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YOUTH, CRIME AND JUSTICE

Draft United Nations standard minimum rules
for the administration of juvenile justice

Report of the Secretary-General

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INTRODUCTION

1. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 entitled "Development of minimum standards of juvenile justice", recommended that the Committee on Crime Prevention and Control develop "standard minimum rules for the administration of juvenile justice and the care of juveniles to serve as a model for Member States". The Congress also recommended that the Secretary-General should report to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved in the formulation of the new rules for review and final action. 1/

2. In recognition of the fact that special attention should be paid to the ways in which juveniles are handled because of their early stage of development, and affirming that standard minimum rules for the administration of juvenile justice are important in diminishing any adverse affects of formal intervention, and in protecting the fundamental human rights of juveniles in conflict with the law in diverse national settings and legal structures, the Sixth Congress also directed that the Rules should reflect four basic principles:

"(a) Juveniles in trouble with the law should be provided with carefully constructed legal protections;

"(b) Pretrial detention should be used only as a last resort, no minors or juvenile offenders should be held in a gaol or other facility where they are vulnerable to the negative influences of adult offenders during this period, and account should always be taken of the needs peculiar to their age;

"(c) Juvenile offenders should not be incarcerated in a correctional institution unless adjudicated of a serious act involving, above all, violence against another person or of persistence in committing other serious offences; moreover, no such incarceration should occur unless it is necessary for their own protection or unless there is no other appropriate response that will protect the public safety, or satisfy the ends of justice and provide the juvenile with the opportunity to exercise self-control;

"(d) The community of nations should do all it can, both individually and collectively, to provide the means by which every young person can look forward to a life that is meaningful and valuable ..."

3. The Committee on Crime Prevention and Control at its seventh session in 1983 provided the Secretariat with guidance in the formulation of the proposed draft rules and inter alia, expressed the view that relevant organizations and bodies should be invited to participate in the process of developing the rules (E/CN.5/1983/2).

4. The proposed draft standard minimum rules, prepared by the Secretariat with the close co-operation of the United Nations regional institutes,* were made available to the regional preparatory meetings for the Seventh Congress. The rules were endorsed in principle, and the specific views expressed are

*The assistance of Horst Schüler-Springorum (Germany, Federal Republic of) who served as consultant to the Secretariat, in the development of the rules, from the first to the present text, is hereby gratefully acknowledged.

reflected in the respective reports of the regional meetings (A/CONF.121/RPM.2-5). The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders prepared draft rules which were submitted to the Latin American regional preparatory meeting (A/CONF.121/RPM/3), and the proposed guidelines prepared by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders were submitted to the Asian and Pacific Regional Meeting (A/CONF.121/RPM/2).

5. An International Meeting of Experts on Youth, Crime and Justice was convened by the School of Criminal Justice of Rutgers University and the National Council of Juvenile and Family Court Judges of the University of Nevada, in co-operation with the United Nations, at Newark, New Jersey, from 2 to 8 November 1983. The expert meeting, which considered the substantive scope and parameters of topic IV of the Seventh Congress, and also examined and elaborated upon the draft rules.

6. An International Meeting of Experts on the Development of United Nations Standard Minimum Rules for the Administration of Juvenile Justice was convened at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, at Fuchu, Japan, from 14 to 19 November 1983, at the request and under the auspices of the United Nations, for further elaboration of the draft text of the proposed rules before their submission to the Committee on Crime Prevention and Control at its eighth session for consideration and review.

7. The Committee on Crime Prevention and Control, at its eighth session in 1984, considered the text of the proposed draft rules, in light of the observations and recommendations made by the regional preparatory meetings and expert meetings.* In its report to the Economic and Social Council (E/1984/16), the Committee stated:

"41. The Committee strongly approved the work which had been done on the question by the Secretariat, as well as the international meetings held at UNAFEI and Rutgers University. The report of the Secretary-General (E/AC.57/1984/2) was considered as providing a solid basis for a further elaboration of the rules."

