

22 February 2012

English only

**Commission on Crime Prevention
and Criminal Justice**

Twenty-first session

Vienna, 23-27 April 2012

Item 8 of the provisional agenda*

**Use and application of United Nations standards and
norms in crime prevention and criminal justice**

**Notes and comments on the Standard Minimum Rules for
the Treatment of Prisoners**

I. Preliminary observations

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.

These rules by definition set out minimum standards for the treatment of prisoners and describe only “the essential elements of the most adequate systems of today”. They should not be taken as a measurement of an ideal model for the treatment of prisoners.

The Rules themselves do not have normative authority. However, they should be considered within the context of convention and treaty documents which do have such authority for those states which have ratified them. In terms of prisons, one of the most fundamental of these is Article 10.1 of the International Covenant on Civil and Political Rights:

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

* E/CN.15/2012/1.



Rule 1 can also be interpreted within the provision of Principles 4 and 5 of the UN Basic Principles for the Treatment of Prisoners:

(4) The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

(5) 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.

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 represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

In 1957 it was considered, for a variety of reasons, that it would not be possible in some countries to observe all aspects of even the minimum standards for the treatment of prisoners at all times. However, all countries should acknowledge and strive to reach these standards as a minimum. Nothing in these Rules may be interpreted as implying that any state may lower its standards for the treatment of prisoners or refrain from improving them.

When a state decides that it is necessary to deprive persons of liberty it takes on an obligation to treat them in a manner which respects their human dignity. One consequence of this is that a state cannot justify unacceptable prison conditions on the basis of a lack of resources. This has been made clear by the UN Human Rights Committee in its general Comment 21 (paragraph 4) on Article 10 of the International Covenant on Civil and Political Rights:

... the application of this rule as a minimum, cannot be dependent on the material resources available in the State party ...

This provision is also to be found in the European Prison Rules 2006:

Rule 4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

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.

The Standard Minimum Rules do not exist in a vacuum. Their primary authority lies in the fact that they are based on human rights treaties and conventions. These

instruments have been approved over the years as understanding of the principles in the original Charter of Human Rights has become more developed. On that same basis, understanding of how the Standard Minimum Rules are to be implemented has also developed. The management of prisons and the treatment of prisoners have also become more sophisticated. This is to be encouraged, provided always that the spirit of the Standard Minimum Rules is respected.

Rule 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. 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.

The Rules in Part I, which deal with the conditions in which prisoners are to be detained and their general treatment, are to be applied to all prisoners without exception and regardless of their legal status. Since 1957 other sets of rules have been approved which complement the Standard Minimum Rules in respect of specific categories of prisoners, most notably the Standard Minimum Rules for the Administration of Juvenile Justice, the Rules for the Protection of Juveniles Deprived of the Liberty and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. The Standard Minimum Rules still apply to these different categories.

Rule 4(1) makes specific reference to the fact that the Standard Minimum Rules are also to be applied to prisoners subject to “special security measures”. In many Member States there has of recent years been a significant increase in the number of prisoners who fall into this category and specific reference is made to this feature in the commentary on Rule 27. The general point being made in Rule 4(1) is that their treatment must also be in conformity with the Standard Minimum Rules.

In some Member States a number of the rules in Part II Section A are not applied to prisoners who have not been sentenced. Examples are the exclusion of pre-trial and remand prisoners from access to education, work or skills training and restrictions on their contact with families. As a result pre-trial prisoners, yet to be found guilty of any offence, are often held in very restrictive conditions with most of their time spent in overcrowded living accommodation. Rule 4(2) makes clear that all prisoners should have access to the facilities of the prison provided this does not conflict with their legal status and that such access is for their benefit.

In a small number of Member States the management of some prisons or parts of prisons has been contracted to commercial or other private companies. In such circumstances the ultimate responsibility of the State for those who have been deprived of their liberty should not be undermined. In prisons which are commercially or otherwise privately managed the same standards must be applied in respect of prisoners and of prison staff as in all other prisons and the Standard Minimum Rules apply without exception.

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 I would be equally applicable in such institutions.

(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.

The Convention on the Rights of the Child provides a clear definition of who is to be regarded as a child:

Article 1: ... a child means every human being below the age of eighteen years ...

Article 37(1) of the Convention requires that arrest, detention or imprisonment of a child shall be used “only as a measure of last resort and for the shortest appropriate period of time”. It goes on to state that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”.

In respect of young persons under the age of 18 years, there should be a presumption against imprisonment other than in exceptional circumstances. Where such young persons are imprisoned, they should not be detained together with adults. This is a general rule which should not be departed from other than in the best interest of the child.

Rule 5(1) reinforces the principle that where young persons are detained exceptionally in prisons they should have access to all available facilities. In addition, there are specific rules which provide additional safeguards for juveniles who are detained: Rules for the Protection of Juveniles Deprived of the Liberty.

The Standard Minimum Rules for the Administration of Juvenile Justice (26.4) underline the need to pay special attention to the needs of young female persons who are detained and to ensure that the level of care, protection and treatment they receive is no less than that given to young males.

The Rules for the Protection of Juveniles Deprived of the Liberty (30) specify that detention facilities for young person should have as little security as is necessary, should be small and should be integrated as much as possible into the local community.

The key principle in respect of persons under the age of 18 years is to be found in Article 3(1) of the Convention on the Rights of the Child:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

II. PART I

RULES OF GENERAL APPLICATION

Basic principle

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. (2) On

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

The basic principle of Rule 6(1) that there shall be no discrimination is based on a number of legally binding covenants, which include:

International Covenant on Civil and Political Rights

Article 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27 In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 2.1 States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

Convention on the Rights of Persons with Disabilities

Article 13 Access to justice:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14 Liberty and security of person:

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

This principle is reinforced in a number of standards and instruments, including the Basic Principles for the Treatment of Prisoners (2 and 3) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (5). It is also referred to in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle II).

The UN Committee on the Elimination of Racial Discrimination's General Recommendation XXXI deals in detail with the prevention of racial discrimination in the administration and functioning of the criminal justice system. Its section on how to develop strategies to prevent such discrimination is particularly relevant to this rule.

In 2006 the International Commission of Jurists and the International Service for Human Rights developed a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity. Principle 9 deals in detail with the right to treatment with humanity while in detention.

The UN Principles for Older People has a section dealing with older people in care which is relevant to this rule.

Rule 6(2) affirms the need to respect the religious beliefs and moral precepts of prisoners. This provision is based on the Universal Declaration of Human Rights, Article 18:

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

This provision is confirmed in Article 18 of the International Covenant on Civil and Political Rights, which expands it in the following respects:

18(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

18(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

It is important to recognise the principle which underlies Rule 6(1). The prohibition on discrimination means that no prisoner should be treated in a disadvantageous manner in respect of any of the listed criteria. This does not imply that there is a prohibition against different treatment of prisoners for specific reasons. For example, a number of the following rules identify circumstances in which special

treatment should be given to women, to juveniles and to those with particular health problems.

Rule 6(2) affirms the treaty rights which all persons have to freedom of thought, conscience and religion and to observe the tenets of religion and belief. This places a positive responsibility on prison authorities to make provision for prisoners to have access to religious and spiritual advisers, to religious worship and, where appropriate, to specific diets. This matter is dealt with further in Rule 41. Article 18(2) of the International Covenant on Civil and Political Rights provides safeguards that no prisoner should be coerced into religious belief. Article 18(3) recognises that there may be some limitations on manifesting religious belief but that they may only be imposed within prescribed legal limits and other protections.

Register

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 each 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.**

(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.

The most important principle in respect of the process of depriving persons of their liberty is to be found in the International Covenant on Civil and Political Rights, 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.

The obligation to have a comprehensive and accessible record of everyone deprived of liberty is to be found in the Convention for the Protection of All Persons from Enforced Disappearance, Article 17.3:

Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;

- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Rule 7 places an obligation on prison authorities to ensure that everyone who is committed to detention has been dealt with under proper legal process. It is particularly important that there should be proper judicial authority for any detention.

The purpose of Rule 7 is to ensure that there is a permanent record that this is the case. When the rule was approved in 1957 the normal way of maintaining such records was in handwritten form. It was important that the record could not subsequently be tampered with or amended. For that reason the rule specifies that the record should be kept as “a bound registration book with numbered pages”. Forms of traceable record keeping have advanced considerably since 1957 and this is an example where the provision of Rule 3 can be implemented by the use of new methods of record keeping, provided they are “in harmony” with the principle in this rule.

Another reason for keeping records of admissions to prison is so that relatives and lawyers can be informed. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Article 6 reaffirms this:

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

The Rules for the Protection of Juveniles Deprived of their Liberty and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders make specific reference to these requirements as far as juveniles and women are concerned.

Separation of categories

Rule 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.

Prisoners are not a single homogenous group of people. They are disparate groups of individuals, some of whom have common features and others who are quite distinct on a variety of grounds.

One important difference is between those who have been convicted of committing crimes or criminal offences and those who have been detained while awaiting trial and who are, therefore, still innocent before the law. These two groups should be held in different accommodation because of their different legal status and also because of their different needs. Other groups who have a special legal status include those who have been detained as a result of a civil justice process rather than a criminal justice one. The implications of these differences are dealt with in more detail on Parts II A, C, D and E of the rules.

Most prisoners are adult males and prisons are generally organised for the management of this group. Other smaller groups can be particularly vulnerable within the prison environment; often they will have specific needs and require special attention. They will include women prisoners and young persons who should be held in dedicated accommodation and should be provided with facilities appropriate to their needs.

In situations where the numbers in minority groups are very small decisions about separation can be complex. For example, if the number of women prisoners is small, then the decision to be made is likely to be whether it is better that all women prisoners should be held in separate prisons for women with the consequence that they will be removed far from their home areas and that contact with their families will be very limited, or whether they should be held in small separate units within larger prisons for males. The benefit of this is likely to be that they will be closer to their families with improved possibilities for contact and for integration back to their communities on release. The danger of this arrangement is that they may have limited access to facilities inside their unit. Rule 8(a) recognises this dilemma in indicating that men and women shall be held in separate institutions “so far as possible”.

