** of the SMR requires:

**Rule 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.**

24. **Principle 9** as well as **Rule 91** of the SMR, certainly is often not implemented because of its practical complications. Still the rules cannot be looked upon lightheartedly. Particularly because medical service in prison have always their limitations, structural and working relations with outside provisions are of major importance. Only then medical help in serious and emergency cases can be guaranteed. It happens, that prison directors and doctors do not pay sufficient attention to it. It certainly is a director's formal and initial responsibility. It is however, just as much a prison physician's duty to organize and maintain such links and to establish procedures and conditions to be observed. At the same time it is important to make sure, that 'red tape' should not obstruct a speedy transfer of patients to hospitals, nor a speedy visit to (out-patient) clinics.

**Health officers**

25. It is mentioned in **Rule 22 (2)**, that 'suitable' and 'trained' officers shall be present in a prison hospital unit. This obviously not only refers to qualified physicians, but also to qualified nurses. Qualified nurses should be present as much in prisons without a hospital unit, particularly if services of a physician are limited. They can fulfil an important role by compensating for a physician's restricted availability. In some countries in prisons even prison officers are trained to act as medical first aid officers, often referred to as health workers, to ensure that immediate help is available when necessary and that minor illnesses or wounds can be treated. (For some observations about nurses and health workers see below).
26. To ensure that responsible action can be taken, a disciplined functioning of nurses and health workers as well as systematic oral and

written reporting to the prison physician is necessary . This also applies to distribution of medicines, prescribed by the prison doctor to prisoners. It applies even more to the preparation of medicines (i.e. mixing or diluting powders and liquid medicines; preparing portions for individual prisoners). These are tasks to be carried out by qualified nurses. Prepared medicines may be distributed by health workers and, only if it is unavoidable, by regular but instructed prison officers. In such cases strict instructions and procedures drawn up by the doctor are to be followed and reporting to the doctor about any irregularities in distributing them should be prescribed. Preparation of medicines however can never be left to insufficiently qualified staff.

### **Equipment**

27. Next to sufficient and competent medical staff, medical services include good and well cared for medical equipment and treatment rooms. Rooms, medicine-cupboards and the like must be solidly locked and be accessible only by competent medical staff. Hygiene and safety also are their responsibility. Because of high temperatures in day-time in certain parts of the world, medicines are easily perishable, which requires adequate provisions to prevent it.

### **The physician as a private doctor of prisoners**

28. The most general guideline for the prison doctor is **Rule 25 (1)**, which reads:

#### **Rule 25 (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.**

This rule undoubtedly implies three things: firstly that the medical officer is a qualified physician; secondly that the prison doctor has at his or her disposal a well equipped physician's surgery and treatment room with all normal facilities and an adequate range of medicines; thirdly that the doctor is in a position and prepared to treat prisoners on the same basis as other patients.

In other words prison doctors should not just prescribe sleeping pills and pain killers, but act and be able to act at a fully professional level. Prison doctors are often under pressure to prescribe various kinds of tranquillisers for prisoners without there being strict medical reasons for doing so. The prison doctor has a duty to prescribe such medicines only when they are medically indicated for individual patients. They should never be prescribed for other reasons or under other circumstances.

**Rule 25 (1)**, seen in its context, also applies to the prison doctor's role as an adviser of the director. This combination is a difficult one, as is explained below. In particular see **paragraph 43**.

**Prompt and proper medical examinations**

29. It is for very good reasons that **Rule 25 (1)** emphasizes the prison doctor's personal responsibility to see daily all prisoners who complain of illness. Health of prisoners is generally more vulnerable than that of free citizens, due to the conditions of imprisonment, due to the behaviour of prisoners themselves, who may mutilate themselves, make suicidal efforts or who may be violated by one another. The emotional stress of imprisonment furthermore may result in physical illness. Illness however also may be pretended and health care misused. But it is only the doctor who can judge this. It should also be taken in mind, that faking illness may be a signal of a prisoner that something about his or her health and situation is wrong.
30. If a doctor is not available or immediately accessible at all times, the availability and accessibility of a qualified nurse is to be ensured for a first screening and first aid. It is also necessary to ensure that an outside doctor can and will be called in immediately in cases of emergency.
31. **Principle 24** of the **Body of Principles** requires that:

**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.**

This principle is not about the physician's duty to examine a prisoner after admission, but about the prisoner's right to be examined. He shall be offered an examination and treatment. This shall be free of charge.

32. To underline the importance of the subject and the central position of the prisoner in it, **Principle 25** and **26** of the **Body of Principles** state respectively:

**Principle 25**

**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.**

**Principle 26**

**The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results**

**of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.**

33. These rules are addressed to the prison authorities as much as to the prison physicians. Both of them however may have different views about what is **'necessary' (Principle 24)**, what are **'reasonable conditions to ensure security and good order' (Principle 25)** and about **'access to reports' (Principle 26)**. And their views may differ from the prisoner's opinion, who after all is the main subject. To comply with these Principles and to solve possible differences of opinion and interpretation, consequences have to be drawn as far as access to medical help is concerned (**paragraphs 35 and 36**), information about injuries (**paragraph 34**) and the competence of decision making bodies in case of disagreements (**paragraphs 86 and 87**).

#### **Health officers should be informed about incidents**

34. It is necessary that the doctor and the nurses are informed and take active steps to be informed about violence between prisoners as well as about use of violence, beatings, physical punishments etc. by members of staff. The prisoners concerned should be visited; immediate medical help should be provided; the director should be advised about the way of treatment of these prisoners. The same applies to suicidal efforts, self mutilation, hunger strike, sexual abuse etc. Wounds and marks of beatings, torture etc. must be investigated by a doctor, preferably an independent one. The doctor should be enabled to do this quietly, without official pressure. A 'second opinion', if required always should be allowed. It is the doctor's responsibility to report to an independent (judicial) body about torture practices and marks of physical violence by staff.

The **Body of Principles**, which explicitly forbids any form of cruel and degrading treatment (see **paragraph 1**), emphasizes that it is a duty of officials and others to report any violation to superior or other authorities or organisations **'vested with reviewing or remedial powers' (Principle 7)**.

#### **Unhindered access to medical care**

35. To ensure a fair, caring and prompt access to prison health services it is of high importance, that prison officers are instructed to take prisoners' complaints seriously, to allow them to see the medical service promptly, to develop a caring and attentive attitude, and not to judge for themselves whether a prisoner needs a doctor.
36. Requests for and access to medical help should not be thwarted by complicated forms to be filled in by prisoners. It is not acceptable that the doctor or at least the nurse would see the patient only one or more days after the complaint has been raised. Although access to medical

services should not be administratively complicated, it does not mean that no records of requests have to be taken. In matters of health misunderstandings must be prevented. Requests to see a doctor should be written down on a simple form or a special book, either by the staff or by the prisoner and signed by both. The doctor is responsible for keeping these forms or the book carefully.

**The prison doctor should explain his or her position to the prisoner**

37. Because the prison doctor mostly is acting in two functions, i.e. as a private doctor and as an adviser to the prison director, he has a strict obligation to make clear his position in advance and to explain where his obligation to confidentiality ends, about what he has to report and which matters only can be reported with the prisoner's consent.

**The physician: adviser to the prison director**

38. The second function of the prison doctor is being an adviser to the director in individual and corporate health matters. Given that health encompasses most aspects of prison life, this function should not be seen as assistance to the director for the sake of good order and safety. Although consideration of health issues may help to do so, the prison doctor should not be ordered to put his or her skills at the service of prison order and discipline. Certainly a prison doctor's function should not be combined with that of a forensic physician, acting for the sake of police investigation. This last task is not envisaged by the SMR, is not compatible with that of prisoners' private doctor and therefore combination of these functions is unacceptable.
39. A prison doctor's views are often asked with regard to punishment of prisoners, as mentioned in **Rule 32 (1) and (2)** (see **Section II, paragraphs 50-53**). This Rule is no longer consistent with viewpoints which have developed since SMR have been established. It is contrary to a doctor's profession and ethics to collaborate in the maltreatment of a person with the possibility of his or her mental or psychical health being affected, by certifying fitness to sustain certain punishments or other hardship. (On this matter see further **paragraphs 43-45**).

**The doctor to report and retain confidentiality**

40. Other Rules about a doctor's function are applicable to his or her being a private doctor as well as an adviser to the governor. They therefore have to be interpreted very conscientiously. These Rules are:

**Rule 24**

**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.**

**Rule 25 (2)**

**The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any conditions of imprisonment.**

**Rule 32 (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 necessary on grounds of physical or mental health.**

41. A doctor examining a prisoner (**Rule 24**) and being obliged to report about it, may interfere with the prisoner's right of personal integrity and privacy. Such medical reports may also have disadvantageous consequences for the prisoner's situation in prison and thereby for his or her well-being or health.
42. Examining and reporting about it for instance may lead to allocating a prisoner to a hard work section or to excluding him or her from manual work at all. It may lead to segregation e.g. of HIV or AIDS patients, thus stigmatizing them. It may lead to punishment, isolation or solitary confinement, which may even cause physical or mental damage.

**The medical officer and punishment**

43. It is stated in the **UN 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, Principle 4(b)**, that:

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

- (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.**



44. What must be avoided at the very least is involvement of a prison doctor in security or disciplinary matters of whatever kind. A prison doctor, being appointed as a clinical doctor, is not and may not be seen as part of prison management. In a dualist function as mentioned, a prison doctor should be painfully aware of not creating the impression on prisoners by attitude, words or conduct, that he or she is at the side of prison management. The advisory function therefore should be restricted as much as possible if the prison doctor has to combine it with being the prisoner's private physician. The physician in the first place, as well as the prison director, should realize, that such a dualist function is difficult to handle and it may present serious conflicts of conscience to an ethically operating doctor.
45. It has to be emphasized that nurses often are put in the same delicate position as physicians. Because of their mostly being subordinate prison staff members, their professional independence should be ensured with even more carefulness.

It should be mentioned that in special institutions, such as (psychiatric) hospitals, doctors may be managers. The potential conflicts between the management function and the clinical function in relation to the individual patient however should be recognized.

#### **Medical experimentation and research**

46. **Article 7** of the **International Covenant on Civil and Political Rights** declares, 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.**

Agreement of prisoners to undergo medical experiments in exchange of, for example, shortening of imprisonment or financial reward, is interfering with his or her free consent. Such forms of manipulation are definitely in disagreement with **article 7. Principle 22** of the (more recent: 1988) **Body of Principles** in a way which is even more restrictive:

**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.**

This principle does exclude categorically the prisoner's consent as an excuse for possibly damaging experimentation.



47. The 1964 **Helsinki Declaration** of the **World Medical Association**, reviewed in 1975, 1983 and 1989, has paid ample attention to this matter, clearly holding that the matter nowadays is of great significance. The Declaration therefore is very recommendable to prison doctors. It does not refer to experimentation in its strict sense, but to medical research. It states that 'Clinical research cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject.' It states further that 'In the treatment of the sick person, the doctor must be free to use a new therapeutic measure, if in his judgement it offers hope of saving life, re-establishing health, or alleviating suffering.' The Declaration goes on saying, that 'If at all possible, consistent with patient's psychology, the doctor should obtain the patient's freely given consent after the patient has been given a full explanation.' The Declaration makes a 'fundamental distinction' between 'Clinical research in which the aim is essentially therapeutic for the patient and the clinical research, the essential object of which is purely scientific and without therapeutic value to the person subjected to the research.' About the latter the Declaration is very detailed. It states that 'it is the duty of the doctor to remain the protector of the life and health of that person on whom clinical research is being carried out.' Further 'The nature, the purpose and the risk of clinical research must be explained to the subject by the doctor'. And: 'Clinical research on a human being cannot be undertaken without his free consent after he has been informed.' This 'Consent should as a rule, be obtained in writing.' Furthermore the person involved 'should be in such a mental, physical and legal state as to be able to exercise fully his power of choice.' And: 'The investigator must respect the right of each individual to safeguard his personal integrity, especially if the subject is in a dependent relationship to the investigator.' The last two statements obviously are of importance with respect to prisoners, in particular when rewards are offered to them in return to their consent.

#### **Transmissible diseases, including HIV infection**

48. Prisoners, who are HIV infected, suffer from AIDS, tuberculosis, hepatitis or other transmissible diseases, are often considered a risk to fellow prisoners and staff. Particularly HIV infection is felt a threat, because of it being often connected with drug use. Therefore, forced medical examination and blood testing sometimes is considered a solution. Also segregation in separate units and social isolation is practiced, although it may be discriminative (see **Section I, para. 11**). Measures taken are very different in different countries. Decisions about these matters cannot be based on irrational opinions of prisoners, staff or the general public. The basic starting points should be respect of a person's integrity and dignity and trust in a physician's medical judgement and obligation of confidentiality. The first

recommendable solution therefore is to inform prisoners as well as staff about these diseases, the real risks of infection and how to avoid them. Furthermore measures to reduce risks should be considered, like making condoms available and even syringes for drug users. However regrettable, sexual contacts among (male) prisoners and use of drugs to a smaller or larger degree are part of prison life. They are even to a certain extent effects of imprisonment. Such practices may be undesirable; certainly forced sexual contacts should be prevented and punished, either disciplinarily or by criminal law; against drug use should be fought sensibly and reasonably, but it is useless to close one's eyes to reality.

49. It is part of a prison doctor's role to take initiatives both with regard to these prison problems of growing urgency and with respect to people's privacy. The latter even more points in the direction of involvement of independent outside health services.

The complex problem as such requires special attention to the training of health staff and to a careful study of their codes of ethics, mentioned in **para. 15** of this Section. In particular clear principles should be adopted on questions of confidentiality in relation to HIV infection.

50. However there may be extreme situations, which may allow for segregation of these prisoners and even to medical tests under well formulated and very restrictive conditions. Decisions like these should never be left to a prison doctor or governor. They should be taken on the basis of specific legal regulations by politically responsible authorities and after broad expert consultations.

### **Suicide**

51. In prison self-mutilation and suicidal efforts occur. They happen generally because of mental, psychic, social or cultural problems. Therefore they should be dealt with carefully, sensitively and individually, certainly not routinely or disciplinarily. Despair about the future, the social situation in prison (e.g. sexual harassment), racial problems, different cultural backgrounds, isolation from family and friends (e.g. with foreigners or imprisonment in very distant and unfamiliar places), many personal reasons can explain such behaviour. Often the measure taken to prevent a prisoner harming him- or herself is isolation. However, isolation is the opposite of what is needed. Care and contact by trusted staff or fellow-prisoners should be the first response.

Besides, prevention of suicide and self-harm is of utmost importance. Death or serious injury of someone in custody can be damaging to staff and prisoner morale. Training staff (including specialists) about reasons

for suicide attempts, identifying symptoms, establishing strategies to support those who appear vulnerable and prescribing record-keeping procedures are essential. There should be clear operational instructions about what to do to prevent suicide and self-harm attempts.

52. All staff are responsible for these issues. Although medical staff should be informed in every case, appropriate help may be found from, for example, a chaplain, a social worker, or another prisoner. Many of the problems that lead to suicide attempts are not resolvable at all, e.g. someone's husband abandoning them. What needs to happen is that unconditional support should be offered to such prisoners immediately. It may become necessary to supervise them closely and to take items away from them that they could hurt themselves with. It is true that in nearly every case prisoners who are offered support and who recognise that staff and fellow prisoners are concerned about them become more able to cope with their situation. Outside organizations who care for the suicidal in the community may be keen to extend their work into the prison.

#### **Refusal to eat**

53. A distinction has to be made between a refusal to eat as a protest, as a symptom of mental disturbance or a free choice to end life. A refusal to eat is frequently a protest, not a suicide-attempt. Where this is the case, it is not a medical problem in the first place, but a political or social problem. It is of prime importance to realize this. Examining a prisoner who is on hunger strike and reporting about his or her condition may lead to forced feeding. It may even lead to ordering the doctor himself to administer liquid food against the will of the prisoner, thus annulling a prisoner's protest and allowing them ignore it. This definitely is unjust. As it is stated in the **World Medical Association's Declaration on Hunger-Strikes**. "... **It is the duty of the doctor to respect the autonomy which the patient has over his person.**" The W.M.A.'s Declaration recognizes the doctor's conflict to both respect the patient's autonomy, and act in what is perceived to be the patient's best interest. The Declaration, however, states, that, if a doctor **'agrees to attend to a hunger-striker, that person becomes the doctor's patient'**, with all inherent implications, **'including consent and responsibility.'** Further the Declaration states: **"The ultimate decision on intervention or non-intervention should be left with the individual doctor without the intervention of third parties whose primary interest is not the patient's welfare."**
54. Prisoners who refuse food may be disturbed, or may be trying to draw attention to their plight, or persuade someone to take or not take certain actions. Sometimes there is no logical connection between not eating and the desired effect. For example, a prisoner who refuses to

eat because he wishes the court to make a different decision is unlikely to be successful. Staff and friends of the prisoner should point this out. If sensible approaches fail, his condition should be monitored by a doctor who should advise him of the health risks involved. If necessary the prisoner should be moved to a hospital. Clear guidelines on treatment and resuscitation should be established.

55. Prison policy should be in accordance with the following principles, formulated in the **Tokyo (1975) and Malta (1992) Declaration** of the **World Medical Association** concerning a refusal to eat:

**There is a moral obligation on every human being to respect the sanctity of life. This is especially evident in the case of a doctor who exercises his skills to save life and also acts in the best interests of his patients (beneficence).**

**It is the duty of the doctor to respect the autonomy which the patient has over his person. A doctor requires informed consent from his patients before applying any of his skills to assist them, unless emergency circumstances have arisen in which case the doctor has to act in what is perceived to be the patient's best interests.**

Furthermore they declare:

**The ultimate decision on intervention or non-intervention should be left with the individual doctor without the intervention of third parties whose primary interest is not the patient's welfare**

From the guidelines the following may be mentioned:

- **Doctors or other health care personnel may not apply undue pressure of any sort on the hunger-striker to suspend the strike;**
- **The hunger-striker must be professionally informed by the doctor of the clinical consequences of a hunger strike;**
- **Any treatment administered to the patient must be with his approval;**
- **The doctor should ascertain on a daily basis whether or not the patient wishes to continue with his hunger strike.**

#### **Extreme illness and death**

56. Another problem is connected with a prisoner's state of terminal or severely incapacitating illness, or with a prisoner being in an extremely bad physical or mental condition without any perspective to improvement. Such prisoners of course cannot be neglected nor given up, although much care is needed. The obvious solution is to end or suspend imprisonment and hand the medical care over to the

appropriate community health services. According to **Rule 25 (2)**, quoted earlier, and as far as confidentiality permits, the doctor anyway should recommend the most preferable medical solution to the director.

57. Because of the complicated position of a prison doctor careful action is needed in the case of a death. It goes without saying that death in prison, regardless of its cause, has to be verified and investigated immediately by a doctor. It is desirable to have it done by an independent physician, not connected with the prison system or the ministry in charge. This should be done at any rate, if relatives of the deceased so request. Extreme caution in these matters is required, regardless of whether there is or could be a link between the imprisonment and the death, or that any suspicion of such a link might arise.
58. In all these cases a prison doctor, acting as the prisoner's private physician and as the director's adviser as well, must act with great subtlety and be extremely candid towards his or her patients about this dualist position and the consequences of it. It applies also to the prison director and other staff.

### **The physician: a health and hygiene officer**

59. The prison physician's general health and hygiene function should not be attributed exclusively to the prison doctor, although in a way it is connected with his or her function as a private doctor of prisoners and as an adviser to the director. Since prisoners live in a closed area and under restricted conditions their health situation is defined largely by this situation. Knowing the physical and mental complaints of the patients, the prison doctor is able to point at matters, which are critical to the health and hygiene situation in prison. Moreover imprisonment itself affects the health of prisoners. Therefore the prison doctor should advise about improvements of the prison regime, prison rules and methods of work, as far as they are related to health and hygiene, as is stated in the following **Rule 26**.

### **A medical officer's duty to inspect and report about health in prison**

#### **60. Rule 26 (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 26 (2)**

**The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.**

- 61. Daily exercise in the open air, as is stated in **Rule 21** (see **Section VI, para. 122**) and safety at prison work, as required in **Rule 74** (see **Section VI, paras 101-103**) should also be paid attention to by the prison doctor, although certainly not exclusively or even in the first place by him or her.
- 62. A doctor is not an expert in all matters mentioned in **para. 60**. Specialist services, as far as they are available in the community, or volunteers, specialized in some of these matters, should be involved, if possible, in monitoring the health and hygiene situations in prison, including those which are mentioned in the next few paragraphs.