"42. The control of delinquency, the safeguard of the rights of juveniles in conflict with the law and the emphasis on non-custodial sanctions were considered essential. It was noted that the rules were intended to be broadly sensitive to various local, national and regional juvenile justice practices and to provide guidelines on basic minimum standards to be applied in legal cases involving young people in conflict with the law."

"43. The view was expressed that the two concepts of adult and juvenile offenders should not be merged. There needed to be a new concept, and special jurisdictions and standards to deal adequately with the problem of juvenile offenders and to meet the requirements of the situation of minors. The irregular conduct of juveniles should not be equated with adult criminality."

*A working group of the Committee, chaired by A.A.A. Adeyemi (Nigeria), was also established to review the draft rules.

"45. It was important to balance the need for due process for juvenile offenders and the right of society to be protected from the effects of juvenile crime. Rehabilitation and redirection of the young offender was not the sole aim of the juvenile justice process, although it might be the most important."

"46. The issue of the special vulnerability of juveniles in official detention under any circumstances was an important consideration from the perspective of the observance of human rights. In that connection, it was suggested that existing and emerging human rights instruments should be taken into account."

"47. In particular, the view was expressed that a rule governing corporal and capital punishment should be in consonance with the principles embodied in existing United Nations human rights instruments, particularly the draft convention prohibiting torture and other cruel, inhuman or degrading treatment or punishment and the International Covenant on Civil and Political Rights [General Assembly resolution 2200 A (XXI), annex]. Furthermore, the death penalty should not be imposed for crimes committed by persons below the age of 18. It was pointed out that in many national legislations, the age of criminal responsibility was lower, and that therefore a specific age should not be proposed in the rule. Such an age limit was a question of national character and made a uniform common formula difficult. The age of responsibility was a subject of considerable debate, as to both upper and lower age limits, the establishment of which involved a decision of the utmost difficulty."

8. The Committee, in its decision 8/4, recommended to the Economic and Social Council that the draft rules should be forwarded, after necessary modifications, to the Seventh Congress for its consideration, through the interregional preparatory meeting on youth, crime and justice.

9. The Sixth Joint Colloquium of the International Association of Penal Law, the International Society for Criminology, the International Society of Social Defence and the International Penal and Penitentiary Foundation, on Youth, Crime and Justice, organized by the Centro Nazionale di Prevenzione e Difesa Sociale, in co-operation with the Ministero di Grazia e Giustizia, Regione Lombardia, Amministrazione Provinciale di Milano, was held at Bellagio, Italy, in April 1984, to consider the topic from the perspective of non-governmental organizations. In that connection, the meeting discussed the rules, as modified by the Committee at its eighth session.

10. The Interregional Preparatory Meeting on Youth, Crime and Justice met at Beijing, China, from 12 to 18 May 1984, to advise the Secretary-General on the technical and theoretical framework for topic IV of the Seventh Congress. The Beijing Meeting considered the text of the rules as revised by the Committee. 2/ The Meeting agreed on a number of amendments which the Secretariat was requested to take into account in finalizing the draft rules and in preparing the present report to the Seventh Congress. Furthermore, it was unanimously decided to recommend to the Congress that the draft formulation of the United Nations draft standard minimum rules for the administration of juvenile justice, when adopted, should be designated the "Beijing Rules". (See A/CONF.121/PM.1.)

11. The characteristics and scope of the draft rules are discussed in chapter I. The text of the proposed rules, with respective commentaries, appears in chapter II of the present report.