Rule 8(b) and (c) appears to be quite specific about the separation of untried prisoners, those imprisoned for debt and other civil prisoners from those who are convicted. However, this rule needs to be read in conjunction with Rule 4(2) which indicates that these prisoners should be given access to the same facilities as convicted prisoners “provided they do not conflict with the rules governing those categories and are for their benefit”.

Similarly, Rule 8(d) appears to be quite specific about the separation of young prisoners from adult prisoners. However, this needs to be read in the context of the Article 37 of the Convention on the Rights of the Child:

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In

particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

This matter is also covered in the Rules for the Protection of Juveniles Deprived of their Liberty:

Rule 29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

The principle in all of these cases is that any exception to the provisions of Rule 8 should be made only when it is in the interest of the more vulnerable group. This is keeping with Rule 3. In some Member States prison overcrowding is so bad that the priority has to be to ensure the right to life and that prisoners are not allocated alongside others who might do them violence. As a consequence, the separation of prisoners according to legal status or age is given a lower priority. It should be stressed that this priority should be enforced only in terms of the right to life and should not be used merely because of overcrowding.

Accommodation

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. (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.

One of the most important obligations on prison authorities is to ensure the personal safety of prisoners from physical, sexual or emotional abuse by others. There are specific situations in which an individual might be at greater risk of abuse. One of these is during the night when staff supervision is likely to be reduced for lengthy periods. One method of improving safety is by accommodating prisoners in individual cells throughout the night. However, there will be a number of situations in which this is either not possible or not desirable.

- In some cultures accommodation in a single room may be regarded as a form of segregation or punishment and there be a preference to sleep in communal rooms or dormitories.
- Even where the norm is to have prisoners accommodated in single cells it may be that an individual is distressed and in danger of harming him or herself and will benefit from sharing a cell with another person.
- In several Member States the reality is that prisons are so overcrowded that prisoners have to share cells.

The principle underlying this rule is that prisoners should be held in accommodation which is safe and in which they are not vulnerable to abuse of any kind. Where large numbers of prisoners share a room or dormitory at night with little or no staff supervision the danger of abuse of the most vulnerable prisoners is likely to be greater. If prisoners do share accommodation at night then the numbers in any one room should be limited.

Care should also be taken in assessing which prisoners can safely share with others. Particular care should be taken in assessing the risk of physical or sexual victimization. Care should be taken in the allocation of lesbian, gay, bisexual or transgender prisoners. There should be regular staff observation of accommodation which is shared.

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.

The accommodation for prisoners includes, first of all, the place where they sleep at night but also the areas where they go to eat, to work, for other activities such as education and the areas where they meet their families. The structure of these buildings should reflect the local climatic conditions and should ensure that there is sufficient air, ventilation and light and, where the climate requires it, heating.

In many Member States there is significant overcrowding in prisons. The worst effects of this overcrowding are usually to be found in the living accommodation, where prisoners often spend the greater part of their lives. Rule 10 does not lay down any specific measurement as to the space which should be available to each prisoner. This will depend both on the nature of the accommodation and the amount of time that prisoners have to spend in their sleeping accommodation each day. The principle is that the conditions in which prisoners live should not be deleterious to their health. These matters are dealt with in the European Prison Rules in the following manner:

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

In the construction and development of prison buildings provision should be made for prisoners with any type of disability, for those who have restricted movement, for the elderly and for pregnant or nursing women.

These provisions are confirmed in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XII:

Persons deprived of liberty shall have adequate floor space, daily exposure to natural light, appropriate ventilation and heating, according to the climatic conditions of their place of deprivation of liberty. They shall be provided with a separate bed, suitable bed clothing, and all other conditions that are indispensable for nocturnal rest. The installations shall take into account the special needs of the sick, persons with

disabilities, children, pregnant women or breastfeeding mothers, and the elderly, amongst others.

Provision for juveniles is contained in the Rules for the Protection of Juveniles Deprived of the Liberty:

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

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.

This rule reinforces the provision in Rule 10, specifically in reference to lighting, air and ventilation.

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.

All prisoners should have access to toilet facilities on demand. The best arrangement for this is if they have unrestricted access to them. They should be able to use these facilities in private and should not be subject to scrutiny by staff or other prisoners. Facilities should be provided for the toilets and surrounding area to be kept clean. Specific arrangements should be made for the sanitary requirements of women prisoners.

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.

Standards of what constitutes “adequate bathing and showering” have changed since 1957. It is now generally expected that access to these facilities should be on a more frequent basis than once a week. Particular groups of prisoners, such as pregnant and nursing women, should have additional access. Provision should be made for prisoners with disabilities to access baths or showers. Prisoners should be

able to use all of these facilities in privacy, subject to the need to maintain security and good order.

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

Prison authorities have an obligation to provide the means for prisoners to keep the prison clean and should make arrangements for prisoners to do this. At the same time, prison authorities should ensure that a sufficient budget is allocated to properly maintain prison facilities.

Personal hygiene

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.

The previous rules deal with the need to keep the prison clean and hygienic and to ensure that prisoners have adequate access to sanitary facilities. Rules 15 and 16 refer to personal hygiene and to the need for prisoners to have the facilities necessary to keep their persons clean. Particular attention needs to be paid to the needs of women prisoners, as specified in the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Rule 5):

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

All essential toilet articles and materials should be provided free of charge.

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 requires the prison authorities to provide facilities for hair cutting and for male prisoners to care for beards and to shave, taking account of cultural and religious traditions. Conversely, prisoners should not have their heads shaved for disciplinary reasons or as a matter of routine.

Clothing and bedding

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.

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

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

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.

These two rules are closely related to those which have gone immediately before. Cleanliness and hygiene extends to the clothing which prisoners wear. The rules do not stipulate that prisoners should be required to wear prison uniform but it states that where this is the case such clothing should not be degrading or humiliating. Note that Rule 88(1) states that untried prisoners should be allowed to wear their own clothing if it is clean and suitable.

There should be facilities for prisoners' clothing to be washed regularly. In this regard particular mention is made of the need to keep underclothing in a clean and hygienic condition.

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.

The nature of a bed and bedding may vary according to local custom. In many countries the norm is to sleep on a raised bed and if this is the custom prisoners should be provided with a bed frame, mattress and pillow. In other countries it may be the custom to lay mats or bedding directly onto the ground. Arrangements for prisoners should mirror the local custom. The important principle is that all prisoners should have their own bed or bed mat, clean bedding and their own sleeping place.

Food

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.

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

This rule is confirmed in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XI:

1. Food Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria. Such food shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law.

2. Drinking water

Every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.

It should be noted that this principle prohibits suspension or restriction of food or drinking water as part of a disciplinary measure. This provision should be universally observed. This is referred to further in the commentary on Rule 32.

The diet for prisoners should take account of a prisoner's sex, age, health, physical condition, religious or other belief, culture and the nature of the prisoner's work. Special provision should be made for the dietary needs of women prisoners who are pregnant or nursing. The timing of meals should be arranged so that there is not an undue gap between meals, particularly the last one of the day and the first of the following day.

Arrangements for juveniles are referred to in the Rules for the Protection of Juveniles Deprived of the Liberty:

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

In some Member States prisoners are able to cook their own meals. If that is the case, the prison authorities must provide them with adequate cooking facilities and sufficient food to meet their nutritional needs.

Having taken the decision to deprive persons of their liberty, the State has an obligation to provide them with sufficient food and drinking water. Food and drinking water should be provided free of charge.

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.

(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.

The provision of one hour of exercise in the open air is a minimum entitlement and applies to all prisoners, including those undergoing any form of disciplinary sanction or restricted regime.

Rule 21 (2) should not be interpreted so as to exclude other prisoners from receiving physical and recreational training

Rule 21(2) is repeated in greater detail in the Rules for the Protection of Juveniles Deprived of the Liberty:

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education.

The provision "if weather permits" should not be used as a reason for denying prisoners the opportunity to exercise. If at all possible, an outdoor covered area and/or in-house facilities should be provided.

Medical services

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.

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

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

The key international standard in respect of health care is to be found in Article 12 of the Covenant on Economic, Social and Cultural Rights:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

This is a universal standard, which by definition includes prisoners.

The Basic Principles for the Treatment of Prisoners (9) describe how Article 12 of the Covenant is to be applied to prisoners:

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

An effective way of implementing this principle is that the Ministry of Health or other national health authority should have responsibility for the delivery of health services to prisoners. Where this is not the case, there should be the closest possible relationship between those who provide health care to prisoners and those who are responsible for providing health services in the community.

The principle of equivalence of health care for prisoners means that all norms, standards, guidelines and monitoring systems used in the community shall apply also to health facilities, staffing, diagnosis, and therapeutic guidelines in prisons. It also means that all health care interventions, such as diagnostic and treatment procedures, shall only be provided with the informed consent of the patient.

An accurate and up-to-date medical file should be maintained on all patients. The medical file is confidential to health care staff. All patients must have access to their file and receive copies of parts or all the record upon request. To ensure continuity of care, a copy of the file should accompany the patient upon transfer and/or release.

Admission to a prison health facility or bed designated as a specialised medical bed, such as an infirmary or hospital, should only be made upon an order from a qualified health professional. Assignment to such beds should not be made by prison staff or used for non-health related purposes.

If a patient has health needs which cannot be adequately addressed in the prison due to lack of facilities, resources, or staff in the prison, the patient should not remain in the prison.

Rule 22 refers to “medical services”, which was a term in common use in 1957. Best practice in the 21st century is to look beyond this terminology, which may indicate a preference for responding to ill health and illness, and to focus on “health services”, a term which generally indicates a proactive attitude to the maintenance of good health and includes preventive, curative and palliative care.

Rule 22 also refers to a qualified medical officer and a qualified dental officer. Modern good practice would involve the presence also of other qualified health staff. The term “qualified” indicates that such staff should hold a valid health qualification which is officially recognised by the Ministry of Health and should be licensed to practice in the community outside prison.

In general terms the health profile of many people who are in prison is poor. This may be as a result of their irregular previous life style or of other personal factors. There are often specific problems relating to mental illness, drug or alcohol problems, HIV or Aids. Some prisoners will have particular health needs; these will include women, especially those who are pregnant or are nursing, the young and the old. In addition, prison conditions may well contribute to deterioration in the health of prisoners. For all of these reasons the prison authorities need to devote particular attention to the health of the prisoners for whom they are responsible.