**Food and hygiene**

- 63. An area of high importance and which requires expert monitoring and supervision is food, water and sanitation. Extensive attention is paid to this subject matter in **Section II**. As has been emphasized in that section, a matter of priority is good quality of drinking water and sufficient access to it. The same applies to hygienic sanitary facilities. In many countries they are below reasonable and humane standards. Especially provisions in prison cells often are horrible. Air sometimes may be polluted by use of oil, paint, other chemicals, or by smut. Clean and sufficient fresh air and ventilation are among the basic necessities of good health and hygiene.
- 64. Inspection of food and meals in prison is extremely important, though often not done regularly, frequently and in a qualified way. Inspection is not only needed of the prepared food, its preparation and the hygiene situation in the kitchen. Inspection is needed as much with regard to the distribution of the meals: Is hot food still hot when the prisoners get it? Are portions sufficiently big? Are ways of distribution and eating facilities hygienic? Special attention is to be given to the

quantity and quality of meals for young prisoners, sick prisoners and those who have to work hard.

65. The quality of food requires sound and expert supervision. The main components of food should be present in adequate qualities and adapted to climate; variation of menus is needed; account has to be taken of special diets for prisoners on religious or medical grounds; particular care should be paid to the diets of pregnant women, young mothers and their babies. These requirements are high. Even if local situations in the community with respect to food leave much to be desired, it is a governmental responsibility, that people in its care, who in fact are unable to care for themselves, are fed well and that health is ensured.

#### **Outside monitoring**

66. Instead of the prison doctor, a medical inspector of community health services could act in this function. In many countries moreover, outside bodies of volunteers, so-called supervisory bodies or boards of visitors, inspect aspects of the general health and hygiene situation and the well-being of prisoners in general. It should be given attention that the medical or related professions are represented in these bodies for matters of health and hygiene. (Inspection is extensively discussed in **Section IX**).

#### **Position of nurses**

67. The Statement of the **International Council of Nurses** (Singapore 1975) about the role of the nurse in the care of detainees and prisoners refers to the **ICN Code for Nurses**, which reads:

**The fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering ...**

The statement concludes among other matters:

**Therefore be it resolved that ICN condemns the use of all such procedures harmful to the mental and physical health of prisoners and detainees; and further it be resolved that nurses having knowledge of physical or mental ill-treatment of detainees and prisoners take appropriate action including reporting the matter to appropriate national and/or international bodies ...**

68. Nurses have a crucial function to perform in prison. At the same time generally their degree of professional independence is less than that of prison physicians. Certainly they are seen as less independent by



prisoners. Nurses may also contribute to this situation by creating an impression of being more concerned with discipline and the smooth running of the prison than with the prisoners' health.

69. Although nurses are not explicitly mentioned in the SMR, it is obvious that they are implicit in what the SMR call 'medical services'. These services cannot function adequately without doctors' assistants. Their function however is often even more delicate than that of doctors. They share with the doctors confidential information, they assist and in minor matters even may replace the doctor and therefore they have to develop a relation of trust with prisoners.

### **Supervision of nurses**

70. Practice in some countries does not always provide protection in accordance with the **ICN Code for Nurses**. The 'medical profession's secret' is not always considered to be applicable to nurse's profession. One reason is the different levels of qualifications of nurses. Another reason is that in prisons nurses, being mostly part of the executive prison staff, are subordinate to the prison director.

Moreover in some countries there are no nurses in prisons. Some nursing or assisting tasks are fulfilled by ordinary prison officers.

To act responsibly it is necessary for prison directors, leading staff and physicians, to fully respect international and national codes of ethics of nurses and other health workers and to inform them about their position in this respect. Furthermore they should ensure that nurses and health workers are not charged with tasks for which they are not qualified and about which appeals to ethical codes will not be recognized.

71. In order to avoid conflicts of conscience with nurses, they should be managed and supervised by the prison doctor, who is responsible for their work.

### **Nurses' status**

72. It is consistent with nurses being part of medical services, that they have access to the same complaints procedures as doctors and for similar reasons. Furthermore they are bound by the right as well as the duty of medical confidentiality in the same way as doctors are. The **ICN Code for Nurses** should be respected by the nurses themselves as well as by leading prison staff. It presents guidelines as to their role in the care of detainees and prisoners and in safeguarding human rights. The **ICN** (Brasilia 1983) stated in this respect:

**Nurses have individual responsibility but often they can be more effective if they approach human rights issues as a group. The national nurses associations need to ensure that this structure**



**provides a realistic mechanism through which nurses can seek confidential advice, counsel, support and assistance in dealing with these difficult situations.**

#### **Nurses' professional skills**

73. It should be a responsibility of the prison doctor to see to it, that the nurses are trained well, that they keep up with their medical expertise and that they are informed about frequent occurrence of diseases, symptoms of new or seasonal diseases and about how to prevent or in minor cases how to treat them. Special attention should be paid to identifying symptoms of AIDS, drug addiction and other transmissible diseases and how to handle them.
74. Nurses not only should be well trained as far as their medical profession is concerned, but also with respect to the way of dealing with patients. An authoritarian or patronizing way of handling prisoners, or behaviour which suggests that it is a favour to the prisoner and a privilege to be given attention, are not ways to gain a prisoner's confidence. This applies to doctors and generally to prison staff as well.

#### **Role of health workers**

75. Health workers can play a valuable role in prisons, provided that they are trained well and function under full and sufficiently intensive supervision of the prison doctor, possibly assisted by a fully qualified nurse. Their main tasks can be:
  - providing simple first aid;
  - recognizing situations which have to be referred to a professional medical officer - doctor or nurse - and acting accordingly;
  - identifying stress caused by or connected with imprisonment and reporting about it to the responsible medical officer;
  - identifying symptoms of drug addiction, abstinence of drug use, AIDS, other transmissible diseases and reporting about it as well.
76. Health workers could ensure full time availability of initial medical care. Health workers then, as a strict condition, must be well-trained and well-supervised. In prisons where regular prison officers have been trained up to a level indicated in **paragraph 78**, health workers may not be necessary. If however health workers are appointed, ordinary prison officers should not be charged with health workers' tasks.

#### **The health officer subject to conflicts of interests**

77. Since prison doctors' - and nurses' - first responsibility lies with the patients and their personal autonomy, it is of utmost importance for

them to make that clear to their patients and thus create a basis of trust with prisoners. On the part of the director it is of prime importance to respect that relation of confidentiality between doctor or nurse and prisoner, asking a doctor's advice only when urgently needed and discussing beforehand about the desirability of medical advice and its possible consequences.

78. If for special reasons, for example at the intake of prisoners, it is necessary to have them examined, doctors always are to inform a prisoner what a specific examination is about and what it is for. It contributes to a trustworthy relationship. If possible however, doctors should leave prisoners a choice and a responsibility, so that they can decide for themselves to allow the examination or not. If prisoners refuse to be examined, it may be necessary to take measures in proportion to health risks, which are suspected by the doctor. However, prisoners should not be punished for it. It would be an interference with their right to personal integrity.
79. Carefulness of health and medical care of prisoners should be ensured by national guidelines, including check lists of diseases, physical and mental complaints which the prison physician has to observe. Files of patients should be composed in conformity with these guidelines.

**Principle 26** of the **Body of Principles**, quoted in **para. 32**, clearly underlines these requirements, where it states that **'the results of such an examination shall be duly recorded'**, and that, **'access to such records shall be ensured'**.

Patients and representatives designated by them, do have the right to know the contents of their files and reports and to read them. If a prisoner is transferred to another prison, it is the physician's responsibility, that prisoners' medical files are handed to the physician of the other prison, while respecting the prisoner's privacy. If desirable from a medical point of view, the prison doctor should advise a prisoner at his or her release from prison, whether certain medical information should be passed on to the prisoner's outside personal physician.

Measures should be taken, to ensure, that the confidentiality of medical records and the patients' rights of access to them are respected after release.

80. Doctors too should not report to the governor without informing the prisoners concerned about the reports' content. As has been said earlier, international rules have defined that prisoners are entitled to know what is in the reports. It would be preferable for a doctor to leave it to the prisoner to inform the governor about the outcome of an examination or not.

81. In fact there are only a few situations, where the doctor has to inform the governor, i.e. when the interest of the prison community or the community outside is at serious risk. These situations are hardly different from those, where a doctor in the community has to report to public authorities about patients causing health risks. In most other situations it can be left to the prisoner to report about his or her health situation, when he or she thinks it necessary. A prisoner should allow the prison director or the responsible staff member to have that information checked with the doctor. In case prisoners do not wish to reply to reasonable and purposeful questions of a competent staff member about their health conditions, the taking of regime measures mostly will suffice. These measures however should never be of a disciplinary nature, in order not to devalue the prisoners' rights in this highly private and vital area of personal life.

### **Right of prisoners to complain about health care**

82. **Rule 36 (1)** of the SMR reads:

**Every prisoner shall have the opportunity each week day to make requests or complaints to the director of the institution or the officer authorized to represent him.**

The same is established in **Principle 33** of the **Body of Principles**. It is therefore important that complaints procedures are developed. Obviously this general Principle also refers to complaints about health care. Complaints procedures should include provisions about involvement of independent health (complaints) bodies, who are competent in matters of medical care. These bodies should be competent to review decisions, to order second opinions or treatment by another physician, to advise authorities about necessary improvements of health services and access procedures and about measures to be taken to ensure professional quality and conduct of health personnel. (About complaints see also **Section II**).

83. Complaints procedures must be known to prisoners to be effective. It inspires confidence if written as well as oral information is given at admission of the prison by a nurse, or by an intake officer together with further information about prison rules and facilities.
84. Independent health authorities furthermore should be involved in monitoring the health care situations in prisons and the application of the standards of medical ethics issues in general.
85. Besides, where such vital interest as health is at stake, access of prisoners to the civil judge and to a disciplinary body of the official professional organization of physicians or nurses should be made possible.

## **Health officers' appeal procedures**

86. The responsibility of a prison doctor and prison health officers in general for prisoners' health and his or her way of performing it, may give rise to problems between the doctor and the prison director. Conflicts also could arise about a doctor, charged with the dual or triple function mentioned before, not acting properly according to a director's opinion. The first way to solve their problem of course is by sensibly and frankly discussing them between each other. That however may not always work. In that case, precisely because of the doctor's delicate and mostly multi-functional position, as well as because of his or her medical expertise, such conflicts need involvement of an independent body, acceptable to both parties and competent in both areas.
87. Formal procedures about how to deal with such matters are needed. It is not only in the interest of doctors and directors, but also of prisoners. It strengthens confidence that health care is considered of great value and problems are dealt with impartially. It is strongly recommended to create also complaints procedures for doctors and health officers in general. Their prescriptions about treatment of patients, or their advices with respect to their advisory and social hygienic functions, may not always be followed at the detriment of individual or general health situations. If such provisions do not exist, the functions of health officers become enfeebled.
88. Since health matters are so crucial in prison, general supervision of the medical practice and the health situation is needed. The attention paid to health care in prisons in international legal instruments are compelling reasons to introduce independent and qualified bodies to ensure regular oversight of medical practice, of effectiveness of links with outside health services and of sufficient resources.

## **Specific health care for some groups of prisoners**

89. **Principle 5 (2)** of the **Body of Principles** in particular stresses 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. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.**

### **Health provisions for female prisoners (and their babies)**

90. The SMR have emphasized the urgent need of special provisions for pregnant women and mothers with babies.

**Rule 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 institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.**

**Rule 23 (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.**

91. Although in different countries different viewpoints are held about the best solutions with respect to imprisoned mothers, some very basic provisions should be guaranteed. The recommendations of the Human Rights Watch Global Report on Prisons (New York, 1993) deserve to be quoted:
- Female inmates should be given sanitary napkins or substitutes and have daily access to showers or their equivalent during menstruation;
  - work and educational opportunities should be available on an equal basis to both men and women;
  - where visits to female inmates are severely limited because of the long distances relatives must travel, the authorities must make efforts to compensate (by subsidizing relatives' travel or through some other system);
  - pregnant prisoners should be given regular pre-natal checkups and an adequate diet;
  - nursing mothers should get an adequate diet;
  - efforts should be made to facilitate mothers' contacts with their children and their right to direct their upbringing.
92. Prisons for women are not, or are poorly, differentiated nearly everywhere. As a result the amount of security is mostly high, certainly far higher than what is generally necessary for women. Prison work for women is little and uninteresting. Prisons are built for men and often hardly adapted to the special needs of women. In some countries not even their vital needs with respect to menstruation, pregnancy and motherhood, are met as is indicated in the afore-mentioned Human Rights Watch Global Report on Prisons. These conditions affect adversely women's health situation and their state of mind. Moreover, women in prison may be vulnerable to abuse, including rape, by some prison staff.

Prison doctors and nurses, therefore, should pay explicit attention to women, their conditions and their complaints. Gynaecological care for female prisoners should be guaranteed.

### **Treatment of drug addicts**

93. A matter of growing concern in prisons is the treatment of drug addiction. The SMR do not explicitly mention the need for drug treatment, because it is a rather recent phenomenon. Moreover in free society consensus of treatment methods does not exist. It should be considered a prudent line of conduct not to have one physician decide all by him- or herself about treatment of a particular prisoner or of prisoners in general. Consultation of colleagues or experts in this area and/or decisions on the basis of recent and well documented reports, should be obligatory. Agreement of the respective prisoner, who has to be well informed, is absolutely necessary. National guidelines therefore should be strived at. They should include rules about use of drugs on order of a doctor. This is still forbidden in some countries, but at least for reasons of medical treatment it should be permitted.

Guidelines are necessary concerning procedures for medically supervised detoxification, so that the risk is avoided that some prisoners are forced to withdraw from drugs without medication or support. For persistent drug addiction and HIV infection, see **paragraph 48**.

### **Care for mentally ill and unbalanced prisoners**

94. Assuring a sufficient degree of well-being of prisoners is particularly difficult as well as important as far as insane and mentally abnormal prisoners are concerned and prisoners under serious psychological stress. **Rules 82 and 83** of the SMR deal with this matter. They read as follows:

#### **Rule 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.**

#### **Rule 82 (2)**

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

#### **Rule 82 (3)**

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

#### **Rule 82 (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.**

#### **Rule 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.**

95. The amount of prisoners in need of psychiatric care is rising in many countries. One reason often is that psychiatric institutions and services in the community are overburdened with patients. Therefore, psychiatric patients who have committed offenses are often not admitted. Mentally disturbed and insane persons, however are not seldom neglected and abandoned in prison. Long term prisoners may develop mental and psychic disturbances by imprisonment itself and by being cut off from their families. Mental problems also arise and may become chronic in big prisons, where there is much overcrowding; where there are few activities; where prisoners have to stay a long time in their cells in daytime; where the prison population is undifferentiated; where criminal subcultures have developed and brute domination by prisoners occurs. These situations often coincide with and are aggravated by insufficient staff to control the prison, let alone that staff have sufficient personal contact with prisoners; that they know who are in need of specialist help and that they can exert a relaxing influence on the prison climate. Moreover cultural differences may pose special hardship and emotional confusion to foreigners and members of minority groups.

These reasons underline the necessity for prison staff to pay special attention to prisoners in psychic or mental trouble and to try and ease their situation individually. It is obviously an even bigger responsibility for medical and psychological staff.

96. To comply with **Rules 82 and 83 (paragraph 94)**, a relaxed atmosphere is the basic requirement. It is characterized by caring attitudes of staff, by an organization which enables staff to know prisoners and report their needs, and by procedures ensuring that prisoners' requests and prison officers' reports (oral and written ones) are taken seriously and dealt with promptly. Only in such situations, is it possible to detect prisoners in need of psychiatric care in the first place. Only then may it be possible to try and have them allocated, according to degree of urgency, to psychiatric institutions or to provide them with all adequate help which is available in prison and possibly after release.
97. In order to guarantee proper and adequate attention and treatment it is of special importance to keep records of mentally disturbed prisoners, or those who show abnormal conduct. Prison doctors or psychologists should be charged with instructing prison staff members to report regularly about these prisoners' behaviour.

In (sections of) prisons for these categories of prisoners, reporting



systems and regular evaluation of reports have to be developed. Special emphasis should be put on qualified staff. It should be emphasized that even in psychiatric hospitals for prisoners practices are not always in conformity with these Rules. It frequently happens that patients are forgotten for a long time.

### **Prisoners under sentence of death**

98. It is mentioned in the initial chapter about 'Where the Handbook starts from', that the SMR and other international rules about treatment of prisoners do not exclude from application people sentenced to death. The United Nations and other international and national organizations strive for the abolition of the death penalty. In spite of all reasonable objections however the death penalty still exists in many countries.
99. The UN General Assembly resolution 2857, dated 20 December 1971, affirmed that "in order fully to guarantee the right to life, provided for in **Article 3** of the **Universal Declaration of Human Rights**, the main objective being pursued is that of progressively restricting the number of offenses for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries."

The UN Economic and Social Council adopted resolution 1989/64, in which it declared itself "Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty". It recommended that "member states take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

- (a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;
- (b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;
- (c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;
- (d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution."

### **Resolution on physician participation in capital punishment**

100. As a consequence of the death penalty and of states' provisional decisions not to execute the death penalty, the situation of prisoners on death row requires urgent and intense attention. Conditions are usually far worse than those of other prisoners, because of increased



isolation, even for long and indeterminate periods of time - and lack of privacy -, inactivity and bad basic physical provisions. These conditions gravely damage death sentenced prisoners' mental, spiritual and physical health. Everything has to be done to ensure that at least humane living conditions, activities and communication facilities are provided, as well as professional psychiatric help. Conditions of prisoners on death row at the very least should not be worse than those of other prisoners.

101. In the context of health care, the role of health officials with respect to the execution of death penalties is to be considered. SMR do not deal with this matter. Reference may be made however to **para. 43** of this Section and to other international instruments. The **World Medical Association** on this matter has adopted in 1981 the following **Resolution on Physician Participation in Capital Punishment**:

**“it is unethical for physicians to participate in capital punishment, although this does not preclude physicians certifying death”.**

The Secretary-general of the **World Medical Association** issued the following press release in September 1981 with the endorsement of the Assembly:

**The first capital punishment by intravenous injection of lethal dose of drugs was decided to be carried out next week by the court of the State of Oklahoma, USA.**

**Regardless of the method of capital punishment a State imposes, no physician should be required to be an active participant. Physicians are dedicated to preserving life.**

**Acting as an executioner is not the practice of medicine and physician services are not required to carry out capital punishment even if the methodology utilizes pharmacological agents for equipment that might otherwise be used in the practice of medicine.**

**A physician's only role would be to certify death once the State had carried out the capital punishment.**



## PRISONERS CONTACT WITH THE OUTSIDE WORLD

### Opening statement

1. The very idea of imprisonment implies that the interaction and communication of inmates with the outside world is seriously reduced. “The encompassing or total character is symbolized by the barrier to social intercourse with the outside and to departure that is often built right into the physical plant, such as locked doors, high walls, barbed wire, cliffs, water, forests, or moors” (Goffman, *Asylums*, 1961, p. 4). Practical as well as humanitarian considerations militate, however, against this very core of the concept of imprisonment.

### Retained rights

2. General human rights to interaction and communication are not abrogated by the fact of imprisonment. Under prison conditions, there must be certain necessary limitations to some of these general rights. The question as to how far these limitations will go, will, however, be debatable. This issue is not dealt with by the SMR, it is, however, made explicit by **Principle 5** of the **Basic Principles for the Treatment of Prisoners**:

**Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the state concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.**

### Reintegration goal

3. The principle that prisoners retain, within certain limits, human rights and freedoms, is connected to the idea that prisoners generally return to society and should reintegrate as normal citizens. Therefore contacts with the outside world are an essential part of the prisoners' reintegration into society. This idea is most clearly spelled out in the SMR, where it says “**the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it**” **Rule 61 (1)**.