12. The Seventh Congress, in considering the adoption of the rules, may wish to address itself to the issue of policy guidelines and mechanisms for the effective implementation of the rules at the national, regional, sub-regional and international levels. Towards that end, it might be desirable to take into account the problems that Governments would encounter with respect to the implementation of the rules (e.g. resource allocation, research needs, institutional arrangements) in diverse cultural, social, economic and legal settings. In that connection, the attention of the Congress is drawn to those problems that have been identified at the regional preparatory meetings for the Seventh Congress (A/CONF.121/RPM/1-5) and at the Interregional Preparatory Meeting on Youth, Crime and Justice, at Beijing (A/CONF.121/IPM/1). (See also the working paper prepared by the secretariat of youth, crime and justice, A/CONF.121/7.)

I. CHARACTERISTICS AND POLICY APPROACH OF THE RULES

13. The draft United Nations standard minimum rules for the administration of juvenile justice generally have two characteristics: as standard rules, they should be applicable in countries with very different backgrounds and legal systems; and as minimum rules, they should contain, and disseminate world-wide, a certain "quality of life", in consonance with the ideal of universal human rights.

14. The draft rules are to be considered in this perspective: as standard rules, they have to be sensitive to the broad scope of national and regional differences that mark the experience and practices in juvenile justice in the contemporary world. As minimum rules, they none the less have to incorporate an unequivocal set of guarantees with reference to the administration of justice and in accordance with the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

15. The rules must be flexible, on the one hand, in order to be widely applicable, and firm, on the other hand, in the interest of the protection of the fundamental human rights of the young. Accordingly, in the formulation of the rules, emphasis was placed on the fair, humane and effective administration of juvenile justice. These characteristics may be hard to reconcile, but they are the ultimate criteria for the successful application of the rules.

16. A number of other considerations should be taken into account. These include:*

(a) The extent of juvenile crime and delinquency, its multifaceted forms and related factors: youth crime manifests itself in various forms and is affected by many different factors; there is delinquency in poor countries as well as in rich countries and in urban as well as in rural areas; there are violent crimes and gangsterism as well as petty delinquency and minor offences. Drugs and alcohol, unemployment and migration, wars and other forms of violence further contribute to youth crime. Even the age composition of a society may make an important difference: where a substantial number of the general population is of a young age;

(b) The dark figure: criminological research underscores the relevance of a substantial "dark figure" - instances of juvenile delinquency that go unrecorded. The existence of the dark figure, which is much higher for juveniles than for adults, raises a fundamental issue of equality, since the standard minimum rules refer only to those juveniles who are identified or apprehended. Thus, the rules aim at guaranteeing certain standards of justice only for those who come within the purview of the juvenile justice system;

(c) The effect of handling juvenile offenders: criminological studies have focused on different approaches developed over the years in various legal systems to the phenomenon of juvenile crime and delinquency. In some countries, considerable attention has been devoted to the evaluation of "success" or "failure" (recidivism or otherwise). It has been found that, in general, harsh measures or penalties have relatively little deterrent value.

*See the working paper prepared by the Secretariat on youth, crime and justice (A/CONF.121/7).

This applies to procedure as well as to sanctions. Standard minimum rules for the treatment and handling of the young who are in conflict with the law, thus, become an important instrument to avoid unnecessary harm that is likely to be caused by procedure and sanctions and to ensure a minimum of respect for the juvenile offender's personality. Worthy of note in this connection is the "spontaneous socialization" of the majority of young offenders when they reach maturity, which warrants a certain degree of tolerance on the part of society towards young offenders;

(d) Criminalization and de-criminalization: criminalization and decriminalization are issues not specifically touched upon by the rules. This is not to underestimate their importance, especially in so far as actual trends toward de-criminalization are concerned. However, by their very nature, the rules are restricted to punishable behaviour, as defined by each respective legal system;

(e) The prevention of juvenile crime and delinquency: prevention, in the sense of averting delinquency or criminality as distinguished from reacting subsequently, is not the main thrust of the rules. The primary focus of the draft rules is on young persons who are already in conflict with the law (although the sub-section on "fundamental perspectives" deals with the prevention of juvenile crime in broad terms). The value of prevention is not to be underestimated. Prevention per se is provided by measures of social care in the pre-delinquency field. They are aimed at all children and youth, particularly those who are "delinquency prone". Prevention may find its correlates in criminal policy that emphasizes deterrence and incapacitation;