The primary duty of medical and health care staff in prisons is to treat the prisoners as patients. This responsibility is confirmed in 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:

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

Principle 3: 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.

The implication of Principle 3 is that health personnel should not have any involvement in the management of prisoners or in security matters, except in so far as they concern the health needs of prisoners. This is further discussed below in respect of Rule 32.

In Guideline 5 of its Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, the World Medical Association notes that:

5. A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician’s fundamental role is to alleviate the distress of his or her

fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose.

Those responsible for providing medical and health care in prisons must respect the normal principles of their profession. These include, among other matters, the obligation to observe confidentiality of medical information, the autonomy of patients with respect to their own health, and informed consent in the doctor-patient relationship.

Any decision to isolate a prisoner because of his or her health condition should be based solely on clinical grounds and not for management reasons. This means, for example, that prisoners suffering from HIV/AIDS should not be isolated for that reason only; nor should their right to medical confidentiality be violated. Medical officers and all other staff working with prisoners who suffer from HIV/AIDS should take account of Economic and Social Council Resolution 2004/35: Combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities.

In addition to generally trained health care staff there should be provision for specialist care, for example, to meet the psychiatric needs of prisoners. There should also be provision for dental care.

From time to time some prisoners will require residential hospital care. If this is provided inside the prison, then the standards provided should be of the required level and the personnel involved in caring for the prisoner/patients should be properly trained. In many situations this level of specialist health care will not be available inside the prison. In this case the prisoners in question should be transferred to an institution or hospital where they can be given the necessary care.

The Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (10) require that women prisoners should be provided with gender-specific health care services which are at least equivalent to those available in the community and that if a woman prisoner requests to be examined by a woman physician or nurse that should happen if at all possible.

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.

(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.

In some Member States the law prohibits the imprisonment of pregnant women or nursing mothers other than in the most exceptional cases. Where this is necessary such women are generally accommodated in prisons with low security, where they can have greater freedom of movement and access to their children. If a pregnant woman is in prison she should be taken outside the prison when she is due to give birth, if at all possible. In any event, a child's birth certificate should not include any reference to a prison.

If a woman with a baby or small child has to be imprisoned, the matter of whether she should keep her child with her must be dealt with sensitively. In each case the decision about this should always be based on the best interests of the child. When nursing infants are kept with their mother in prison appropriately qualified staff should be there to assist the mother as required and to ensure that the child is given proper care.

All health care staff who deal with women prisoners should be fully aware of the content of the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

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.

This rule is reiterated in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (24), which also states that medical care should be provided free of charge. Principle 25 states that a prisoner should be able to seek a second medical opinion, subject to reasonable provisions. Principle 26 requires that a record should be kept of medical examinations.

A prison is a closed institution where many human beings live in close proximity to each other. In such an environment if one prisoner enters with an infectious disease there is always a danger that this will be transmitted to others. Sometimes persons are admitted to prison with an unidentified physical or mental illness which may be acute or chronic and which may be likely to deteriorate in the prison environment.

Many prisoners will come into prison from police custody or after being held for a period in some other form of detention. There is an obligation on the prison authorities to ensure that such prisoners are clear of any marks or injuries which might have been sustained in their previous detention. If any such marks are found they should be recorded and reported to the appropriate authorities immediately.

All of these are reasons why prisoners should be offered a medical examination as soon as possible after admission.

A full medical record or file should be established on all patients; all clinical encounters should be documented in the medical confidential records; wounds, injuries should be graphically represented and if possible photographs should be taken.

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.

(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.

The fundamental duty of a doctor working in the prison setting is no different from the clinical duties of doctors in other settings. In this connection the basic standard

is laid out in the World Medical Association Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (5):

A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician's fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose.

Rule 25 emphasises that the primary duty of the medical officer is to treat any sick prisoner first and foremost as a patient. This rule is reinforced by 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 (1):

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

In 1979 the International Council of Prison Medical Services approved an ethical code known as the Oath of Athens, according to which they pledged:

... 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 prisons 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 in 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 persons.
5. That our medical judgements be based on the needs of our patients and take priority over any non-medical matters.

There are a number of circumstances in which a doctor who works in prison must bear in mind the primary duty to treat the prisoners as patients. One example is the prohibition against forcibly feeding a prisoner who refuses to eat. In this matter, a prison medical officer needs to observe the World Medical Association Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (5):

Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning

the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.

Another specific example of the doctor's duty towards the prisoner as patient will be considered below in reference to Rule 32.

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.**

(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.

Rule 26 indicates that in addition to duties towards individual prisoners, medical officers have general responsibilities to use their professional expertise to inspect and report on all those conditions which may affect the health and hygiene of prisoners.

In modern society inspections such as these are often the responsibility of public health, sanitary and hygiene professionals.

Discipline and punishment

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.

In accordance with Article 10 of the International Covenant on Civil and Political Rights, Member States have to ensure that prisons are secure, safe and well-ordered but are not run in an oppressive or brutal manner. It is the duty of the prison authorities to implement the sentence of the court but not to impose additional punishment.

The term "firmness" in this rule is not to be confused with harshness, but should be understood to mean consistency and fairness in all measures that aim to establish good order and in all disciplinary procedures, as covered in Rules 29 and 30. On the same basis, firmness should never be understood to imply the use of unnecessary force. Rule 54 explains the strict restrictions placed on the use of force.

The Rules for Juveniles Deprived of their Liberty (66) emphasises in greater detail the principle that:

“Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.”

The Standard Minimum Rules do not provide detailed guidance on how discipline and order should be maintained on a daily basis. There is no reference, for example, to measures that comprise elements of procedural security, and in particular rules governing searches. The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle XXI) and the European Prison Rules (Rule 54) elaborate the principles and procedures that should apply to all types of searches in prisons. These rules provide that there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency.

Searches should also be carried out in circumstances that are clearly defined by regulation. This principle, which aims to prevent the arbitrariness in decisions to carry out searches, is reflected in the European Prison Rules (54.2), which provides that:

The situations in which such searches are necessary and their nature shall be defined by national law.

This requirement is reflected also in the Principle XXI of the Best Practices on the Protection of Persons Deprived of Liberty in the Americas, which states that:

... Whenever bodily searches, inspections of installations and organizational measures of places of deprivation of liberty are permitted by law ...

Both these regional instruments emphasise that staff need to be trained to carry out these searches in a way that respects the dignity of the person being searched and that the persons being searched should not be humiliated by the searching process.

The principle that persons should only be searched by staff of the same gender is dealt with in the commentary on Rule 53 below.

The Human Rights Committee, in its General Comment 16 on Article 17 of the International Covenant on Civil and Political Rights has stated that:

“So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex”.

The searches referred to in these rules include all personal searches, including what are often described as rub or pat down and frisk searches. Different principles apply to invasive body searches, which are sometimes referred to as intimate body searches or cavity searches. Such searches can be extremely humiliating and even traumatic and should only be carried out only in very narrowly prescribed

circumstances. There are now methods of screening which may include using modern technology. Alternatively, arrangements should be made to keep the prisoners under close supervision until such time as any forbidden item is expelled from the body.

The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle XXI) totally prohibit intrusive vaginal or anal searches in all cases.

The World Medical Association Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly in 1993, deals with these matters in detail:

The prison systems in many countries mandate body cavity searches of prisoners...

These searches are performed for security reasons and not for medical reasons. Nevertheless, they should not be done by anyone other than a person with appropriate medical training. This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. In such a case the physician should explain this to the prisoner. The physician should furthermore explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities. If a physician is duly mandated by an authority and agrees to perform a body cavity search on a prisoner, the authority should be duly informed that it is necessary for this procedure to be done in a humane manner.

If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner.

The physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system.

The World Medical Association urges all governments and public officials with responsibility for public safety to recognize that such invasive search procedures are serious assaults on a person's privacy and dignity, and they also carry some risk of physical and psychological injury. Therefore, the World Medical Association exhorts that, to the extent feasible without compromising public security,

- alternate methods be used for routine screening of prisoners, and body cavity searches be used only as a last resort;
- if a body cavity search must be conducted, the responsible public official must ensure that the search is conducted by personnel with sufficient medical knowledge and skills to safely perform the search;
- the same responsible authority ensure that the individual's privacy and dignity be guaranteed.

Finally, the World Medical Association urges all governments and responsible public officials to provide body searches that are performed by a qualified physician whenever warranted by the individual's physical condition. A specific request by a prisoner for a physician shall be respected, so far as possible.

Strip searches and intimate body searches should always be authorised by the director of a prison and the reason for the search shall be put on record. Such searches shall be carried out in a manner that provides privacy from other prisoners and staff members.

Rule 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.

In some Member States it is common practice to appoint prisoners as group leaders, requiring them to report to the prison authorities on the behaviour of other prisoners and to make recommendations which affect the way they are treated. In other situations prisoners have been given authority over prisoners in punishment or segregation units. These practices bring with them immense risks of abuse of power by such prisoners and generate a climate of fear and distrust which undermines the principles of creating a positive and healthy prison environment and a prison that is managed on the basis of fairness and justice. This rule is also reflected in the European Prison Rule 62.

Rule 28(2) points out that prisoners may be given opportunities to participate in aspects of the administration of the prison in other positive ways. Subject to the needs of good order, safety and security, prison authorities may allow and encourage the creation of prisoner councils, responsible for channelling communications between the prisoners and the prison administration, or other prisoner bodies who may be given responsibility for organising social, educational or sports activities. This is referred to in European Prison Rule 50:

Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

Rule 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.**

This rule stresses that disciplinary offences, the types of punishments that can be used and the authority which has the competence to impose such punishments should all be determined by law or regulation. This prevents disciplinary procedures

and punishments being imposed in an arbitrary manner and ensures that prisoners are informed in advance of the implications of their actions.

This rule should be read together with Rule 35(1), which means that prisoners should be made aware in writing at the point of admission about the issues listed in Rule 29. Prisoners who do not speak the language most commonly spoken in prison should be provided with written copies of prison rules and regulations in a language they understand. Irrespective of whether translations of prison rules are available, they should also be carefully explained, to ensure that all points are understood, including by those who are illiterate.