The quantity and quality of family and other contacts need to be enhanced in order to fulfil whatever limited crime preventive role the

prison may have. To unduly restrict family contact is to undermine the alleged function of the prison. While **Rule 61** is formulated with sentenced prisoners in mind, it is applicable and should be applied to all prison situations under **Rule 4**. (See **Section I, paragraphs 3,4 and 21**.) For a broader discussion of **Rule 61**, see **Section VI**.

#### **More or less open institutions**

4. In what follows, different kinds of outside contacts will be distinguished: contacts with family and friends, professional and institutional contacts and other relations with the outside world. It is clear that all of these can be more easily achieved under conditions of open or half-open prisons. There the principle of normalcy (see **Section I, paragraph 31**) can prevail more easily than under conditions of secure confinement. Prisoners should be transferred to open institutions as much as possible and as early as this can be responsibly done. If, however, these open institutions are far away and difficult to reach, prisoners may legitimately prefer to stay in proximate prisons, even if these are less open.

#### **Contact with family and friends**

##### **5. Rule 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.**

##### **Rule 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 such restrictions and supervision as are necessary in the interests of the administration of Justice and of security and good order of the institution.**

Prisoners' outside contacts must be seen as entitlements rather than as privileges. They should, therefore, not be used as either rewards or punishments. To deprive prisoners of such contacts as a disciplinary sanction should be unacceptable, except where a specific abuse of the exact contact was the offence. With respect to family contacts any such deprivation should be avoided.

#### **Links with family: a basis for reintegration**

6. Both **Rules 37** and **92** focus on family links. They can be seen as an application to prisoners of **Article 12** of the **Universal Declaration of Human Rights**, where it says that no one shall be "subjected to

**arbitrary interference with his privacy, family, home or correspondence.”** This may be even more important inside prison as on the outside. Very often, near relatives will be the only ones to keep in touch with an offender over long stretches of imprisonment. Also, it is well known that to be separated from one’s family and friends is among the most acute pains of imprisonment. Furthermore, there is the notion that links with the family (and the wider community) constitute the most solid basis for social reintegration (**Rules 61 and 79**). While family contacts may be important for most prisoners, they constitute a special problem for young prisoners and parents of small children respectively.

### **Contact with friends**

7. It would be wrong, however, to restrict prisoners’ outside contacts to just their families. Many prisoners are unmarried, divorced or separated from their partners. In other cases, the prisoner may not wish to have contact with relatives. Therefore, the language of the rules must not be construed too narrowly. Relatives should be seen as one important example only of external social relations that need to be preserved, strengthened or re-established. This point has been clarified by **Principle 19** of the **Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment**, which make family members only one important example of people entitled to visit a prisoner:

**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.**

It must be questioned, whether it is reasonable when **Rule 37** restricts contacts to ‘reputable friends’ only. First of all, the notion of ‘good repute’, with its strong social class connotations could be abused to rule out visits from many friends of most prisoners. Secondly, even a narrower concept of repute inevitably focusses on past decisions. To prohibit a visit because the visitor is, for example, a former prisoner is indefensible as long as all continuing relationship of prisoners with close friends and family members is of extreme importance. It is therefore good practice to restrict such contacts only when specific incidents or information make this unavoidable in the interests of security.

### **Information about transfer**

8. Notification of the detention and of any transfer is a necessary prerequisite to any communication and interaction with family and

friends. This also serves as a safeguard against “disappearances” and incommunicado detention. The SMR make it a right of the individual prisoners themselves to pass on the information of his or her imprisonment. The fact that this is particularly important when a person is first taken into custody is recognized by a special Rule, i.e. **Rule 92** quoted in **paragraph 5**.

The same applies to any transfer to another institution:

**Rule 44 (3)**

**Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.**

This applies to police cells, remand prisons, psychiatric prisons and any other place of detention. The message of these rules is re-affirmed in **Principle 16 (1)** of the **Body of Principles**, which states:

**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.**

Information about transfer is not only a right of prisoners but also of their children. **Article 9.4** of the **Draft Convention on the Rights of the Child** (1989) obliges the State Parties to the Convention to provide the child or, if appropriate, another member of the family “**with the essential information concerning the whereabouts of the absent members of the family.**”

9. Notification of imprisonment or transfer shall be made “at once” (**Rule 44 (3)**) or “without delay” (**Body of Principles 16 (4)**). It is to be deplored that **Principle 16.4** of the **Body of Principles** allows the notification to be delayed “**for a reasonable period where exceptional needs of the investigation so require.**” Good practice would seem to require notification within twenty-four hours (Human Rights Watch Global Report on Prisons 1993, p. 107). By implication, if the prisoner is unable to write, the prison authorities are responsible for helping him or her get the information out. This is made explicit in **Principle 16.3** of the **Body of Principles**:

**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 this principle. Special attention shall be given to notifying parents or guardians.**

### **Placement near home**

10. The importance of maintaining links with family members and friends has implications first of all for the placement of prisoners. If prisoners are placed a long distance from their homes, this makes visiting (as well as home leaves) more strenuous as well as more costly. This point is taken up by **Principle 20** of the **Body of Principles**, which require that:

**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.**

The possibilities of a transfer to a place closer to home should be discussed with every prisoner soon after his or her arrival in the prison. In many systems such a transfer may be particularly difficult with respect to female prisoners, since the few women's prisons may not be in the right places. If, on the other hand, a permanent placement near home is not feasible, temporary transfer for visiting purposes are a helpful practice. In the case of foreign prisoners, the implication is that they should, if possible, be able to serve the sentence in their home country (cf. **Model Agreement on the Transfer of Foreign Prisoners**, adopted by the Seventh UN Crime Congress, 1985).

### **Letters and telephone calls**

11. Correspondence as a means of maintaining outside contacts is mentioned explicitly. Traditionally, there have been rather restrictive regulations in this area. If all letters are to be read and censored by prison staff, the flow of letters has to be kept at a minimum. It appears, however, that only in extreme cases such censorship represents a **"reasonable condition and restriction"** in the terms of the **Body of Principles (Principle 19)** quoted above. As a rule, therefore, there shall be no limits imposed on the number of letters a prisoner may send and receive and the number of correspondents he or she may have. This applies also to correspondence between prisoners. In some systems, only incoming letters are checked. If the goal is to prevent contraband from entering the prison, the letters need not be read, but only checked for illegal enclosures. Good practice requires this to be done in the presence of the prisoner, in order to avoid any appearance of invading the prisoner's privacy.
12. In order to facilitate needy prisoners' correspondence, it may be necessary to supply them with the necessary writing utensils and with stamps. As indicated, this applies, in principle, to all categories of prisoners. For prisoners under arrest and awaiting trial, **Rule 92** allows, however, **"such restrictions as are necessary in the interests of the administration of justice and of the security and good order"**

**of the institution.”** This somewhat more restrictive language makes obvious amends to those criminal justice systems working in the inquisitorial tradition. From the point of view of the presumption of innocence (**International Covenant on Civil and Political Rights, Art. 14 (2)**) any such restrictions are, however, problematic.

13. Neither the SMR nor the **Body of Principles** explicitly mention telephones. If a country has a developed network of private phones, this can, however, be an important means for prisoners to maintain contact with their family and friends. In such countries, telephone communication should therefore be treated very much like correspondence: “This term covers all forms of communication over distance, i.e. by telephone, telegram, telex, telefax, as well as by mechanical or electronic means of communication” (Manfred Nowak, *Convention on Civil and Political Rights Commentary*, Kehl 1993, p. 304). The normalcy of telephone communication can be stressed by having regular telephone booths in prisons. In many prisons this is still seen as impossible because the coins necessary for operating pay phones are not allowed. The invention of card telephones has to a large degree, done away with that argument. The possibility to talk over the phone is, of course, of particular importance for those prisoners who do not know how to read and/or write. If prisoners’ families and friends live far away from the place of imprisonment, visits are more difficult and telephone calls can serve as a substitute. In South Africa, for example, most inmates are allowed to substitute a visit for an up-to-ten-minute phone call (Human Rights Watch *Global Report on Prisons*, 1993, p. 107).

#### **Visits**

14. Visits are a more powerful medium of external social relations than letters or telephone conversation. As a rule, they should allow for physical contact. Physically separating visitors should be resorted to only in exceptional situations. Conditions in which visits are conducted are of great importance to maintaining social links and for preserving prisoners’ dignity. Staff should be specially trained for conducting visits in an atmosphere of human dignity.

Where prisoners are not allowed out, visits are the most obvious opportunity to smuggle drugs, alcohol, money and arms into prisons. If staff spend a disproportionate amount of their time on playing a policing role centred on searching and taking disciplinary action against smugglers, there will be a high negative cost to staff-prisoner relationships. The establishment and maintenance of security is at least as dependent on sound relationships as on policing. In practice this means that a balance has to be struck between providing humane and welcoming arrangements for visits and the need for supervision.



15. It is a good practice in some prison systems to allow longer visiting hours if the visitors have to travel a long distance. Sometimes, even special rooms, houses, trailers etc. are provided for the prisoners to meet their long-term visitors in an atmosphere that allows for more privacy and intimacy. This is particularly important for visits with all the family, including children. "In normal circumstances and where special security considerations do not apply, families need to be able to sit down together within sight but out of hearing of prison staff" (Introduction to Human Rights Training for the Commonwealth Prison Officials, London 1993, p. 110). The same must be true for the visits of close friends.

### **Intimate visits**

16. In some prison systems, sexual contact between prisoners and their visitors is discouraged. In other systems such contact is tolerated. In still others they are openly allowed, cf. e.g. the following report from Costa Rica: "In principle, conjugal visits with private rooms are authorized in all establishments .... The form taken by visits varies according to the regime: Permission to go into the yard under minimum security, more strictly controlled fortnightly visits under maximum security. There are also bedrooms set aside for conjugal visits where couples may stay for between four hours and a night". (International Prison Watch, Lyon, 1994 p.45). While this system is usually referred to as "conjugal visits", making it seem like a privilege of married prisoners, it is often extended to unmarried couples. The SMR are unfortunately silent on this specific matter. The principle of normalcy (**Rule 60 (1)**) implies, however, that sexual contacts between prisoners and their partners should be allowed, if this is possible under relatively normal conditions. Whenever sexual contact is permitted, contraceptive precautions (e.g. condoms) should be available to prisoners and their visitors.

### **Prison leave**

17. The most natural way of enhancing a prisoners contact with the outside world is by way of prison leave (home leave, furloughs etc.). If the prisoner can periodically go home, this can at least alleviate some of the problems that are caused by imprisonment itself (including the sexual and relation problems of prisoners and their partners). If possible home leaves should be granted on a regular, periodic basis and to clearly defined groups of prisoners. If it is granted as a privilege, by rather arbitrary decisions and as a reward of good conduct, it not only devalues home leaves as a means of maintaining family ties and social contacts, but also may cause feelings of unfair treatment.

An interesting compromise solution between visits and leave is known in Germany as "Besuchsausgang" (leave-instead-of-visit). Suitable prisoners are permitted to meet their visitors outside prison walls for

the visiting time allotted to them. For prisoners and visitors this has the advantage that the visit is conducted under conditions of their choosing. For the prison it has the advantage that visits may be granted irrespective of possible shortages in visiting areas and staff.

#### **Contact for foreign prisoners**

18. As far as outside contacts are concerned, foreign nationals are not to be treated differently with respect to the above. There may be, however, a greater need of assistance. The Seventh UN Congress on the Prevention of Crime has, therefore, made the following recommendation: 'Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners'. (Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice, 1992, p. 109).

#### **Professional and institutional contacts**

##### **Contact with a lawyer**

19. Contact with a lawyer can be of utmost importance in a situation of imprisonment. Such contact needs to be unobstructed and confidential. The SMR have recognised this fact as far as prisoners under arrest or awaiting trial are concerned:

##### **Rule 93**

**For the purpose of his defence, an untried prisoner shall be allowed 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 institutional official.**

20. But the situation is no different for other kinds of prisoners. In addition to the purpose of defence, legal assistance may be necessary to shorten the stay in prison or to ameliorate prison conditions. Furthermore, legal assistance may be needed for reasons not immediately connected to the fact of imprisonment. This more encompassing nature of contact with lawyers has been recognized by the **Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (Principle 18)**. It was also incorporated into **Principle 8** of the **UN Basic Principles on the Role of Lawyers**:

**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.**

These privileges of confidentiality and non-interference apply to all of the forms of communication discussed above (correspondence, telephone, visits etc.). This means that prison officials may not open lawyers' letters, listen in on lawyers' phone calls etc. Possible doubts about the lawyers' credentials have to be settled before the privileged communication begins.

#### **Contact with religious representatives**

21. Much of what has been said about contacts with lawyers applies equally to contacts with representatives of a religion or an ethical society. This can be based on the right to freedom of thought, conscience and religion, as laid down in **Article 18** of the **Universal Declaration of Human Rights**. (See also **Article 18** of the **International Covenant on Civil and Political Rights**). The right to privileged contact with religious representatives is made explicit and elaborated upon in the SMR:

#### **Rule 41 (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.**

The SMR remains silent on the conditions under which visits by religious representatives are to be conducted. Because of the highly private nature of such encounters it is good practice to conduct those visits, very much like lawyers' visits at least out of hearing of any prison officials.

#### **Contact with public authorities and agencies**

22. There are no international rules on prisoners' contact with members of the administration, the courts, the legislature or parliament. In many countries, however, such contact is privileged, i.e. letters are not censored, visits are not supervised. This is good practice since it permits prisoners to vent their grievances without fear of reprisal by prison officials. The same should apply to contact with international organisations, notably with the UN Human Rights Commission and other human rights bodies.

23. In the spirit of the guiding principles of the SMR, notably **Rule 61**, efforts should be made to encourage and facilitate contacts of prisoners with probation or rehabilitation bodies and other community agencies, which are, as **Rule 61** states, “**charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies**”.

**Contact with diplomatic and consular representatives**

24. Foreign nationals have to be enabled to communicate with their countries’ diplomatic or consular representatives:

**Rule 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.**

**Rule 38 (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.**

As the language of the Rule indicates, such contact should be ‘allowed’, but never made by the prison administration without the consent of the prisoner concerned.

25. In **Article 36** of the **Vienna Convention on Consular Relations** (24-4-1963) there are even more specific and legally binding rules on this subject for those states signatory to this convention:

**(a) Consular officers shall be free to communicate with nationals of the sending State and have access to them. Nationals of the sending States shall have the same freedom with respect to communication with and access to consular officers of the sending State;**

**(b) If he so requests, the competent authorities of the receiving State shall without delay inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be**

**forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;**

- (c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.**

Not all prisoners will want the diplomatic representatives of their country to know about the fact of their imprisonment. It is therefore good practice for the prison administration not to volunteer information about a person's imprisonment without the person's consent. Prison authorities should primarily inform prisoners about their rights under **Rule 38** and under the **Vienna Convention**. This includes the right to contact their embassies and/or consulates. But it should be observed that the Vienna Convention (in **Article 36.c**) also establishes a right of prisoners to oppose action on their behalf by their consular or diplomatic representatives.

It should be mentioned that the international Red Cross (ICRC) has a responsibility to assist foreign prisoners in countries where these prisoners have no permanent diplomatic or consular representation, where the ICRC is requested as a neutral intermediary and where the ICRC has a permanent delegation or has regular access to those countries.

## **Other retained rights**

### **Media contact**

26. Direct human contact is the most important but by far not the only outside contact prisoners are entitled to have. To **“receive and impart information and ideas through any media”** is among the **Universal Human Rights (Article 19 Universal Declaration of Human Rights)**. The freedom of opinion, expression and information is even more forcefully stated in **Article 19** of the **International Covenant on Civil and Political Rights**:

**Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**

Restrictions of the freedom of information are sometimes justified by reference to public order. But it must be stressed that particularly strict requirements must be placed on the necessity of a given statutory restriction. "Restrictions on prisoners' freedom of information, widespread in many states are permissible only when they are provided by law and are absolutely necessary to prevent crime and disorder in the prison" (Manfred Nowak, Convention on Civil and Political Rights Commentary, Kehl 1993, p. 357).

27. The SMR use comparatively restrictive language:

**Rule 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.**

While limitations to media access are frequent in many countries, the necessity thereof will not frequently be demonstrable. In view of this and also in the light of the principle of normalcy **Rule 60 (1)**, it is good practice to allow prisoners, as a rule, complete access to all media that are legally available outside prison. Exceptions to this rule should be limited to reasons of safe custody, i.e. material which would facilitate escape from custody or insurrection inside the prison. It is not good practice to restrict access to information on the grounds of treatment. "Treatment depends on the maintenance of contact with the outside world. Systematic deprivation of the news of current events cannot therefore reasonably be regarded as a form of treatment - particularly of treatment designed to ensure that released prisoners take their place as fully participating citizens in civil society" (Van Zyl Smit, South African Prison Law and Practice, 1992, p. 207).

28. From this starting point, **Rule 39** appears as an additional obligation of the prison administration to provide access to "**the more important items of news**" even to those prisoners who are for some reasons unable to get this information on their own. The most important newspapers and other periodicals should be available at the prison library. It is good practice to allow prisoners to subscribe to any periodical that is legally available outside the prison. Private organizations should be encouraged to provide poor prisoners with free subscriptions of newspapers or other periodicals.
29. One very efficient way of giving prisoners access to outside information is by providing them with the opportunity to listen to radio programs or watch television. This means that the prison will have to

provide radios and/or television sets. Usually this is done in communal rooms, where prisoners can spend their time after work together. In countries where radios and/or TV sets are normal equipment in most households, the principle of normalcy will speak in favour of allowing prisoners to have their own radio/TV sets.

### **Prisoners' property**

30. Property is among other things, a means of establishing and retaining identity. In prison, having personal things is an important way of retaining some connection with the outside world, of holding on to some personal identity. According to **Article 17** of the **Universal Declaration of Human Rights**:

#### **Article 17 (1)**

**Everyone has the right to own property alone as well as in association with others.**

#### **Article 17 (2)**

**No one shall be arbitrarily deprived of his property.**

This holds for prisoners too, even though the conditions of confinement will often make it impossible to make much use of their property. They may, however, make free dispositions about their property, i.e. sell it, lend it etc. By the same token, they may acquire new property by way of inheritance, presents or by buying it. The prison administration must not interfere with such transactions.

31. The SMR regulate only the safekeeping of prisoners' property by the institution:

#### **Rule 43 (1)**

**All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.**

#### **Rule 43(2)**

**On the release of the prisoner all such articles and money shall be returned to him except insofar as he has been authorized to spend money or to send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.**



**Rule 43 (3)**

**Any money or effects received for a prisoner from outside shall be treated in the same way.**

**Rule 43 (4)**

**If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.**

This Rule is rather self-explanatory, as far as the safekeeping is concerned. Since it is normal practice, it is implicit that the prisoner gets an identical copy of the inventory and the receipt mentioned in **paragraphs 1 and 2** respectively of the Rule and that they are also signed by the prison officer in charge. The Rule also indicates implicitly, that the prisoners may retain some of their property even in prison. Regulations that do not allow the prisoners to have any of their own things with them in their cells should be reviewed. Very often security considerations can be dealt with in other ways than by prohibition. In order for radios and TV- sets not to become caches for drugs or weapons they can be sealed. As a minimum, prisoners should be allowed at least some personal items with them in their cells (e.g. photographs of their family or friends).

**Prisoners' voting rights**

32. In some countries, voting rights may be taken away as punishment or as a consequence of conviction for some particularly serious crimes. With respect to unconvicted prisoners, the presumption of innocence argues for the full retention of the right to vote, even in such countries. Traditionally, the suffrage is denied to prisoners without legal basis, simply because of their incarceration. Under **Article 25** of the **International Covenant on Civil and Political Rights**, however, the '**right and opportunity**' to vote is granted today, to every citizen, subject only to '**reasonable restrictions**'. The fact of incarceration in itself hardly necessitates the taking away of the vote. It is therefore good practice for the prison staff to assist prisoners in the exercise of their voting rights.
33. There may be difficulties for prisoners to follow the election campaign and form their own opinion as to which candidate to choose. As of right, they should, however, be allowed to follow the political debate through the media (see **paragraph 25**). Depending on the type of prison, candidates may also be allowed to come into the prison and address their potential voters directly. This may also be organized through prisoners' councils.
34. The voting itself can be organized in a number of different ways. In some countries mobile polling booths are brought into the prison.



Sometimes even polling boxes are brought into individual cells. In some countries prisoners have the opportunity to vote by post (mail ballot) or to vote by proxy.