(f) Approach to the disposition of juvenile cases: the rules necessarily reflect the divergence between the welfare and the justice approaches to the handling and treatment of juvenile offenders. In practice, however, the difference between the two is not really a difference in kind but one of degree, both approaches being followed to varying extents in most national systems. It will be seen that the rules do specify assistance and rehabilitation and require the fair, humane and equitable treatment of juveniles in conflict with the law, with emphasis on the right to personal development and education.

17. The draft rules reflect an attempt to integrate differing approaches into a consistent and coherent set of rules, paying due regard to relevant international human rights instruments. 3/

18. The proposed draft rules are based on the current legislation, procedures, practices and experiences of countries from all regions of the world. They are the result of extensive study, research and consultations in which the impact of various institutions and policy measures has been taken into account in the long process of development and refinement of the rules in accordance with the recommendations of the Sixth Congress, previous Congresses, preparatory meetings for the Seventh Congress, and the Committee on Crime Prevention and Control.

II. DRAFT UNITED NATIONS STANDARD MINIMUM RULES FOR THE
ADMINISTRATION OF JUVENILE JUSTICE

19. The following draft rules with commentaries, are presented to the Seventh Congress for its consideration.

Part one. General principles

1. Fundamental perspectives

- 1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.
- 1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.
- 1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.
- 1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.
- 1.5 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.5 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

2. Scope of the rules and definitions used

- 2.1 The following standard minimum rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.
- 2.2 For purposes of these rules, the following definitions shall apply:
- (a) A juvenile is a child or young person who, under the respective legal system, may be dealt with for an offence but is not yet criminally responsible as an adult;
 - (b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal system;
 - (c) A juvenile offender is a juvenile who has been alleged to have committed or who has been found to have committed an offence.
- 2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:
- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
 - (b) To meet the needs of society;
 - (c) To implement the following rules thoroughly and fairly.

Commentary

The standard minimum rules are deliberately formulated in such a way as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the rules always being applied impartially and without distinction of any kind. The rule follows the

formulation of principle 2 of the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV) of 20 November 1959).*

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the juvenile offender, who is the main subject of these standard minimum rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these standard minimum rules.

Rule 2.3 is addressed to the necessity of specific national legislation with a view to the optimal implementation of these standard minimum rules, both legally and practically.

*See also the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180); the Declaration of the World Conference to Combat Racism and Racial Discrimination (Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978 (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council Resolution 663 C (XXIV)); the Caracas Declaration (General Assembly resolution 35/171, annex); and rule 9.

3. Extension of the rules

- 3.1 The relevant provisions of the rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult;
- 3.2 Efforts shall be made to extend the principles embodied in the rules to all juveniles who are dealt with in welfare and care proceedings.
- 3.3 Efforts shall also be made to extend the principles embodied in the rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the standard minimum rules for the administration of juvenile justice to cover:

- (a) The so-called "status offences" prescribed in various national legal systems, where a different and usually wider range of behaviour for juveniles than for adults (e.g. truancy, school and family disobedience, immoral conduct, public drunkenness etc.) (rule 3.1);
- (b) Juvenile welfare and care proceedings (rule 3.2);
- (c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

- 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, can a child, by virtue of her or his individual discernment and understanding, be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

- 5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (e.g., social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (e.g., by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here too the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

- 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
- 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.
- 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.5 and 23.) The formulation of specific guidelines on the exercise of discretion and the provision of a system of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

- 7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

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Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) and in article 14.2 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex).

Rules 14 seq. of these standard minimum rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

- 8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.
- 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

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Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (e.g. the name of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rules 15 and 22.)