The use of disciplinary procedures should always be a matter of last resort and staff should attempt to prevent incidents which might result in breaches of discipline and to resolve problems by informal dispute resolution or by some form of restorative justice. This is provided for in European Prison Rules 56 and 57:

56.1 Disciplinary procedures shall be mechanisms of last resort.

56.2 Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

57.1 Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

All punishments should be proportionate to the offence committed and should never be excessive. Restrictions on particular forms of punishment are referred to in Rules 30 to 33. Disciplinary punishment should not result in the sentence being extended beyond its original duration.

The prisoner should have an avenue of appeal against any disciplinary finding.

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.

(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.

A prisoner may only be punished after a formal disciplinary hearing, conducted according to the procedures based on the key principles of natural justice. These include the right to know details of the charge in advance, to be given sufficient time to prepare a proper defence and to be present at the hearing.

If prisoners are not capable, for whatever reason, of defending themselves they should be allowed to call another person to assist them. This may, for example, apply in the case of a prisoner with a disability, as provided for in the Convention on the Rights of Persons with Disabilities, Article 12:

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

If it appears that a serious crime may have been committed, the prison authority should refer it to the appropriate criminal justice investigatory authority.

No prisoner may be punished twice for the same offence. This means that if the offence is considered to be a serious breach of the criminal law and has been referred to an external court of law, there should not be a parallel internal disciplinary procedure. This does not preclude the prison authorities from taking necessary steps to ensure that the prisoner does not repeat the offence and does not interfere with witnesses in any investigation.

If the disciplinary charge is a serious one with the possibility that it might result in the imposition of a heavy penalty or if the charge involves complicated points of law, provision should be made for the prisoner to have legal representation. European Prison Rule 59(c) provides that prisoners charged with a disciplinary offence shall:

Be allowed to defend themselves in person or through legal assistance when the interests of justice so require.

The conditions under which legal representation may be granted in disciplinary hearings should be clearly defined in prison regulations and should also be drawn to the attention of prisoners.

Rule 30(c) provides the right to an interpreter, where necessary and practicable. This requirement should be interpreted in light of the International Convention on the Elimination of All Forms of Racial Discrimination General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (38(a)) which requires states to guarantee prisoners who are of a minority race, colour, descent, or national or ethnic origin the right to the assistance of an interpreter. European Prison Rule 59 also refers to the right to an interpreter:

Prisoners charged with disciplinary offences shall:

e. have the free legal assistance of an interpreter if they cannot understand or speak the language used at the hearing.

Rule 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.

This rule should be interpreted in conjunction with Article 7 of the International Covenant on Civil and Political Rights, which provides that:

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

General Comment No. 20 of the UN Human Right Committee (5), with reference to Article 7 of the ICCPR, explains that:

The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure ...

Thus the specific forms of punishment listed in Rule 31 are totally prohibited.

All punishments should be proportionate to the offence committed and should never be excessive.

Prohibition of family contact, especially where children are involved, is liable to be detrimental to the mental wellbeing and rehabilitation of all prisoners and should not be used as a punishment. Such a punishment would also imply unwarranted restriction on the right of other family members to family life.

This is confirmed in respect of women prisoners by the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (23):

Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

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.

(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.

Close confinement, or solitary confinement as it is otherwise described, involves confining a prisoner in a closed cell on his or her own. This form of punishment generally involves extensive sensory deprivation. Rule 31 prohibits total exclusion of light but solitary confinement will often include deprivation of any human contact or stimulation. A number of Member States use this form of punishment, sometimes for extended periods. It is also used by some authorities for reasons other than punishment. Sometimes this is described as administrative segregation.

Solitary confinement, applied for whatever reason, can have extremely harmful psychological, and sometimes physiological, effects. The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium in Istanbul, noted:

Solitary confinement is applied in broadly four circumstances in various criminal justice systems around the world: as either a disciplinary punishment for sentenced prisoners; for the isolation of individuals during an ongoing criminal investigation; increasingly as an administrative tool for managing specific groups of prisoners; and as a judicial sentence. In many jurisdictions solitary confinement is also used as a substitute for proper medical or psychiatric care for mentally disordered individuals. Additionally, solitary confinement is increasingly used as a part of coercive interrogation, and is often an integral part of enforced disappearance or incommunicado detention.

Recognising the potentially harmful impact of solitary confinement on all prisoners, the Basic Principles for the Treatment of Prisoners (7) provide that:

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

This principle applies to all prisoners, including life sentenced and long term prisoners and prisoners under sentence of death who in many parts of the world are subjected to solitary confinement by virtue of their sentence. The emphasis in Rule 32 and in the Basic Principles for the Treatment of Prisoners is on solitary confinement applied as punishment. Given the recommendation that its use as a punishment should be abolished or restricted, this recommendation is all the more relevant to circumstances where the prisoner concerned is not being punished.

The UN Human Rights Committee has expressed the opinion in its General Comment No. 20, paragraph 6, that prolonged periods of solitary confinement may amount to torture or ill-treatment:

The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 (of the International Covenant on Civil and Political Rights).

The Committee against Torture has recognised the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pre-trial detention, as well as a disciplinary measure. Except in exceptional circumstances, such as when the safety of persons or property is involved, the Committee has recommended that the use of solitary confinement be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law and exercised under judicial supervision. The Committee on the Rights of the Child has recommended that solitary confinement should not be used against children.

In the exercise of his mandate, particularly in the course of visits to places of detention as well as by responding to allegations brought to his attention, the UN Special Rapporteur on Torture has expressed concern at the use of solitary confinement, urging States to prohibit its imposition as punishment, either as a part of a judicially imposed sentence or a disciplinary measure. More specifically, he found that the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture. According to the Special Rapporteur, prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days, constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. Accordingly, he calls on the international community to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days (see A/66/268).

Solitary confinement is prohibited in the cases of pregnant women, women with infants and breastfeeding mothers in prison by the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (22):

Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.

The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXII paragraph 3, prohibits the use of solitary confinement in punishment cells, strictly forbids the imposition of solitary confinement on pregnant women, on mothers who are living with their children in the place of deprivation of liberty and on children deprived of liberty. It provides that:

... solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.

In all cases, the disposition of solitary confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.

European Prison Rule 53 provides for similar restrictions and strict procedures to be followed in the application of special high security measures.

The Istanbul Statement on the Use and Effects of Solitary Confinement explains that solitary confinement can harm prisoners who were not previously mentally ill and tends to worsen the mental health of those who are ill. It recommends that the use of solitary confinement in prisons be kept to a minimum. The statement recommends that the use of solitary confinement should be absolutely prohibited for death row and life-sentenced prisoners by virtue of their sentence, for mentally ill prisoners and for children under the age of 18.

It is now widely held that a reduction of diet is a form of corporal punishment and as such constitutes inhuman punishment. Use of reduction of diet as a punishment contravenes the principle of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as provided in the Covenant on Economic, Social and Cultural Rights, in addition to being incompatible with the principle of treatment prisoners with humanity and respect to their human dignity, as provided by International Covenant on Civil and Political Rights. Principle XI of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas prohibits the restriction of food as a disciplinary punishment, as detailed in the commentary on Rule 20.

Rule 32(1) requires that before a prisoner is punished by close confinement or reduction of diet the medical officer shall examine the prisoner and certify in writing that the prisoner is fit to sustain such a punishment. This is a clear instance in which the developments in good practice provided for in Rule 3 must be applied. Rules 22 to 25 describe the role of the medical officer with regard to prisoners. The commentary on these rules and in particular on Rule 25 demonstrates that the

medical officer's primary responsibility to prisoners is that of doctor to patient. To certify that a prisoner is fit to undergo any punishment, far less punishment involving solitary confinement or reduction in diet flies in the face of that professional responsibility and of a doctor's medical ethics. Such activity is not compatible with 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, Principle 4 (b), which states:

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

A doctor who certifies that a prisoner is fit to undergo solitary confinement or reduction in diet violates this principle.

Rule 32(3) requires that the medical officer shall visit daily prisoners undergoing close confinement or reduction of diet or any other punishment that might be prejudicial to the physical or mental health of a prisoner and shall advise the prison director if he considers the termination or alteration of the punishment necessary on grounds that it is damaging the prisoner's physical or mental health. This situation is not so clear cut. By visiting such prisoners daily, particularly if the visit is a cursory one, the doctor may be regarded by the prisoner and by the prison authorities as either condoning or approving the punishment. This would not be professionally acceptable.

On the other hand, where prisoners are undergoing such punishment they remain entitled to medical care and the doctor has a duty to inform the prison director if he or she sees clinical evidence that the prisoner's health is deteriorating as a result of the punishment.

The Committee of Ministers of the Council of Europe Recommendation Concerning the Ethical and Organisational Aspects of Health Care in Prison deals with this matter as follows:

66. In the case of a sanction of disciplinary confinement, any other disciplinary punishment or security measure which might have an adverse effect on the physical or mental health of the prisoner, health care staff should provide medical assistance or treatment on request by the prisoner or by prison staff.

European Prison Rule 43 provides as follows:

2. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

3. The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

Instruments of restraint

Rule 33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, 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.

Rule 33 should be read in conjunction with Rule 54 on the use of force and its accompanying commentary. In general, the use of physical restraints should be based on the principles of legality, necessity and proportionality (see for example European prison Rules 68.2 – 68.4)

In recent years many new forms of physical restraints have been developed and Rule 33 should be understood to encompass newer forms of restraint, in addition to those listed. These include finger and thumb cuffs, body-worn electroshock devices and any weighted or fixed restraints. The use of all of these physical restraints should be prohibited as punishment.

In other circumstances physical restraints should only be applied in exceptional circumstances and for the shortest possible period of time. They should not be used as an alternative to other physical measures of security. For example, it is never permissible to keep prisoners chained by the ankle or wrist to walls or to long iron bars, either individually or in groups, simply because the physical security of buildings is very weak.

Physical restraints should not be used as a matter of course when a prisoner is being transferred from one location to another, either within a prison or outside the prison. In each case, their use should be based on an individual assessment of the risk posed by the prisoner.

Restraints may have to be used as a last resort to control a violent prisoner who is threatening the safety of others. As soon as that person stops the violent behaviour the restraint must be removed. Only in exceptional circumstances should restraints be used to prevent a prisoner harming him or herself. Best practice suggests that this should rarely be necessary, because there are alternative methods to prevent self-injury.

The Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (24) prohibit the use of instruments of restraint on women at certain times:

Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.

The Rules for the Protection of Juveniles Deprived of their Liberty (64) strictly limits the use of instruments of restraint to exceptional cases described in the rule and for the shortest possible period of time and following procedures which require the director to authorise their use, to consult with medical and other relevant personnel and to report to the higher administrative authority.

The procedures for the authorisation of physical restraints need to take account of 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 5, which states:

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

These considerations are particularly important in cases where the prisoner concerned may have some form of mental illness or disability.

The senior member of staff on duty must authorise the use of physical restraints and should ensure that they are used properly. A full record should be kept of every time physical restraints are used, including the period of time for which they are used. The director of the prison and a medical officer must see any prisoner restrained because of violent behaviour or self-injury as soon as possible and authorise the continuing use of restraints if necessary. The decision and the procedure for each use of restraints must be closely monitored by higher authority and, according to best practice, by an authorised independent monitor.

Rule 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.

Every prison system must have clear and transparent procedures for the use of physical restraints and key staff should be trained in their use. These procedures must be specific as to:

- the circumstances in which restraints may be used;
- which types of restraints may be used, based on the understanding that they should have a demonstrable practical utility in law enforcement / prison management;
- who can authorise their use;
- how they are to be applied;

- who is to monitor that the prescribed procedures are being carried out correctly.

The use of instruments of restraint must always be proportionate to the need for their use.

Information to and complaints by prisoners

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 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.

Prisons are places where discipline is important and where there are regulations which prisoners have to obey. These requirements are essential if there is to be good order in prisons and they are to be safe and secure. On first being admitted to prisons many prisoners will find that they have entered a strange world in which they are uncertain about what is expected of them and how they should behave. They are also likely to be uncertain about the rights to which they are entitled and the privileges to which they may have access. Prison authorities should provide all prisoners at point of admission with clear information about their rights, privileges and obligations. Prisoners should also be given information about how make requests on any matters and the avenues which are available to them for complaint when they consider that they may have been unfairly treated.

This information should be provided in writing in a language which the prisoner can understand. The information should be available in Braille for prisoners who are unsighted. Prisoners who cannot read should be given this information orally and those who are deaf or hard of hearing should be given the information by sign language if necessary.

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.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

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

The matter of requests and complaints is dealt with in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

The authorities should ensure that any prisoner who chooses to make a complaint on any matter, including sexual abuse, is not subsequently subject to intimidation or retaliation.

Contact with the outside world

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.

The importance of family relationships, is made clear in Article 10(1) of the International Covenant on Economic Social and Cultural Rights which states:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Maintaining family ties during the period of imprisonment has been recognized as an important, positive factor contributing to better social reintegration prospects upon release.

Art 17.2(d) of the International Covenant on the Protection of All Persons from Enforced Disappearance, which is more specific with regard to the rights of those deprived of their liberty, states:

[Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:]

(d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;

In order that prisoners can maintain contact with the outside world the Body of Principles for the Treatment of Prisoners (20) recommends 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.

In many Member States prisons are located in areas which are relatively remote from the main centres of population with the result that prisoners are detained far from their families. Nevertheless, prison authorities should take account of the residence a prisoner's family when deciding on allocation. This consideration should also be taken into account when decisions are being made about the location of new prisons.

At a regional level, the European Prison Rules (24) are very specific about prison authorities' obligations with regards to communication with and visits to prisoners. They make reference to communication by letter, telephone or other forms of communication and also to the need for visits to be arranged in such a manner as to allow the maintenance and development of normal family relationships. All these forms of communication should be restricted only in specific circumstances.

The Rules for the Protection of Juveniles Deprived of their Liberty (59-61) emphasise the particular needs of juvenile prisoners in respect of communication with the outside world and especially with their families.

Special attention needs to be given to the rights of the children of prisoners to have contact with and to visit their imprisoned parent. This referred to in the Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (28). The provisions in this rule should also apply to fathers as well as to mothers.

Visits from family members should take place in conditions which are as natural as can be allowed in the prison environment.

In fulfilling their obligation to respect the universal human right to family life, prison authorities should ensure that the arrangements for visits by family members provide for frequency, regularity and sufficient privacy, allowing for legitimate security requirements. These arrangements vary among Member States. In some instances visits are of relatively short duration and take place in large public rooms. In some Member States couples are allowed to spend several hours in a private

room. In other States there is provision for longer visits, sometimes lasting up to 72 hours, with various family members coming to live with the prisoner in a small flat or private unit. In half open or open institutions, additional measures to facilitate family ties can be introduced. The Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (27) emphasises that such arrangements should be available to women prisoners as well as to men.

In a number of Member States an increasing number of prisoners are non-nationals, often with families resident in other countries. Prison authorities should be aware of the special difficulties which these prisoners are likely to have in maintaining contact with their families and should make every effort to minimise these problems. This might include flexibility in the times when prisoners are permitted to make telephone calls.

Prisoners should also be able to make contact with lawyers and/or legal advisers when necessary. The European Prison Rules (23) make direct reference to this.

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.

(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.

In many Member States an increasing number of prisoners are foreign nationals. In some countries the proportion can be as high as 50 per cent of the total. This fact presents a variety of specific challenges to prison authorities, including matters such as language, dietary needs, religious observance and cultural sensitivities.

Rule 38 restricts itself to the basic right which foreign national prisoners have to make contact with the consular representatives of the state to which they belong. In this regard the most important binding treaty is the Vienna Convention on Consular Relations. Article 36 of this Convention contains the following provisions:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State 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 be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(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 judgment. 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.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

This provision is reiterated under Annex II of the UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners, Annex II:

6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.

This issue is also dealt with in the Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders, Rule 53.

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.

Article 19(2) of the International Covenant on Civil and Political Rights states that:

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.

Deprivation of liberty does not imply that prisoners should be prohibited access information about local, national or international developments. On the contrary, such access can assist eventual reintegration into society on release. In addition to the methods listed in the rule, prisoner should also have access to television programmes. As technology advances, some Member States provide prisoners with access to internet information.

Books

Rule 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.

A library is an important cultural and recreational resource. It is also an important element of educational provision. In many Member States public libraries are now

important sources for literature in a variety of electronic formats. This development should be reflected in library facilities in prison where possible.

Books and other sources of information should be available in the languages spoken by all groups in a prison. Where available, provision should be made for prisoners with reading difficulties.

Religion

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.

(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.

Rule 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.

The right to freedom of thought, conscience and religion is enshrined in Article 18 of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

In terms of Article 18 prisoners should have the opportunity to pray, to read religious texts and to meet other requirements of their religion, such as clothing, diet, hygiene, praying times. They should also have the opportunity to gather as a group for religious services on religious holy days and to be visited by qualified representatives of their religion for private or prayers and group services. Communal prayer and meditation among prisoners should be facilitated, even in the absence of a religious representative.

These provisions should apply to all recognised religious groups and should not be restricted to the main religions in any country. The spiritual beliefs, religious customs and ceremonies of indigenous peoples are particularly to be respected in terms of the United Nations Declaration on the Rights of Indigenous Peoples.

Special attention should be paid to the religious needs of prisoners from minority groups. They should always be able to observe the tenets of their religion in terms of such matters as personal or communal prayers, hygiene and clothing requirements.

Religious representatives should be able to provide religious texts, artefacts (prayer rugs, beads, statues, pictures), and conduct confessions, private prayers or group counselling in strict confidentiality (no acoustic surveillance) unless there is a clear, definable, and exceptional risk to security or public order. Preaching hatred, inciting violence, paramilitary exercises, or practicing rituals harmful to others (also self-mutilation or animal sacrifices) should be prohibited.

Deprivation of religious rights may not be used as a disciplinary measure, and acts aimed at injuring the religious feelings of person (for instance, to extract information) or the interrogation of religious representatives about information which they receive should be strictly prohibited.

It is also important to ensure that prisoners who do not adhere to any religious group or who do not wish to practice a religion should not be obliged or put under pressure to do so. For example, prisoners should not receive additional privileges or be allowed to live in better conditions because of their religious affiliation or practice.

Retention of prisoners' property

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.

(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 authorized 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.

This rule is a further statement of the fact that imprisonment constitutes deprivation of personal liberty. It does not imply permanent forfeiture of personal possessions. While prisoners may not have access to some of their possessions while they are in prison, these must be safely and securely retained, with a receipt provided to the prisoner, and they should be returned to the prisoner on release.

Notification of death, illness, transfer, etc.

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 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 authorized, 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.

This rule should be read in conjunction with Rule 7, which requires that a proper record should be kept of every person who is received into prison, and Article 6 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, which requires that accurate information about the custody and whereabouts of persons deprived of their liberty, including transfers, shall be made available promptly to the prisoner's relatives and lawyers. It also takes account of the provisions in the Declaration on the Protection of All Persons from Enforced Disappearances.

In addition to safeguarding the legal status of prisoners, this rule recognises the universal right to family life involves the right of families and other partners to be aware of matters affecting family members who are in prison. This right involves a two way process and prisoners also have a right to be informed of the death or serious illness of any near relative and, taking account of security requirement, to attend the family member.

In respect of juveniles these matters are also referred to in the Rules for the Protection of Juveniles Deprived of their Liberty (56 and 57).

If a person dies in custody or shortly after release it is important to establish the cause of death and to discover whether the death was linked in any way to the fact of imprisonment. For this reason a post mortem examination should be carried out by a qualified, independent pathologist. The Body of Principles for the Treatment of Prisoners (34) state that when any such death occurs there an inquiry should be undertaken by a judicial or other authority and that the findings of such an inquiry should be made known unless such disclosure might jeopardise an ongoing criminal investigation.

The corpse of a person who dies in custody should be returned to his or her next of kin.

Removal of prisoners

Rule 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 shall obtain for all of them.

This rule conforms with the obligation to treat prisoners with respect for the inherent dignity of the human person.

The prohibition against unnecessary physical hardship in the course of a transfer shall be taken to include an obligation to provide prisoners with sufficient food, drinking water, exercise and access to toilet facilities, as necessary.