35. While it is not always easy to solve some of the practical problems for casting the ballot in prison, it is usually much more difficult to run for election from the prison cell. Even in countries where the law does not explicitly deny prisoners the right to run for elective office, practical problems are usually considerable. This applies particularly to the limited possibilities of prisoners to campaign, hold meetings, address the media etc. A real election campaign will usually require a temporary release from prison. In case the national laws do not provide for such an interruption of the sentence, campaigning may still be possible under some sort of prison leave arrangement. Given the importance of elections for the democratic process, it would be good practice to exercise in such cases any discretion the prison authorities might have in favour of a prisoner running for elective office.

### **Notification of death and serious illness**

36. Not infrequently, people die in prison. Suicide rates in prisons are higher than outside, as is the rate of HIV/AIDS infection. This is a cause for serious concern. There will frequently be questions as to whether the prison authorities have been directly or indirectly responsible for a prisoner's death. Terminally ill people should not be in a prison (**Rule 25 (2)**). Rather they should be transferred to a hospital (**Rule 22 (2)**) or handed over into the care of their relatives. At any rate, the SMR require of the prison authorities to notify relatives and/or friends of the impending or actual death of a prisoner.

#### **Rule 44 (1)**

**Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of a mental affliction, 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.**

#### **Rule 44 (2)**

**A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.**

In case of the prisoner's death, serious illness, injury or transfer to a mental institution, the prison director is charged to take it on himself

to make the necessary notifications (**Rule 44 (1)**). This implies that the prison authorities ask every new prisoner at intake to indicate persons that should be notified in addition to or in place of the family. In the case of a prisoner's death good practice requires notification within twenty-four hours. In warm climates even shorter notice may be necessary. In any case, prison authorities have to take proper care of the body of the deceased person.

37. By the same token, the prisoner has to be informed immediately whenever the prison authorities hear about the death or serious injury of a near relative. It is good practice not to be too formalistic about the term "near relative", which may be subject to cultural variations. Parents, siblings, spouse and children will, however, always fall into this category. If the illness of the near relative is "**critical**", i.e. in the case of impending death, the prisoner should be allowed to see the person, "**whenever circumstances allow**". Although participation of the prisoner at the funeral of a near relative is not explicitly mentioned, the same logic should apply there too.

## PROGRAMMES FOR PRISONERS

### Opening statement

1. Programmes for prisoners are founded on **“the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”** (Preamble to the **Universal Declaration of Human Rights**). This principle is reiterated in other international law on human rights and reflected in the SMR. There is an obligation under international law to treat prisoners with respect for their human rights, but beyond this there is little explanation of what “treatment” of prisoners in terms of regimes and activities should entail. The binding instruments of international law do not extend to this level of detail. However, it is clear that people are sent to prison as punishment, not for punishment and that treatment of prisoners must therefore not be punitive.
2. The SMR reflect a treatment philosophy. The main references to treatment in the SMR, are applicable to sentenced prisoners. Provisions in the second part of the SMR may also be applied to prisoners awaiting trial and civil prisoners **“where their application may be conducive to the benefit of this special group of persons 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”**. (Rule 95)

### From prisoners’ treatment to assistance of prisoners

3. When the SMR were framed “treatment” implied reformation of the prisoner; for that reason it was applied primarily to prisoners convicted and sentenced for criminal offences. That treatment philosophy has been overtaken by more recent thinking. Indeed the SMR themselves make allowance for such change: the **Preliminary Observations** make it clear that the SMR **“cover a field in which thought is constantly developing”**. (Rule 3)
4. Time has moved on. Confidence in prison institutions’ ability to reform offenders has given way to more realistic expectations about the effects of imprisonment. The emphasis has shifted towards providing prisoners, of whatever status, with assistance and opportunities to develop their individual potential and to cope positively with their return to society. This view is grounded in the reality that today’s prisoner is tomorrow’s ex-prisoner. It is in the

interests both of the prisoner and of society to promote the prospects for resettlement through positive treatment in prison. (N.b. even when a life sentence operates, there should always be some prospect of release; long term programmes for life prisoners are necessary to help their eventual return to society).

### **Dynamic security**

5. The SMR were written at a time when treatment and security considerations were seen as diametrically opposed. The SMR make few references to security, although keeping prisoners in custody is undoubtedly a primary function of prisons. In the SMR security is seen as a limiting factor on treatment. The concept of dynamic security was not recognised at the time when the SMR were framed. Instead there was a one-sided obligation on the part of the authorities and prison staff to ensure treatment and security. It was seen as their duty to ensure treatment as they had to ensure security. Nowadays, on the basis of long and hard experience, it has become clear that treatment is not a one-sided activity. Treatment cannot be successful unless the prisoner concerned co-operates. Terms such as 'assistance' and 'self-help' reflect that conviction.
6. It is now generally acknowledged that prisons run safely and positively with the co-operation of prisoners. External security (freedom from escapes) and internal safety (freedom from disorder) are best ensured by building positive relationships between prisoners and staff. This is the essence of dynamic security: security depends upon good relations within prisons and on positive treatment of prisoners.
7. Programmes are of central importance. Resource problems cannot be used to justify not providing programmes for prisoners. (See **Human Rights Committee of the U.N., General Comment 21 (44) 6 April 1992**).
8. The risk of future offending behaviour may be reduced by assisting prisoners to develop as mature individuals with a sense of responsibility. This entails treating prisoners with decency and respect for their human rights, making clear their choices and the consequences of choice and offering assistance for self-development. (The term treatment is used in a broad and general sense).

### **Guiding principles: person not prison-oriented**

9. The ethos outlined in the SMR concerning how to treat prisoners rests on certain guiding principles set out as the introduction to the second part of the SMR (**Rules 56 to 64**). These span the issues of

security, classification, care and resettlement. The principles include:

- minimising the suffering inherent in imprisonment;
- normalising prison life;
- encouraging a law-abiding and self-supporting life on release;
- providing assistance according to individual needs;
- facilitating a gradual return to life in society;
- emphasising prisoners' continuing part in the community.

In addition programmes are guided by the Basic Principles set out at the beginning of the SMR, including the principle of non-discrimination. This means that the disadvantaged require special programmes to achieve equality.

10. The prisons have a major role to play in putting these guidelines into practice. Government, too, has an obligation to educate and encourage the general public and local communities to play their part in realising these principles.
11. Many of the guiding principles could apply to all prisoners regardless of status:

**Rule 56**

**The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.**

**Rule 57**

**Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.**

**Rule 58**

**The purpose and justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.**

#### **Rule 59**

**To this end the institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.**

12. The broad range of assistance to prisoners described by the SMR includes emphasis on moral and remedial forces. Today there is greater recognition that real change and self-development comes from choice. The risk that reformatory zeal can lead to coercion is not inconsiderable in settings such as prisons which are coercive by nature.

#### **Community oriented prisons**

##### **13. Rule 60 (1)**

**The regime of the institution should seek to minimise 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.**

##### **Rule 60 (2)**

**Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organised in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.**

##### **Rule 61**

**The treatment of prisoners should emphasise not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of the prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.**

The idea of making prison life as normal as possible has developed in recent years. (See **Section I, para. 31** about the principle of normalcy). There is a growing recognition that to exacerbate the deprivation of

imprisonment is not only unjustifiable but also reduces the chances of resettlement on release and so increases the risk to society, if the ex-prisoner returns to crime as a means of survival.

#### **How normal is prison life?**

14. Prison by definition is not normal. Attempts to make prison more like normal life can never counteract the deprivation that loss of liberty entails, but may reduce the alienating effect of imprisonment. Initiatives to maintain prisoners' links with the outside world are an important part of making prison life normal, as are facilities to allow prisoners to wear their own clothes, and to clean and cook for themselves. Provision for such activities serves several purposes. Reducing the difference between life inside and outside prison encourages independence and responsibility, gives practice in basic skills and reduces reliance on services provided by the prison administration.
15. However, this approach should not be used by prison administrations as an excuse for doing nothing when prisoners are unable to provide for themselves. For example, if prisoners do not own adequate clothing, the prison administration is under an obligation to provide it. Prisoners may then be responsible for keeping it clean, using facilities provided by the prison.
16. The SMR recognise that relations with the outside world are an essential part of prison life and the foundation of programmes for resettlement in society. It is too late if these programmes begin at the end of the sentence. Prisoners need to maintain such ties from the outset of custody.

#### **The well-being of problematic prisoners**

##### **17. Rule 62**

**The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.**

The health and well-being of the prisoner is intrinsically bound up with his or her prospects of development and eventual resettlement. Although it is clear that people who are mentally ill do not belong in prison, this does not remove the obligation to provide for the psychological as well as physical well-being of all prisoners. **Rule 22** stresses this obligation in its definition of the role of the medical officer (see **Section IV**).

18. Other specialists have a role to play in relation to the prisoner's physical and mental well-being. For example, in some systems drug dependence is a major problem among prisoners; psychological

assistance, counselling and therapy from specialists and specially trained prison staff are as important as detoxification care and education to reduce health risks, including HIV transmission.

#### **Different groups, different programmes, different security**

##### **19. Rule 63 (1)**

**The fulfilment of these principles requires individualisation of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.**

##### **Rule 63 (2)**

**These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.**

##### **Rule 63 (3)**

**It is desirable that the number of prisoners in closed institutions should not be so large that the individualisation of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.**

##### **Rule 63 (4)**

**On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.**

This part of the SMR emphasises the link between security and treatment considerations. It introduces the idea of selection of prisoners, implying a careful assessment of the sentenced population.

20. Implementing individualised treatment based on flexible classification involves providing different programmes geared to different groups of prisoners. The more varied the provision, the greater the range of skills required of staff working with prisoners. This has implications for the selection and training of people working in prisons and differentiated selection and training depending upon the kind of institution and of prisoners.
21. The SMR suggest separation of categories of sentenced prisoners by institution or by unit (section of an institution) as a way of balancing



treatment as well as security and safety considerations. The idea of variations in levels of security for different groups of prisoners is introduced but not fully developed.

22. Traditionally security has meant that whole institutions were categorised according to one level of security. It is possible in practice to have units within institutions with different levels of security. Security does not simply involve perimeter safety, but also has to do with degree of mobility of prisoners.

**Units: the human scale**

23. Even if it is impossible for reasons of economics to provide separate open institutions, it may still be possible in practice to create more open conditions within a closed institution, by allowing certain classified groups of prisoners greater mobility.
24. The division of institutions into separate units designed to cater for different treatment needs can be a more economical basis for individualising treatment. Units of manageable size allow work with individual prisoners, particularly if the units are organised on a team basis so that staff are selected and trained to work on particular units with particular groups of prisoners.
25. The rules express the inherent tension between individualised treatment and economies of scale. In practice it may be possible to minimise cost and maximise use of expensive facilities by efficiently organised sharing of facilities among units within large institutions. However, experience indicates that despite the poverty of regimes and facilities in some smaller institutions, prisoners prefer them because there they feel more like individuals.

**Right to social perspective**

26. **Rule 64**

**The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him and towards his social rehabilitation.**

The SMR acknowledge that the process of preparation for release and resettlement begins in prison and continues after release and that there is a need for continuity of assistance spanning this period. This argues for close liaison between such organisations and prison administrations during sentence. Increasingly it is recognised that resettlement depends on practical assistance (e.g. with accommodation and work) as well as helping to combat negative attitudes.

27. **Rule 70**

**Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of the prisoners in their treatment.**

The SMR speak of “privileges” as part of the approach to treatment of prisoners. This is a somewhat outmoded concept of incentives for good behaviour and co-operation. Today the emphasis has shifted towards choice and responsibility, rights and obligations. Prison administrations tend to see the provision of a range of useful opportunities for prisoner activity and planning of individual persons’ imprisonment by setting realistic targets as a way to encourage positive behaviour, co-operation and responsibility. (N.B. in **Rule 70** and some other Rules of the SMR the term ‘class’ is used instead of ‘category’. Because of its social connotation the word class is avoided in this Handbook.)

28. It is important that prisoners understand about the rules of the institution and the options available to them. Sometimes those options may be quite limited. Treating prisoners like adults and explaining the limitations of choice is more important than making the choice for prisoners. Prisoners need to make informed choices; this means understanding the consequences of choices, including the choice not to co-operate. In this way the individual prisoner accepts responsibility for his or her behaviour.

## **Differentiation and individualisation**

### **The prisoner: a responsible person**

29. This section of the SMR explains in greater detail the treatment approach introduced in the guiding principles.

#### **Rule 65**

**The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of 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.**

#### **Rule 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.**

**Rule 66 (2)**

**For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.**

**Rule 66 (3)**

**The report and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.**

30. These rules describe in detail the kinds of elements to be included in programmes for prisoners. Such an approach may seem far removed from the mundane problems facing some prison systems, such as providing adequate accommodation and food for prisoners. It is, however, a direction in which prison administrations can develop, even in simple ways, by encouraging staff to see prisoners as individuals and to give them responsibility for their day to day lives whenever possible.

**Therapeutic programmes**

31. The SMR point towards but give no details concerning therapeutic programmes, that is programmes geared at addressing behaviour problems, including offending. Programmes, such as anger control and learning how to say 'no', can assist prisoners to understand and modify their behaviour, contributing to rehabilitation.

Specialist programmes are required for severe problems such as sexual offending; an integrated approach is important, drawing on the skills from different disciplines.

32. In many systems, as in society generally, dependence on drugs (including tobacco and alcohol) presents problems for behaviour and for health. As well as security measures to reduce the entry of illicit drugs into prisons, there is a major task for prisons to address dependence.

33. Humane detoxification and long-term harm reduction programmes are needed, linking the medical and social aspects of therapy. (See **Section III**). Health education and risk prevention need to be incorporated into programmes for all prisoners, taking gender, age and cultural background into account. The prisoner population is at potential risk through drug use and sexually transmitted diseases, such as HIV. Many prisoners have had little or no access to health education outside prison. Custody carries an obligation to provide programmes both for the health of prisoners and for public health generally.
34. Therapeutic programmes work largely by informing and encouraging; experience indicates that voluntary participation by prisoners is a necessary condition for such programmes to operate effectively.

### **Freedom of belief and worship**

35. Spiritual support and assistance should always be available. Since freedom of religious belief is a basic human right (see **Section I, paras. 15 and 16**), prisoners should be given the opportunity to avail themselves of such services of their own free will. This should also apply in the case of prisoners in distress, solitary confinement, suicide-attempts, hungerstrike, severe illness and death. Such services are also important in the event of family illness or bereavement.

#### **Religion: a right not a duty**

36. Personal responsibility is at the basis of the standards for care with respect to religion. **Rule 41** and **42** deal with that. They see religion as a right of the prisoner, not as a duty for the prisoner.

##### **Rule 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.**

##### **Rule 41 (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.**

##### **Rule 41 (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.**

#### **Rule 42**

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

37. The SMR take a pragmatic position on group worship. Numbers and facilities will dictate whether group worship is practicable for those belonging to minority religions within an institution's prisoner population. However, it is important that this numerical difference should lead to as little differentiation as possible. In particular, when a state religion operates, care must be exercised to ensure that the institution does not merely provide one place of worship, adorned with the objects of worship of the State religion. If worshippers of other faiths have to share the place of worship, religious objects of worship should be removable, so that they do not give offence to other groups.
38. Needless to say, a prisoner who embraces extreme religious convictions which prejudice other people's freedoms, for example one who believes in violence in the name of religion, has no right to exercise those convictions and the prison administration is obliged to protect others from the consequences of such extreme convictions.

#### **Religious care and treatment**

39. The inclusion of religious care as part of prison treatment (See **para. 29, Rule 66 (1)** above) owes much to historical attitudes towards reformation and rehabilitation. Although some prisoners are helped to change their attitudes and behaviour through religious conviction, there is also a danger that coercion may occur, particularly when a state religion operates.
40. It is essential that in any treatment programmes for prisoners religious norms should not be used indiscriminately to judge a prisoner's progress towards self-development. A prisoner should not be judged as immoral or incorrigible because his or her religious convictions differ from prevailing religious norms.

#### **Needs assessed, imprisonment planned**

41. **Rule 66 (1)**, (quoted in **para. 29**) lists factors which could form the basis for prisoner assessment. This implies a sophisticated assessment process, which in practice requires time and skilled staff. Psychiatric input in the assessment process is suggested. Few systems have this level of sophistication at present and if there is psychiatric input, it tends to be limited to the most serious cases, for example lifer prisoners.

### **Staff training in assessment skills**

42. Training of staff in counselling and assessment skills may be a useful means of moving in the direction of skilled assessment of prisoners. This may be combined with the development of assessment teams involving people from different disciplines. Where specialist skills are not available at individual institutions, a practical alternative is to provide centralised units for assessing and allocating prisoners after sentence.
43. The requirement for updating clearly reflects the fact that prisoners' needs change over time. The process of updating entails regular feedback on individual development. Even if the initial assessment is carried out by a centralised assessment team, effective planning and treatment will depend on local staff developing the necessary skills to amend and carry forward treatment plans. This has implications for training of local staff.

### **Planning: a continuous process, starting at admission**

44. The planning of an individual person's imprisonment has implications for the way in which prisoners are dealt with from the moment they first enter custody after sentence.

#### **Rule 69**

**As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.**

The planning process involves finding out about the individually sentenced prisoner. The SMR describe the prisoner as a passive participant, but experience indicates that imprisonment planning works best when the prisoner is actively involved in the planning process.

45. **Rule 69** applies specifically to prisoners of suitable sentence length (presumably excluding those with very short sentences to serve, for example days or weeks rather than months). However, where it is clear that an unconvicted prisoner will be held for a long period before trial, the prison administration cannot avoid all responsibility for planning a useful programme to suit the individual's needs, always provided that the prisoner wishes this and that his or her rights as an unconvicted person are in no way prejudiced.

### **Classification: a flexible system**

46. The SMR stress that systems of classification:
  - safeguard prisoners' rights;

- protect groups of prisoners;
- determine necessary levels of security and control; and
- provide different activities to suit individual needs.

**Rule 67**

**The purposes of classification shall be:**

**(a)**

**To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;**

**(b)**

**To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.**

**Rule 68**

**So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.**

47. The Rules define both negative and positive reasons for classification and separation. The negative reason is associated with traditional theories of contamination and risk reduction. The positive reason is based on individual needs with respect to rehabilitation or self-development.
48. There are tensions between the negative and positive reasons for classification. Implementing classification means balancing these potentially competing priorities. In practice classification according to security risk often takes priority, for the convenience of the institution. Counteracting this tendency has implications for the staff training: it must emphasise relating to prisoners as people. Care and treatment skills are important security and control techniques. Indeed effective interpersonal skills often make traditional security and control techniques unnecessary, except as a last resort in exceptional cases.
49. Classification and separation are linked in the SMR. The object would seem to be to emphasise the important distinctions between categories of prisoners and to increase the likelihood that the distinctions will be observed in practice through treating prisoners individually.
50. In practice classification does not always coincide with separation; separation is often a costly method of dealing with prisoners. Especially in overcrowded conditions separation of distinct categories of prisoners may quickly vanish and the distinctions between them become obscured.

51. Classification systems often form the basis for security and control restrictions. Without classifications, security tends to be geared towards prisoners posing the highest risk of escape and control towards prisoners posing the highest risk of disruption. This may result in the imposition of unnecessary restraints on individual prisoners. When classification is relatively crude, some prisoners may still be restricted unnecessarily, but at least the majority of the prisoner population is not limited by maximum security and control restrictions which are usually justifiable only for a minority.
52. The dangers of rigid classification should not be overlooked. Prisoners classified as 'dangerous' may find it difficult, if not impossible, to live down this labelling, particularly when special secure units or maximum security prisons exist exclusively to hold such prisoners. Review and reassessment are important features of any humane classification system which seeks to balance security and rehabilitation. They should be scheduled and conducted with reasonable frequency and with sensitivity to the individual prisoner's development.

#### **Removal of prisoners**

53. An important aspect of the care and treatment of prisoners concerns their needs and even rights when being transported. The more differentiated a prison system is, the more prisoners will be moved from one place to another, according to their individual plans. Transport of prisoners however often presents specific difficulties and causes hardship. This is in particular the case, where pre-trial prisoners are transported from prisons to courts and vice versa. Rightly therefore the SMR have paid attention to it:

#### **Rule 45 (1)**

**When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.**

#### **Rule 45 (2)**

**The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.**

#### **Rule 45 (3)**

**The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.**

54. In practice prison life affords prisoners little privacy. They are generally subject to scrutiny by institutional staff for security reasons. The right



to privacy is upheld in the SMR specifically in respect of protection from the public gaze during transportation.