9. Saving clause

- 9.1 Nothing in these rules shall be interpreted as precluding the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards - such as the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)); the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex); and the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)) and the draft convention on the rights of the child. It should be understood that the application of the present rules is without prejudice to any such international instruments which may contain provisions of wider application. 3/ (See also rule 28.)

Part two. Investigation and prosecution

10. Initial contact

- 10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.
- 10.2 A judge or other competent official or body shall, without delay, consider the issue of release.
- 10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. 4/

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex), article 9.3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm", admittedly is flexible wording and covers many features of possible interaction (e.g., the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles, the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

- 11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.
- 11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these rules.
- 11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- 11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practiced, on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (e.g. the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making - by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.2 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would

contradict the Abolition of Forced Labour Convention.*) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (e.g. in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority" may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (e.g. first offence, the act having been committed under peer pressure etc.).

*Adopted on June 1957 by the General Conference of the International Labour Organisation at its fortieth session.

12. Specialization within the police

- 12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.5) but more generally as an instrument for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention awaiting trial

- 13.1 Detention awaiting trial shall be used only as a measure of last resort and for the shortest possible period of time.
- 13.2 Whenever possible, detention awaiting trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- 13.3 Juveniles under detention awaiting trial shall be entitled to all rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners.
- 13.4 Juveniles under detention awaiting trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention awaiting trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention awaiting trial are entitled to all the rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex), especially article 9 and article 10, paragraphs 2(b) and 3.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (e.g., females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, e.g. of arrest etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention awaiting trial, thus contributing to the avoidance of victimization, and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards specified that the rules, inter-alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three. Adjudication and disposition

14. Competent authority to adjudicate

- 14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council etc.) according to the principles of a fair and just trial.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. Competent authority is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (e.g. the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to refuse to answer, the right to have the last word in a hearing, the right to appeal etc. (see also rule 7.1).

15. Confidentiality

- 15.1 Proceedings in juvenile cases shall not be open to the public.
- 15.2 The proceedings shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

Rule 15.1 reflects an important requirement relating to procedures involving juvenile offenders: safeguarding confidentiality and protecting the privacy of the juvenile. These interests should prevail over those of the public in attending the proceedings or being informed by the press, mass media or other means of communication (see also rule 8).

Rule 15.2 refers to the competent authority's endeavour to maintain a benign, supportive and confidential atmosphere throughout the proceedings. This endeavour does not contradict the safeguards of more formal guarantees, as laid down in rules 7.1 and 16. The special character of proceedings in juvenile cases should not deprive the juvenile of basic procedural rights; they will become particularly important if the juvenile, for whatever reason, refuses to express herself or himself freely and to participate positively and actively in the hearing. But even where, for one reason or another, an atmosphere of understanding cannot be fully established, the competent authority should be bound at least to offer all necessary empathy in conducting a juvenile case.

16. Legal counsel, parents and guardians

- 16.1 Throughout the proceedings the juvenile shall have the right to be represented by her or his legal adviser or to apply for free legal aid where there is provision for such aid in the country.
- 16.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 16.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. ^{4/} Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 16.2 should be viewed as general psychological and emotional assistance to the juvenile - a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude toward the juvenile; hence, the possibility of their exclusion must be provided for.

17. Social inquiry reports

- 17.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most cases involving legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board for this purpose. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

18. Guiding principles in adjudication

- 18.1 The disposition of the competent authority shall be guided by the following principles:
- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
 - (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
 - (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
 - (d) The well-being of the juvenile shall be the paramount factor in the consideration of her or his case.
- 18.2 Capital punishment shall not be imposed for any crime committed by juveniles.
- 18.3 Juveniles shall not be subject to corporal punishment.
- 18.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is especially pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of standard minimum rules for the administration of juvenile justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 18.1, in particular under subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 18.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, it encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 18 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in subparagraph 18.2 is in accordance with article 6.5 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex).