Institutional personnel

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.

(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.

The first point to be noted in this rule is the reference to “the prison administration”, which implies that there should be a separate prison administration. Best practice is that the authority responsible for prisons should be separate from the military, police and investigation services. Imprisonment is a function of the formal criminal justice process and should be in the hands of the civil power. In the interests of justice it is essential that there should be a clear organisational separation between the prison administration and the police, who are responsible for the detection and investigation of crime, as well as from the authority which is responsible for the prosecution of crime. Reference is made to this principle in European Prison Rule 71:

Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.

Prison staff carry out an important public service in terms of contributing to public protection and safety. Their task is a complex and responsible one and for that reason they require to be carefully selected. Rule 46(1) identifies the key qualities which their job demands: integrity, humanity, professional capacity and personal suitability. Integrity implies that there is an ethical dimension to the work and a number of Member States have emphasised this by developing a code of ethics for prison staff. The need for humanity rests on the obligation to treat all prisoners with that quality. Prison staff, especially those who work directly with prisoners, deal with a wide cross section of men and women. Some will be a threat to the public; some will be dangerous and aggressive; others will try very hard to escape. Many are likely to be mentally disturbed, to suffer from addictions, to have poor social and educational skills or to come from marginalised groups in society. Each of them has to be dealt with as an individual person. In order to carry out this difficult and complex work prison staff need to be professionally competent and to have a suitable personality.

The Code of Conduct for Law Enforcement Officials (2) affirms these principles:

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

The processes which prison administrations use for the recruitment of staff must be robust enough to ensure that only persons who meet these high standards are admitted to work in prisons. Attention should be paid to recruiting staff from diverse gender, ethnic and cultural backgrounds.

Rule 46(2) emphasises the need for continuing public education as to the nature of work carried out by prison staff and its public importance.

Prison staff should have a professional status and be given public esteem which is commensurate with the difficult task which they carry out, as described in Rule 46(3). Their professional status should be equivalent to although different from that of other law enforcement officers. Given that the prison authority should be in the hands of the civil power, it follows that prison staff should also be civilian and should have the status of civil servants. Alongside these requirements it should be remembered that prisons remain disciplined and hierarchical organisations with a clearly recognised chain of command.

In recognition of the work which they carry out, prison staff are entitled to public respect and to conditions of employment which reflect their difficult work. For this reason they should not be at risk of arbitrary dismissal. They should be paid an adequate salary. In addition to being their entitlement, this will reduce the danger that they might be corrupted or bribed in anything that they do.

Rule 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.

If prison staff are to be professional in their work then only those with a requisite standard of education and intelligence should be recruited. To ensure that this is the case there has to be a rigorous assessment process.

Once they have been recruited, they have to be trained to a professional standard. The first requirement is to reinforce for all of them an appreciation of the ethical context within which prisons must be administered. Staff need to be taught the basic skills which are required to deal with other human beings, some of whom may be very awkward and difficult, in a decent and humane manner. This means that training has to cover international and regional human rights standards, including those which deal with issues of cultural diversity and the rights of minorities, as well as issues relating to age or disability, to sexual orientation or gender identity. Special training should be provided for staff who work with particular groups, such as foreign national prisoners or those with mental illness. In some circumstances staff should be provided with specific training on languages and cultural awareness.

Another example of specialised training required is described in the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5) which specifies the importance introducing strategies to prevent racial discrimination in the administration and functioning of the criminal justice system:

5. (b) To develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc.;

(c) To foster dialogue and cooperation between the police and judicial authorities and the representatives of the various groups referred to in the last paragraph of the preamble, in order to combat prejudice and create a relationship of trust;

(d) To promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice.

Staff should be given the necessary technical training. This includes an awareness of all security matters. Staff need to be taught how to manage violent prisoners in a manner which involves minimum use of force.

Throughout the course of their career staff of all ranks should be given a regular series of opportunities for continuing development.

Special training should also be given to staff who work with juveniles, as the Rules for the Protection of Juveniles Deprived of their Liberty (85) indicates:

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

The Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (29) indicate the need for similar provision for staff who work with women prisoners:

Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.

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 example and to command their respect.

Several Articles of the Code of Conduct for Law Enforcement Officials emphasise the responsibilities of those staff with responsibility for people deprived of their liberty:

1. Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.
2. In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
4. Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.
6. Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.
7. Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

If individual members of staff are to behave in accordance with these principles, it will be important that they also imbue the entire ethos of the prison administration. This is likely to be particularly important, for example, to eliminate any danger of corruption.

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.

(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.

The first line prison staff, those who generally wear uniforms, are required to be much more than guards and to have a positive influence on prisoners as described in Rule 48. In addition, there is likely to be a need for individuals who are already trained in a specific profession. They will include teachers, instructors and health care staff. In some prisons there will also be a need for psychiatrists and psychologists. It should not be assumed that persons who have had a professional training, say as teachers, will automatically be suitable to work in a prison environment. They also need to be selected carefully and there needs to be clarity about the role they are expected to carry out in the organisation. Specialist staff should also be provided with access to continuous training within their own professions equal to training opportunities provided to their colleagues working outside of prisons.

Rule 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.

Prison management is above all else about the management of people, primarily the prisoners and the staff. The individual who is in charge of a prison is the key person in setting the tone throughout the whole prison and more fundamentally his or her method of directing can determine whether or not the prison is a place of decency, humanity and justice.

Several of the previous rules have emphasised the importance of ethical standards in prison and the need for a respect for human dignity. If these are to be realised, prisons have to be properly led and managed. Those with responsibility for prisons and prison systems need to look beyond technical and managerial considerations. They also have to be leaders who are capable of enthusing the staff for whom they are responsible with a sense of value in the way they carry out their difficult daily tasks. They need to be men and women who have a clear vision and a determination to maintain the highest standards in the difficult work of prison management.

The task of directing a prison is not one for the amateur or the unqualified. It is a highly skilled public appointment. The persons appointed to this role must have the required skills in leadership, management and administration and must be given the necessary training. The need to do the job on a full time basis and should have no other responsibilities. They need to be available at all times in case of emergency. Previously this would have meant that they needed to live within calling distance of the prison. With modern methods of communication there can be greater flexibility about this requirement.

There should be no gender bias in the appointment of prison directors. There is now extensive experience in many Member States to confirm that women can have the necessary skills to be directors of male prisons and that similarly men can direct prisons for women. This is referred to further on the commentary on Rule 53.

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.

(2) Whenever necessary, the services of an interpreter shall be used.

This rule has even greater significance today than when it was first approved, given the wide range of nationalities and languages to be found in many prisons. It goes without saying that the majority of staff should be able to speak the language of the greatest number of prisoners. There should also be sufficient interpreters to meet the needs of prisoners who speak other languages or who need sign language.

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 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.

The duties of a prison medical officer have been described in Rules 22 to 26. Rule 52 emphasises the arrangements which need to be in place to ensure that these duties are properly implemented. First, there need to be a sufficient number of medical officers. Second, they need to be available to respond without delay to any medical emergency. As with the director, modern methods of communication may mean that the doctor does not always have to be physically on site. This issue is covered in greater detail in Recommendation R (98) 7 of the Committee of Ministers of the Council of Europe concerning the ethical and organisational aspects of health care in prison which states that:

2. In order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health.

4. Prisoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises. In case of serious emergencies, the doctor, a member of the nursing staff and the prison management should be warned; active participation and commitment of the custodial staff is essential.

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.

(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.

Female prisoners are generally detained either in prisons which hold only women or in separate units in prisons for male prisoners. In principle the former arrangement is preferable since the prison is more likely to be organised in such a way as suits the needs of women prisoners. A disadvantage is that there are likely to be few of these prisons in any one system and, therefore, the prisoners will often be far from their homes, families and the environment to which they will return on release.

The alternative is to have separate units for women within larger prisons which hold male prisoners. This arrangement minimises the problems of distance but brings its own difficulties. The larger prison will be organised to meet the needs of male prisoners and the women will often have limited access to its resources. Women prisoners are particularly vulnerable in the closed environment of a prison and special provisions need to be made for their safety and security. This is particularly important when women prisoners are held in units within a predominately male prison, and this is the situation to which Rule 53 refers.

When the Standard Minimum Rules were approved in 1957 prisons which were exclusively for women were directed and staffed only by women; the reverse was true for male prisons. This is no longer the case. In Africa, the Americas and Europe

there are instances where entire prison systems are directed by women. In many Member States some male prisons are directed by women and some female prisons are directed by men. Similarly, it is not uncommon for female staff to work in male prisons. Such arrangements may also be required by legislation on equality of employment within some Member States. In these cases the provisions of Standard Minimum Rule 3 will apply.

The most important principle in this matter is that the vulnerability of women prisoners, particularly in a gender context, must always be recognised and that arrangements for cross gender working must take account of this. Legislation for equality of employment must protect gender differences in sensitive situations. This means, for example, that prisoners should only be physically searched by staff of the same gender and that staff of a different gender should not supervise in toilets, showers or other areas where prisoners are entitled to specific privacy.

The need for all staff who work with women prisoners to receive special training is emphasised in the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (33):

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.
3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

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.

(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.

The UN Convention against Torture (10) is clear about the need for prison staff to be properly trained in what constitutes torture:

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

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

This is reiterated in the Code of Conduct for Law Enforcement Officials (5):

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 a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide detailed information about the use of force and firearms in a detention setting:

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

The same principles go on to describe the reporting and review procedures which need to be in place to monitor the use of force and firearms:

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or

prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Prison is by definition a coercive environment and the possibility of violence is ever present, even in the best managed prisons. Staff should be given special training in preventive techniques which will minimise the likelihood of violence and in methods which can be used to defuse potentially violent situations without recourse to violence. They should also be trained in methods for restraining prisoners who are violent with use of minimum force, as well as in techniques for dealing with violence by groups of prisoners.

Rule 54(3) provides that staff who work in direct contact with prisons should not be armed, except in special circumstances. The definition of “arms” should embrace new types of weapons of force as they are developed and should include, for example, electric shock batons and chemical irritant devices.

Inspection

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.