55. Transportation of prisoners is a time when abuses can easily occur. The prison administration is responsible for the care and well-being of transported prisoners, even though the prisoner is no longer in the institution. The same standards of care and conditions apply during transportation. This means that the task of transporting prisoners should only be undertaken by staff equivalent to trained prison staff (see **Section VII**).
56. It is important for accompanying staff to understand, that being exposed to public view while handcuffed and being guarded closely encroaches upon their feelings of human dignity. It causes emotional stress, however much such measures may be considered necessary. Therefore it would be advisable for those, who are in charge of removing and transporting prisoners, to take time before departure to explain to prisoners, where they are going, for what reason, if they will be handcuffed, why this is necessary during which stage of the transport; whether they will or could be exposed to public view, what is done to prevent it and how they could help to prevent it themselves. Here too explaining what will happen and why is an important way to ease tension, which often is raised by transports, and to create a relaxed, respecting and trusting atmosphere.

## **Differentiation and protection**

57. **The International Covenant on Civil and Political Rights** establishes separation of individuals in custody by age and legal status (**Article 10**). Classification and separation of prisoners by gender, legal status, offending history and age reflect a practical approach to the potential vulnerability of different groups within the prisoner population and the need for protection. There is also recognition that men and women, alleged offenders and convicted offenders, civil and criminal detainees, young and old, have very different histories and different needs with respect to treatment or self-development. **Rule 8** specifically points to these questions. It reads:

**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 reasons for their detention and the necessities of their treatment. Thus:**

### **Rule 8 (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;**

**Rule 8 (b)**

**Untried prisoners shall be kept separate from convicted prisoners;**

**Rule 8 (c)**

**Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;**

**Rule 8 (d)**

**Young prisoners shall be kept separate from adults.**

**Gender**

58. The risks of sexual abuse, assault or harassment impose a clear obligation on prison establishments to protect prisoners. It should be remembered, however, in this respect that such risks may not be confined to the prisoner population nor to the opposite gender.
59. Special attention should be paid to sexual abuse of women in prisons and to its prevention. With respect to this, rules are necessary about very careful psychological selection of staff - male and female - , about close supervision of (male) staff, about frequent visits of medical staff to female prisoners and their living areas and about easily accessible complaints procedures including independent bodies.
60. In most prison systems women represent a very small minority. From an economic viewpoint separate provisions of facilities for them is disproportionately costly and tends to be limited. The economic pressure to mix by gender is strong, but mixing does not in practice eliminate women's disadvantageous position; they will still be the minority within mixed institutions. Where it is impossible to provide equal and separate facilities for women, women should have a choice of separate and equal access to shared facilities.
61. Careful attention has to be paid to the requirement that women should not be placed in men's prisons. In some countries mixed prisons exist for well selected prisoners, intensely supervised and living in a balanced, prospective regime with highly qualified staff. Also in some countries women may work or study together with male prisoners, again under substantial supervision. According to **Rule 3** (see **Section I, para. 4**) such deviation from the rules is acceptable, if the spirit of the rules is maintained. Putting men and women together in prisons should not be done against their wishes. Ample provision should be made for a considerable amount of individual privacy for the female prisoners, or at least separation out of working hours. Close supervision should be ensured by well selected and sufficient staff

members as well as effective and qualified assistance in case of problems or complaints.

### **Legal status**

62. The Rules classify prisoners by their different legal status (prisoners under arrest and awaiting trial, convicted prisoners and civil prisoners) and recommend that prisoners be separated on the basis of these distinctions. **Rule 85 (1)** reads:

**Untried prisoners shall be kept separate from convicted prisoners.**

63. The separation of prisoners according to legal status is backed up by **Article 10** of the **International Covenant of Civil and Political Rights** and underscores the special rights of the unconvicted person to presumption of innocence and the guarantees of defence in law embodied in **Article 11.1** of the **Universal Declaration of Human Rights** and **Articles 9, 14** and **15** of the **International Covenant of Civil and Political Rights**. (See **Section II**).
64. In theory, if a separate institution is specifically designated for unconvicted prisoners, this might increase attention to their special rights and needs (bail information, facilitation of communications with lawyers or legal advice services). In practice, institutions exclusively concerned with the unconvicted often provide less, both in terms of services reflecting legal rights and programmes of activities, than institutions holding unconvicted and convicted prisoners.
65. For example, facilities for work may be more scarce in separate institutions specifically for unconvicted prisoners; since unconvicted prisoners cannot be forced to work, provision of work opportunities are often seen as less of a priority. (See **paragraphs on Prison labour**, below).
66. Against this background, some prison systems justify departure from the separation rule on the grounds that separate facilities for unconvicted prisoners means in practice poorer facilities for them. Because economies of scale are less possible with separate institutions, resources are spread more thinly, with consequent disadvantage to prisoners. However, the economic argument in favour of combining prisoners from different classes, at least in terms of shared facilities for activities, translates in practice into a differential system in which the unconvicted are again at a disadvantage. Provision of services inevitably tends to be focussed on the most constant element of the prisoner population, namely the sentenced prisoners who are there for a predictable length of time.

67. The unconvicted and civil prisoners represent marginal groups who generally have least or no access to facilities, even though the unconvicted may be a substantial proportion of the total prison population. Little or no provision of programmes for the unconvicted cannot be justified because of the transitory nature of their custody. In reality in many prison systems unconvicted prisoners spend more time in custody than prisoners sentenced to short terms of imprisonment.

### **Age**

68. Age limits are not defined in the SMR, so that although a distinction is made between young and old prisoners, it is not clear what this means in practice. The same is true for juveniles, who are defined under the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) Rule 2.2 (a)** as persons **“who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”**.
69. Under the **Beijing Rules** juveniles **“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”**. (**Beijing Rules 13.4 and 26.3**).

The same principle is contained in the **International Covenant on Civil and Political Rights (Article 10.2 (b))**. Similarly **“every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”**. (**Draft Convention on the Rights of the Child, UNICEF 1989**).

70. In some jurisdictions a simple distinction is made according to chronological age. The age limits vary across cultures. Chronological age may not always reflect real distinctions in maturity among prisoners.
71. In other jurisdictions the age distinctions are more complex, depending both upon chronological age and upon behaviour. Thus in certain jurisdictions an age limit for adult criminal responsibility may operate for all offences except the most grave; e.g. when a young person normally excluded from the adult criminal justice process commits very grave offences, that individual may be considered adult for the purposes of dealing with that offence.
72. **Rule 85 (2)**  
**Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.**

This rule additionally underscores the presumption of innocence and the special need to protect against the potentially adverse influence on young alleged offenders of older convicted offenders.

73. Some prison systems, with reference to normal life outside, justify age mixing among female prisoners, but in practice mixing younger and older women prisoners is sometimes used as a control mechanism as the older women prisoners may have a calming effect on the young. Mixing male prisoners by age may be more problematic. The more extensive and more serious prior criminal records of male prisoners are, the more they may increase the adverse effect of age mixing on young male prisoners. Bullying and victimisation of the young and vulnerable may be more prevalent among the male prisoner population, especially where a macho culture prevails.
74. Sexual abuse and even torture of young prisoners is not unknown; they may be particularly at risk where mixing of adults and youngsters occur. In some prison systems control of younger prisoners is managed by placing an older prisoner with them in multiple occupancy rooms. This can give rise to abuses.

#### **Protection of prisoners against prisoners**

75. In practice some institutions classify according to whether prisoners are likely to be victims or aggressors or neither and separate their prisoners into these groups. Into this equation come factors such as physique, personality, sexual orientation and nature of the offence; some offences, particularly sexual offences against children, carry particular stigma and increase the likelihood that the prisoner will be the subject of violence. Institutions have a duty to protect all prisoners equally.
76. In some systems vulnerable prisoners are segregated for their own protection. Often these prisoners are held in cells identical to those used for punishment. They may have little or no access to the opportunities offered in the prison's normal regime. The effect is tantamount to punishment. (See **Section II**).
77. In the past sexual offenders were seen as the major group needing protection from other prisoners, or from staff, in some systems. It appears that there are more and more of these vulnerable or disadvantaged groups: HIV positive prisoners, the mentally disordered and the educationally subnormal.

#### **Formation of gangs**

78. Formation of gangs in prisons can leave some prisoners, especially young ones, vulnerable. Drug dealing in prisons creates pressures on non-users and weaker prisoners.

### **Separation of vulnerable prisoners: not a preferable option**

79. It is important that prison administrations adopt a positive approach to protecting prisoners. Separating prisoners from other prisoners because they are vulnerable or on their own request certainly is not the most preferable solution. On the contrary, it may lead to protection on protection. Often it is only an embarrassment-type solution. Forming small groups of prisoners, of which some vulnerable prisoners are part, may be a better solution. In such groups these prisoners are regarded as individuals and such groups can be controlled better. Although this may not be possible for all groups of vulnerable prisoners, it may be tried for some of them.

### **Babies in prison**

80. Neither the SMR nor other instruments address the treatment of babies or small children held in custody with their mothers (see **Section III**). The dilemma of whether or not to detain such young people is a real one. The interests of the child are paramount. Bonds with the mother are of great importance at this early stage. When small children are detained with their mothers, they are not prisoners in the ordinary sense and their treatment must reflect that fact. They must be cared for in accordance with recognised outside standards of child care. This includes health care and provision for stimulation. Unless a baby or small child is taken out of the prison environment every week to see the outside world, learning and emotional development may be retarded and adaption to society jeopardised.

### **Professional assistance of staff**

81. All prisoners, including vulnerable prisoners, need programmes addressing their needs. These should include advice and care for HIV positive prisoners, psychological care, remedial education and therapeutic programmes for sexual offenders. In extreme cases their needs may not be met in prison, but require some other form of custody or care.
82. In addition training of staff should emphasise a professional approach towards all prisoners, regardless of offence or handicap, and challenge prejudice and stigmatising attitudes among staff and prisoners.

### **Prison activities: associative, constructive and non-exploitive**

83. The SMR recognise that inactivity and boredom are among the worst aspects of imprisonment. Because overcrowding is a common feature of prison life, it is particularly important that provision for activities involves occupying prisoners out of their cells during the day.

84. The basic standards regarding activities stress that the normal situation outside prison should apply to activities undertaken in prison. The recommended norm is for prisoners to be out of cell during the day and occupied in useful activity and for the activity to be a meaningful part of the prisoner's development and treatment.
85. The SMR try to strike a balance between constructive use of prisoners' time and safeguards against exploitation of prisoners as a cheap and plentiful source of work. The SMR are intended to guard against the excesses of systems based on self-supporting or profit-making principles and against unsafe or unhealthy working conditions. One way of reducing excesses is to make prisons open to inspection by outside specialist inspectors, where these exist in the community. (See **Section VIII**).

### **Prison labour**

86. Work for prisoners has been central to prison philosophy since the 19<sup>th</sup> century. Traditionally work is one of the main activities in prison. Yet it is difficult, if not impossible, to provide all prisoners with full employment in prison.

#### **Rule 71 (1)**

**Prison labour must not be of an afflictive nature.**

#### **Rule 71 (2)**

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

#### **Rule 71 (3)**

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

#### **Rule 71 (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.**

#### **Rule 71 (5)**

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

#### **Rule 71 (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.**

87. Forced labour is clearly prohibited under the **International Covenant on Civil and Political Rights**:

**No one shall be required to perform forced or compulsory labour. (Article 8.3 (a)).**

The only qualification is that hard labour is allowed as a punishment if and only if directly imposed by a court (**Article 8.3 (b)**). Moreover the **International Labour Organisation Convention 105 Article 1 (a)** bans forced labour as a means of political coercion or as a punishment for holding or expressing certain political views.

88. Clearly prisoners should only work if they are fit for work. Here again a similar procedure should be followed as in free society. A properly qualified doctor may be asked to examine a prisoner upon his or her admission to the prison about his or her health, including possible unfitness for work. If a prisoner complains of illness and of not being able to work, a doctor should examine him or her and report to the director about his or her being able to work or not. The role of the doctor with respect to this is, however, a delicate one as has been explained in **Section IV**.

#### **The normal working day**

89. Providing a normal working day for prisoners represents a significant challenge in practical terms. Making the prisoner's working day similar to a working day on the outside is seen as important for rehabilitation and resettlement purposes. However, there are obviously staffing implications, if prisoners' work is to last for a normal working day.

90. The volume of work required may not be readily available in practice. Other activities, such as education or training, may be suitable and in some cases a preferable alternative when sufficient work is unavailable and where training or skills development are equally valid ways of meeting prisoners' needs.

#### **Work: a training process**

91. In reality many prisoners have little or no past experience of gainful employment and often lack employable skills. When work available outside prison is limited in range and unemployment high, work in prison can provide opportunities for developing skills. Even if no guarantee can be given of employment after release it is still important for personal development.



92. Some of the work available in prisons may be work to keep the institution functioning. This need not mean that the work is not useful in terms of experience and development of working habits and skills, however rudimentary. In practice linking work in prison to training and wherever possible to a qualification which is recognised outside prison is one way of using the available work to maximum effect. For example, cooking or cleaning is generally needed in institutions. If this work is supervised as training work experience, it may provide a prisoner with a certificate of skills or work reference for use after release.
93. In practice access to vocational training will depend upon the availability of qualified staff and other resources to provide courses. Equipment and space may be scarce for this purpose and choices need to be made about investment in plant, in order to benefit the majority of prisoners in the institution or unit. The usefulness of a trade depends on its relevance to prisoners' lives outside prison or on the likelihood of employment after release.
94. Choice is an important aspect of assuming responsibility. In reality the choice of work may be severely limited. Where choice does exist, it is important that prisoners be consulted about the options available and about development of work options as this occurs. In this respect work placement in the community is to be encouraged whenever possible, as a means of making the work experience more 'normal' and increasing the prospects for resettlement.

#### **Work conditions**

##### **95. Rule 72 (1)**

**The organisation 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.**

##### **Rule 72 (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.**

Normal occupational life will have very different meanings in different countries. In terms of practical implementation, it is important that work for prisoners is organised and carried out according to prevailing local outside norms.

96. For example, some prisoners are made to scrub floors on their hands and knees, although outside prison normally a mop or other equipment would be used. This method of prison work is designed to

prolong the work period and is arguably also humiliating to the prisoner.

97. In practice prison work and training may run at a loss because of lack of organisation and insufficient demand for product, although there are examples of profitable prison factories in some systems. While more efficient operations are not ruled out, the SMR seek to ensure that the priority is training rather than exploitation of the prisoner workforce for profit.

#### **Administration-run or private-run work**

98. **Rule 73** of the SMR moreover wants to prevent abuse of prison labour and stimulate remuneration of prisoners, however much the latter has been proven to be realistic only in rather exceptional circumstances.

##### **Rule 73 (1)**

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

##### **Rule 73 (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.**

99. Past experience of the inefficiency of administration-run industries and farms has led some prison systems to turn to private contractors to operate these activities. This can lead to abuses of prisoner workers. The **International Labour Organisation Convention 29** ("**Forced Labour Convention**") bans prison work unless it is supervised and controlled by a public authority; the prisoner must not be placed at the disposal of private individuals, companies or associations. Where private companies are involved in providing work for prisoners, state supervision is still essential. Prisoners should have the choice of whether or not to work for private companies.
100. **Rule 73** removes incentives for work contractors to exploit prisoners' labour, by defining the parameters within which contracting may occur. It is clear that there should be a clear contract concerning prisoners' work. The prison administration remains under an obligation to ensure that the terms of the contract are absolutely explicit and that the prisoner exercises free choice as to whether or not to undertake this work.

### **Safety at work**

101. Local requirements concerning health and safety at work vary and may be inadequate. The involvement of health and safety experts from the community in inspection of prison institutions will help to keep standards in prison at least level with those outside, as it is stated by **Rule 74.**

#### **Rule 74 (1)**

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

#### **Rule 74 (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.**

102. Protection of prisoners as workers may be complicated by the involvement of outside enterprises in prisoner employment. For example, the question arises as to whether the prison administration accepts liability for injuries caused to the prisoner when working with an outside company. If the company is a multi-national corporation, the complications might be even more extreme.

103. **Rule 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.**

#### **Rule 75 (2)**

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

Again the SMR seek to bring conditions of work inside prison in line with the legal terms and conditions existing locally. For example, if prisoners are needed to work overtime, they should be paid more for this. It would be desirable to extend to prisons the remit of local officials charged with inspecting work conditions in the community, as increasingly occurs in some countries.

### **Scarcity of work, compensation and remuneration**

104. Work opportunities for prisoners may be limited by the amount of available equipment or plant. Rotation of prisoners in work shifts can provide maximum use of scarce work facilities. In practice work opportunities and educational and other activities often coincide in the

prison timetable, so that the choices are mutually exclusive. The SMR imply a reorganisation of an institution's programme of activities so that options are offered on a staggered timetable, to allow prisoners to take up more than one option. This has obvious implications for staffing schedules.

105. Prisoner pay is in practice often set at a derisory level, if not non-existent. Still the SMR consider it a matter of importance:

**Rule 76 (1)**

**There shall be a system of equitable remuneration of the work of prisoners.**

**Rule 76 (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 families.**

**Rule 76 (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.**

106. The SMR suggest that earnings be sufficient for private cash, family support and savings. To the extent that this is not achieved, there is an obligation to provide public funds for release grants as a substitute for savings and to ensure that this money is available at the moment of release. Although normal wages present difficulties, some release money at least is needed especially for prisoners without family or home address. A closer approximation to normal wages reduces the problem of outside complaints of unfair competition. In Brazil, for example, some private companies employ prisoners at the same wages as outside. Where minimum wage structures operate in the community, these should be reflected in prisoners' pay structures. Pay structures for prisoners should include payment for participation in other kinds of activities, such as education, training and therapeutic programmes, so that no disincentive exists.
107. Women prisoners and their families may suffer particular hardship when these standards are not consistently observed. There may be less remunerative work available for women. They may be the chief support of their families who are left destitute in their absence. It is important that alternative methods of support for families and for release are considered, if prisoner wages are insufficient to meet these standards.

### **Work by unsentenced prisoners**

108. The sections concerned with prisoners' work occur in the SMR under the part applicable to sentenced prisoners. **Rules 89** and **90** indicate the standards relating to work with respect to unconvicted and civil prisoners, respectively.

#### **Rule 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.**

About civil prisoners, **Rule 94** states that **"their (civil prisoners) treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work."**

109. In practice the right of untried prisoners to choose whether or not to work often translates into a denial of the opportunity to work. This generally occurs because work opportunities are limited in most prison institutions and therefore are given first to those prisoners who must work. This places untried prisoners at a distinct disadvantage.

110. Lack of work for untried prisoners should not result in their being locked up for more time than sentenced prisoners who have work. Providing other activity options for untried prisoners is often seen as impracticable, given the perceived unpredictability of their time in custody. This means that in practice untried prisoners often suffer the worst conditions in terms of lock-up and inactivity. This is unjustifiable. In reality many untried prisoners remain for long periods in prison; provision of activity in short modules is one way to take account of shorter periods in custody.

### **Education and recreation**

111. Education and cultural activities are a fundamental part of human development. The right to participate in education and cultural activities is underpinned by the **Basic Principles for the Treatment of Prisoners (Principle 6)**. It reads:

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

Likewise the SMR state:

**Rule 77 (1)**

**Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in 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.**

**Rule 77 (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.**

**Rule 78**

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

The central role of education in prisoner programmes in many prison systems rests on:

- the importance of education in the development of the individual and the community;
- the humanising effect of education on prison life;
- the role of education in resettlement;
- the many educational needs of the prisoner population.

**Voluntary, mutual and outside assistance**

112. The distinction between training and education for the prisoner population may have little practical significance. A broad definition of education is necessary in prisons. Many prisoners have few educational qualifications and need basic skills. Prison education may be resource intensive. However, the prisoner population may include some skilled individuals who could be used as a source of peer education or training. Using the human resources in prisons in this way means overcoming traditional attitudes towards the role of prisoners and staff.
113. As a first step in this direction it may be possible for institutions with limited educational provision to employ prisoners who can read to explain to other prisoners the rules and regulations concerning prisons, including the SMR. However, teachers trained in adult and remedial education are important in the prison context. Many prisoners have had poor past experiences of learning and require special motivation to build confidence. Education can be a vital avenue towards renewed self-respect and hope for a positive return to society.