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)) as well as the draft convention on torture and other cruel, inhuman or degrading treatment or punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 18.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

19. Various disposition measures

19.1 A large variety of dispositions shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Examples of such measures, some of which may be combined, are as follows:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

19.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 19.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proven successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 19.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based corrections is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 19.2 points to the importance of the family which, according to article 10.1 of the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 (XXI), annex), is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 19.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (e.g., child abuse).

20. Least possible use of institutionalization

- 20.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 20 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("least period"). Rule 20 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

21. Avoidance of unnecessary delay

21.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

22. Records

- 22.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
- 22.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

23. Need for professionalism and training

- 23.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
- 23.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a pre-requisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth United Nations Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four. Non-institutional treatment

24. Effective implementation of disposition

- 24.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.
- 24.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institution or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries a juge d'execution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 24 in order to ensure wide acceptability.

25. Provision of needed assistance

- 25.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 25 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

26. Mobilization of volunteers and other community services

- 26.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services in particular, have proven to be valuable resources, yet one that is underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 26 emanates from the principles laid down in rules 1.1 to 1.5 and follows the relevant provisions of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex).

Part five. Institutional treatment

27. Objectives of institutional treatment

- 27.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- 27.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex and personality and in the interest of their wholesome development.
- 27.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 27.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
- 27.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
- 27.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 27.1 and 27.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 27.3, are in line with one of the basic guiding principles of the rules, as set out by the Sixth Congress in its resolution 4. (See also rule 13.4.)

Rule 27.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in light of the Caracas Declaration of the Sixth Congress, which inter alia calls for equal treatment in criminal justice administration, 5/ and against the background of the Declaration on the Elimination of Discrimination against Women (General Assembly resolution 2263 (XXII) of 7 November 1967), and the Convention on the Elimination of all Forms of Discrimination against Women (General Assembly resolution 34/180 of 18 December 1979).

The right of access (rule 27.5) follows from the provisions of rules 7.1, 10.1, 16.2 and 19.2. Inter-ministerial and inter-departmental co-operation (rule 27.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

28. Application of the United Nations Standard Minimum Rules
for the Treatment of Prisoners

- 28.1 The United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
- 28.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were among the first to be promulgated by the United Nations. 6/ It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, the Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify the existing Standard Minimum Rules on the Treatment of Prisoners according to the particular characteristics of institutions for juvenile offenders within the scope of standard minimum rules for the administration of juvenile justice.

Rule 28 focuses on the necessary requirements for juveniles in institutions (rule 28.1) as well as on the specific varying needs of their age, sex and personality (rule 28.2). Thus, the objectives and content of the rule interrelates to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

29. Frequent and early recourse to conditional release

- 29.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.
- 29.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in halfway houses etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

30. Semi-institutional arrangements

- 30.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structure support as an important step towards successful reintegration into society.

Part six. Research, planning, policy formulation and evaluation

31. Research as a basis for
planning, policy formulation and evaluation

- 31.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.
- 31.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.
- 31.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.
- 31.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 31 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning with the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

Notes

1/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980, Report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4).

2/ "Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: youth, crime and justice" (A/CONF.121/IPM/1).

3/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1, 1983).

4/ The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva. In its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, inter alia, the Recommendations on the Selection and Training of Personnel for Penal and Correctional Institutions and the Recommendations on Open Penal and Correctional Institutions. According to this resolution, Governments were invited to give favourable consideration to the adoption and application of the Standard Minimum Rules and to take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in resolution 2076 (LXII) of 13 May 1977. The text of the Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations is contained in ESA/SDHA/1 and in Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1). See also United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.83.XIV.2) and the Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.1956.IV.4).

5/ Sixth United Nations Congress ..., chap. I, sect. A, para. 1.6.

This archiving project is a collaborative effort between United Nations Office on Drugs and Crime and American Society of Criminology, Division of International Criminology. Any comments or questions should be directed to Cindy J. Smith at CJSmithphd@comcast.net or Emil Wandzilak at emil.wandzilak@unodc.org.