Prisons are closed institutions and should be subject to external scrutiny. There are two main forms of scrutiny that may complement each other. One is carried out by governmental agencies and is often a form of audit to ensure that all laws and internal regulations are being observed. The second form of scrutiny is that carried

out by independent bodies. This form of scrutiny can take several forms. In some Member States it is undertaken by judicial authorities; in others it is done by an ombudsman; in others there is an independently appointed inspector of prisons.

The Optional Protocol to the Convention Against Torture defines the need for a system of independent monitoring of places of detention:

Article 1: The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2: 1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

Article 3: Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4: 1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 15: No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

The right of prisoners to communicate with visiting inspectors is confirmed in Principle 29 of the Body of Principles for the Treatment of Prisoners:

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

The Rules for the Protection of Juveniles Deprived of their Liberty go into further detail about the system of inspection for places of detention holding juveniles:

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced

inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

In some Member States there are various forms of independent inspection of prisons. Where this is the case it is important that these should complement each other rather than duplicate their activities.

Independent inspection of prisons is likely to be most effective when inspection reports are published and are followed up at a later date.

III. PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Guiding principles

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 I of the present text.

Rules 57 to 81 deal with aspects of how prisoners are to be treated, with issues such as assessment, links with the community, categorisation, privileges, work and education. The general heading of this section is “Prisoners under Sentence”. However, Rule 4(2) emphasises that the rules in this section shall also be applicable to all other prisoners, including those awaiting trial, provided they do not conflict with the rules governing the specific categories and are for the benefit of the other groups.

In some Member States a number of the rules in Part II Section A are not applied to prisoners who have not been sentenced. Examples are the exclusion of pre-trial and remand prisoners from access to education, work or skills training and restrictions on their contact with families. As a result pre-trial prisoners, yet to be found guilty of any offence, are often held in very restrictive conditions with most of their time spent in overcrowded living accommodation. Rule 4(2) makes clear that pre-trial and other unconvicted prisoners should have access to the facilities and resources of the prison.

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.

This rule recognises that imprisonment is by its nature a negative experience. It is not the task of the prison authority to aggravate the suffering which this involves by the imposition of excessive discipline or forms of segregation. This principle is also articulated in European Prison Rule 102:

2. Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

In some Member States there is a tendency to exclude some groups of prisoners, for example those serving life imprisonment or very long sentences, from work, educational or other activities in prison. Rule 57 clarifies that this should not be done as a matter of course but only when it is necessary in an individual case.

Rule 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.

This rule highlights the importance of providing prisoners with opportunities to develop in ways that will enable them to lead law abiding lives on release. While imprisonment in itself is “afflictive”, prison authorities have an obligation to make sure that the experiences which prisoners have are as positive as possible. This obligation is confirmed in Article 10(3) of the International Covenant on Civil and Political Rights:

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

This principle is also stressed in Article 5.6 of the American Convention on Human Rights:

Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

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.

Many prisoners have a wide range of personal problems and difficulties for which they require assistance if they are to be integrated into society on release. Prison authorities do not have the internal resources to provide for all of these needs. In any event, given that the aim is to help former prisoners to lead law abiding lives within society, it will be necessary to use all the resources within society to achieve this. Rule 59 underlines that prison authorities should make use of all the resources which are available. This will be a two way process: those responsible for providing these resources within society need to take account of the needs of prisoners and to include them in their activities.

Rule 59 also acknowledges that prisoners are individuals and that their needs will vary. Different groups will also have differing priorities. The Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders and the Rules for the Protection of Juveniles Deprived of the Liberty describe the special needs of these two groups of prisoners.

The treatment and care of prisoners under sentence of death and prisoners sentenced to life imprisonment without the possibility of parole should be determined by individual needs rather than the type of sentence they are serving.

In a number of Member States a high proportion of prisoners come from minority racial, ethnic or cultural groups. They will have specific needs which have to be provided for. In doing so, prison authorities should seek the advice and involvement of community leaders from these groups.

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.

(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.

Rule 60 reinforces the provisions in Rule 58 and emphasises the need to prepare prisoners for release. One way of doing this is by making special provision for prisoners who are coming to the end of their sentence so that they can make a gradual return to society. This will be particularly important for prisoners who have served long sentences and who are likely to find reintegration difficult. Such prisoners should not be released without proper preparation and should be given support and supervision when they are released. The rule stresses the need for this supervision to be provided by appropriately qualified personnel.

This rule should be read within the context of Rule 63 which identifies the benefits of having different levels of security as appropriate.

Rule 61. The treatment of prisoners should emphasize 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.

By definition imprisonment involves separation from society. However, if prisoners are to be settled back into society on release the effect of this separation needs to be minimised as far as is possible. The prison authorities are more likely to be successful in this aim if they do not work in isolation, but rather encourage community bodies and groups to work alongside them in the prison and upon the prisoners' release. The Body of Principles for the Treatment of Prisoners stresses the importance of creating conditions whereby the prisoner can more easily reintegrate back into society on release from prison:

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

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

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

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.

Rules 22 to 26 describe the importance of health care in the prison environment and discuss the role of medical and other health care staff in this regard. Rule 62 points out that providing for the health care of prisoners is not simply a matter of responding to their needs inside prison. Given the poor health profile of many prisoners, health care staff should also identify and seek to resolve any illness or other health matter which have a negative effect on a prisoner's rehabilitation after release.

Rule 63. (1) The fulfilment of these principles requires individualization 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 individualization 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.

Rule 8 deals with the need to separate prisoners according to their sex, age, criminal record, legal status and their treatment needs. Rule 63 takes this matter further and points out the need to treat all prisoners as individuals with different needs. One way of meeting this need is to break prisoners into the groups which have specific needs and, in so far as is possible, to deal with each of these groups separately. In practical terms it may not be possible to separate each of these groups physically, not least because most prisoners are likely to have multiple needs.

Rule 63(2) raises the important issue of differing levels of security for different groups of prisoners. Some prisoners require to be held in conditions of very high security which involves constant supervision; others require medium security which allows a degree of freedom of movement inside prison; others can safely be held in minimum security, with little physical restriction and staff supervision. Prisons of this last type are sometimes called open prisons, with prisoners allowed to go out for part of each day to work or for other activity. The prison authorities should assess the level of security which each prisoner requires. Assessment should take account of a number of factors, including the threat to the public were the person to escape, previous history of trying to escape, the nature of the crime and the length of sentence, and in the case of remand and pre-trial prisoners the potential threat to any witnesses. This assessment should be regularly reviewed.

Rule 63(3) and (4) refers to the number of prisoners to be held in each prison. One of the purposes of prison is to protect society by increasing the likelihood that prisoners will lead law abiding lives on release (Rule 58) and the best way of doing that is by treating them as individuals (Rule 59). Conditions inside the prison should not make that work more difficult. This rule suggests that best practice is that a prison should not hold more than 500 prisoners and in many cases the figure should be lower. The larger the number of persons in a prison, the greater the risk that they will become places solely of containment.

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 after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Prison authorities can assist prisoners to begin the process of their rehabilitation inside prison. In addition, many other agencies and bodies need to be involved, both while persons are in prison and also after they are released. This means that the prison authorities should work closely with these other bodies, which in turn need to continue to be involved once the prisoner has been released. This matter is emphasised in the Body of Principles for the Treatment of Prisoners (10):

With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions

shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

More detail of how this is to be done is provided in European Prison Rule 107:

1. Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.
2. In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.
3. This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.
4. Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.
5. Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

Treatment

Rule 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.

This rule reiterates a principle contained in a number of previous rules, including Rule 58. It goes on to emphasise that it is important to involve prisoners themselves in this process, by encouraging their self-respect and helping them to develop a sense of personal responsibility. Neither of these can be imposed on a person externally. This is what underlies the principle in Article 10 of the International Covenant on Civil and Political Rights.

In many cases the resettlement of prisoners in the community after release will be made more likely if their families can be involved in their preparation for release while still in prison.

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.

(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.

Rule 66 lists some of the methods which are to be used in assisting prisoners to prepare for a law abiding life after release. All of these methods are intended to help prisoners to improve themselves as persons and to identify the circumstances which make it more likely that they will be integrated back into society. A full record should be maintained for each prisoner with the aim of encouraging progressive development.

Classification and individualization

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.

Rules 67 and 68 indicate the two main purposes of classifying prisoners individually and of separating them into groups. One is to reduce the danger that prisoners will be made worse as a result of imprisonment through mixing with those who are likely to influence them in a negative manner; in other words, that prisons should not be “universities of crime”. This is an ever present danger if prisons are too large, are overcrowded and are not properly supervised by staff.

The other purpose of classifying prisoners is as a means to provide them with assistance, training and support which will help them to integrate into society on release. This purpose is confirmed in European Prison Rule 17:

1. Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.
2. Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

The Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders refer to the particular needs of women prisoners:

4. Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programmes and services.
40. Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and

implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.

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.

Rule 69 reinforces the principle which runs through many of the rules in this section about the need to treat prisoners as individuals in order to assist their integration back into society. This should happen with all prisoners. However, the reality in many Member States is that the large numbers in each prison and levels of overcrowding make it impossible for staff to work in this way with individual prisoners. If resources have to be targeted then priority should be given to those serving long sentences since they may need special support when they are released. They are also likely to have committed the most serious crimes. These matters are dealt with in more detail in documents such as Council of Europe Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners.

Privileges

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 co-operation of the prisoners in their treatment.

Care need to be taken to distinguish between rights and privileges. Basic rights such as, for example, access to food and water, family contacts, and health care, should not be subject to limitation. On the other hand, there are certain privileges that can be used to encourage good behaviour if they are granted and/or withdrawn in a transparent manner.

Work

Rule 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.

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

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

Rule 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.

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

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

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.

(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.

Rule 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.

Article 8 of the International Covenant on Civil and Political Rights is concerned with protection of all persons from forced labour and has specific provisions in respect of prisoners:

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

order of a court, or of a person during conditional release from such detention;

The International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour regulates the work or services that may be exacted from persons as a consequence of a conviction in a court of law. More specifically, such work or services should be carried out under the supervision and control of a public authority, and the said persons not be hired or placed at the disposal of private individuals, companies or associations (Art. 2).

With regards to young people in custody, the Rules for the Protection of Juveniles Deprived of their Liberty make clear that:

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

It is appropriate that those prisoners who are able should work. However, this work should not be imposed in the form of punishment nor should its conditions be equivalent to slave or forced labour. In all cases the provisions of Rules 72 to 76 are to be observed.