### **Special needs**

114. Prisoners are viewed in the SMR as individuals who are a continuing part of the community outside. Their transition to life in the community should be facilitated through the provision of opportunities for education and recreation which can be continued after release. Using community facilities and linking to programmes in the community will help to make the change from prison to release easier; whenever possible prisoners should be allowed to participate in education outside prison.
115. It is important to cater for prisoners with special difficulties, including those who do not speak the language, and prisoners with mental or other disabilities. Social skills training is an important aspect of broader education which may be relevant to many prisoners. (See also **Therapeutic programmes**, above).

### **Library: staffing and educational value**

116. Links with the community also can be improved by prison libraries. In co-operation with outside public libraries they can in particular offer recreation as well as educational activities, individually tailored to the interests, needs and capacities of the prisoners. It is in this way, that **Rule 40** of the SMR could be understood. It reads:

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

In practice prison libraries are often very limited in space and content and there is inadequate access for prisoners. The assumption that prisoners will not or cannot make use of libraries, because of illiteracy or lack of interest, is used as an excuse for poor provision. This cannot be justified. Education programmes and provision of books go hand in hand as a constructive way of using time in prison.

117. As a start prison libraries should contain a core of materials concerning prison rules and prisoners rights, including the SMR. Also the national and prison's by-laws should be available.
118. Libraries are not just a collection of materials; they imply the provision of trained staff who can convey information, explanation and advice. Some times assistance is provided by librarians of libraries outside, or by professional volunteers.
119. Prison libraries cannot usually afford exhaustive stocks of books. It is therefore important that wherever possible they are linked with library

services in the outside community, so that prisoners have maximum access to a wide range of reading material.

120. Prison libraries need to be aware of the special needs of prisoners who do not speak the main language of the institution. Links with libraries outside prison can help to provide materials in other languages.

121. **Rule 90**

**Any untried prisoners 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.**

This provision emphasises the special status in law of untried persons; it is important that in practice it is not used as an excuse for not providing untried prisoners with access to the library or other opportunities for activity. Untried prisoners have particular needs for access to information and materials concerning the law and the criminal justice process. The institution has an obligation to provide accurate and up to date information of this kind, including in the languages needed by its unconvicted prisoner population.

#### **Recreation and sport**

122. Participation in additional activities other than education and work is seen as a normal part of life and as important for prisoners' well-being. **Rule 78** is closely linked to **Rule 21** concerning exercise and sport.

##### **Rule 21 (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.**

##### **Rule 21 (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.**

It may be noted, that **Rule 21** creates the impression that prisoners are to be forced to take part in exercise and training. Although prisoners should not be completely free to participate or not, in case of refusal efforts should be made to persuade them. Disciplinary punishments would not serve reasonable and educational purposes.

123. The SMR acknowledge the importance of time in the open air for all



prisoners. In addition they recognise that young prisoners have particular needs in this respect, partly because they are developing physically and partly because exercise is an important way for them to let off steam and use up their considerable excess of mental and physical energy. There is the implication that the constraints of custody are particularly onerous for the young.

124. In practice many prison institutions for young and old recognise the central role of exercise and sport in alleviating the stress of imprisonment. Provision of sports and recreational equipment need not place excessive burden on prisons. Access to outside space is important, but a ball can provide the basis for recreation and exercise for a whole group of prisoners. Activity of this kind is useful for health and good relations in the prison, particularly if staff join in.
125. Case law exists confirming prisoners' rights concerning exercise and fresh air. **UN Human Rights Committee** case, 27 July 1992, held that five minute time limits for personal hygiene and open air exercise violated the detainee's right to be treated with humanity and dignity. (Article 10 CCPR/Parkanyi v. Hungary). In the case of Conjwayo v. Minister of Justice, Legal and Parliamentary Affairs and Anor, the Supreme Court of Harare on 24<sup>th</sup> January and 21<sup>th</sup> February 1991 upheld the rights of prisoners to exercise and fresh air. (See the recommendations on sport in prisons of the **International Council on Physical Recreation**).

### **Social relations and throughcare**

126. The SMR refer to "social relations and aftercare", but today the term throughcare is replacing aftercare. It emphasises the point that provision for resettlement does not begin after release, but is a continuous process starting with the sentence:

#### **Rule 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.**

#### **Rule 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.**

127. The importance of family ties and other contacts with the outside world

is discussed in detail in **Section V**. Here the emphasis is on the role of family and other contacts in the prisoner's development and prospects for release. One of the factors most strongly associated with breaking the pattern of re-offending is a stable relationship with family. Therefore it is important for risk reduction, as well as for humanitarian reasons, to reduce the strain and harmful effect that imprisonment necessarily has on a prisoner's personal relations with people outside.

128. The phrase "desirable" relations (**para. 126, Rule 79**) appears today somewhat paternalistic. It is for the individual prisoner to develop his or her personal relations, whether with family or friends. Interference is often counterproductive, although advice and family counselling may be useful if welcomed by the parties involved.
129. In extreme cases, such as when abuse has occurred in the past, there may be grounds for the institution, through its specialist staff, to intervene in family relations. It is unrealistic to expect that the institution can fundamentally alter family dynamics. Therefore such intervention should only occur in truly exceptional cases. Where child protection, access and custody issues are involved, the institution should avoid taking sides or action to prejudice the rights of any party.
130. The SMR make it clear that preparation for release is a long process starting with the start of the sentence. The best prospect of resettlement depends on careful planning and continuity of contact. Release is a traumatic experience, however welcome, for prisoner and family; individuals, their roles in the family and their attitudes towards each other inevitably change during imprisonment. Personal contact throughout the sentence provides opportunities for coping with those changes.
131. **Rule 81 (1)**  
**Services and agencies, governmental or otherwise, which assist 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.**

**Rule 81 (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.**

**Rule 81 (3)**

**It is desirable that the activities of such agencies shall be centralised or co-ordinated as far as possible in order to secure the best use of their efforts.**

The SMR pay attention to the practical aspects of discharge at release. Some prisoners will have families or friends able to provide for them, whereas others may have no one. The prison administration retains responsibility for ensuring that no prisoner is cast adrift from prison without the means of surviving. The cost of proper discharge provision is small compared with the costs if the prisoner reverts to crime out of destitution or isolation.

**Community services for probation and resettlement**

132. There is also a responsibility within the community for ensuring resettlement of prisoners after release. Non-governmental organisations with a responsibility in this area should be involved. Governments must put into place arrangements in their own system for agencies with specialist training in assisting (ex-) prisoners with resettlement and reintegration (e.g. probation services and rehabilitation organisations). The SMR assume, as has been said earlier, that the work of such agencies begins in prison.
133. Allowing full access to organisations working for the resettlement of prisoners is the surest way of improving the prospects for release. Too often this involvement occurs in the final stages of sentence, when there is insufficient time to lay the foundations for plans which will survive beyond the moment of release.



## PRISON STAFF

### Opening statement

1. Every prison requires staff of a high calibre, **'since it is,'** as Rule 46 (1) states, **"their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends."** The staff deal with prisoners on a daily basis, cater for their needs, are responsible for the smooth running of the prison and for security and safety, and identify and tackle problems. A prison is in some ways a society in microcosm. Its inhabitants are in a perpetual state of interdependence, - a situation in no way diminished by inequalities in the balance of power. Prisoners have very little say, being dependent on fellow prisoners and on staff for their requirements, their food, the general atmosphere, work and the minutiae of everyday life.

### Relaxed and forward-looking prison climate

2. The relationship between prisoners is complex and can only indirectly be influenced. The more difficult prison life is the more prisoners' ability to survive and to stand up for themselves will emerge. It is of course in the interests of the staff to encourage prisoners to get on well together, since a bearable situation for prisoners will mean a bearable situation for staff. Staff who are aware of their duties and responsibilities will do what they can to maintain satisfactory contact with prisoners and to encourage prisoners to adopt a tolerant attitude to one another. Good staff will realise that it is in the interests of security to have a situation in which prisoners are reasonably reconciled to the deprivation of their liberty.

Prisoners who accept their punishment and their stay in prison will be more inclined to tolerate their conditions of life, their fellow-prisoners and the prison staff, and are less likely to show resistance or aggression. This may directly affect personal safety, since tense situations can lead to attacks on prisoners or staff. Good staff are also alert to colleagues' safety and will protect each other. Such solidarity gives prison personnel the strength and certainty necessary to perform their difficult task.

3. Aspects such as decent living conditions and a forward-looking prison policy are crucial, not only to prisoners and staff, but - given that the vast majority of prisoners will sooner or later return to society - also to the prison authorities, the government and politicians. It is in their interests that prisoners are reasonably prepared and able to reintegrate into society.

### **Personal qualities and training requirements**

4. The **U.N. Standard Minimum Rules for the Treatment of Prisoners** express similar viewpoints. As far as prison staff is concerned, they however are restricted to its professional quality.

They hardly elaborate on the structure and methods of work. However understandable, since structures and methods can and should be flexible in order to be adjustable to changing viewpoints, some basic notions deserve to be paid attention to. It should even be emphasized, that these subject matters need to be mentioned, since a prison, however old it is, cannot be managed, nor prisoners be treated from views and methods, which do not reflect present day social climate and civilization.

5. The following factors play a role in determining the quality of staff and the conditions in which they must work:
  - organisation;
  - recruitment and basic training;
  - professional skill and attitude;
  - conditions of service and status;
  - specialist staff;
  - use of force;
  - gender issues;
  - director's task.

Each of these factors will be considered in turn.

### **Organisation**

6. The SMR **“are not intended to describe in detail a model system of penal institutions”** (Rule 1). The organisation of a prison however is important as to its capacity to meet the requirements explicitly or implicitly laid down in the SMR. Some general characteristics of a desired organisation of a prison may be derived from the SMR.
7. As an organisation, a prison is part of a greater complex, generally that of a Ministry of Justice, or a Ministry of the Interior. The relevant central authority uses legislation as a basis for the formulation of rules which should clearly express a prison's objective. At the very least, these rules will determine security measures, rules governing the safety of prisoners and staff, measures to be taken to minimise the difference between society and prison, and conditions necessary to promote a prisoner's ultimate rehabilitation.

### **The local level: monitoring and leadership**

8. As a consequence of the establishment of legal rules however, their implementation must be ensured. On a national level this could be realized by forms of independent inspection, such as recommended by the SMR, **Rule 55** (see **Section VIII**). But it is highly desirable to have detailed implementation of existing rules ensured on a local level as well. A frequently used form of monitoring implementation is by supervisory committees, working on a guaranteed independent basis. Such committee is attached to each penal establishment to provide a thorough and consistent form of monitoring. The committee's task is to pay frequent visits - both announced and unannounced - to the establishment in order to form an idea of how it is run. The committee members confer regularly with the governor, staff and prisoners and issue regularly reports of their findings. Where complaints are raised it is the committee's duty to try and resolve them. To this end it may call upon the central authority or the minister. Its members - volunteers - may not be attached to the prison or the ministry. It is advisable to ensure that a lawyer, a doctor and a minister of religion are represented at the committee.
  
9. A prison is a hierarchical organisation, with a director at the top. It is the director's task to translate legislation and ministerial guidelines into policy and objectives. Objectives should be communicated to prison staff. Optimal use must be made of the available staff in achieving objectives. This means that staff must be offered a certain amount of scope to define their own methods, while still remaining answerable to the director. A prison should not have a militaristic set-up. An overly hierarchical structure and a military approach inhibit individual staff responsibility and reduce personal involvement and individual care.

### **Conditions for professional work**

10. The various functions within a prison must be clearly defined, with the powers and obligations of individual members of staff being laid down. It must also be clear to whom staff are accountable, and who should check on the performance of duties. The more highly qualified staff is, the more professional they will be, and the more freedom they can be allowed to make their own decisions. Staff meetings, chaired by a unit head, are necessary if the quality of work is to be improved. Here information is exchanged with a view to improving relations with prisoners, making detention a more meaningful experience, identifying the problems perceived by staff and increasing job satisfaction and safety. It is the duty of a unit head, if necessary in consultation with his superior, to optimize staff working conditions and further prisoners' interests as much as possible. Rules must be laid down in writing, for both staff and prisoners. These should also detail complaints procedures.

## **Recruitment and basic training**

### **11. Rule 47 (1)**

**The personnel shall possess an adequate standard of education and intelligence.**

### **Rule 47 (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.**

### **Rule 47 (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.**

Working in a prison takes its toll on staff. On the one hand they are expected to maintain a high level of security and safety, while on the other they must constantly remember that prisoners will sooner or later be returning to so Prisons can be hotbeds of tension, with outbursts of violence from prisoners resenting their situation. Victims can include both staff and other prisoners. The better staff are trained, the better equipped they are to identify problem and dangers and take timely measures to reduce risks. To this end they should be open and alert, good observers, and prepared to establish contacts with prisoners. This should be taken into account when selecting personnel, since it is important for staff not only to be aware of security but to have an eye for prisoners' needs. Individuals who seek to become prison officers with a view to meting out extra punishment to prisoners do not belong in the system. Prisoners are punished by imprisonment itself. The requirements will of course differ in the case of members of staff whose duties are of a purely clerical nature, or have some other ancillary function. They are simply required to be competent for their duties, as well as to support in general terms the establishment's objectives.

12. All staff should have an adequate level of training and an adequate degree of intelligence. This should be tested in the job interview and where possible in a psychological test. Social skills are also needed, since these are crucial to the maintenance of the delicate balance which exists within a prison.

The same conditions should be mentioned for personnel in charge of transport of prisoners from one prison to another, or from a prison to a court or a clinic. They should be aware of the tension the prisoner has to deal with.



13. A new prison officer should follow certain courses of basic training, in which his or her attitude is closely monitored. An attempt should be made to make this training as general as possible, in order to make members of staff fit for jobs elsewhere. Supplementary courses of training should be offered, depending on the function in question. It may be useful to join training courses for personnel of comparable establishments. These could be supplemented by courses of in-service training for certain tasks specific to prisons. The organisation needs to acknowledge the importance of well-trained staff and give staff the opportunity of following training courses during working hours. Training should also be paid for by the organization.

### **Training subjects**

14. Training should include at least the following areas;

#### **LAW**

- knowledge of constitutional law, criminal law, the law on criminal procedure and the law as it applies to prisons;
- knowledge of U.N. Standard Minimum Rules and related international legal instruments;
- human rights training and laws applying to the prison;

#### **INTERPERSONAL SKILLS**

- knowledge of criminology and background of criminal behaviour;
- social skills;
- developing awareness for potentially suicidal prisoners;
- how to deal with violent prisoners, the appropriate use of force;
- physical skills, including self-defence;
- knowledge of how to support and advise prisoners to solve their problems;
- knowledge of psychology.

#### **HEALTH**

- awareness and understanding of transmissible diseases;
- developing an awareness for potentially suicidal prisoners;
- first aid;
- health education.

#### **CULTURAL AWARENESS**

- knowledge of languages which are spoken and or understood by the greatest number of the prisoners;
- knowledge of the culture and beliefs of groups regularly detained.

#### **When working with MENTALLY DISTURBED prisoners**

- knowledge of psychiatry.

#### **When working with CHILDREN AND YOUNGSTERS**

- knowledge of child and adolescent development.

### **CUSTODY**

- knowledge of the employing organization and its objectives;
- knowledge of the organization of the ministry, and the various relevant factors which concern the prison;

### **When relevant and necessary**

- firearms training, for staff, who as part of their perimeter function, may be equipped with a firearm, (i.e. not for staff who work directly with prisoners);
  - training in how to perform searches, including body searches.
15. Use could be made of institutions which provide training for staff of similar establishments, of academic expertise and of knowledge and experience of senior colleagues. Training should best be concluded by examinations. To some extent promotion should be made dependent on performance during training.

### **Professional skills**

#### **16. Rule 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.**

#### **Rule 46 (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.**

#### **Rule 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 examples and to command their respect.**

#### **Rule 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.**

#### **Rule 51 (2)**

**Whenever necessary the service of an interpreter shall be used.**

High requirements may be attached to the selection of prison staff. At the same time, however, one may assume that the average inhabitant of a country could in principle be considered suitable for work in a prison. Account must be taken during selection of cognitive skills and attitude. A minimum requirement in respect of cognitive skills might be that a member of staff must at least be able to read and write and express him- or herself well in the language normally spoken in the prison. In addition, candidates should meet certain psychological standards, as indicated above.

When possible, prison staff must also consist of members of ethnic minority groups. Often prisoners from ethnic minorities are over-represented. Staff with the same cultural background will be able to have better contacts with prisoners with the same background. This creates better working conditions for all staff and better circumstances for many prisoners.

### **Opinion and attitude of staff towards prisoner and prison**

17. The following observations can be made in respect of the attitude of prison staff. They should accept a prison's existence and function, and be aware that detention constitutes punishment and that no further suffering need be added. They should also accept that the government is empowered and obliged to impose measures in respect of its citizens. A prison officer should accept the state's powers, but also attach weight to the judgment of the independent judiciary, which if necessary pronounces on the state's actions.
18. When dealing with prisoners, a member of staff should first and foremost approach them as fellow human beings who should be treated equally. It is an officer's task to help and assist prisoners where possible and within reason. Such assistance will naturally be withheld if prisoners flout prison rules, seek their own advantage, place members of staff under pressure or try to escape.

It must be made clear to prisoners that this behaviour does not show a positive attitude and will not result in good relations, nor will it contribute to the skills needed to be able to function in society. Prisoners should be enabled to develop methods for dealing with problems. It must be clear for prisoners and staff that cooperation will give better results for both groups and for the whole prison. In a way staff and prisoners are sentenced to live alongside each other.

Criteria relevant to contacts with prisoners include concepts such as integrity, commitment, care for prisoners, equal opportunities and the need for innovation and improvement. Members of staff should be aware that the way in which they treat prisoners has a considerable effect on the ways in which colleagues function and in which prisoners and staff treat each other. A positive relationship emphasizes a person's

better qualities and represses their worst side. This role-model function directly influences working relationships and the atmosphere within the establishment, thus flustering the prison's objective of rehabilitation.

## **Conditions of service and status**

### **19. Rule 46 (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.**

Work in a prison makes high demands on staff. And a tense environment takes its toll. It goes without saying that a job as difficult and demanding as this should be well paid and that the job can be done in an acceptable number of hours.

Staff should be provided with decent facilities which at all events should not be worse than those for prisoners. Wherever possible they should have restrooms, somewhere to buy and eat food, access to sport halls and the library.

## **Working conditions**

20. Staff should have a contract in which the tasks are described and the number of working hours is mentioned, which should not extend beyond 50 hours a week, including overtime. It's the government's responsibility to ensure good working conditions. That means appropriate buildings in acceptable repair, good atmosphere and safe conditions. Arrangements for cases of emergency should be made in favour of staff and prisoners.

## **Salaries**

21. Good pay is important for a number of reasons. Well-paid staff will function better, which will in turn reduce escapes, tension and resistance, and ultimately prisoners will toe the line. It is difficult, given the different standards of living which apply in different countries, to express the appropriate level of pay as a set figure, but it is possible to indicate it in another way. Staff should have an income which enables them to enjoy a reasonable standard of living. They should earn enough to prevent them from having to take on extra jobs. A further aspect of good pay is that it prevents staff from being vulnerable to bribes. Corruption in an establishment promotes lawlessness, injustice, fear, uncertainty, insecurity, revolt, and endangers lives. Ultimately, no-one stands to benefit.

### **Abrogation of secrecy**

22. Work in a prison tends to be a subject with which the outside world is unfamiliar, given the distance which penal establishments have a habit of maintaining with their surroundings. The public is largely unaware of what goes on in prisons, and some rather distorted notions exist concerning life "inside". There is a tendency to think of prisoners as sinful beings who should be flung into cheerless cells for a considerable period of time.
23. A good prison service has nothing to hide. It is no easy task to run what are often large establishments with hundreds of prisoners. It requires a well-functioning central authority, sound leadership on the part of each prison authority, and dedicated staff. The achievements of the prison service are often hard to demonstrate. Prisoners often spend many years in prisons, and re-offend after release. An outsider might be tempted to think that prisons are not really doing their job. This may be changed through open communication with the outside world. Information can be provided on the requirements which staff are expected to fulfil, the way in which prisoners are treated and details of their daily routine.