Article 6 of the International Covenant on Economic, Social and Cultural Rights enshrines the right to work:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The provisions for prisoners, as expressed in Rule 72, are confirmed in the Body of Principles for the Treatment of Prisoners (8):

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

The Rules for the Protection of Juveniles Deprived of their Liberty provide more detail about the provisions for juveniles to undertake vocational training or carry out remunerated labour:

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

The implication of Rule 72 is that the main purpose of prisoners working is to provide them with the experience, skills and training necessary to obtain employment on release. It can also be argued that it is proper that prisoners should be able to put the time when they are in prison to good effect and not spend it in boredom and monotony. Rule 72(2) emphasises that these considerations should take priority over any wish of the prison authority to make a profit from the work of prisoners.

Rule 73 reinforces the provision in Rule 72 about the primary purpose of work by prisoners. In a number of Member States workshops and other industries for prisoners are now contracted to private companies, on either a commercial or a not-for-profit basis. This is another instance where the provisions of Rule 3 can be applied. Contracting out in this way is acceptable provided the main purpose is to provide skills and training for prisoners and is not primarily for the commercial benefit of the private contractor or of the prison authority.

If prison work is contracted to private companies, they should pay the full rate for the work being done. Best practice is that prisoners should in turn be paid the full rate for their work. The prison authorities can then require the prisoners involved to pay proportions of their wages for their upkeep in prison, for the upkeep of their families, in compensation to victims if appropriate, and also to save a proportion for their release.

The provisions of Article 7 of the International Covenant on Economic, Social and Cultural Rights apply to prisoners:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions

of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Education and recreation

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

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

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

Rules 77 and 78 expand on the provisions in Rule 59.

Article 13(1) of the International Covenant on Economic, Social and Cultural Rights confirms the right to education:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 15 of the International Covenant on Economic, Social and Cultural Rights requires that:

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

The rights contained in these articles are applicable to prisoners. This is confirmed in the Basic Principles for the Treatment of Prisoners (6):

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

The Rules for the Protection of Juveniles Deprived of their Liberty confirms the rights of juveniles to education:

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

Rule 58 specified the obligation on the prison authorities to prepare prisoners for integration back into society. Many prisoners have had an inadequate education and in many Member States a significant proportion will be illiterate. This lack of education will make re-entry into society more difficult. This places an onus on prison authorities to provide prisoners with educational facilities. Rule 77(1) goes so far as to provide that education shall be compulsory for those who are illiterate and for young prisoners.

Education as part of human development goes beyond merely learning to read and write. For those who are capable provision should be made for further educational attainment. This is more likely to be possible if there is a close link between education in prison and that provided in the community.

In respect of education, of language and especially of cultural activities it is important that prison authorities should make provision for the wide range of races and ethnic groups which are now present in many prisons.

Social relations and after-care

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 79 confirms the provisions included in Rule 37 and the commentary to that rule refers also to the provisions in Rule 79.

Article 10 of the International Covenant on Economic Social and Cultural Rights states:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society,

particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

This is confirmed in Article 23(1) of the International Covenant on Civil and Political Rights:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The Rules for the Protection of Juveniles Deprived of their Liberty emphasise the importance of family ties for this group of prisoners:

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

The Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders describe the special considerations that need to be taken into account for women prisoners, especially those who are mothers of small children.

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.

Rule 80 refers in more detail to the provision in Rule 58 about the need to prepare prisoners throughout the course of their sentence for integration back into society on release.

Principle 10 of the Basic Principles for the Treatment of Prisoners states:

With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions

shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

The Standard Minimum Rules for the Administration of Juvenile Justice recommend the use of conditional release and other arrangements that may help juveniles to reintegrate into society:

28.1 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.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

29.1 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.

The Rules for the Protection of Juveniles Deprived of their Liberty also stress the particular importance of preparation for release as far as young prisoners are concerned:

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

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

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

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

Rule 81 is to be read in conjunction with Rules 60 and 64.

Preparation for integration back into society should begin as early as possible in a prisoner's sentence and should intensify the closer the person gets to release. The most essential needs of persons on release from prison are suitable accommodation, a form of employment which will provide income, and support and supervision for any particular needs, particularly if the person has health problems or has been in the past abused drugs or alcohol. Support in these areas is likely to come from a variety of governmental and non-governmental bodies. The prison authorities should develop strong links with all of the relevant bodies, encourage them to come into prisons on a regular basis, and provide structures which will encourage these bodies to assist individual prisoners.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

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.

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

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

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

The title of this section reflects the thinking which was prevalent in 1957. In some Member States the term "insane" may still have legal standing. The term "mentally abnormal" is no longer acceptable. The section in fact deals with issues of mental health.

The identification of any form of mental disease involves a medical diagnosis that can only be made by a qualified health professional and not by prison staff or directors.

Persons who are clinically diagnosed as having a severe mental illness, either while awaiting trial or in the course of sentence, should not be detained in prison but should be transferred to an appropriate psychiatric or other medical facility.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care are very clear on the conditions under which those with mental illness should be held, with Principle 9 stating:

Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.

3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.

4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 20 refers to those serving sentences of imprisonment:

1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.

2. All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in paragraph 5 of Principle 1.

3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.

4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11.

(Principle 1 refers to the right of all people to have the best available mental health care. Principle 11 refers to the need for consent to treatment.)

The Rules for the Protection of Juveniles Deprived of their Liberty (53) state that:

A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

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.

Rule 83 is a specific provision which is also covered by the general provisions in Rule 81.

Principle 7 of the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care states:

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her or the of

his or her relatives or friends and shall have the right to return to the community as soon as possible.

Principle 8(1) states that:

Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.

C. PRISONERS UNDER ARREST OR AWAITING TRIAL

Rule 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 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.

The binding international treaties leave no room for doubt as to the legal status of persons who are charged with a penal offence. Article 11 of the Universal Declaration of Human Rights states that:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Article 9 of the International Covenant on Civil and Political Rights is similarly clear in respect of the grounds for deprivation of liberty in the case of persons who are facing a criminal charge:

1. Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide

without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

This means that persons accused of criminal crimes or offences should only be deprived of their liberty if the specific circumstances of their case make this necessary. In addition, the ICCPR states that they are entitled to trial within a reasonable time or else should be released. There is no definition of what constitutes “a reasonable time”. The reality is that in many Member States a significant minority, and in some cases a majority, of prisoners are awaiting trial. This is a major contributory factor to prison overcrowding. In addition, these prisoners are often held in the most restricted and oppressive conditions, with no access to many of the facilities in the prison.

Article 11 of the Universal Declaration of Human Rights stresses that persons who have not been convicted according to law in a public trial have the right to be presumed to be innocent. This right is restated in Article 14(2) of the International Covenant on Civil and Political Rights:

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

This right needs to be observed strictly by prison authorities. Persons in this category should not be referred to nor be treated as offenders nor should they be subjected to “correctional” measures. At the same time, Rule 4(2) makes clear that all the rules in part IIA are to be applied to persons under arrest or awaiting trial, provided they do not conflict with the rules in Part IIC. This means that these prisoners should have access to all the facilities in the prison. Rules 84 to 93 are additional safeguards for these prisoners and do not replace those in Part IIA.

Rule 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.

Rule 85 is based on Article 10.2 of the International Covenant on Civil and Political Rights, which states that:

(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;

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

Untried prisoners have the right not to mix with those prisoners who have been convicted. However, this should not result in worse treatment or more restricted access to the facilities of the prison.

The general principle in Rule 85(2) is that several of the separation of categories listed in Rule 8 are also to be applied to untried prisoners. So, untried male, female and young prisoners are to be separated from each other, in the same way that untried male, female and young prisoners are to be separated from convicted male, female and young prisoners.

Rule 86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

This is a confirmation of Rules 9 and following. At the same time, the provisions in Rule 67 about the need to separate prisoners who are likely to be a negative influence on others in any way apply also to untried prisoners.

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.

This is an extension of Rule 20.

Rule 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.

This is an extension of Rules 17 and 18.

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.

This is an extension of Rules 71 to 74. Untried prisoners should also be offered the opportunity to attend education.

Rule 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.

This is an extension of Rules 39 and 40.

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.

This is an extension of Rules 22 to 25.

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 restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

1. This is an extension of Rules 37 and 44.

Rule 93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

The legal basis for this rule is to be found in Article 14(3) of the International Covenant on Civil and Political Rights which specifies the legal entitlements of anyone who is faced with a criminal charge:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

These rights apply to everyone who faces a criminal charge. Persons who are detained in custody while awaiting trial by definition have their freedom of movement curtailed and are likely to be especially in need of exercising the rights of Article 14(3).

The details of these rights in respect of persons who are detained are expanded in the Basic Principles on the Role of Lawyers:

- 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
- 6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
- 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
- 8. 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.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (18) includes the following provisions:

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

D. CIVIL PRISONERS

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 be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

Rule 94 makes clear that prisoners who are detained on a civil charge are to be treated no less favourably than untried prisoners, with the possible exception that they may be required to work. As is the case with untried prisoners, the provision in Rule 4(2) requires that all the rules in part IIA are also to be applied to these prisoners.

Article 11 of the International Covenant on Civil and Political Rights places a strict limitation on imprisonment on civil matters:

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE

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, 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.

The provisions of Article 9 of the International Covenant on Civil and Political Rights referred to in this rule are listed above in the commentary on Rule 84. The provision in Rule 4(2) requires that all the rules in part IIA are also to be applied to these prisoners.

In some Member States some persons seeking asylum may be detained. In 1999 the Office of the UN High Commissioner for Refugees issued revised Guidelines on applicable criteria and standards relating to the detention of Asylum Seekers, which included the following provisions:

Guideline 2: General Principle

As a general principle asylum-seekers should not be detained.

Guideline 3: Exceptional Grounds for Detention.

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.⁵

There should be a presumption against detention.

Guideline 10: Conditions of Detention

The following points in particular should be emphasised:

(iii). the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;

The provision in Guideline 10 above is reiterated in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas:

Principle XIX Separation of categories

Asylum or refugee status seekers and persons deprived of liberty due to migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.