### **Change of jobs**

24. It is advisable for prison officers to have a regular change of duties. This might be done through exchanges with bodies such as the child care and protection boards and the mental health care services. The basic aim should be to prevent staff from becoming bored and dispirited with their jobs, but the system will benefit from the fresh input provided by officers with experience of a related field of work. Such exchanges could naturally take place within the prison service, where experience of different prisons could also lead to useful input. International exchanges are of course also an option, though practical considerations will limit them to an extent.

### **Gender issues**

#### **25. Rule 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.**

#### **Rule 53 (2)**

**No male member of the staff shall enter the part of the institution set aside for the women unless accompanied by a woman officer.**

### **Rule 53 (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 SMR assume almost complete segregation of the sexes. While this is perhaps appropriate for certain countries, others now regard strict distinction between the sexes as outdated. In the latter countries, women have secured a position on the labour market and are employed in men's prisons in a number of functions ranging from prison officer to director. Equally, it is not uncommon in such countries for men to be employed in different capacities in women's prisons. It is felt that both sexes should enjoy equal opportunities in the field of employment, and that they should receive equal pay for doing the same work. Working mothers often have to see to a household in addition to their job. It is therefore advisable to make jobs available on a part-time basis.

26. Those countries which employ prison officers of both sexes tend to find the experience positive. Female prison officers often reduce the level of aggression shown by male prisoners, as male officers working in a female prison may contribute to better conditions. The presence of both male and female staff has the advantage of creating a situation which more closely resembles society at large. However, the presence of women in a male prison can also create sexual tension. Female officers can be approached - not only by prisoners but also by male colleagues - in a sexist way. They can experience sexual harassment, sometimes to a degree which makes it impossible for them to carry out their work properly. It is the duty of every member of staff to guard against the type of intimidating behaviour which seriously affects colleagues in the performance of their duties.

### **Sexual relations**

27. Heterosexual and homosexual relationships sometimes develop between staff and prisoners. Whereas the love of two people for each other is no subject for rational discussion, a love affair of a member of staff and a prisoner within a prison cannot be approved, the reason being that the parties are not equal. A detainee is strongly dependent on a member of staff. On the other hand a member of staff also may be put under emotional pressure, albeit unintentionally. Although the feelings may be genuine there is too great a risk of exploitation. The climate and communication opportunities within a prison should be such that a member of staff should be free and feel free to report such unprofessional feelings for a detainee. The prison

authority should then determine the measures to be taken, without, as it were, automatically considering disciplinary punishment or discharge.

## **Specialist staff**

### **28. Rule 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.**

### **Rule 49 (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.**

### **Rule 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 institutions or in its immediate vicinity.**

### **Rule 52 (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 emergency.**

Where possible, optimal use should be made of such specialists as are available. The SMR refers to a range of specialists. The list is certainly not exhaustive. A prison could for instance call upon the services of pastoral workers, librarians, sports instructors, placement officers, doctors and nurses. These staff, too, should support the organisation's objectives. On the one hand, safety and security should be ensured. On the other, the prison service should also prepare prisoners for a return to society. This means that prisoners must be helped as much as possible, so that they re-enter society under optimal circumstances.

## **Specialists' professional independence**

29. It is not in the interests of any state, system or organisation to have the prison service unleash on society embittered, vindictive or disturbed individuals. It is therefore in states' interests to restrict the damage done during detention, just as it is in their interests - if purely from the point of view of costs - to keep prison sentences down to minimum. Specialists should not be involved in the day-to-day running of a prison, but should be called in when their services are required. They should, by virtue of their being called, be somewhat independent of the prison

system, a situation which may enable them to win prisoners' confidence, without, naturally, breaching security. This is particularly true of specialists in the field of mental and physical care, such as psychologists, psychiatrists, doctors, nurses and pastoral workers. They often work alone, providing specific services, either on their own initiative or in response to a request from a third party within the organisation.

Specialist staff should be given an introduction by a senior member of the prison staff. Specialists need to understand why people are in prison, what happens in prison, what the important issues are and the importance of having a safe prison. Specialists also need to know what they must do and must not do in order to help staff create and maintain that safety. At times that may lead to tensions between keeping confidence and issues concerning safety.

It is only reasonable that prisoners be given the chance to consult specialists without interference. Specialists should regard any information about prisoners they treat as confidential, only communicating it to members of their own profession, and with the approval of the prisoner.

30. A specialist's working methods and quality of work could be monitored by colleagues in the same profession. It is advisable for specialists to issue guidelines to the prison authorities on matters relating to detention and the way in which staff should function. They may also provide prison officers with information on physical or mental disorders, with a view to improving the general climate within a prison. Finally, specialists are charged with reporting abuses between staff and prisoners, between staff and staff and between prisoners and prisoners.

### **Use of force: critical situations**

#### **31. Rule 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.**

#### **Rule 54 (2)**

**Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.**



### **Rule 54 (3)**

**Except in special circumstances, staff performing duties which bring them in 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. In a prison, tension is - inevitably - never far away. No matter how dedicated its staff, it cannot be denied that the majority of prisoners are being held against their will. A consequence is that prisoners may rebel. They may simply resent detention as such, or their anger may be directed against rules or against the staff. It is important for staff to remain aware of their powerful position. The authorities and the staff make the rules, and the prisoners have to obey them. The staff keep the keys, and determine the daily programme, while the prisoners are often at the mercy of prison officers' whims. Staff must bear this in mind, and must treat prisoners as fellow human beings and as equals. This means that they must not exercise more power than is reasonable and proper in a given situation.**

32. The above applies even more to the use of force - a very fundamental form of the exercise of power. Before using force, an officer should always establish whether the desired objective can be achieved by other means. If not, the degree of force used should be appropriate to the situation in question. These are the basic **principles of subsidiarity and proportionality**. They should always be applied when force is used. Instructions on the use of force and particularly on restrictions in use of force are always to be incorporated in prison rules, and staff should be well trained in this field. To prevent the indiscriminate and inappropriate use of force, officers should be required to account to their immediate head and to the director following any incident involving force. They should do so both orally and in writing, describe the incident and justify the use of force.

### **Prevention of violence and use of force**

33. There are special situations, where use of force and the risk of ill-treatment easily can occur, such as riots, group fights and collective disturbance of order. It is of utmost importance, that staff is aware of how critical these situations are with respect to possible ill-treatment. It also is important, that instructions are made, which not only explain how to deal with these situations and what procedures should be followed, but which also give guidelines on how to prevent excessive use of power and ill-treatment. Moreover such incidents often deteriorate the prison climate and can carry with them virulent tensions between prisoners and staff for quite a long time. These are periods in which new incidents easily can be ignited. Such situations most likely occur:

- after incidents such as riots and hostage takings, especially when prison personnel have been injured;
- when a prison moves from a normal situation to a lock-down. In such situations outsiders are often prevented from coming in, the prison is even more closed off from the community and the standard protections, notably visibility and proper supervision, cease to be available;
- experience also shows, that risks of undue force, disrespect and ill-treatment is imminent, when prisoners are between prisons in transport vehicles (see **Section V**) and in the case of people with 'weak complaining power' e.g. foreigners and mentally ill prisoners.

### **Arms are not the answer**

34. To prevent an escalation of violence, it is a general principle that members of staff in direct contact with prisoners should be unarmed. An officer with a gun might be tempted to use it inappropriately, or prisoners might get hold of such weapons. Staff also is charged with minimising outbreaks of violence between prisoners. Prisoners may do anything they can to survive in the prison world, where the law of the jungle can sometimes prevail. The worse the conditions, the greater the aggression, since a greater effort is needed to survive. It should be the task of the staff and the prison authorities to reduce aggression to a minimum, preferably with open discussions or by facilitating discussion between the quarreling groups. Discussing problems with prisoners as much as possible on a footing of equality, often has proven to be a very successful way of solving problems or at least creating mutual understanding, respect and tolerance. It has been shown that such discussions can prevent the situation of using force and more force from both sides.

Only if such discussions do not solve the problem should internal transfers, disciplinary punishments or isolation of violent prisoners be considered.

35. Ways of preventing **ill-treatment**, excessive use of force and even torture are:
- (a) **Access:** many people from outside coming in all the time and being able to see every part of the prison and every prisoner. Whereas for obvious reasons prison staff tend to cover each other, outside witness will and need not turn a blind eye as easily and therefore will prevent ill-treatment. In this respect the role of outside non-governmental organizations should be mentioned, which can inform society about treatment, if it happens on a somewhat routine basis, and which can mobilize forces in society to oppose it.

- (b) **Rules:** a framework of rules within which anything that could lead to serious ill-treatment, e.g. solitary confinement, use of restraints, is regulated; a system for checking that the rules are kept and disincentives for those found not keeping the rules, e.g. by having them promoted.
- (c) **Commitment:** a clear lead from the top on the ethical framework within which detaining people is done.

## **A director's task**

### **36. Rule 50 (1)**

**The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.**

### **Rule 50 (2)**

**He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.**

### **Rule 50 (3)**

**He shall reside on the premises of the institution or in its immediate vicinity.**

**The prison director is responsible for the running of a penal establishment. Whether or not someone is suitable as a director is to a great extent determined by aspects such as training, attitude and dedication. His training should at least incorporate the elements as referred to under para. 15, although of course a director has to study these subjects more in depth.**

## **The director, an inspiring person**

37. Two capabilities seem crucial to a prison director, acting in an essentially hierarchical and rather formally regulated institution, namely a sense of democratic and humane leadership and being an inspirational, motivating person. Partly it is a matter of personality, partly it can and should be developed by highly qualified training. A director should know how to run an organisation, be well versed in the legal system, understand how society functions and be aware of the prison's place in society. A director also should be conscious of his or her position as a role model. Subject matters which the director considers important usually will be regarded as important by the staff, and issues which the director considers unimportant will be neglected by the staff. On the one hand, the director should monitor his or her personnel, while on the other he or she should foster an open attitude which allows staff a degree of creativity in the performance of their duties. A director should be a visible figure within the prison,

maintaining formal and informal contacts with his staff. He or she should listen to problems, and solve them to the best of his or her ability, while at the same time demonstrating a critical attitude and ensuring that staff do their work properly. He or she should keep an eye on the way officers work, and stamp out any abuses.

**The director to serve prisoners' and community interests**

38. Prison directors should show a willingness to speak to prisoners, treating them first and foremost as human beings entitled to respect. If the pressure of work prevents them from personally seeing prisoners, a deputy should be appointed to take over this task and submit a report of prisoners' complaints and needs. Where possible and within reason complaints should be dealt with speedily and fairly. Directors should protect the interests of prisoners in the prison, acting for them in situations involving the staff or the world outside prison. In their actions directors should be guided by the notion that it is in the interests of both prisoners and society to reduce to a minimum the difference between life in detention and life in society. Directors should ensure that the organisation's interests are served in the sense that they should make every effort to obtain from the central authority such funds as are necessary to allow the organisation to function properly.
  
39. Directors should be aware that they have to account for their prisons' policy. This entails enabling the central authority to carry out inspections, issuing regular policy reports and communicating openly with relevant bodies outside the prison. This means, for instance, that specific target groups should be able to visit the establishment with some regularity, though not in the sense that prisoners are paraded in front of visitors or are exposed to them against their will. Even a prisoner's cell should never be entered by visitors without preceding permission of its inhabitant. A good prison furthermore maintains open communication with parliament and public media, who represent the people and the community and who can communicate the problems, needs, hopes and fears of prisoners and prison. For a well-run organization with confident and committed staff there is little need to shut off prison reality from the world outside.

## INSPECTION

### Opening statement

1. Implementation of international as well as national rules about treatment of prisoners can be promoted and improved by regular, competent and intensive inspections, provided that these inspections have consequences. These consequences may be measures taken by the appropriate authorities. The consequences may also be public and political reaction to published inspection reports. Such reactions are often very effective for securing improvement.
2. However important inspections are, they are not the only means of ensuring implementation of rules. Ultimately, doing away with traditions of secrecy, which all too often surround prisons and what happens behind the walls, is a basic requirement to ensure that prison rules are put into practice. (See also **Section V** and **VII**).

### The scope of inspections

3. Inspections, carded out by persons of personal integrity and expert authority, are nonetheless an influential instrument to ensure that serious efforts are made to implement rules and to achieve prison and treatment objectives as good as possible. **Rule 55** of the **U.N. Standard Minimum Rules** (SMR) categorically requires inspections to be carried out.

#### **Rule 55**

**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.**

4. The word “inspection” means “to look closely into” or “to examine officially”. Inspections which look closely into prison regimes or examine them officially to ensure that policies and practice are in conformity with laws and regulations are an important safeguard for prisoners and staff alike. The former have a right to serve their sentences under the conditions which are stipulated by laws and regulations; the latter have a duty to enforce imprisonment in conformity with those same laws and regulations. Properly conducted inspections offer guarantees that such is the case. Moreover, such

inspections can have a preventive value. By the early detection of unacceptable conditions and practices, more serious situations can be avoided. Similarly, to give recognition to good policies and practice helps to reinforce them and ensure their permanence, thus facilitating achievement of penal and correctional objectives.

**Inspections: regular, frequent and qualified**

5. The term ‘penal institutions’ is to be interpreted widely since the SMR are applicable to all categories of prisoners, whether tried, untried or civil as well as to persons arrested or imprisoned without charge. Untried prisoners include those detained in prison or police custody **(Rule 84)**. Thus, not only prisons but also police and court cells as well as all other places of detention for the categories covered by the Rules should be subject to inspection.
6. Certain further conditions must be fulfilled if inspections are to afford an effective guarantee. Thus, the Rule requires that the inspections shall be of regular nature, i.e. they shall be regular and reasonably frequent. Inspections should cover the totality of conditions, services and activities in the prisons as well as the quality of staff-prisoner relations. Finally, the Rule specifies that inspectors appointed by a competent authority should be qualified and experienced persons. Judgement, experience and knowing what to look for in the way of abuses are obviously necessary if sound assessments are to be made and the inspectors’ reports and recommendations are to command respect.

**Occasional inspections**

7. Although inspections should be an ongoing process, special inspections should always be carried out whenever extreme occurrences such as riots, shooting, group violence, strikes, deaths under suspicious circumstances and similar untoward events, arise. In the case of persons taken prisoners as a result of inter- national armed conflict it is particularly necessary to ensure informed and impartial inspections of their conditions of captivity through appropriate bodies, e.g. the International Committee of the Red Cross (ICRC). The need for a fully experienced, qualified and, above all, independent inspectorate (to which further reference is made below) is especially great under extreme circumstances.

**Inspections: searching and methodical**

8. In the first place, inspections should be carried out by inspectors accountable to the prison administration or the ministry responsible for the prisons. Such inspections presuppose that clear objectives and guidelines on working methods have been formulated and circulated by the responsible ministry or prison administration. Inspections are

often announced in advance. In order, however, to avoid temporary improvements being made for the benefit of an announced inspection, unannounced inspections should also take place. Inspections should include such diverse matters as reception procedures, the use of disciplinary punishments, security matters, the maintenance and cleanliness of buildings, the provision of health and medical services as well as those for education and social assistance. They further should include talking with prisoners about their experience of the prison. This can only be useful if the discussion is unsupervised, and prisoners are encouraged to speak freely. Particularly where the prison is large, a team of inspectors may be necessary if a number of different aspects are to be thoroughly and competently assessed.

### **Inspection reports**

9. The final assessment of the prison should be the subject of a written report which should be made available not only to the responsible minister or head of prison administration but also to the prison staff. It is an advantage if the report can be discussed with the staff and plans for dealing with any observed weaknesses drawn up. The general principle should be for inspection reports to be made public even if it may not always be possible to publish full details about, for instance, prison security. Objective inspection reports give credit for work well done as well as provide criticism of deficiencies.

### **Specialist inspections**

10. Prison inspections increasingly engage the attention of external bodies. This occurs because prisons should not be exempt from the inspections which are carried out on a variety of enterprises in ordinary society. Such inspections, relate, for example, to sanitation, the hygienic preparation of food, and other services or conditions for the maintenance of health and industrial safety. Yet other regulations may deal with special emergencies, for instance, fire prevention in relation to materials, construction and procedures to be followed in case of fire.
11. In these and similar cases, the inspections should be carried out by inspectors who are external specialists in a particular matter. They may well be - and ideally perhaps should be - part of a professional inspectorate attached to ministries, departments or authorities other than the prison administration. Educational and training courses, especially if provided by external authorities or if they lead to nationally recognised certification, are also often subject to evaluation by external educational experts. The prison administration stands to gain from independent and expert inspections. Since budgetary requests for resources necessary to secure improvements carry greater weight if they have their origin in independent and expert recommendations. Prison administrations have therefore much to gain



from all kinds of independent inspections. Independent inspections can lead to proposals for improvements or, alternatively, confirm the efficiency of what is undertaken.

### **Objectivity and independence**

12. A key aspect of inspections which is implicit in **Rule 55** is that they must be objective and independent. The **European Prison Rules**, referring to a Rule (**Rule 4 of the EPR**) with almost identical wording, emphasize the importance of independence in an explanatory memorandum as follows: **'The effectiveness and credibility of the inspection services will be enhanced by the degree of independence from the prison administration that they enjoy and the regular publication of the results of their work'**.
13. To some extent independence is guaranteed by using qualified and experienced inspectors. A greater degree of independence can be assured, however, by making inspectors accountable to an impartial person or body or, at least, to a higher authority. In some countries this is done by requiring the official prison inspectorate to report to the minister and not to the head of the prison service.

Where the courts have been involved in litigation over prisoners' rights, judges should consider appointing a trusted person to oversee the carrying out of judicial decisions and report back to the court. An especially important inspection role should be played by a justice ombudsman who should visit prisons on a regular basis and in response to alleged deficiencies. Ombudsman inspections have a unique significance where the protection of human rights in prison is concerned. Members of parliament and relevant parliamentary committees should also concern themselves with prison conditions by making regular visits of inspection.

14. In many countries there has long existed a supervision board at local level who inspect the prison regularly and hear prisoners' complaints. Such boards are often headed by a judge and consist of concerned and experienced members representing professions of relevance for prison activities. In other countries a special judge for the implementation of sentences may include inspections among his functions.
15. There is, however, always a risk that in the course of time inspecting persons or bodies become 'co-opted', i.e. their relations with the prison administration become unduly close and, as a result, they cease to be truly independent in their assessments of policies or practice. Through familiarity and habituation they accept unsatisfactory conditions. The best way of guarding against this is for inspections to be seen in a broad perspective and not limited to official inspections. Other bona fide bodies should be allowed to enter prisons with a view to ensuring that conditions are satisfactory.



The inspection reports of the various inspecting bodies should be made available to every other inspecting body. Inspections can then be carried out on the basis of information from previous inspections.

### **Involvement and role of NGO's and other non-official bodies and persons**

16. Inspections should not, therefore, be carried out by a single set of official bodies or persons. In addition to official bodies, use can and should be made of assessments made by external persons and bodies. Prison visitors, for example, can come across cases of injustice or improper treatment which demand redress. Concerned non-governmental organisations, in particular, have a long experience in many parts of the world of seeking to improve prison conditions. They have an important role to play in ensuring that just laws and regulations are upheld and that prison conditions are in conformity with the SMR and other human rights instruments. By visiting prisons, collecting documentation and through contact with prisoners, ex-prisoners and prison staff they can gain and present valuable information about prison climate, conditions and practice. The involvement of non-governmental organizations in the inspection of prisons can, moreover, be a major corrective to the erosion of inspectoral independence through 'co-option'.

### **Particular attention to vulnerable persons**

17. Inspectors should give special attention to the position of vulnerable detained persons, for instance, the mentally disturbed, foreigners (especially where there are language difficulties) and asylum seekers. Thorough inspections will often include private interviews with those detained either as individuals or as a group, in the course of which malpractices may well be alleged. It is integral to the purpose of an inspection to ensure that the uncovering of malpractice does not lead to the intimidation of detainees before, or their harassment after, an inspection takes place.

### **International inspections**

18. Of special interest are the emerging possibilities for international inspections. Mention was made in **para. 7** of this Section of the **International Committee of the Red Cross** (ICRC) and its work for persons taken prisoner in situations of armed conflicts. In fact the ICRC represents the oldest known form of internationally empowered inspection. Although this Handbook does not specifically deal with political prisoners, it should be noted, that the ICRC, by virtue of **Article 126** of the **Third Geneva Convention** of 1949 and **Article 143** of

the **Fourth Geneva Convention**, both dating from 1949, is empowered to visit places holding prisoners of war and civilians protected by the latter convention. These provisions of empowerment entitle the ICRC to visit all places of internment, detention and work and to undertake private interviews with detained persons. The ICRC may, by virtue of **Article 3** common to the **Geneva Convention**, also offer its services to the parties of a non-international armed conflict and visit persons deprived of their liberty for reasons connected with that conflict. In other situations of internal national violence and strife not covered by the Geneva Convention the ICRC may, by virtue of **Article 5** of the **Statutes of the ICRC** and **Red Crescent Movement** approved for adoption by a number of States, offer its services to persons deprived of their freedom as a result of such situations.

19. A big step forward is the appointment in 1985 of a **Special Rapporteur** by the **United Nations** to investigate places of detention and examine questions relating to torture. He is required to collect reliable information and act on it without delay. The action consists of laying the information received before the government concerned “**in order to ensure protection of the individual’s right to mental and physical integrity**” (United Nations Fact Sheet No. 4). In principle he can investigate situations arising in any member State of the United Nations irrespective of whether it has ratified the **United Nations Convention Against Torture** (adopted in 1984, entered into force 1987). The **United Nations** has also set up a **Committee against Torture** which studies reports by States party to the Convention Against Torture on the steps taken to abolish torture or conditions of detention which amount to torture. The Committee can also conduct an enquiry if it receives information about unacceptable practice in a State party to the Convention.

#### **Prevention of injurious situations**

20. One limitation in the mandate of both the Special Rapporteur and the Committee is that they are empowered only to investigate and try to remedy torture situations after they have arisen. An important purpose with inspections - that of preventing seriously injurious situations from arising - is thereby missed. There has been discussion about a United Nations Sub-Committee on Torture which would work on similar lines to the already existing European Committee against Torture (see below for description). The Sub-Committee’s mandate would differ from that of the Committee Against Torture and the Special Rapporteur by including inspections designed to prevent torture from ever occurring. To date no decision has been taken about setting up such a Committee.
21. The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** is set up under a **European Convention** with the same title. The 24 States which have

ratified the Convention bind themselves to permit and facilitate unhindered visits by the Committee to any place of detention. The visits may be announced or unannounced. Their purpose is to make overall assessments of the conditions of confinement rather than to hear individual complaints and to **prevent** as well as to detect inhuman or unjust conditions of imprisonment.

22. The Committee consists of permanent members **“chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by the Convention”** (Article 4 of the Convention). The Committee may and does co-opt penological experts to assist it when making visits. The Committee’s report after a visit is presented to the responsible government. The reports, it should be noted, always give credit for good conditions and work as well as pointing firmly to observed deficiencies. The government concerned can present initial comments on the report and, at a later stage, a follow-up account of action taken to remedy any deficiencies noted. The report remains confidential unless the government concerned agrees to publication. So far virtually every government of a visited country has authorised publication of the Committee’s report.
23. The Convention does not provide the Committee with any way of compelling remedial action. But, of course, in ratifying the Convention governments have indicated willingness to receive advice from the Committee. If, however, a country in an extreme case does not follow the recommendations of the Committee, the latter is empowered to publish the report and make a public statement. This has, to date, only happened on one occasion. In general it can be said that the drafting of the European Convention, the setting up of the Committee and the Committee’s subsequent work constitute an extremely important form of regional inspection. It is to be hoped that a worldwide system under the United Nations might be set up. Individuals and non-governmental organisations might well seek to influence discussions on this matter with a view to a decision to start up a United Nations Sub-Committee against torture as outlined above.

### **Achieving improvement**

24. As the foregoing shows, inspections can be internal and external to the prison system, official and unofficial, national, regional and universal. The various inspection possibilities supplement each other. Whatever the nature of the inspection, objectivity and independence are crucial. Any recommendations resulting from inspections should always lead to appropriate action. Such action will include, as necessary, changes in legislation or in circular instructions, changes in staff practice or staff

training and changes of procedures. In severe cases of malpractice, prosecution or a disciplinary investigation of those responsible should be undertaken.

25. Rule **55** specifies that inspections are *inter alia* intended to help the achievement of the aims of the prison service. The furthering of this purpose means that it is important for the staff of the prisons be informed about the importance of inspections as a way of upholding essential standards, including those which follow from international human rights instruments. Opportunities should also be given to staff to learn about and discuss the results of inspections with a view to achieving any necessary improvements. Conversely, such opportunities also make it possible to provide recognition of good work and practice. It is vital that inspection reports should not lead to staff resistance to change or reprisals on prisoners for making complaints. For the central prison authority inspections give valuable indications about strengths and weaknesses in the prison system. Both at local and central levels the results of inspections may provide an essential ground for requesting improved resources.

**Inspection reports publicly available**

26. Although only one of the 95 Standard Minimum Rules deals with inspections, their importance cannot be overrated. They are an essential means of providing objective feedback information about the functioning of the prison system to the community which prisons are there to serve. As such, inspection reports should be publicly available, unrestricted documents providing indispensable information to the public, politicians, prisoners, prison administrations and prison staff.

## UNITED NATIONS PRISON RULES IN CONTEXT

### Opening statement

1. This Handbook is based on the human rights and the standards of humanity, developed in the corpus of United Nations instruments. Since its inception the United Nations has sought to promote humane treatment of prisoners. The **Universal Declaration of Human Rights**, adopted in 1948, outlaws torture, cruel, inhuman or degrading treatment or punishment (**Article 5**). Since then the Declaration has been joined by several other international conventions or resolutions, the first of them being the **United Nations Standard Minimum Rules for the Treatment of Prisoners** (SMR), adopted in 1955. They deal in a very specified way with prison conditions and prisoners' treatment. It was not the intention, when the SMR were adopted, that they should be an international treaty or convention. Nevertheless, the SMR as a whole can be seen as detailed enactments, which are complementary to more general international conventions. In their turn the SMR have been complemented since then by other UN instruments, which have emphasized or elaborated aspects of humanity in prison conditions and prisoners' treatment, or established new norms and prisoners' rights. They are:

- The International Covenant on Civil and Political Rights, 1966, (notably Part 111);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988;
- The Basic Principles for the Treatment of Prisoners, 1990.

Moreover international professional organizations have developed codes of ethics or standards for the carrying out of respective professions in prison.

### The scope and applicability of the SMR

2. Of particular importance is the **International Covenant on Civil and Political Rights** which not only prohibits torture and cruel, inhuman or degrading treatment or punishment (**Article 7**), but goes further and also provides positively that

**“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10.1).**

The Committee which drafted this article noted specifically that although there was no reference to the SMR in **Article 10**, they should be taken into account by states party to the Covenant and that nothing in **Article 10** should prejudice the application of the SMR. The Human Rights Committee, which is charged with the enforcement of the Covenant, regularly refers to the SMR when it is called upon to interpret **Article 10**.

3. The initiative which **Penal Reform International** has taken in drawing up this Handbook is an indication that the UN instruments, the SMR in the first place, have become central to what is regarded internationally as acceptable penal practice. The Handbook is not primarily a commentary on these instruments. Instead, it deals, with what is regarded a good practice in 1994. It does so within the framework provided by the SMR, which is the major, most systematic and detailed UN instrument on prison matters. By way of illustrative example drawn from the contributions of experts from across the world the Handbook points to some areas in which the general consensus of contemporary thought is that minimum standards are now higher than, or different from, those set up by the SMR in 1955. It also stresses that minimum requirements can always be improved and suggests practical ways in which this can be done in different contexts, depending on the available resources.
4. At the same time, the Handbook emphasizes that there are instances where specific minimum standards have been recognized internationally. For all their flexibility, the SMR as a whole, as understood in 1994, have some normative force. Governments and other institutions and organizations which claim to subscribe to the SMR and other related international instruments cannot deny that these minimum standards are applicable to them.
5. The original 94 rules which make up the SMR have never been amended. In 1957 they were approved by the Economic and Social Council of the United Nations, which in 1977 added a new **Rule 95** in order to extend the scope of the SMR by explicitly including persons detained without charge. This implies that the SMR are not applicable only to people in prison but also to people detained in other places. Since their adoption in 1955 the SMR have been affirmed, directly and indirectly, by other international and regional instruments. They have been recognized as an accepted basis for penal policy by national legislatures, courts and prison administrators.

The object of this Handbook is to bring together some of the wisdom and experience which have been accumulated in the use and application of the SMR and thus to assist in ensuring that international prison standards have a significant impact throughout the world.

## The status of the SMR

6. In recent years the SMR have been supplemented by other specialized international instruments. Thus, the **United Nations Standard Minimum Rules for the Administration of juvenile justice (“the Beijing Rules”)**, which were adopted by the General Assembly of the United Nations in 1985, acknowledged the extent to which **the Standard Minimum Rules for the Treatment of Prisoners** had gained recognition, by providing (in **Rule 9.1**) that nothing in the **Beijing Rules** should be interpreted as **“precluding the application of the Standard Minimum Rules for the Treatment of Prisoners ... and other human rights instruments and standards recognized by the international community...”** (General Assembly Resolution 40133 of 29 November 1985). In 1990, the General Assembly added its imprimatur more directly. In the **Basic Principles for the Treatment of Prisoners** which it adopted in that year, the General Assembly formally recognized **“that the Standard Minimum Rules for the Treatment of Prisoners adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders are of great value and influence in the development of penal policy and practice”** (General Assembly Resolution 451111 of 14 December 1990).
7. Further recognition has been given to the SMR by regional tribunals. In its early judgements, such as in the Greek case, the European Court of Human Rights referred directly to the SMR when interpreting **Article 3** of the **European Convention on Human Rights and Fundamental Developments** which prohibits torture or inhuman or degrading treatment or punishment. Subsequently, more attention has been paid to the **European Prison Rules**, but these rules were largely developed out of the United Nations SMR. National courts, in countries as diverse as Switzerland, South Africa and the United **States** of America, have applied the SMR in a similar way. As a US Court explained in 1980 in the case of *Lareau v Manson* (507 F Supp 1177):  
“The ‘evolving standards of decency’ with which overcrowding of inmates ... are incompatible include the Standard Minimum Rules for the Treatment of Prisoners, which were adopted by the United Nations Economic and Social Council ... and thus form part of the body of international human rights principles establishing standards of decent and humane conduct by all nations.”
8. The recognition which the SMR has received, means that they have developed a special status amongst international criminal justice instruments. They have become indispensable to the interpretation of international human rights conventions and must be recognized as generally forming part of international human rights law.



## **The interpretation of the SMR**

9. The general recognition of the SMR by international bodies, governments and non-governmental organizations does not mean that every individual rule has binding legal force. The SMR themselves exclude such an interpretation. As has been mentioned in **Section 1, para. 3**, the preliminary observations contained in **Rule 1-4** are basic declarations of intent and purpose of the SMR. They state:

### **Rule 1**

**The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.**

### **Rule 2**

**In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they re- present, as a whole, the minimum conditions which are accepted as suitable by the United Nations.**

### **Rule 3**

**On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.**

### **Rule 4 (1)**

**Part 1 of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to 'security measures' or corrective measures ordered by the judge.**

### **Rule 4 (2)**

**Part 11 contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section**



**A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.**

(To explain **Rule 4**, the SMR consist first of an Introduction, which briefly outlines the history of the Rules. The Rules themselves are divided into a set of Preliminary Observations followed by Part 1, Rules of General Application and Part 11, Rules Applicable to Special Categories, A, B, C and D).

10. The restrictions contained in the preliminary observations must themselves be qualified. Such qualification takes three forms:
  - (a) The rules which contain the restrictions, i.e. the preliminary observations, themselves contain internal qualifications of the primary restrictions. Thus **Rule 3** allows experimentation, only if **“it is in harmony with the principles and seeks to further the purposes which derive from the text of the rules as a whole”**. Similarly, when **Rule 2** provides for differential application of the rules because of the variety of conditions which exist in the world, it lists these conditions. It thus acknowledges, at least implicitly, that there is a limited number of such conditions and that differences must be related in an explicable way to these conditions.
  - (b) The individual rules which make up the bulk of the SMR give indications of whether they are intended as general guidelines or are meant to be prescriptive. Prescriptive rules may deal with general principle or with specific matters. A good example of a prescriptive rule stating a general principle is **Rule 6(1)** which provides the rules shall be applied impartially and goes on to provide that **“there shall be no discrimination on grounds of race, colour, sex; language, religion, political or other opinion, national or other social origin, property, birth or other status”**. The force of this general principle is not modified by the preliminary observation which allows experiments. In other words, experiments which are discriminatory in ways prohibited by **Rule 6(1)** are outlawed by the SMR.

Strongly prescriptive rules which deal with specific matters will be discussed under the appropriate headings of this manual. What is important is the way they are worded. For example, **Rule 31** provides that certain punishments, **“shall be prohibited completely”**, thus indicating that the prohibition is absolute and not to be justified by the restriction contained in the preliminary justifications.

- (c) The restrictions contained in the Preliminary observations of the SMR are also of less force where a particular rule has been bolstered by other provisions, be they of international human rights law or of national law. There are many concrete illustrations in the Handbook of how the SMP, has been boosted by other international instruments. The medical treatment of prisoners, for example, (see **Section IV** is now also governed by other instruments which deal with the treatment of detainees. To the extent that these complement or confirm the relevant rules of the SMR, the SMR rules should be regarded as being less subject to restriction.

In other instances national legislation may be read with the SMR, with the result that the importance of both is increased and the impact of the restrictions contained in the preliminary observations reduced. For example, **Rule 10** of the SMR (discussed in **Section 111-13**) provides that all sleeping accommodation for prisoners shall meet all requirements of health including minimum floor space. Clearly such requirements will vary according to geographical (climatic) conditions and to a lesser extent perhaps as a result of the social conditions in a society. The practical consequence is that different national prison systems may set different standards for minimum floor space. However, the prescribed national standards must be justifiable in terms of the overall requirement of prisoners' health as this fundamental objective of **Rule 10** is not affected by the restrictions contained in **Rule 1 to 3**. Moreover, once national standards (of a minimum floor space in square meters in this example) have been set, they must be applied impartially. If this is not done the authorities will fall foul of the requirement of impartiality set by **Rule 6**.

### **Juveniles, a special case**

11. Since the SMR were adopted in 1955, various other instruments have come into being to deal with children in detention. The most important of these are the **United Nations Standard Minimum Rules for the Administration of juvenile Justice (The Beijing Rules)** (General Assembly resolution 40133), the **United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyam Guidelines)** (General Assembly resolution 451112) and the **United Nations Rules for the Protection of Juveniles Deprived of their Liberty** (General Assembly resolution 451113). The special measures required for dealing with juveniles in detention would form a separate subject. They are not considered in this Handbook. In this regard, **Rule 5** of the SMR, the last of the Preliminary Observations, stipulates that the SMR,

although not seeking to regulate the management of institutions for young persons, nevertheless are equally applicable to institutions for young persons. It also notes that as a rule young persons should not be sentenced to imprisonment.

**Rule 5 (1)**

**The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general Part 1 would be equally applicable in such institutions.**

**Rule 5 (2)**

**The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.**



## **PENAL REFORM INTERNATIONAL**

**Penal Reform International (PRI)** is an independent, world-wide, non-governmental organisation, with members in 75 countries on all major continents. PRI exists to improve prison conditions and to promote fairer and humane ways of dealing with people who break the law. It aims to help bring criminal justice policies and practices more into line with international standards.

PRI was established in 1989, is registered in the Netherlands and has an international board. The secretariat is in London, U.K.

PRI has consultative status with the United Nations and with the Council of Europe and observer status with the African Commission on Human and Peoples Rights.

Penal Reform International seeks to achieve penal reform, whilst recognising diverse cultural contexts, by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction in the use of imprisonment throughout the world;
- the use of constructive non-custodial sanctions which encourage social reintegration whilst taking account of the interests of victims.

PRI works in partnership with individuals and NGOs in different countries and co-operates with governments. It does not set up its own national sections. It has helped establish practical penal reform projects in thirty countries around the world, including:

- seminars on penal reform for judicial agencies, prison officials and other interested groups in the Caribbean, Central and Eastern Europe and Africa;
- new national system of community service as an alternative to custody in Zimbabwe;
- development programmes for staff of NGOs and government officials in Albania and Romania;
- craft training workshops for prisoners in Senegal;
- assistance to prisoners under sentence of death in some Commonwealth countries, in making appeals to the UN Committee on Human Rights and the UK Privy Council.

PRI produces quarterly newsletters in English, French and Spanish and disseminates extensive information on prison conditions and penal reform around the world.



**HUMAN RIGHTS IN THE ADMINISTRATION  
OF JUSTICE: PROTECTION OF PERSONS  
SUBJECTED TO DETENTION OR IMPRISONMENT**

**34. Standard Minimum Rules for the Treatment of  
Prisoners**

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**PRELIMINARY OBSERVATIONS**

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.
2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.
3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorise departures from the rules in this spirit.

#### **Human rights in the administration of justice**

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge.
4. (2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.
4. (3) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.
4. (4) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.



**RULES OF GENERAL APPLICATION**

**Basic principle**

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

**Register**

7. 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;
  - (d) 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.

**Separation of categories**

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;
  - (b) Untried prisoners shall be kept separate from convicted prisoners;
  - (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

- (d) Young prisoners shall be kept separate from adults.

**Accommodation**

- 9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.
  - (2) Where dormitories are used, prisoners carefully selected as being suitable to associate with one another in such conditions shall occupy them. 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. (a) In all places where prisoners are required to live or work, 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.
- 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.

**Personal hygiene**

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.

**Clothing and bedding**

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 authorised 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.

**Food**

20. (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.

**Exercise and sport**

21. (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.

**Medical services**

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 specialised 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.
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 institution. 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.
24. 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.

25. (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 whenever 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.
26. (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.
  - (2) The director shall take into consideration the reports and advice that the medical officer submits according to rules **25 (2)** and **26** and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to a higher authority.

### **Discipline and punishment**

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.
28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.
  - (2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.
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 necessary on grounds of physical or mental health.

#### **Instruments of restraint**

33. Instruments of restraint, such as handcuffs, chains, irons and strait jackets, 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;
  - (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.

#### **Information to and complaints by prisoners**

35. (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 authorised 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.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorised 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.

#### **Contact with the outside world**

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 authorised or controlled by the administration.



**Books**

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.

**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.

**Retention of prisoners' property**

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.
- (2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorised to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.
- (3) Any money or effects received for a prisoner from outside shall be treated in the same way.

- (4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

**Notification of death, illness, transfer, etc.**

44. (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.
- (2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorised, whenever circumstances allow, to go to his bedside either under escort or alone.
- (3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

**Removal of prisoners**

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
- (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
- (3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions for all prisoners.

**Institutional personnel**

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.

**Inspection**

- 55. 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.



**RULES APPLICABLE TO SPECIAL CATEGORIES**

**A. PRISONERS UNDER SENTENCE**

**Guiding principles**

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.
57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
59. To this end, the institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
60. (1) The regime of the institution should seek to minimise 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.
  - (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in

another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasise not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.
62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.
63. (1) The fulfilment of these principles requires individualisation of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.
  - (2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.
  - (3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualisation of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.
  - (4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.



64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him and towards his social rehabilitation.

#### **Treatment**

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.
- (2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a 'report by a medical officer, wherever, possible qualified in psychiatry, on the physical and mental condition of the prisoner.
- (3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

#### **Classification and individualisation**

67. The purposes of classification shall be:
- (a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

- (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
- 68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.
- 69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

### **Privileges**

- 70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

### **Work**

- 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 organisation 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 no 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.

**Education and recreation**

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 practical, 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.

**Social relations and after-care**

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.
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 centralised or co-ordinated as far as possible in order to secure the best use of their efforts.

#### **B. INSANE AND MENTALLY ABNORMAL PRISONERS**

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 specialised 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.

#### **C. PRISONERS UNDER ARREST OR AWAITING TRIAL**

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody Jail but who have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules.
  - (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.
  - (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.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.
- (2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.
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.
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.

#### **D. CIVIL PRISONERS**

94. 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 be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

#### **E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE**

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.

